

DEMOCRACY AND GOVERNANCE IN PERU: AN ASSESSMENT

Under contract to the
U.S. Agency for International Development
Contract No. AEP-I-00-96-90006-00, TO 5/ Contract No. 527-0-00-00-00121-00

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March 29, 2000

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**REVISED VERSION
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CHAPTER I: EXECUTIVE SUMMARY

During a three-week period in February-March 2000, a five-member team of specialists was tasked to carry out a comprehensive assessment of the state of democracy and governance in Peru, applying a framework and methodology developed by USAID and tested by similar teams in other contexts. The Peru Team convened in Lima and spent the better part of three weeks conducting interviews with a diverse group of experts, including academics and activists, politicians, government officials, businessmen, university students and journalists; as well as reviewing documentation and collecting data on a host of issues affecting Peruvian democracy. Two Team members visited two other regions selected for their unique social and political characteristics, Piura and Tarapoto, to investigate local governance and other issues at closer range and to provide regional perspective on national political trends. The main findings and an initial set of recommendations were presented to the USAID Mission in Peru on March 29, in advance of the general elections of 2000.

Given the extremely controversial nature and outcome of those elections, the polarized post-electoral environment, and the subsequent involvement of a high level mission of the Organization of American States in proposing a set of democratic reforms to the government and other actors, team members reviewed the initial recommendations in early July and made modest revisions. This report is the culmination of both efforts.

The Team found that the challenges to improving democracy and governance in Peru encompassed *each one* of the issue areas identified in the assessment framework: consensus on the rules of the game, respect for basic human rights and civil liberties, free competition of ideas as well as actors, meaningful inclusion of all citizens in the political process, and good governance, meaning not only efficient public institutions but also transparency, accountability and respect for the rule of law.

However, the Team identified the main problems for democracy in the next five years as being primarily in the realm of *competition and balance of power*, broadly understood. Without competition for power based on popular sovereignty, there is no real democracy, even if there is rule of law and efficient government. Obviously, a fully competitive democracy involves a free and fair electoral process and a working party system, both of which are in serious trouble in Peru today. But elections are not the only form of competition in a liberal democracy, and public office is not the only prize. Democracy is also about the free competition of ideas and public policies, which requires a broadly permissive political arena (allowing for a range of debate and disagreement between government and citizens and a structural balance between various centers of power), a strong and plural civil society, and a free and independent media. Furthermore, democracy requires institutionalized competition *within the government itself*, through a balance of power between its branches and levels that serves as a check on potential abuses of power.

In this case, *the Team concludes that democracy and good governance in Peru are seriously hindered in the short run by the lack of effective checks and balances on the exercise of Executive power*. This includes both a lack of real balance of power within the government (among the various branches and levels), and limited mechanisms of government accountability to society. This lack of effective limits on Executive power, in turn, has led to political intervention in and manipulation of the Judiciary, disregard for the rule of law, violation of basic citizen rights and liberties, and limited government transparency or accountability. Furthermore, the desire of the current administration to perpetuate itself in power has also weakened its original promise of efficient governance, while placing increased restrictions on the

media and on other political competitors, and undermining the quality and legitimacy of the electoral process itself.

In this context, *the Team recommends that the overriding objective of the D/G program in Peru should be to support those actors and institutions that are most effective at providing checks and balances on the exercise of state power.* There are five spheres of influence in which checks and balances on centralized power are normally exercised in a democracy: the Judiciary and the Legislature, local levels of government, the media, and what we call “political society”, which includes political parties as well as various forms of civil society organization. The report summarizes the situation in each of these spheres and establishes the following set of recommendations:

- **Justice and Human Rights**

In addition to its failure to uphold the rule of law, the judicial branch of government does not uphold Constitutional limits on executive and legislative authority. While there is a lack of institutional capacity to deliver justice, this is not the main strategic problem at present. Instead, the most immediate problem is that judges and prosecutors are beholden to the Executive and allow politics and other non-judicial considerations to influence their decisions. This fact has been recognized by the OAS mission in its insistence on the need to dissolve the Executive Commissions currently overseeing this sector and bolster judicial independence.

Until there is firm evidence of government commitment to reform in this sector, the Team recommends that USAID maintain its decision to not provide direct support to judicial branch institutions. Instead, the Team recommends that USAID continue to work with both the *Defensoría del Pueblo* (Ombudsman) and leading human rights organizations – actors that lie outside the Judiciary itself, but whose efforts to hold government accountable in that sphere and others that have been judged successful in numerous evaluations. Together, the Defensoría and the human rights community draw national and international attention to rights violations and abuses of power, and help to prevent such abuse. Human rights organizations are important allies of the *Defensoría*, and the *Coordinadora Nacional de Derechos Humanos* in particular plays a key role in bringing together and empowering disperse civil society groups.

In the near term, both of these actors should play a leadership role in monitoring government progress on the OAS recommendations, and generating specific proposals for sectoral reform if the opportunity arises. Additionally, USAID should work with the human rights community and others to prepare for when the present Defensor’s term expires. Pressure should be applied to assure that the new Congress names a competent successor. If the *Defensoría* is weakened or politicized, USAID would need to fill the void with greater support for NGOs working on human rights and justice issues.

- **Civil and Political Society**

Peruvian civil society is vibrant and diverse, but also fragmented and institutionally weak. Although nongovernmental organizations have taken the lead in defending democracy and human rights, there is a notable lack of effective, intermediary-level organizations capable of aggregating and representing the diverse interests of the citizenry in the political arena, proposing viable governance alternatives, and holding elected officials accountable. In most democracies these tasks are assumed by political parties, but also by organizations such as business and labor associations, NGO networks and other national-level

interest groups. Together we call this stratum “political society”, to distinguish it from the broader sphere of particular and grassroots organizations.

In the short term, the Team believes it is premature to engage in traditional party strengthening activities, which might simply perpetuate transitory political movements lacking a firm commitment to democratic rules or values. Nevertheless, this sphere of political society should be given higher priority, with a possible two-track approach. First of all, D/G staff should give greater priority to partners that can play this intermediary role, including business groups and networks of NGOs. D/G staff can also encourage other USAID programs to emphasize institutional strengthening in their program activities, and encourage coordination among donors interested in putting the issue of civil and political society on their agendas.

Second, it suggests promoting debate about and concrete proposals for reform of the existing electoral rules and structures of representation that contribute to party fragmentation and weakness, elements also cited in the OAS recommendations. Furthermore, it suggests dialogue among current and potential new political leaders aimed at seeking solutions to the present crisis of political competition and representation. Ideally, such activities would feed into legislative and constitutional reform efforts in the new Congress, and could also help to identify candidates for more specific leadership training or party development initiatives in the medium term.

- **The Legislature**

Despite modest advances in technical efficiency, the Congress since 1992 has been incapable of fulfilling its formal role as an autonomous branch of government that represents citizens’ interests, promotes the free competition of ideas and policies, and checks abuses of executive power. Instead, Congress has passed laws of questionable constitutionality that restrict political competition and undermine the functioning of other actors and institutions. This has been due in large part to the existence of a disciplined and submissive pro-government majority, and exacerbated by the weakness and division of the minority parties.

