

The Human Rights Ombudsman in Central America: Honduras and El Salvador Case Studies

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Abstract

This article compares efforts to establish and strengthen the office of Human Rights Ombudsman in two Central American countries, Honduras and El Salvador. It focuses on challenges faced by reformers who seek to institutionalize human rights protection as part of the process of democratizing the state. The article highlights the particular features of a post-authoritarian context, wherein the rule of law is weak. The article is based on elite interviews in each country, supported by the findings of public opinion surveys. The findings demonstrate that under energetic leadership the Ombudsman can influence government behaviour and shape public values and perceptions concerning human rights. The findings also show that even democratically elected regimes in the post-authoritarian setting of Central America are reluctant to support the genuine strengthening of an accountability agency like the Ombudsman in ways that assure its independence and efficacy.

1. Introduction

The widespread interest in creating national human rights agencies is an important feature of the post-Cold War world. One such agency, the Human Rights Ombudsman, has been established in many countries, from the former Soviet republics to countries in Africa and Latin America. Indeed, more than 100 nations have adopted an Ombudsman's office in some form¹. In post-authoritarian nations, where judicial systems were weak and politically compromised, the Ombudsman held promise for the encouragement of the institutionalization of human rights protection in the transition to democracy. The 'Paris Principles', set forth at an international workshop in 1991 broadly established the parameters of what a national Human Rights Ombudsman would do: i) promote awareness of human rights through public outreach and review of legislation; ii) prepare annual human rights reports; and iii) receive and investigate citizens' complaints concerning abuses of public authority².

Although the office of Ombudsman first appeared in Sweden nearly two centuries ago, it was more widely adopted in European democracies only in the twentieth century. As an independent office charged with investigating citizens' complaints about abuses of authority or maladministration in democratic regimes, the Ombudsman gained a positive reputation. It seemed to work well in that context. However, the rapid spread of the office of the Ombudsman to countries undergoing political change in different settings raises new challenges. In the Nordic countries, for example, one could argue that the Ombudsman is itself a reflection of a developed polity, a complex state, and a democratic culture. An office

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¹ 'Ombudsman Newsletters', International Ombudsman Institute, 24: 2 (June 2002)

² 'Performance and legitimacy: national human rights institutions', Geneva: International Council on Human Rights Policy, 2000, pp 1-2

that facilitates citizens' dealings with bureaucracy is a logical complement to state administration in such a setting. However, in emerging democracies such as Honduras and El Salvador, which must overcome authoritarian legacies, the role of the Ombudsman is likely to be different. Where state corruption and repression have been the norm, the Ombudsman may be viewed with deep suspicion by those who exercise power. Thus, the Ombudsman will need to provide strong leadership in establishing accountability as a norm of political and administrative behaviour, but quite possibly in a hostile political environment. In that environment, can the office of the Ombudsman establish its independence and at the same time its efficacy in influencing the state to respect human rights?

Prior to undertaking a democratic transition, the Honduran and Salvadorean regimes were notorious for suppressing civil liberties, violating human rights, and concentrating power in the executive. Counter-insurgency wars only added to a culture of violence and mistrust, disarticulated political systems, and discredited justice sector institutions (police, prosecutors, and judiciary). In that context, democratization required a 'rule of law revival',³ which entailed reforming the judicial system and establishing new accountability agencies such as the Ombudsman for Human Rights.

One author, Mark Ungar, has speculated that in creating a national Ombudsman, some governments hoped to appease reformers 'without threatening entrenched interests'.⁴ His point finds support in the Honduran and Salvadorean cases. In the former country President Callejas, who initially established the Commissioner, or Ombudsman, for Human Rights, was later accused of the most flagrant corruption in Honduran history. In El Salvador, President Cristiani accepted the creation of the office of the Ombudsman as a key provision of the 1992 Peace Accords, while tenaciously resisting purges of the armed forces or judiciary, steps that were crucial to democratizing the state. Ungar also argues, however, that if the Ombudsman's office enjoys strong international support and builds effective ties with civil society, it may confound the modest expectations of governments and assume a 'vocal advocacy role'. Indeed, since its inception the Ombudsman's office throughout Central America has received support from the Nordic countries, Netherlands, Spain and the United Nations Development Program (UNDP). Sweden, for example, works with the Ombudsman in every Central American country except Costa Rica.⁵ Even so, the institution's effectiveness ultimately depends on two factors. First, it must gain respect for its functions among public officials, which would entail respect for its independence, a supportive budget, and compliance with its resolutions. Secondly, it must establish credibility among the citizenry, which implies building strong ties with civil society. The following discussion examines how well the office of the Ombudsman in Honduras and El Salvador has succeeded in meeting reformers' expectations. Has the office achieved demonstrable successes in promoting the accountability of the state and respect for the rule of law? Is it becoming an institutionalized feature of Central American government? In order to answer these questions, the author conducted in-depth elite interviews in El

³ Thomas Carothers, 'The Rule of Law Revival' (1998) 77 *Foreign Affairs* (March-April), 95-106.

⁴ M. Ungar, *Elusive Reform: Democracy and the Rule of Law in Latin America* (Boulder: Lynne Rienner, 2002), 37.

⁵ See Executive Summary in L. Bloomquist, M. L. Bartolmei, and F. Uggla, *Evaluation of Swedish Support to the Ombudsman Institutions in Latin America*. (Stockholm: Swedish Institute for Public Administration, 2002)

Salvador and Honduras in May 2001 and in May and September 2002.⁶ Information gathered through interviews was supplemented by public opinion surveys carried out in El Salvador in collaboration with the University Institute of Public Opinion of the Central American University (1996) and in both El Salvador and Honduras in collaboration with CID Gallup Latin America (2001).⁷ Finally, the author and his colleague, Donald W. Jackson of Texas Christian University, collaborated with the University Institute of Public Opinion to carry out focus group interviews in El Salvador in 1999.