While the new government elected in May 2000 may have already pieced together a new congressional majority, there is no guarantee that the new majority coalition will prove as cohesive as was the case during the 1995-2000 period. Opposition parties hold a larger share of the seats in the new Congress and have greater public support than in 1995-2000. These are potentially encouraging developments. A larger and less fragmented parliamentary minority could help to make the 2000-2005 Congress a more important forum for public debate, a sphere for new leadership development, a source of initiative for reform, and an institution that is at last capable of fulfilling its constitutional oversight functions. Recently, members of government and some Congressional leaders have indicated a willingness to support reforms in existing electoral rules and in the size and structure of Congress. The litmus test of their sincerity will be measured in both legislative process and output: whether lofty declarations translate into policy and whether policy reflects a process of negotiation and compromise within the Congress and among branches of government.

In this uncertain context, the Team recommends conducting a formal sector assessment for legislative strengthening and complementary civil society activities, after the new legislature is convened. This need not be a lengthy effort, but should be conducted by legislative development experts from within and outside Peru. It should emphasize what strategic interventions can address the main problem of legislative autonomy and checks and balances on state power, rather than just the technical aspects of

building the legislature as an institution. Such an assessment could be coordinated by a prestigious national university or prominent nongovernmental organization.

As mentioned above, the Team also recommends encouraging debate about the merits and disadvantages of existing electoral rules and structures of representation, including the unitary district, the size of the legislature, and simultaneous elections for the President and Congress. Reforms in this area could constitute important steps towards overcoming both political party and legislative weaknesses. Recent announcements by government officials of proposals to modify the electoral rules are encouraging signals in this regard.

- **The Media**

Freedom of expression and the exchange of diverse viewpoints are essential to check and balance government power, as well as to enable competition to take place. In Peru in recent years there has been an alarming increase in direct political intimidation of the media, as well as in the practice of self-censorship (especially by the broadcast media) to avoid political retribution. Such limits on the full exercise of media freedoms inhibit the dissemination of ideas, distribution of information, and the ability of dissenting groups to get their messages to the public. These problems reached a high point during the 2000 electoral campaign, when commercial television stations in particular engaged in clear favoritism of the incumbent candidate, while other candidates lacked adequate access to free or paid air time.

External donors may not be able effectively to address the root causes of much of the current restrictions on press freedom in Peru, which include the financial fragility of the sector and its dependence on public sector advertising. However, the Team recommends providing modest support to watchdog organizations that can monitor the media, document violations of press freedom, draw international attention to this issue, and provide legal assistance for journalists or media owners embroiled in high-profile media freedom cases.

- **Decentralization and Local Government**

Local government has the potential to serve as a check against centralized power, as well as being an arena in which new political leadership can emerge and through which inclusion issues can be tackled. However, municipal governments in Peru are underfunded through direct revenue transfers and are overly dependent on Executive-level budgetary authority and decision-making. This situation often undermines local governments and thwarts the development of a system of institutionalized checks and balances to central government authority at the local level.

Donor support to advance this dimension of democracy, even in the absence of a more extensive decentralization process, would help prepare regional and municipal governments for the responsibilities of governance. Resources permitting, the Team therefore recommends supporting local and regional initiatives that contribute to greater local participation in decision-making; strategic planning and technical assistance to create capacity for municipalities to generate their own resources; and technical assistance to select regional mayors' associations. The Team also recommends a national policy debate on the need to carry out a democratic decentralization effort and to address resource insufficiencies at the local level.

More specifically, the Team recommends that USAID's Democracy and Governance program strengthen collaboration with the Agency's Alternative Development Program to consolidate the San Martin effort as a model of democratic local governance that can be replicated in other area, including both coca-growing regions and non-coca regions. USAID should also use the Peru-Ecuador border initiative to apply some key approaches and lessons learned from the San Martin project. Finally, the Team recommends that USAID search for ways to stimulate national debate on, and practical progress toward democratic decentralization and more local control of resources.

Although the main democracy and governance problems that the Team identified lie in the sphere of institutional politics and central government power, the strategies recommended in this report for overcoming these problems lie primarily within the sphere of civil society. This is because to date most governmental institutions have not been capable of significant "reform from within", for a variety of reasons explained in the text. Hence this report stresses the responsibility of key actors in civil society, as well as within the international community, to provide checks on state power and hold government accountable.

The OAS mission has recently proposed a set of institutional reforms that should be undertaken in Peru in the short term, involving concrete government actions as well as dialogue and collaboration with the political opposition and civil society organizations. These include reestablishing the independence of the Judiciary, strengthening the rule of law and separation of powers, ensuring adequate protection of human rights and press freedom, and reforming the electoral system itself. For the most part these are also priorities cited in this report, and Team members consider their initial acceptance by the government as well as the political opposition to be an encouraging sign.

However, given the Fujimori government's past record, the polarized political climate and the lack of any firm agenda for dialogue on or enactment of these proposals, it is too early to determine whether there is a genuine commitment to reform on the part of authorities. It is also too early to conclude whether other political and social actors will participate in any such process. *In the short term*, therefore, the Team recommends that USAID respond to this new framework in the following ways:

- **Monitor government/congressional response to OAS proposals**

USAID should support the efforts of qualified nongovernmental organizations to monitor government response to the OAS proposals, particularly in the sensitive areas of justice, human rights and press freedom. In certain cases, initial "good faith" actions on the part of the government may be expected by international observers as well as opposition leaders as a prelude to subsequent collaboration.

Many items on the reform checklist provided by the Gaviria-Axworthy mission are by definition not executive but *legislative* initiatives, and thus must originate in or pass through the Congress. Therefore, USAID should also support NGO efforts to track the progress of bills aimed at addressing the deficiencies identified by the OAS in order to identify the obstacles obstructing the path to legislation and policy. USAID can then make a determination about whether it is prudent to change its posture with respect to legislative strengthening and support.

- **Encourage national dialogue and consensus**

While some of the proposed reforms require unilateral government action, others require negotiation among government leaders, Congress, elements of the political opposition, the media and civil society. USAID can play a role in bringing together these diverse actors and promoting dialogue and consensus around the proposed agenda for reform. Should opportunities arise, USAID should also encourage the generation of specific policy proposals in the above-mentioned issue areas, based on the considerable expertise of its current grantees.

If the political commitment to democratic reform increases dramatically over the next two years, and significant progress is made in addressing the central problems of competition and balance of power, then it would make sense to consider working directly with certain government institutions — such as the Judiciary and the Legislature — and addressing other strategic priorities. Such scenarios are mapped out briefly as part of the final recommendations.

CHAPTER II: INTRODUCTION

A. Historical Antecedents

Political democracy is a relatively recent phenomenon in Peru. Entrenched poverty, profound social and economic inequalities and an elite with little historical commitment to liberal values have all contributed to this outcome. Since gaining independence in 1821, the country has had 107 governments, only 19 of which were elected and only nine of which completed their terms. Oligarchic power remained entrenched well into the 20th century, the Armed Forces have repeatedly intervened in politics, and large sectors of the population were formally denied the basic rights of citizenship until universal suffrage was finally introduced in the Constitution of 1979.