In Honduras and El Salvador the law grants administrative autonomy, so that each elected Ombudsman is free to organize or reorganize the office and set its agenda. The Ombudsman is elected by the legislature (by simple majority in Honduras and by two-thirds majority in El Salvador) and reports annually to the legislature. The term of office is three years in El Salvador and six in Honduras, with the possibility of re-election. In El Salvador a special budget is set by the Legislative Assembly each year, while in Honduras the budget is part of the national budget. The law sets high standards for appointment in terms of human rights experience and moral rectitude, and provides strong legal protection against retaliation toward the Ombudsman by other office holders. But in the end the office of the Human Rights Ombudsman must rely on its moral authority and legitimacy because, while it can issue public condemnations, it has no enforcement or punishment powers. Its effectiveness depends very much on whether it is perceived by the public as an impartial defender of citizens' rights.

2. Creating and Strengthening the Ombudsman in Honduras

Honduras became enmeshed in the low-intensity conflicts that plagued Central America in the 1980s because the country served as a base of operations for the United States' efforts to depose the Sandinista government in Nicaragua. The resulting militarization of Honduran politics led to serious human rights violations. Initially, Honduras' transition from military rule was orchestrated by the United States in order to facilitate the war in Nicaragua, with the result that democratization was more formal than real. Indeed, during the 1980s the military was autonomous in matters of national security and enjoyed an informal assurance against investigations of military abuses of human rights.⁸ The arbitrary arrests and forced disappearances of citizens, carried out with impunity by agents of the state, demonstrated the weakness of Honduran democracy at this stage. It was not until an international peace process got under way in 1987 that Honduras began to move towards a more effective consolidation of democratic institutions.

The Esquipulas Peace Accords called upon the signatory governments to establish National Reconciliation Commissions (CNR) to facilitate the passage from war to peace. Under the leadership of Archbishop Enrique Santos, the CNR in Honduras pushed for demilitarization and modernization. In 1990 President Rafael Callejas acted on these recommendations by establishing a Commission to Modernize the State. That Commission urged the president to create a Commissioner for Human Rights, or Ombudsman, which he

⁶ The interviews were conducted on the record and tape recorded with permission to use the interviewees' names.

⁷ Please see the appendix at the end of this article for further information about the surveys undertaken by the article's author and colleagues.

⁸ D. Schulz and D. S. Schulz, *The United States, Honduras, and the Crisis in Central America* (Boulder: Westview Press, 1994), 71.

did by executive decree on 8 June 1990.⁹ Although human rights activists worked behind the scenes through the Human Rights Commission of the United Nations, the creation of Honduras' Ombudsman did not result directly from popular pressure; it was a more top down initiative. At the time the government viewed human rights NGOs, such as the Honduran Human Rights Committee (CODEH) and the Committee of Families of the Detained/Disappeared in Honduras (COFADEH), with suspicion. This attitude was typical of Central America, where governments had pursued 'demobilization' strategies to discourage grassroots organizing.¹⁰ In any event, President Callejas appeared to be responding to the prestigious CNR. The CNR then served as a consultative body and provided early political support in setting up the Commissioner's office.¹¹ It also proposed the list of candidates to head the office, from which President Callejas selected Dr Leo Valladares, who founded an NGO in 1991 that provided human rights education and legal services.

Although the Salvadorean Ombudsman will be discussed below, this is an appropriate place to mention that, because the office in that country was created by the Peace Accords, it enjoyed UN assistance and the tutelage of human rights experts in its early days — a considerable asset given the violence and polarization that characterized the Salvadorean civil war. Honduran society was less polarized. Still, there were important similarities between the two contexts in that genuine democratization of the state implied an accounting for military behaviour and a reduction in the armed forces' role in politics. This essential task was carried out by the United Nations in El Salvador, but in Honduras it was undertaken by the Ombudsman. By confronting this issue vigorously, Dr Valladares established a foundation of credibility for the institution.

In the introduction it was noted that the Human Rights Ombudsman's formal powers are quite broad. In practice this has meant that the mandate has exceeded institutional capacity. The first Commissioner pushed hard for formal legislation and Congress obliged in October 1995. The law empowers the Commissioner to monitor whether state actors respect rights guaranteed under the Honduran constitution as well as rights enshrined in international treaties signed by Honduras. He is further empowered to determine whether government policies are consistent with international treaties and conventions ratified by Honduras. To that end he can solicit information from any public authority, including classified information, and inspect records and files. Investigations of citizens' complaints involve a report of findings issued to the accused party and the authority to make the report public (a form of censure) if no satisfactory response is given. Obstruction of investigations by the Commissioner's office can lead to an indictment for contempt and cases are referred to the Attorney General if evidence of criminal behaviour is discovered.¹²

These formal powers (which do not include direct enforcement authority) have to be gauged in relation to resources at the Ombudsman's disposal. The office is expected to

⁹ L. Valladares Lanza, *El Defensor del Pueblo: los nueve años del Comisionado Nacional de los Derechos Humanos en Honduras (1992-2001)* (Tegucigalpa: Editorial Guaymurás, 2002), 18.

¹⁰ J. Booth and T. W. Walker, *Understanding Central America* (Boulder: Westview Press, 1999), see chapter 9.

¹¹ Author interview with Dra Irma Pineda, former judicial advisor to the Human Rights Commissioner (21 May 2002), Tegucigalpa.

¹² Author interview with Ana Pineda, Deputy Commissioner for Human Rights (26 September 2002), Tegucigalpa.

balance the functions of promoting education and awareness of human rights throughout the country with promotion of a state of law and the investigation of complaints brought by individual citizens or groups. This last function is defined so broadly that it extends beyond official behaviour to encompass cases involving domestic violence.¹³ This function, essentially social work, could on its own strain the resources of a small agency with a limited budget. Obviously, each of these responsibilities represents a substantial brief in its own right, and the Commissioner has had to carry them out with a small, vulnerable budget and inadequate staff.¹⁴

3. Raising the Profile of the Commissioner's Office

The Commissioner for Human Rights came to prominence quickly by addressing one of the more sensitive issues in Honduran politics: forced disappearances that occurred during the 1980s. Ironically, the state of Honduras accepted the jurisdiction of the Inter-American Court of Human Rights on 9 September 1981, at the same time as state security services were arresting suspected regime opponents, subjecting them to torture, and in some instances killing them while they were in state custody. One of the most notorious of these cases involved a university student, Angel Manfredo Velásquez Rodríguez, who was arrested by agents of army intelligence and subsequently disappeared. When the government of Honduras failed to fulfill its habeas corpus obligations, the Inter-American Commission on Human Rights petitioned the Inter-American Court to hear the case. In *Velásquez-Rodríguez v. Honduras* (29 July 1988) the Court found unanimously for the plaintiffs, holding that the state of Honduras had violated Articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment) and 4 (Right to Life) of the American Convention on Human Rights.

Once Honduras had been found culpable in a court of law of failing to protect human rights or to prosecute rights violators, the government came under strong political pressure to seek an accounting of forced disappearances.¹⁵ In rendering its judgment in the Velásquez case, the Inter-American Court indicated that between 100 and 150 disappearances may have occurred. Dr Valladares carried out an exhaustive study and published his findings as 'The Facts Speak for Themselves'¹⁶ He concluded that forced disappearances were government policy in the 1980s and that the Armed Forces were complicit in severe human rights violations. He placed responsibility with the High Command and intelligence units such as Battalion 316.¹⁷

Despite vocal rejection of the report by military leaders, the incoming president, Roberto Reina, embraced it publicly and Commissioner Valladares began investigating specific cases by examining military records. He also joined with human rights NGOs to locate the disappeared, who were buried in clandestine graves, and carry out forensic research on the causes and circumstances of their deaths. These efforts captured national and international attention, and led eventually to a handful of criminal indictments. Although few individuals were convicted, exposing the Armed Forces' abuses hastened

¹³ Bloomquist, n. 5 above, 26

¹⁴ Interviews with Commissioner Leo Valladares and other staff members of the Ombudsman office. See subsequent discussion of congressional attacks on the Commissioner's budget.

¹⁵ R. Sieder (ed.) *Central America: Fragile Transition* (New York: St. Martin's Press, 1996), 179.

¹⁶ Valladares, n. 8 above.

¹⁷ Valladares, n. 8 above, 26.

demilitarization and implicitly indicted the Honduran judiciary.¹⁸ Subsequently, the Commissioner played an important role in judicial reform. A prominent journalist summed up the significance of the Commissioner's report:

For the first time in Honduras' history human rights violators were in the dock of the accused . . . the Honduran state had taken up the theme of human rights and the theme of official responsibility in relation to disappearances, tortures, and political prisoners.¹⁹

The Commissioner also focused on corruption in the intelligence agencies and police. In 1993 an ex-agent of the Investigative Police agreed to talk about his role in targeting civilians for execution. The Human Rights Commissioner took the agent under his protection and received testimony that implicated San Pedro Sula police officials in drug trafficking and other crimes, including murder. Intense press coverage led the Supreme Court to order a formal investigation. Other agents subsequently came forward to corroborate the charges and the process ended with indictments of several high-ranking military officers.

These investigations prompted President Reina to establish the High Level Ad hoc Commission for Institutional Reform, which recommended the dissolution of the militarized Investigative Police and the transfer of the investigative police to the jurisdiction of the Public Ministry.²⁰ A struggle ensued between the military, which sought to retain control over criminal investigations, and the Ombudsman, who strongly opposed it. The Commissioner was appointed to the body whose recommendation to place the police under the civilian authority was enacted into law in September 1995.

It was to be the first civilian police in the thirty years the police had existed . . . its first director stood up and said in front of everyone: 'I promise that while I am directing the Investigative Police you will never have to bring a writ of habeas corpus.' This was unusual because until that moment only organizations to defend human rights had revealed these things, while the state had generally ignored them. For the first time someone within a state institution had come out and said that these things certainly did happen here in this country.²¹

Military and police leaders continued to push for the creation of a Ministry of Security where the authority to conduct criminal investigations would be lodged. This drive gained support in Honduras, as elsewhere in Central America, due to the dramatic post-war rise in crime. Fearful of the threat of a re-militarization of policing, the Commissioner reached out to civil society, convoking the Citizens' Forum on Public Security. The Forum began with the participation of a small number of human rights NGOs, women's organizations and intellectuals, together with the citizen council of the Public Ministry. Eventually its membership grew to more than thirty civil society organizations. Although Congress did place the investigative police within the Ministry of Security, it raised the professional criteria for recruitment, training and promotion. As these changes were finalized in 1998, the government was also reducing the autonomy of the Armed Forces by establishing a civilian Ministry of Defence.²²

The Human Rights Commissioner has broad responsibility for promoting the rule of law. Article 42 of the Organic Law of the Commissioner prescribes two specific duties with regard to the state's judicial function. The Commissioner is mandated to ensure that citizens enjoy unimpeded access to judicial remedy and that judges carry out their functions with due

¹⁸ Valladares, n.8 above, 38-42.

¹⁹ Author interview with Iselda Arita, publisher, (23 September 2002), Tegucigalpa.

²⁰ Valladares, n. 8 above, 51, and Sieder, n. 14 above, 181.

²¹ Author interview with Sociologist Leticia Salamon (23 September 2002), Tegucigalpa.