The Peruvian population today is estimated at 25 million, approximately 72% of which resides in urban areas and nearly a third in the capital city of Lima. Ethnically, Peru has a significant indigenous population that is not adequately captured in national census data, though estimates taken from the last census in 1993 range from 4.3 million to 7.8 million persons.¹ The indigenous population is located primarily in the highlands (*sierra*) and the eastern jungle regions. The majority of Peruvians have some indigenous roots, but most urban residents consider themselves *mestizo* or mixed-raced. The colloquial term “*cholo*” is also used as an intermediate category between indigenous and white/European. All of these are cultural categories more than racial ones. Migration, modernization and the influence of the political Left have had the effect of diluting the identification with indigenous life and have accelerated the identification with *cholo*, *mestizo* and white. Approximately 15% of the population are of white European descent, and another three percent are of Asian or African descent.

By the onset of the 20th century, as the land-based oligarchy entered into a long period of decline, Lima began to urbanize. As happened throughout the region, the expanding urban areas led to the articulation of new social sectors and classes – primarily middle and working classes. By the 1920s, these new sectors of society were pressing for new forms of political representation, which led to the emergence of labor unions, working-class parties and, above all, a new form of mass politics that would unite the unrepresented urban sectors in the more modern areas of the economy and polity. This mass politics is typically referred to as “populist”, and is exemplified in Peru by the APRA party, founded in 1931. Populism, with deep and long traditions in the region, has had unusual sway in Peruvian politics, though its failures and difficulties are also notorious. Though claiming at least a third of the electorate from its founding in 1931 through 1968, the APRA was kept out of direct political power by the military and dominant economic elite throughout much of the 20th century.

The 1968 Military Government

Peruvian politics was fundamentally transformed by the “Revolutionary Government of the Armed Forces” (GRFA) that took power in 1968 under the leadership of General Juan Velasco. Prior to this date, and in the face of growing peasant unrest and a guerrilla insurgency in the 1960s, the Peruvian

¹ The National Census does not include data on racial or ethnic self-identification, and estimates of the total indigenous population vary widely. According to the National Statistical Institute and other government agencies, there are approximately 300,000 members of “native communities” in the Amazon jungle area, representing 65 different ethnic groups and 14 linguistic families. Roughly 4.3 million Peruvians claim Quechua, Aymara or Amazonian languages as their native tongue, 6.4 million live in peasant or native communities and 7.8 million live in rural areas per se, and all of these have been used as equivalents for indigenous origins.

military began to shed its earlier role as defenders of oligarchical power and undertook a serious re-evaluation of their strategic mission. Military leaders placed new emphasis on the need for state modernization, industrial development, land reform and national integration. Although President Fernando Belaunde Terry (1963-1968) had been elected with the promise to realize such reforms within a democratic context, his government was stymied by the combined opposition of conservative elites and the APRA in Congress. The Armed Forces then decided to take matters into their own hands.

In contrast to the exclusionary, authoritarian military regimes that came to power elsewhere in Latin America in the 1970s, the GRFA declared a “third way” that was neither capitalist nor socialist. In power, the military implemented the most extensive land reform in Latin America outside of Cuba, undermining the economic base of the oligarchy and converting large estates on the coast and in the sierra into agrarian cooperatives owned by former workers of the land. Distrustful of parties and other intermediaries, the GRFA attempted to create “corporatist,” top-down organizations to channel political participation, though these had little success. Urban shantytowns were given legal recognition and access to state resources. The government also recognized indigenous and peasant communities, trying to erase the stigma and racism of the past and incorporating highland Indians as citizens. Bilingual education programs were launched and Quechua was recognized as an official language of the country along with Spanish.

The GRFA failed at its own stated objectives of increased national development and the eradication of social injustice. Instead, it ended in economic recession, with an unprecedented foreign debt and persistently high levels of poverty and inequality. By 1975, the Peruvian Armed Forces began to prepare for their withdrawal from power, in the face of a groundswell of labor strikes, mass protest and marches. However, the dramatic experiences of the 1970s also created new conditions for a more inclusive democracy in the years ahead.

The Return to Democracy in 1980 and the New Competitive Political Arena

Peru embarked on its first genuine experiment with full formal democracy in 1980. This time new factors worked in favor of democratic rule, including a new Constitution, a larger and more diverse electorate, free and fair elections, respect for civil liberties, a free and lively press, a broader party system, and a citizenry that was better organized than ever to defend its new rights. However, within a few years, this new regime would be shaken to its roots by profound economic crisis, political violence and deepening poverty.

The Armed Forces convened elections for a Constituent Assembly in 1978 in order to draft a new Magna Carta and prepare the way for a change of regime. While Belaunde’s Acción Popular (AP) party abstained from the 1978 elections, nearly a third of the seats were won by parties to the left of the APRA, underscoring the emergence of new forms of participation and representation that barely existed when the military took power a decade earlier. The APRA won another 35% of the vote, assuming a clear position at the center of the new political spectrum, and a more modern right wing, led by the Partido Popular Cristiano (PPC) with indirect support from the AP won another 24% of the vote.

Peru’s new Constitution of 1979 was drafted by an Assembly representing the political left, right, and center, and its composition reflects this diversity of viewpoints. This Constitution was to set the rules of the game for Peru’s transition to elected rule in 1980. Several analysts have argued that many of the strengths and weaknesses of the subsequent democratic period of the 1980s can be traced back to the machinations of 1979 and the behavior of these principal political actors. The Left contributed to the

inclusion of new economic and social rights in the constitution, but at the same time became frustrated with its minority role within the Assembly and ultimately, in a protest action, refused to sign the new constitution. For their part, APRA and the PPC joined forces and designed a system that concentrated greater power in the Executive, the former believing that it was on the verge of winning the presidency and the latter desiring to avoid the problems that brought down the Belaunde administration twelve years earlier. For its part, the military was concerned with retaining many of its institutional prerogatives as it planned to return to the barracks.

The result was a mixed, and at times contradictory, set of rules, structures and incentives. On the one hand, the new constitution marked a return to a strongly presidentialist political system, in which the bicameral legislature could delegate ample powers to the Executive if the latter had majority support. The Executive, in turn, was given ample power to delegate authority to the Armed Forces for a variety of tasks. On the other hand, the electorate was much larger and more socially diverse. The range of parties competing in the new system was broader than in the past, and previous ideological restrictions on party formation were eliminated. Nonetheless, few efforts were made to strengthen the multiparty system and throughout the 1980s political power remained notably concentrated in Lima and among a subset of largely creole elites.

In the 1980 general elections, the parties that had drafted the Constitution were unable to sustain significant voter support. The APRA split into warring camps, the Left divided into five separate lists, and the PPC was unable to move beyond a narrow base among the urban social elite. Hence in a surprising turn of events, Fernando Belaunde and his AP party returned to power with 45.4% of the votes and allied with the PPC to have a firm congressional majority. Superficially it appeared that little had changed since the man who won the last presidential election in 1963 was again the victor in 1980. But the country had changed, and this volatility in the fortunes of its key political figures and parties would continue.

By 1983, the population was dissatisfied with the AP-PPC alliance, the economy remained in shambles, and the welfare situation of the poor remained critical. By this point, also, both the socialist Left and the APRA party made comebacks under dynamic new leadership. In 1983, the United Left front (IU), led by independent *provinciano* lawyer Alfonso Barrantes, won the majority of Lima and nearly one-third of the municipal vote nationwide. In 1985, the APRA under the leadership of the charismatic young politician Alan Garcia won the presidency outright with an historic 53.1% of the votes, followed at a distant second by Barrantes.