²² Valladares, n. 8 above, 54-57.

diligence and timeliness. Earlier research has pointed out that even by Central America's lax standards the Honduran judiciary was traditionally deeply politicized, the appointment of magistrates being based explicitly on party patronage rather than on professional criteria.²³ Clientelism within the judiciary was a glaring problem, compounded by a budget that was often less than half of the constitutionally mandated 3 per cent of the national budget. Despite these challenges, the Human Rights Commissioner undertook an extensive study of the judiciary. His April 2000 report underscored the absence of judicial independence, asserting that judicial appointments rested 'strictly on political, economic, and personal criteria.'²⁴ Following publication of the report, the US Agency for International Development (USAID) threatened to reduce funding for reform efforts if anti-corruption measures were not initiated. In response, the then President Carlos Flores established a Commission of Notables and Dr Valladares was nominated to this commission. The Commission's recommendations were partially implemented thanks to a 5-year, US\$30 million Inter-American Development Bank project.²⁵

Dr Leo Valladares was unusual among Central American Ombudsmen in having served two terms, for a total of ten years. Appointed by President Rafael Callejas in 1992, then elected for a 6-year term after passage of the 1995 Commissioner Law, he headed the office until March 2002. His staff grew from the original six persons to 118 by 2001. However, this number remained inadequate due to severe budget cuts in 2000. Two deputy Commissioners oversaw work in the various policy areas. Efforts to extend the Commissioner's office throughout the country were largely successful, with only one department lacking a regional delegation. To compensate for a weak regional presence, the Commissioner instituted mobile units that could also receive complaints. The intake of citizens' complaints increased steadily, rising from 2,326 complaints filed in 1996 to 10,387 in 1998, then dropping back to 7,939 in 2000. Local offices were 'processing units', which drafted resolutions, which were then forwarded to the central office for approval. This pattern of centralization typified Central American Ombudsmen and has been criticized by donor groups.²⁶ With these basic operating structures and a very limited budget, the office of the Commissioner of Human Rights has sought to assert its presence in Honduran society. How has it fulfilled other aspects of its ambitious mandate?

Dr Valladares described the intake and investigation of citizen complaints as the 'backbone of the institution'.²⁷ The Commissioner used such devices as radio talk shows, educators who travelled the country, and distribution of pamphlets in neighbourhoods to publicize the office and the nature of citizen rights. Complaints were analyzed to determine whether a rights violation might have occurred and an investigation were warranted. To illustrate this, in 1998 about a third of complaints were handled without an investigation, either by directing the citizen towards the proper agency where help could be attained, or through 'human attention.' (An example of the latter would be driving a person to visit a relative in detention or in prison.). The remaining cases involved opening an investigation.²⁸ Critics of the Ombudsman have argued that too much attention has been given to processing citizen complaints at the expense of developing a more strategic plan for

²³ Sieder, n. 14 above, 175.

²⁴ Valladares, n. 8 above, 67.

²⁵ Author interview with Swedish Embassy official, Ina Ericsson (26 September 2002), Tegucigalpa.

²⁶ Bloomquist, n. 5 above, 27.

²⁷ Valladares, n. 8 above, 128.

²⁸ Bloomquist, n. 5 above, 28.

influencing state modernization and democratization.²⁹ Yet Honduras' experience is typical for Central America. The Ombudsman felt a strong need to establish a presence at the grassroots, where state institutions that provide services have had little purchase in the past. By far the most common citizens' complaints are brought against the police and the judiciary. What is interesting is that the staff of the Ombudsman's office and external observers alike contend that public authorities in Honduras by and large cooperate with investigations and comply with the Commissioner's resolutions 'if not out of good will, at least out of apprehension'.³⁰

Let us turn now to the question of establishing links between the Ombudsman's office and Honduran civil society. Exploring this issue will lead us into the broader question of how successive Honduran administrations have reacted to, and cooperated with the Commissioner for Human Rights. When he was initially named Ombudsman in 1992, Leo Valladares was not well known either in political or human rights circles. He was an academic and professor at the national university with some background in diplomacy. Better-known figures in the human rights field were passed over, perhaps due to conflicts with earlier governments. In any case, Dr Valladares faced the task of establishing the institution and of building his own presence and reputation as a defender of human rights. He seemed to achieve these objectives far more effectively than might have been expected. As one analyst commented, Dr Valladares 'gave a very special character to the figure [of Ombudsman], a profile that not even the government itself was expecting'.³¹

Early in his tenure, in addition to his electrifying report on forced disappearances, the Commissioner displayed exceptional skill in forging strong relationships within civil society. Valladares showed 'great ability to establish relationships with diverse sectors of society,' relationships that extended beyond the narrowly defined human rights community. 'Organizations in society strongly identified with him, with his language, with his projects, and with the agenda developed by the Commissioner.'³² The Commissioner was able to build consensus among various civil society organizations in support of the drive to encourage demilitarization of policing, for instance, to a degree that instilled the sense that the Ombudsman was more a part of civil society than a state institution.³³

In the mid-1990s Hondurans engaged in an active debate over police and military reform, and over new legislation affecting young people, women, and other vulnerable sectors. 'When the Law of the Child and the Adolescent was under discussion, the Commissioner facilitated the creation of spaces for NGOs concerned with children's rights so that they could press for the best law possible.' He 'greatly facilitated women's organizations' as they struggled to shape a law concerning domestic violence. The Commissioner 'played a constructive role'. He had 'the capacity to generate consensus, to call people to sit at the same table' to determine a common strategy. He was helpful, too, in providing legal and technical analysis to facilitate a maximum of influence in shaping the new legislation. Thus, in the context of a fragmented and weak civil society, Dr Valladares was seen to become 'a spokesman of civil society.'³⁴ These efforts took their most visible and

²⁹ Author interview with Political Scientist Rafael del Cid (25 September 2002), Tegucigalpa.

³⁰ Bloomquist, n. 5 above, 31.

³¹ Arita interview, n. 17 above.

³² Salamon interview, n. 19 above.

³³ Arita interview, n. 17 above.

³⁴ Arita interview, n.17 above

concrete shape in the Commissioner's decision in 1997 to help form a Citizens' Forum for Public Security ('Foro Ciudadano', which came to be known simply as the 'Foro'), with the specific aim of giving civil society a voice in police reform. The Commissioner drew together some two dozen NGOs and civic groups ranging from academics to labour and peasant associations and women's groups. During the year prior to the devastating arrival of Hurricane Mitch in 1998 the 'Foro' met regularly under the auspices of the Commissioner and worked with Congress to craft legislation. Although the 'Foro' received a great deal of publicity through these efforts, Valladares kept somewhat in the background, trying to act as conciliator between the 'Foro' and the government in the tenuous moments. Some felt that his leadership, while properly focused, was too conciliatory.