Yet once in power, Garcia returned to the populist politics of the past. Rather than consolidate APRA's position as a governing party, he attempted to exercise direct and arbitrary leadership unmediated by political institutions. He sought to reach out to a broad, multi-class coalition of people, "the many against the few," and to reintroduce a fiery nationalist discourse back into the political arena. His party, at the same time, became a vehicle for patronage, corruption and harassment of other political competitors. APRA's long years in the wilderness had not prepared it to govern. One of Garcia's first acts as President was to announce that Peru would limit its debt service payments to 10% of export earnings. He also began to stimulate the economy by granting subsidies and controls that directly favored supporters, and tried to nationalize the banking system in a failed effort to prevent capital flight. The results were disastrous and the economy spun out of control. During Garcia's final years in office, the economy contracted -7.4% in 1988, -12.3% in 1989 and -2.3% in 1990. During those same years, inflation rose to 1,722% in 1988, 2,775% in 1989, and 7,650% in 1990.

Garcia's failures initially created an opening for the reemergence of the political right, which supported the candidacy of independent novelist Mario Vargas Llosa in the 1990 general elections. Vargas Llosa's coalition, Fredemo, was based on the AP and PPC as well as new independent rightist sectors. Vargas Llosa narrowly won the first round of balloting with 27.6% of the vote, but after a bitter and divisive campaign characterized by racism on all sides and unprecedented levels of campaign spending on the part of Fredemo, Vargas Llosa and his allies ultimately lost in a second round run-off to a previous political unknown, university professor Alberto Fujimori, 56.5% to 33.9%.

By the end of the 1990 campaign, the entire party system had been discredited, and outsider Fujimori came to power with a popular campaign to replace traditional representative institutions and partisan competition with mechanisms of "direct democracy". Once in power, Fujimori applied extreme austerity measures that successfully halted the hyperinflation and eventually restored steady economic growth. From 1990 to 1992, Fujimori had to deal with an opposition Congress. In 1992, however, the Armed Forces and a majority of Peruvians supported the President's decision to suspend constitutional rule, close Congress and disband the Judiciary. These actions, called a "self-coup" (*auto-golpe*), served as the coup de grace for Peru's political parties, which have yet to recover popular support. The message from the people was that the parties were thoroughly discredited, and that they were looking for more effective government.

Armed Conflict and Democratic Transition

A curious phenomenon occurred in 1980. While almost all of the large but fractious political Left entered the electoral arena, a small, and apparently insignificant faction of a Maoist dissident faction of the Communist Party of Peru declared a "popular war" against the State. The dissident faction was called "The Peruvian Communist Party – for the Shining Path of Mariátegui," commonly referred to as the Shining Path or Sendero Luminoso. Sendero initiated its activities in the remote province of Ayacucho and was founded and led by intellectuals, professors and students from the national university there. Their first armed action was to destroy the ballot boxes in presidential elections of 1980. They were extreme nihilists, committed to the need to terrorize and annihilate the state and its perceived collaborators, including civilians, Leftist politicians, government officials, and almost all other groups and individuals who stood in their path.

In 1980, the newly elected civilian government paid little attention to this obscure rebellion in the remote Andes. President Belaunde was also reluctant, as Sendero had correctly predicted, to call out the troops to repress their uprising so soon after the military had returned to the barracks. Yet Sendero would soon spread its activities to other rural areas and into the coca growing zones in the eastern jungles. After two years of inaction, Belaunde finally called out the troops and presided over a scorched-earth strategy. The repressive strategy seemed to entrench Sendero's position, underscoring how removed much of the sierra and the jungles were from the politics and social life of Lima.

Many analysts found Sendero to be a difficult group to analyze. Its emergence under a democratic regime – at precisely the moment of democratic transition – seemed to turn much of revolutionary theory on its head. For some, its appearance in the remote rural Department of Ayacucho underscored the great regional and ethnic differences that divided the country. The democratic transition, so profoundly experienced in Lima and throughout much of the modern sector, did not speak directly to the long history of exclusion and discrimination in the rural highlands. Clearly Sendero was able to take advantage of these wide fissures in the Peruvian body politic. And in so doing, it and another smaller group, the MRTA, came to present a serious challenge to the process of democratic transition begun in 1980. By

1985, over 60% of the nation was under emergency rule, giving the Armed Forces control over civilian authority and denying basic safeguards of human rights to the inhabitants of these zones. Democracy was confined to Lima and a few provincial cities. Such a situation would challenge any democratic regime; it ultimately weakened the governments of Belaunde and Garcia.

Garcia tried to reign in the human rights abuses. The scorched-earth policy was toned down, but in general, the Armed Forces gained considerable autonomy in fighting the subversive threat. The Armed Forces also demonstrated a remarkable learning curve. By the late 1980s, they had begun to work with, not against, local peasant communities in resisting this extreme guerrilla threat. Yet still, throughout the presidency of Alan Garcia, Sendero Luminoso appeared to be marching inexorably towards power. Much of the state presence had collapsed in the rural highlands, the coca zones were largely areas of support for the guerrillas, and by 1990, the guerrillas had announced their plans to bring the war more directly to Lima.

Redefining the Political Arena: 1990-2000

If the 1980s witnessed robust party activity, they also witnessed the collapse of the economy and the rapid spread of violence, terrorism, and illicit coca cultivation. The state seemed to be receding from much of the national territory. Most of the success of President Fujimori since his election in 1990 rests on his having addressed the most serious problems facing the nation at the time: the collapsed economy and hyper-inflation, the high levels of political violence and terrorism, the lack of state control over much of its territory, and the rise of illicit narcotics trafficking. Today, the guerrillas remain defeated, reduced to minor cells in the remote jungles with no capacity to threaten the regime, and in March 2000 the last remaining emergency zones were lifted. The economy, long removed from the crisis years of the 1980s, still shows deficiencies in generating sufficient employment and equitable and sustained growth. Coca production has declined in the last few years, although the price has gone up (and recently leveled off) since the fall of 1998, while the government has undertaken a concerted program of state spending in rural areas.

President Fujimori was rewarded for his initial policy successes in the 1995 presidential elections, in which he won a clear victory and his coalition, Cambio 90/Nueva Mayoría, won 67 of 120 seats in a new unicameral Congress. However, suspicions that the government had not played fair in the 1992 constituent assembly elections and a 1993 referendum on the new constitution led to a call for domestic and international observers to monitor the 1995 contest. Observers conceded that those elections were fair, but there were enough irregularities in the preferential to cast doubts on the government's congressional majority.

President Fujimori's second administration (1995-2000) was marked by a number of additional social and foreign policy successes, including a historical peace accord with neighboring Ecuador. At the same time, it was plagued by increasing authoritarianism and a desire to perpetuate itself in power which ultimately weakened the President's original promise of efficient governance, while undermining the rule of law and placing increased restrictions on other political competitors. By the time Fujimori declared his candidacy for a constitutionally dubious third term (2000-2005), public opinion on his governing ability was far more divided, while confidence in the electoral institutions themselves was very low indeed. This precipitated another call for international observers to monitor the 2000 campaign and the vote on election day. The resulting process was one of the most questioned and problematic elections in Peruvian history, and Fujimori's reelection generated a new domestic political crisis as well as widespread international criticism. In June 2000, a High Level Mission of the Organization of American

States (OAS) was sent to Peru to intercede in this crisis, proposing a set of institutional reforms to be discussed by the government, the political opposition and civil society.

How crises are resolved at one point in time shape the subsequent political arena. Peru overcame a period of profound economic crisis and terrorist violence, but it did so largely by restricting the rule of law and weakening democratic institutions. Peru must now confront the legacy and consequences of the way in which it achieved those initial successes. The democratic transition of the 1980s was undermined by economic mismanagement, over-concentrated Executive authority, inadequate civilian control over the military, and a severe insurgent uprising. In the light of the current political crisis, many Peruvians would agree that it is time to start again the task that went awry in 1980: the consolidation of a democratic regime, and the creation of a competitive political system that better represents the great diversity of Peru's citizens, cultures, and regions.

B. Assessment Objectives

There are underlying socioeconomic and cultural problems that continue to work against the consolidation of democracy in Peru. These include persistent poverty and inequality, as well as racism, sexism, and other forms of social discrimination. A number of these problems are being addressed directly by USAID in Peru through other Mission programs.

The challenge for the Democracy and Governance program is to identify and address the most important *political* obstacles to democracy in the short to medium-term, while bearing in mind the need for longer-term social change and seeking the political means with which to encourage it. The purpose of this assessment was to assist USAID in this process. As a follow-on to a recent evaluation of current USAID democracy education activities in Peru, this assessment had three stated objectives: (1) to provide a background analysis of the Democracy and Governance situation in Peru, in order to help the Mission develop a new strategy for promoting democracy in this country over the next five years; (2) to recommend changes that are needed in order to more effectively strengthen Peruvian democracy during that time period; and (3) to provide some tentative recommendations for how these changes could be achieved with the assistance of USAID programming.

The assessment was conducted by a team of five experts using a framework tool developed by USAID's Democracy Center. This framework involves four steps. The first, presented in Chapter III of this report, is a broad analysis of the Democracy and Governance problems that need to be addressed, using five main variables: consensus, rule of law, competition, inclusion and good governance. This section of the assessment locates Peru on a continuum of democratic development and reviews the main problems to be addressed in the years ahead.

The next two steps, presented together in Chapter IV, examine how "the game of politics" is played in Peru, identifying the main arenas of action and the principal actors and interests involved. Although this section ultimately leads to a narrowing down of the possible institutional arenas in which interventions might have the greatest impact, its richness of detail provides Mission staff with information that might be useful in considering alternative paths if country conditions change in the years ahead. The final step, summarized in Chapter V, develops recommendations for a new Democracy and Governance Strategy in Peru. This includes suggestions for an *optimal strategy*, without regard to external or internal constraints, and then a brief discussion of the various filters through which this optimal strategy must pass. The chapter concludes with tentative recommendations for a *practical strategy* for the Mission in the next five years.

C. Team Methodology

After briefings with relevant USAID/Washington staff and a review of program documents, the team spent three weeks in Peru in February and March 2000. During this period, they had briefings with USAID staff; reviewed additional documents; and conducted interviews with a wide array of grantees, independent analysts, political and economic leaders, civil society representatives, and representatives of other donor agencies. (See Appendix I for a full list of sources) Individual team members visited Tarapoto and Piura in order to conduct interviews. A post-election review of the main findings and recommendations was undertaken by three Team members in early July 2000.

CHAPTER III: DEFINING THE DEMOCRACY AND GOVERNANCE PROBLEM

An effective democracy requires basic consensus on the “rules of the game” among all competitors, respect for human rights and civil liberties, free competition of ideas as well as actors, and opportunities for meaningful inclusion of all citizens in the political process. The perpetuation of a democracy also requires good governance, meaning not only efficient public institutions but also transparency, accountability, and respect for the rule of law.

It is important to stress from the outset that in Peru today there are difficulties on each of these five dimensions (consensus, rule of law, competition, inclusion, and good governance), and these are elaborated below. However, the assessment Team identified the main problem for democracy in the next five years as being primarily in the realm of *competition and balance of power*, broadly understood.

Without competition for power based on popular sovereignty, there is no real democracy, even if there is rule of law and efficient government. Obviously, a fully competitive democracy involves a free and fair electoral process and a working party system, both of which are in serious trouble in Peru today. But elections are not the only form of competition in a liberal democracy, and public office is not the only prize. Democracy is also about the free competition of ideas and public policies, which requires a broadly permissive political arena (allowing for a range of debate and disagreement between government and citizens and a structural balance between various centers of power), a strong and plural civil society, and a free and independent media. Furthermore, democracy requires institutionalized competition *within the government itself*, through a balance of power between its branches and levels that serves as a check on potential abuses of power.

In this case, *the Team concludes that democracy and good governance in Peru are seriously hindered in the short run by the lack of effective checks and balances on the exercise of Executive power*. This includes both a lack of real balance of power within the government (among the various branches and levels), and limited mechanisms of government accountability to society. Political scientists have called the current political regime in Peru a “delegative democracy” (the electorate “delegates” to the President the right to govern as he sees fit without oversight from other branches of government), “neopopulist” (the President rules in a traditional populist political style, disregarding representative institutions), or outright authoritarian. The central features of this regime are the lack of effective limits on Executive power and the weakness of democratic institutions, which in turn have led to persistent political intervention in and manipulation of the Judiciary, disregard for the rule of law, and violations of basic civil rights and liberties. The desire of the current administration to perpetuate itself in power has also weakened its original promise of efficient governance, while placing increased restrictions on other political competitors and undermining the legitimacy of the electoral process itself.

Although the team identified the main problem as residing in the sphere of institutional politics and beginning with the exercise (and abuse) of state power, the strategies recommended for overcoming this problem are primarily within the sphere of civil society. For a variety of reasons, government institutions in Peru to date have not been capable of significant “reform from within.” Hence, we believe it is up to key actors in civil society, as well as within the international community, to provide checks on state power and hold government accountable for its actions. In this sense, our assessment upholds the current Mission emphasis on *demand driven* democracy, even while it suggests certain modifications in that approach.

A. Consensus

In Peru there is a basic consensus on the nature of citizenship and the boundaries of the State. Universal adult suffrage was achieved in 1980. According to public opinion polls, there is also a widespread consensus among all sectors of the population that democracy is the *preferred* system of government and that elections are the best way to effect changes of government. Between 1980 and 1992, no electoral outcome was seriously questioned, and the presidential reelection of 1995 was widely considered fair (although more questions were raised about irregularities in the congressional vote). The results of the 2000 contest, however, have definitely ended public confidence in national electoral institutions, while generating political polarization and a significant lack of consensus about the legitimacy of the new government.

Historically, there has also been less consensus on the primacy of democracy under all conditions. Broad sectors of the population supported the 1992 *auto-golpe* as a means of overcoming executive-legislative deadlock and addressing economic and political crisis. Today, significant sectors continue to prefer a third term for President Fujimori, even while recognizing the increasingly authoritarian nature of his administration and the irregularities committed in the electoral process itself.