In that context a regional survey was published revealing attitudes toward public institutions throughout Central America. Those findings stimulated the 'Foro' to contract with the Centre for Honduran Documentation to gauge perceptions of the Commissioner of Human Rights, and to determine what people knew about functions of the office and how to use it. The results proved to be more critical than might have been expected, given the Commissioner's achievements to that point. To his credit, Valladares communicated the findings to his staff in order to stimulate a rethinking of strategies. Greater emphasis was given to educational outreach and to bringing services to far-flung communities. The idea of coordinating a social audit process ('auditoría social') to scrutinize public administration, which would occur simultaneously at national and local levels, began to take shape within the Commissioner's office. However, it was at that point Hurricane Mitch wreaked its havoc on Central America.

4. Political Attacks on the Human Rights Commissioner

The devastating hurricane that swept through Central America in late October 1998 caused appalling property damage and loss of life. Most of Central America was affected, but the damage in Honduras was especially severe. Thousands died, hundreds of thousands were left homeless, and the storm did nearly US\$3 billion worth of damage to homes, businesses and infrastructure. The banana crop, the country's second largest export product after coffee, was virtually wiped out. Despite the calamity, some analysts think it had positive consequences for democratization because it led to growing participation in the 'auditoría social'. 'Mitch, as much as it destroyed us, I think it gave us a great push forward in the development of democracy and civil society.'³⁵ The social audit came to life in the context of a sharp influx of international relief funds, and the Commissioner for Human Rights played a key role.

Once the Honduran government had presented its plan for national reconstruction in December 1998, the Commissioner contracted with an NGO to study 'the distribution of external aid'.³⁶ Based on that study, the Commissioner prepared a preliminary report, which documented seventeen instances of irregularities and possible corruption involving state agencies and private companies. He also turned the findings over to the anti-corruption division of the Public Ministry to determine whether criminal charges were warranted.³⁷ The report cited nepotism in the granting of contracts and questioned whether help was reaching

³⁵ Ibid.

³⁶ Marlin Oscar Ávila, 'Auditoría Social', (2002) 20 *Revista Probidad* (September), at 4.

³⁷ Valladares, n. 8 above, 91.

the intended beneficiaries. Although the scale of malfeasance was relatively small in relation to total aid, Valladares' actions generated a fierce political reaction.

In mid-April 1999 the Honduran congress held an evening 'rump' session aimed at reducing the Ombudsman's powers and forcing Dr Valladares from office by reducing the Commissioner's term to four years and making this provision retroactive, thus in effect firing him legislatively. The bill also proposed to remove the investigative authority of the office, except in narrowly defined 'human rights' cases. The clear intent was to punish the Ombudsman for reporting on irregularities in the use of relief funds and to intimidate his office.³⁸ However, because a quorum was not present at the first vote on 20 April a second vote had to be scheduled. In the meantime, the rapid mobilization of domestic and international civil society organizations in defence of the Commissioner brought such pressure to bear that Congress backed down. Should this episode be regarded as a triumph for the office of the Ombudsman and its developing ties with civil society, or as an ominous sign of the intolerance the institution faces from sceptical governments? As will be demonstrated below, a similar but even more severe reaction against the Ombudsman occurred in El Salvador.

5. Establishing and Strengthening the Ombudsman's Office in El Salvador

The office of the Procurator for the Defence of Human Rights (PDDH), or Ombudsman, in El Salvador originated in the Chapultepec Peace Accords, which were signed in December 1992. These Accords focused on purging the armed forces,³⁹ demilitarizing the police,⁴⁰ and reforming the justice system. Perhaps the greatest stimulant to that last goal was the establishment of a Truth Commission, whose final report concluded: 'El Salvador has no system for the administration of justice which meets the minimum requirements of objectivity and impartiality so that justice can be rendered reliably.'⁴¹ In the light of that conclusion, the Commission urged the strengthening of the newly created PDDH and appealed to the United Nations to work closely with the PDDH to define its role, establish its presence, and 'make more frequent use of its powers'.⁴² These recommendations reflected the counsel of UN human rights expert, Pedro Nikken, who remarked that:

[U]nless the strong presence of the [Ombudsman's] office is recognized soon as a recourse for human rights violations, people will inevitably become skeptical about it and, what is worse, it will be seen as still another weak entity among so many others in the history of El Salvador.⁴³

The office of the PDDH has broad investigative powers, including the authority to review any public records and carry out inspections of state offices, including jails and penitentiaries, without prior notice. These powers imply a potential adversarial relationship between the Ombudsman and state officials, which would require strong leadership qualities

³⁸ Bloomquist, n. 5 above, 31.

³⁹ P. Williams and K. Walter, *Militarization and Demilitarization in El Salvador's Transition to Democracy* (Pittsburgh: University of Pittsburgh Press, 1997).

⁴⁰ W. Stanley, *The Protection Racket State: Elite Politics, Military Extortion, and Civil War in El Salvador* (Philadelphia: Temple University Press, 1996).

⁴¹ Truth Commission for El Salvador, *From Madness to Hope: The 12-Year War in El Salvador* (San Salvador and New York: United Nations, 1993).

⁴² *Ibid.*, 233.