The new Constitution in 1993 was approved by public referendum, albeit with a narrow margin, and today there are no significant groups that formally contest the legitimacy of this document. It establishes a liberal, representative democracy with a balance of power in government among the three branches, and between national, local and regional levels; establishes protections for basic human rights and civil liberties; and defends equal rights for all citizens and guarantees against discrimination. It also includes new mechanisms of citizen participation and protection, including the referendum, the legislative initiative by local governments and citizens' groups, and the Ombudsman (*Defensor del Pueblo*).

At the same time, most citizens are unfamiliar with the specific contents of the Constitution, and those who are familiar with it do not believe that it regulates daily political or social life. The country's economic elite has also demonstrated a selective commitment to constitutional rules and principles. Major business associations applauded the *auto-golpe*, for example, and have supported the president's potentially unconstitutional third term. Furthermore, although civilian control over the military is established in the Constitution, the actual degree of subordination of the armed forces to elected officials is unclear, and the military's support for democracy and the rule of law has been spotty at best. Furthermore, in practice, the executive, military, and Congressional majorities have demonstrated blatant disregard for the 1993 Constitution and rule of law in a number of areas, most notably in the autonomy of the Judiciary.

B. The Rule of Law

At the present time, the Peruvian state is not committed to enforcing the rule of law, public security forces are not subject to the rule of law, and the Judiciary branch has neither independence nor integrity. Rather than upholding the Constitution and serving as a check on the other branches of government, the Judiciary has been seriously compromised by executive interference. It is the least respected among public sector institutions. The primary organism designed to uphold the Constitution, the Constitutional Tribunal, has been disbanded.

There has never been equal justice for the poor and disadvantaged in Peru. The judicial system has long been rife with corruption and inefficiency, and there is no effective system of public defense for accused

that cannot afford counsel. After the *auto-golpe*, the Executive disbanded the Judiciary, removed allegedly corrupt judges, named new provisional magistrates, and placed the Judiciary under executive control. Initial reform efforts made progress in the acceleration of certain kinds of cases, modernizing judicial proceedings and using conciliation mechanisms, but the fundamental problem of political manipulation of this sector remains.

This does not mean that there is not any protection of life, liberty or property in Peru. There are no formal barriers on freedom of expression and association, the media is largely in private hands, and private individuals, businesses and nonprofit associations enjoy considerable liberty of action. On the whole, respect for private property has increased. Personal security has also improved in recent years, as a result of the successful battle against terrorism. However, the government security apparatus has increasingly turned on critics of the government, including opposition parties, civil society organizations, the media and even outspoken business leaders. Rather than protecting the victims of such abuses, the judiciary is all too often another instrument of persecution, as critics find themselves embroiled in dubious and complex judicial proceedings.

C. Competition

Even if the rule of law were to be fully restored in Peru, there would be no effective democracy unless there were competition for power based on popular sovereignty. Neither the 1979 nor the 1993 Constitution gives the Executive unlimited power. In fact, the current Magna Carta provides for a significant number of checks and balances on central power from the Congress, the Judiciary, local and regional governments, the electoral process, multi-party competition, a free and autonomous civil society, and a free press. Therefore, the ability of elected Presidents to exercise arbitrary power is due in large part to the weakness or complicity of other competitors and to increasing practical restrictions on these arenas of competition.

The 1993 Constitution invests the Congress with significant powers and prerogatives, including debating and passing legislation, creating investigative commissions, and forcing cabinet members to step down through censure, impeachment, and votes of no confidence. In practice, however, the legislature has been neither significant nor autonomous. This is largely because the official party has occupied an absolute majority of the seats and maintains a high degree of discipline, while the minority in opposition is composed of weak and fragmented parties. The legislature seldom functions as a forum for debate over major public policy issues, nor does it function as a vehicle for the representation and articulation of citizen interests. Nearly half of all legislation issued since 1995 was issued by the Executive.

Changes in the Constitution and electoral rules themselves since 1993 (e.g. reduction in the size of Congress and move to a single voter district for congressional elections), have also weakened the links between representatives and the voters, a trend which is exacerbated by the fragmentation of the party system. Whereas voters in the 1980s tended to support four main political parties, since 1990, the party system has been characterized by a predominance of independent political movements that are largely transitory in nature, organized around personalist leaders rather than specific ideologies or programs. Fourteen parties and movements participated in the 1995 general elections and nine fielded presidential candidates in the 2000 contest.

The significance of this trend for democratic consolidation is not entirely clear. On one hand, the current system favors a high degree of pluralism and greater inclusion, as the new independent movements have offered more opportunities for women and non-elites to participate as candidates and leaders. The shift

from highly ideological party discourses to addressing more practical demands (jobs, schools, public works) also reflects the preferences of an electorate skeptical of any political promises and oriented towards concrete results. On the other hand, the weakness and fragmentation of these political groups reinforce the weaknesses found within civil society and provide fertile terrain for authoritarian populism, a phenomenon that predates President Fujimori. In practice, therefore, the current party system does not offer the most effective channels for interest representation. Nor does it promote competition of ideas. It has been virtually incapable of serving as a counterweight to central government power. Given these problems, it is not surprising that the public continues to rate parties *and* independent movements among the institutions of lowest legitimacy and esteem.

With such limitations on the Judiciary, Congress and political party system, key civil society organizations are the leading domestic actors in the effort to promote greater competition and curtail government power. In particular, a number of NGOs and educational institutions have taken the lead in activities ranging from the defense of basic human rights and civil liberties, to the monitoring of elections, to the development of public policy alternatives and the promotion of greater participation by disadvantaged groups. In order to overcome the fragmentation of societal interests, such organizations have sought to build nationwide alliances, strengthen their international contacts, expand and diversify their funding sources, and build longer-term sustainability. Their willingness to do all of this against considerable odds marks a notable contrast to the short-term priorities of most political parties to date.

Finally, two basic tools are required for all competitors in a democracy—access to the media and to money. A free and independent media is essential to provide an outlet of expression for various actors, and to inform the voters of their rights and options. In Peru, the emergence of new leaders no longer depends on having an organized cadre of party militants but rather on access to the mass media and particularly to commercial television, the main source of political information for the majority. However, since 1995 Peru's relatively free media has become increasingly vulnerable to government intimidation, in part due to the financial instability of this sector. As a result, the media has engaged in self-censorship on critical issues such as the structure and behavior of the armed forces and human rights violations. Nevertheless, print media and cable television still have considerable freedom, and journalists enjoy relatively high levels of public confidence.

D. Inclusion

In a healthy democracy, neither formal rules nor informal practices should exclude segments of the population from participation in governmental or non-governmental arenas, and participation in the public sphere should be a legitimate means for advancing the interests of the disadvantaged. As noted earlier, Peru is a country of great ethnic and cultural diversity, but exclusion of the poor and nonwhite majority from political and social power has been a historical barrier to democracy. Since the 1970s, however, important advances have been made in this realm, through increased access to education, expanded civil society organization and elimination of most formal barriers to participation.

Today there are no legal barriers to political participation by civilian adults in Peru. Adult suffrage is universal and obligatory, and a recent "quota law" stipulates that at least 25% of the candidates on all party lists be women. In the past two decades there has been a notable increase in the number of mayors, city council members, congressional candidates and even presidential aspirants, who come from humble backgrounds or are of non-European descent. Nonetheless, formidable barriers remain to including millions of Peruvians in the public institutions that affect their lives. Poverty, illiteracy, and the low *quality* of public education limit participation. Because of linguistic and cultural barriers, peasant women

and members of the indigenous and native populations remain the most excluded. Racism, sexism, and other forms of discrimination are still pervasive at the societal level and in the labor market, and incipient efforts to defend civil rights have been thwarted in the judicial arena.

A principal criticism of the political parties of the 1980s was that they were elitist and lacked ethnic and cultural diversity among their leadership. Fujimori, a university professor of humble origins and Asian descent, initially used this criticism to his advantage. Although the party system is more diverse today, it is also weaker. The linkages between elected representatives and their would-be constituencies are more diluted, making it difficult to advocate effectively for broader inclusion at the national policy level.

E. Good Governance

In a democracy, good governance includes transparency, efficiency, accountability, and respect for the rule of law. During its first term in office, the Fujimori administration made substantial gains in efficiency, privatizing state firms, reforming the tax administration, and establishing new and efficient administrative agencies. State capacity to enforce order was improved, as the military, police and civil society organizations all contributed to the defeat of the Shining Path and MRTA. Many of these gains were explicitly made at the expense of democratic process and the rule of law. From the outset, Fujimori offered a sort of trade-off between efficiency and competition, touting his “direct democracy” and strict majority rule as an antidote to the party infighting that was blamed for most of the country’s ills.

Although Fujimori’s reelection in 1995 suggested a high level of support for this trade-off, in recent years there has been increasing public fatigue with this model. Even highly regarded state institutions such as the tax authority (SUNAT) and the National Social Compensation Fund (FONCODES), have been charged with political bias and misuse of state resources in relation to the 2000 reelection campaign. In response to the OAS mission, the government has acknowledged the need to restore credibility to public agencies and strengthen democratic institutions. It remains to be seen whether this will be translated into concrete reforms.

In summary, today Peru is far from having a stable democracy, and has been backsliding in serious ways since 1995. This is most notable in the sphere of free and fair competition and balance of power, which in turn have had negative consequences for the rule of law, good governance and the effective inclusion of disadvantaged groups. The reelection of President Fujimori to a third term in May 2000 was highly irregular and the new government is widely perceived to be weak and lacking in legitimacy.

CHAPTER IV: ARENAS AND ACTORS

This section of the assessment addresses the principal arenas of action and identifies the key actors and interests involved in each arena, looking at those actors that create or sustain existing problems. In addition, it locates the best allies for strategies to overcome these problems. The Team examined five critical arenas for democracy in Peru, along with the main actors and interests involved in each: the legal arena, competitive arenas, national governance, local government, and civil society.

A. The Legal Arena/Rule of Law

Peru has had no fewer than twelve Constitutions since its establishment as a Republic in 1821. These formal documents were observed more in the breach than in practice, due to the prevalence of *de facto* military regimes and elected governments that routinely violated constitutional rules. In theory, constitutions were supreme and no laws could contradict them. In practice, the judicial branch exerted little control over the constitutionality of laws, despite having the authority to do so.

Peru's constitutional tradition has been characterized by "presidentialism," a tendency toward the authoritarian exercise of power, political and economic centralism, and a personal *caudillismo* transcending parties and ideologies. Throughout Peruvian history, political instability combined with weak institutions to produce repeated constitutional disruptions and swings between elected government and dictatorship, the latter resulting from coups following conflicts between presidents and opposition parliaments.

In summary, a civic culture of respect for the rule of law did not develop among Peruvian elites or the general public, nor did Peruvians develop an awareness of constitutions or confidence in their validity. At first, the 1979 Constitution promised to be an historic exception to this pattern.

1. The Current Constitutional Framework

Alberto Fujimori was elected for the first time in 1990 under the 1979 Constitution, which forbade immediate presidential reelection. Many of the Government's early economic reforms found support in the Congress, but other measures, encountered sharp resistance. Because the Government lacked a parliamentary majority, conflicts between the President and the opposition Congress intensified, culminating in the *auto-golpe* of April 5, 1992. Fujimori suspended the 1979 Constitution, and closed down the Congress, the Judicial branch and the Public Ministry (roughly equivalent to the Attorney General's Office). The *de facto* regime was forced to bow to international pressure and hold elections in November 1992 for a Constituent Congress whose primary charge was to draft a new Constitution.

The Government won a majority in the new Congress, which in turn allowed it to turn any and all Executive proposals into law. Amid intense public controversy, Congress approved a new Constitution and submitted it to public referendum in October 1993. It was ratified by a scant majority of 51%. Key new provisions of the 1993 Constitution included stronger powers for the Executive and presidential reelection for one consecutive term, strong limits on state intervention in the economy, restrictions on regional and municipal decentralization, and an increase of the powers of military courts.

The 1993 Constitution also included several major changes to the structure of the judicial system, including the establishment of the *Consejo Nacional de la Magistratura* (sometimes translated as the

National Judicial Council) and the *Academia de la Magistratura* (National Judicial Academy) and the election of lower-level judges. This Constitution also created the autonomous *Defensoria del Pueblo* (Ombudsman), and made important changes in the electoral system.

2. Political Manipulation of the Judiciary

Since Fujimori's reelection in 1995, with another parliamentary majority, the Executive and Congress have exerted control over the Judiciary. In 1996, the majority in Congress passed a law requiring the Constitutional Tribunal (CT) to obtain six votes out of seven in order to declare a law unconstitutional. This would clear the way for the Congress to pass laws of arguable constitutionality and assure their enforcement, as it would be much harder for the CT to obtain enough votes to overturn such laws. Since members of the CT are appointed by a two-thirds majority of Congress, the Government is assured a quota of magistrates sympathetic with its political objectives and sufficient in number to check any Tribunal decision contrary to such objectives.

The most notorious manipulations of the Judicial Branch have been those measures aimed at clearing the way for Fujimori's second reelection. In August 1996, the Congress passed the "Law of Authentic Interpretation of Article 112 of the Constitution," which classified the 1995-2000 term as Fujimori's first term, allowing the President to run for reelection again in 2000. The passing of this constitutionally suspect law set the parameters for the political debate for the next three years, creating an atmosphere of polarization and continuous legal argument.

Congress also adopted a series of measures to promote reelection and control the various agencies involved in elections. Examples include:

- Dismissing three Constitutional Tribunal judges who declared the law authorizing a new presidential reelection unconstitutional.
- Passing a law to increase the number of the Supreme Court judges and Attorney General magistrates to include the votes of the provisional and substitute members. Since it was these judges' task to designate the representatives to the National Electoral Board (*Jurado Nacional de Elecciones* or JNE), the intention was to influence the composition of that electoral organ.
- Suspending, temporarily, the authority of the National Judicial Council to name regular judges and curtailing their powers to punish judges. This usurping of the Council's functions prompted all of its members to resign in protest in March 1998. Some weeks later, the director of the National Judicial Academy resigned as well.
- Limiting the public right to submit to referendum the abolishment of laws, just when a proposal of popular consultation regarding the controversial new law permitting presidential reelection was to be formalized.
- Modifying the JNE voting system in regard to challenges submitted against individual candidates (*tachas*), which would make it more difficult for challenges to Fujimori's candidacy to prosper.
- The curtailing of the Public Ministry's powers, after a change in personnel.