⁴³ M. Popkin, *El Salvador's Negotiated Revolution: Prospects for Legal Reform* (New York: Lawyer's Committee for Human Rights), 38.

on the part of the Ombudsman. The tensions are inherent: the Ombudsman must earn the respect and perhaps the trust of public officials, whilst also holding them accountable for their actions. The PDDH also has oversight of judicial compliance with due process guarantees and is charged with educating the citizenry about their rights and the role human rights play in a democracy. Still, the PDDH relies chiefly on the exposure of misdeeds and moral suasion to achieve its goals because the office has no enforcement authority other than public denunciation.⁴⁴

El Salvador's Assembly chose a prominent Christian Democrat, Carlos Molina Fonseca, as the nation's first Ombudsman or Procurator. Molina had little human rights experience and during most of his tenure the Human Rights Division of the UN Observer Mission (ONUSAL) did the human rights monitoring envisioned by the Truth Commission. His main achievement was in establishing departmental delegations throughout the country, as called for in the PDDH law. In comparison with Honduras's Leo Valladares, Molina kept a low profile and the PDDH remained innocuous as ONUSAL began its withdrawal from El Salvador in 1995. It was a critical moment of transition which called for strong leadership, because ONUSAL's departure left the PDDH confronting much the same challenge that had been faced by Leo Valladares when he became Honduras' first Commissioner of Human Rights.⁴⁵

In early 1995 the Assembly elected Dr Victoria Velásquez de Avilés, Molina's Deputy for Children's Rights, to succeed him. A former labour lawyer with notable human rights experience, she moved quickly to redeem the Truth Commission's call for active use of the Ombudsman's powers. She asserted her investigative power in response to citizens' complaints and the PDDH, both nationally and locally, saw a steady rise in the number of individual cases handled. She also spoke out against efforts in the Assembly to reinstate the death penalty, which the governing party saw as an appropriate response to rising post-war crime. The PDDH published a number of stinging reports on sensitive cases in which it appeared the police had botched investigations or may even have been involved in serious rights violations. Velásquez de Avilés successfully challenged the constitutionality of some features of the government's anti-crime legislation. On top of this, she cultivated close ties with human rights groups and women's organizations.⁴⁶ The Ombudsman made it a priority to bring appropriate cases before the Inter-American Court of Human Rights, to offer mediation in cases of potentially dangerous social conflict, and to work with the courts and the Attorney General's office to develop a programme to 'combat impunity in the administration of justice.'⁴⁷ During her tenure the PDDH eventually received 1,000 complaints monthly and issued nearly 100 resolutions per month. Human rights activists generally praised her performance.

As the PDDH actively took over the role of monitoring human rights that ONUSAL had played, public approval of the institution rose noticeably, as is illustrated by the results

⁴⁴ M. Popkin, *El Salvador's Negotiated Revolution: Prospects for Legal Reform* (New York: Lawyer's Committee for Human Rights), 35.

⁴⁵ J. M. Dodson and D. Jackson, 'Re-inventing the Rule of Law: Human Rights in El Salvador,' (1997) 4 *Democratization*, 4 (110-34, at 123).

⁴⁶ M. Popkin, 'Building the Rule of Law in Post-War El Salvador' in M. Studemeister (ed.), *El Salvador: Implementation of the Peace Accords* (Washington, DC: United States Institute of Peace, 2001), 10-19, at 13-14.

⁴⁷ V. Velásquez de Avilés, 'La institución del ombudsman en Centroamérica: tareas y desafíos,' (1995) 2 *Derechos Humanos*, 2, 5-8.

of national public opinion surveys carried out in 1995, 1996 and 1998, the last of which was conducted just as the Ombudsman was finishing her term. These surveys showed Salvadoreans to be highly critical of public institutions, suggesting disenchantment with the pace and depth of change mandated by the Peace Accords. For example, in an August 1996 opinion poll (see Appendix), less than 12 per cent of the respondents thought 'honest' best described the Salvadorean justice system, 47 per cent said 'corrupt' was the best description, and 75 per cent thought many judges were subject to political control.⁴⁸ Respondents held the PDDH in higher confidence than traditional institutions, such as the courts, or indeed of any other government institution.

Indeed, in 1996 two-thirds of informed respondents had a favourable impression of the PDDH. In a February 1998 poll (see Appendix) almost two-thirds of the respondents gave Dr de Avilés a good or very good personal evaluation.⁴⁹

Table 1

How much confidence do you have in:

Year	1996	2001
The Legislative Assembly	0.91	1.25
The Central Government	0.94	1.56
The Armed Forces	0.99	Not asked
The Judicial System	Not asked	1.35
The Supreme Court	1.15	1.48
Newspapers	1.36	1.81
The National Civilian Police	1.38	1.57
Radio News	1.50	1.92
Television News	1.70	1.93
The Procurator for the Defense of Human Rights	1.71	1.67

Scale: 0 = None, 1= Little, 2 = Some, 3 = A great deal .

Even more significantly, when asked which was most important, the institution of the PDDH, the person who held the office, or both, the following results were found:

Table 2

Date	Institution	Person	Both	Don't know
February 1998	52.9 %	20.4%	18.0%	8.8%

Such findings suggested that the Salvadorean public was beginning to embrace the PDDH as a public institution to defend and promote human rights. The question then became whether the momentum established by Dr de Avilés could be sustained? Would the Salvadorean public's apparent appreciation of the importance of institutionalizing human rights protections be reflected in the continued strengthening of the PDDH, especially as manifested in the cooperation and support of public officials and political leaders?

⁴⁸ D. Jackson, M. Dodson, and L. N. O'Shaughnessy, 'Protecting Human Rights: The Legitimacy of Judicial System Reforms in El Salvador,' (1999) 18 *Bulletin of Latin American Research* 4, 403-21

⁴⁹ Universidad Centroamericana San Simeón Cañas (1998) 'Encuesta de evaluación de derechos humanos', (San Salvador) Instituto Universitario de Opinión Pública.

6. Political Attacks on the PDDH

At a minimum, government support of the office of the Ombudsman and its role should have been reflected in two key criteria: allocation of adequate resources in order to sustain the PDDH, especially when external funding began to diminish, and a commitment to achieve political consensus around well qualified, independent candidates to serve as Ombudsman. As to resource allocation, the PDDH budget of roughly US\$3 million per year enjoyed virtually no increase from the beginning of de Avilés' term through to 2001, a period of six years. The PDDH budget can be compared with the dedicated budget for the judiciary of about US\$100 million. The consequences of a meagre and frozen budget were low pay for PDDH staff and a lack of funds for such essential equipment as networked computers and vehicles. As a result, the Ombudsman was totally dependent on international assistance for any institutional strengthening efforts. The PDDH faced the problem of constant attrition among professional staff due to extraordinarily low salaries.

The question of selecting a qualified Ombudsman is a more complex issue. Dr Velásquez de Avilés' vigorous efforts to establish a human rights regime in El Salvador evidently surprised the governing party, the Alianza Republicana Nacionalista (ARENA). Indeed, the Procurator's activism provoked death threats, which were reported in the press. The source of those threats was unclear, but they were made in an atmosphere in which 'there was a systematic campaign against the Procurator's prestige organized by some government officials.'⁵⁰ ARENA leaders strongly opposed her re-election in 1998 but the Assembly deadlocked over a successor and the election process became protracted. As in Honduras, one reaction to an assertive Ombudsman was legislative manipulation of the office through 'reform.' During the election impasse ARENA rushed through a revision of the Ombudsman law, which prevented de Avilés' adjunct, who was similarly well qualified in human rights work, from serving in her place until the election was completed.

To summarise these events, faced with a legal deadline in the summer of 1998, the Assembly hurriedly elected a judge named Eduardo Peñate Polanco.⁵¹ The election was challenged immediately when reports surfaced that the PDDH was actually investigating Peñate for judicial misconduct. However, the parties in control of the Assembly refused to reconsider Peñate's election and he assumed office. In what one observer called a 'prototypical operation of the way power was exercised in the past',⁵² Peñate began a systematic purge of personnel trained for human rights work. He replaced trained workers with cronies from the Christian Democratic Party. Peñate also effectively shut down cooperative programming with the United Nations Development Program, which had been a major investor in the development of the Human Rights Ombudsman. He shifted attention dramatically away from the investigation of human rights complaints by ordinary citizens. Whereas de Avilés averaged 85 resolutions a month at the end of her term, Peñate closed thirty one cases in his first six months and then fired the director of the investigations department. A scandal involving the misuse of Swedish funds finally forced Peñate's resignation in February 2000.

⁵⁰ Author interview with Silvia María Guillén, Executive Director of Fundación de Estudios para la Aplicación del Derecho, 28 May 2001, San Salvador.

⁵¹ Jackson, n. 46 above, 68-9.

⁵² Author interview with Antonio Cañas, Program Officer, United Nations Development Program, 28 May 2001, San Salvador.

The remaining months of Peñate's term, to 2001, were completed by Peñate's adjunct, Marcos Valladares. Displaying little concern for the institutional integrity of the PDDH, the legislature now reversed the action taken seventeen months earlier, and revised the PDDH law a second time so that Valladares could finish the term. During those months Valladares conspicuously avoided challenging the government over human rights issues, such as the wholesale firing of workers and doctors in the Public Health service. He became so unpopular that the employees took the improbable step of barricading his office and forcing him to work away from the central office of the PDDH. In the face of these events, the Assembly instructed Valladares to conduct a further purge of PDDH personnel. It was in that turbulent state of affairs that the Assembly faced the next election of the Ombudsman in July 2001.

Several months before Peñate's resignation the author and a colleague collaborated with the University Institute of Public Opinion of the Central American University (UCA) to conduct focus group interviews with Salvadorean judges, business leaders, leaders of NGOs and municipal officials. Those interviews revealed a striking level of consensus that the PDDH was a 'triumph of the [Peace] Accords,' and also that the election of Peñate manifested an old style of Salvadorean politics, which had little regard for democratizing the State. One judge assessed Peñate's impact this way: '[The]credibility of the Procurator for Human Rights is being destroyed. What is going to happen with that institution? We Salvadoreans are going to become the same [as before], thinking it is useless to go to those places.' The respondents attributed Peñate's election to the 'ideological interests' of the governing parties and to the prevailing notion that public office 'belongs to the political parties'. One called El Salvador a 'partocracy'. These assertions, that ideological considerations drove the appointment of the Ombudsman, that party loyalty superseded merit, and that the government did not value the PDDH, can be assessed in the light of ARENA manoeuvrings during the 2001 Ombudsman election.

As in July 1998, the Legislative Assembly could not reach agreement on a candidate. In the 1998 election, the parties of the centre and left had rejected ARENA nominees on the grounds that they lacked the legally required human rights experience. ARENA had rejected nominees of the opposition parties as being too partisan (i.e., sympathetic to the left). ARENA's Walter Araujo, president of the Assembly, had criticized de Avilés for creating 'a very partisan atmosphere in the PDDH'. She had 'set up a partisan political structure within the Procuraduría that did nothing to advance the cause of human rights' but rather existed 'solely to support her partisan agenda'.⁵³ He had suggested that the Ombudsman's agenda was to use attacks on the government through the medium of human rights complaints to position herself for a presidential bid at the end of her term.

Araujo's claim that de Avilés had no interest in strengthening the PDDH is contradicted by all the independent human rights experts the author interviewed in El Salvador, including those in the international community. The research showed that civil society leaders working to strengthen the rule of law believed that de Avilés' appointments reflected professional criteria.⁵⁴ In a separate interview, Araujo told a Costa Rican consultant that El Salvador did not need an Ombudsman because human rights violations had virtually ceased. He supported this conclusion by referring to the decline in human

⁵³ Walter Araujo, President, El Salvador Legislative Assembly. Television interview. 'TCS Entrevista', San Salvador, 4 July 2001. Transcript, p. 2.

⁵⁴ Guillén interview, n. 46 above.

rights complaints during Peñate's term of office! In the end, as in 1998, the Assembly again faced a legal deadline for electing the Ombudsman and a compromise was struck that ultimately led to the election of Dr Beatrice Alamani de Carrillo, a prominent law school Dean.

Polarization over the election of an Ombudsman with strong human rights credentials indicated that the deep ideological rift that divided El Salvador before the Peace Accords had diminished little with the advent of formal democracy. From the point of view of the political opposition, the checks and balances provided by an independent judiciary and a vigorous Ombudsman would strengthen democracy and the rule of law. However, ARENA, which has governed El Salvador since 1989, and its legislative allies regard activism on behalf of human rights as a left-wing agenda designed to embarrass the Salvadorean government. To its detriment, the PDDH became a casualty of the inability to bridge that divide. By the end of the Peñate/Valladares term ARENA was proposing that the PDDH should simply be folded into the office of the Attorney General or abolished altogether, although neither proposal was carried out.

How did Salvadoreans view the PDDH after three years of controversy, negative publicity, apparent corruption, and declining efficacy? A Gallup Central America poll conducted in June 2001 (see Appendix) found that the positive evaluations of the PDDH that were reported above were largely evanescent, at least in terms of the personal identity of the Ombudsman. When given the name and title of the then acting Ombudsman, Dr Marcos Valladares, over 80 per cent of respondents reported that they had no knowledge of him. Of those with some knowledge of the office, 31 per cent reported that their opinion of the Ombudsman had worsened over the past year or so. When asked which institution was most likely to protect human rights in El Salvador, they responded thus:

Table 3

Don't know or no response	57%
The Police	17%
The Central Government	8%
The Supreme Court	7%
NGOs	6%
Judges	4%
Dr Valladares, the Interim Procurator	1%

It is certainly striking that more than half the respondents chose none of the suggested alternatives and it is interesting that for the rest the police lead the list, given El Salvador's political history⁵⁵. The acting Ombudsman had almost no personal visibility. These findings demonstrate the effects of a polarizing election procedure in which extreme partisanship seemed to guide all parties. They also underscore the weak commitment of ARENA, which is the dominant veto player in El Salvador, towards an institution designed to deepen the accountability of the State.

⁵⁵ W. Stanley. *The protection racket state: elite politics, military extortion, and civil war in El Salvador*. Philadelphia, Temple University Press, 1996.

Conclusion

The above discussion has shown that in both Honduras and El Salvador the Ombudsman enjoyed a period of high visibility as an independent accountability agency. Dynamic Ombudsmen such as Leo Valladares and Victoria Velásquez de Avilés strove to establish the credibility of the office and to make the accountability of public officials a norm of political life, even while working with limited resources. However, when the exercise of the Ombudsman's authority was seen to affect the governing party or powerful interests adversely, attempts were made to punish and weaken the institution through budgetary restrictions, legislative reforms, or the appointment of an unqualified figure to the office. In El Salvador the reaction was especially severe inasmuch as the election of an Ombudsman who had no interest in human rights or in strengthening the institution nearly caused its collapse.

On the positive side, the evidence suggests that the office of the Ombudsman achieved a significant degree of independence under the leadership of individuals who were willing to exercise the legal authority of the office. In those phases (1992-2000 in Honduras, 1995-1998 in El Salvador) the office developed its capacity to respond to individual citizens' complaints and also undertook the more proactive task of addressing broader human rights issues, such as through the social audit in Honduras. In each case, however, these successes led to direct attacks on the institution and attempts to weaken it. These efforts were more successful in El Salvador. Although elections in the early 2000s restored vocal human rights advocates to the Ombudsman's office in both countries (Dr Ramon Custodio, former head of CODEH in Honduras and Dr de Carrillo in El Salvador) it remains to be seen whether the institution will experience further strengthening and deeper acceptance by the political elite. Its budget remains strikingly inadequate. In 2000 budget cuts obliged the Honduran Ombudsman to lay off nearly 50 per cent of his staff (although part of the budget was restored the following year) and 40 per cent of the total budget is provided by international donors.⁵⁶ The Salvadorean Ombudsman's office has a large staff (more than three times the size of Honduras) due in part to featherbedding under Peñate, yet its budget was not increased over nearly a ten year period.

It should also be noted that Hondurans and Salvadoreans live in a climate of insecurity (due to high rates of crime and unemployment), and they also observe the relative impunity of those who resort to violence or abuse the public trust through corruption. In this environment the public's faith in democratic institutions may be weakened. A *Latinobarometro* poll was administered in April and May 2001 in seventeen Latin American countries. When asked whether they agreed with the statement that 'democracy is preferable to any other kind of government', only 25 per cent of Salvadoreans agreed. Honduras did somewhat better with 57 per cent in agreement. At the same time nearly 60 per cent of Hondurans were unhappy with the way democracy worked in their country, while the figure was nearly 70 per cent for El Salvador. Aggregating the responses from all Central American countries, fewer than 30 per cent of the respondents surveyed had 'some' or 'a great deal' of confidence in their country's judiciary, casting doubt on their faith in the rule of law as it currently functions.⁵⁷ These findings suggest that opportunities for successful democratic

⁵⁶ Bloomquist, n. 5 above, 27

⁵⁷ 'An Alarm Call for Latin America's Democrats,' (2001)360 *The Economist* . 8232. at 51-52 (author of article?)

transitions in Central America may not be open-ended. In that light the further strengthening of the office of the Human Rights Ombudsman could be an important factor in legitimizing democracy, although the evidence from Honduras and El Salvador suggests that the political elite is not yet strongly committed to supporting the institution.

Appendix

The following opinion polls were conducted by the author and his colleague, Donald Jackson:

- a) in collaboration with University Institute of Public Opinion, *Encuesta sobre derechos humanos y el sistema judicial*. San Salvador, August 1996. A poll of 1,199 Salvadorean adults with a margin of error of +/-4.0 per cent.
- b) in collaboration with CID Gallup Latin America, *Public Opinion in El Salvador*. San José, Costa Rica, May 2001. A poll of 1,292 Salvadorean adults with a margin of error of +/-2.8 per cent.
- c) in collaboration with CID Gallup Latin America, *Omnibus Study: Trust in the Country's Political Institutions*. San Salvador, October 2001. A poll of 1,220 Salvadorean adults with a margin of error of +/-2.8 per cent.