All of this has led to what the Ombudsman calls “the blurring of the constitutional design,”² or the weakening of the rule of law by imposing severe limitations on the functions and autonomy of judicial institutions through laws passed by a Congressional majority submissive to the Executive. Formally, the institutions established by the Constitution do exist. In practice, however, such institutions do not exercise their basic prerogatives or have lost the necessary power to counterbalance an overpowering Executive.

3. Judicial Reform

Historically, Peru’s judicial branch has been organized into a Supreme Court and a set of Superior Courts in each judicial district, judges of first instance, and justices of the peace who are called upon to adjudicate minor infractions. The 1979 Constitution established the Public Ministry as an autonomous organ of the judicial branch, heading up penal actions and leading criminal investigations, among other functions. During the last two decades, however, the judicial system has sunk into grave disrepute. Despite constitutional regulations guaranteeing the autonomy and independence of the judiciary, the selection of magistrates by an Executive Commission of the Judiciary has evolved into a tool to maintain political control. Poorly qualified judges and attorneys, combined with high levels of corruption in the system as a whole, the continued use of outdated procedures, and a deep resistance to change, have eroded the credibility of the judicial system.

Judicial reforms enshrined in the 1993 Constitution were considered positive changes. The National Judicial Council was given the task of monitoring the designation, approval, promotion, and dismissal of Judicial Branch and Public Ministry judges. Seven members of the Council were to be designated by the Supreme Court, supreme attorneys, public and private university law faculties, and the Peruvian bar association (*Colegio de Abogados*), along with other professional associations, theoretically excluding the direct participation of Executive and Legislative branch agencies in the process.

The National Judicial Academy was charged with the selection of applicants to judgeships and promotions, and given responsibility for training judges and magistrates at all levels. The Constitutional Tribunal was given the authority to monitor the constitutionality of laws and review cases where the judicial branch had breached *habeas corpus*, “*accion de amparo*,” and *habeas data*. Formally outside the Judiciary, the Ombudsman was entrusted with the defense and protection of fundamental rights, the supervision of public administration and the provision of public services.

After the 1992 *auto-golpe*, the Government suspended the Judiciary and ordered the dismissal of numerous judges. To fill the void, it promoted lower administrative officials, judges, and attorneys to serve on a provisional basis or designated lawyers to serve as substitute judges. In November 1995, Congress created the Executive Commission of the Judiciary, comprised of three Supreme Court judges, to oversee the judicial branch and the reform process. The President of the Supreme Court and the natural governing entities established in the Organic Law of the Judiciary were barred from participating in the commission.

In June 1996, Congress declared the Judiciary, the Public Ministry and the National Judicial Academy under “reorganization,” and established the Council of Judicial Coordination to oversee the reorganization. Initially, the reorganization was to have taken one year, but the term has been continuously extended. As a result, new tribunals and attorney offices were created in order to process

² “Primer Informe del Defensor del Pueblo ante el Congreso” (First Report of the Ombudsman before the Congress 1996-1998), pp. 394-397.

the backlog of cases. These posts were occupied by provisional and substitute magistrates, thus reinforcing the “provisional” character of the judicial system.

Some important achievements in the area of judicial reform include introducing computerized systems into the administrative and jurisdictional procedures, creating specialized tribunals in different areas of the country, and establishing “corporate offices” to accelerate case processing. Other accomplishments include training for jurisdictional, administrative, and auxiliary personnel. In addition, the judicial branch budget and revenues were increased, improving judges’ salaries. These measures, adopted in an atmosphere of strong political control, sought to limit the natural self-government mechanisms of the judicial branch and to exclude judges from designating their own authorities. Reforms of the Public Ministry, by contrast, have been minimal, in spite of the fact that (or perhaps because) institutional leadership has remained concentrated in a single individual,³ a situation that has worsened due to the failure to implement a new Penal Code⁴.

Despite advances in judicial modernization, there remains a high degree of political intervention and corruption in the judicial branch. The most critical problems include the following:

- The politically tenuous position of provisional judges affords the government political control over the judicial apparatus. The lack of job stability renders the provisional or substitute magistrate vulnerable to political or economic pressure, since his/her tenure often depends upon not contradicting judicial authorities. In many cases, the composition of a particular court was modified or a judge changed when deciding cases affecting government interests, or a member was removed as a punishment for failing to decide in favor of the government.
- The persistence of military courts in the hands of military officers, most of whom have no formal legal training. These courts continue to decide civilian cases of major importance, such as cases of treason or terrorism. Its decisions are supreme; they are not subject to review by the judicial branch. Military trials are speedy, but they ignore essential due process guarantees, and the secrecy of the process allows little control over or knowledge of this tribunal’s performance or of the legal grounds of its verdicts, all of which makes the defense of the accused precarious.

The Constitutional Tribunal, after the Congress dismissed three of its seven magistrates, has been rendered incapable of deciding on the constitutionality of laws. Meanwhile, Congress passes laws that

³ After the coup of 1992, the Government named Blanca Nélica Colán as Attorney General or director of the Public Ministry. She was reelected for two consecutive terms, by means of laws expressly issued by the Congress in order to assure her continuity, over the objections of most of supreme attorneys. In June 1996 she simultaneously occupied the position of President of the Executive Commission and Director of the Public Ministry. When she finished her last term in the Public Ministry, she was replaced by Miguel Aljovín, but his main powers were clipped, turning him into a practically decorative figure until the recent culmination of his term. At present, Ms. Colán has again been named Attorney General and retains her position of President of the Executive Commission. After nearly eight years in charge of this institution, the lack of significant reforms can be claimed to be her direct responsibility, as well as the notorious submission of the Public Ministry to the Executive, even greater than the one noticed in the Judicial Power.

⁴ The new Penal Procedural Code was approved by the Congress and the Executive’s Review Commission in 1991. This law introduces the accusatory system, attorney’s investigation and diverse guarantees for an appropriate penal process. However, the Government enforced only a few articles of this Code, delaying enforcement until May 1994. This enforcement has been continuously postponed until the present time, by virtue of express ban from the Executive, influenced in turn by the Ministry of the Interior, the Police, and the state security bodies.

violate the Constitution, but it remains free of any control by Constitutional Tribunal. As for the remaining cases of *habeas corpus* and “*acciones de amparo*,” the jurisprudence of the tribunal is erratic.

4. The Human Rights Situation

Human rights in Peru have improved over the last decade, due in large measure to the successful campaign against terrorism and a corresponding decline in political violence. Serious violations, including summary executions, disappearances, and detentions have decreased significantly from their high levels in the early 1990s, while many special measures enacted to combat terrorism have been scrapped. However, military courts still decide cases of treason and terrorism, and violations of penal process rules continue to be detected in the trials of civilians in military courts.

The Ad Hoc Pardon Commission, created for the review of the cases of innocent people falsely accused and convicted for terrorism, played a critical role in ensuring that miscarriages of justice were corrected, belatedly, in terrorism cases. Set up by the President, this Commission included the Ombudsman, the Minister of Justice and a presidential representative -- a respected priest who works in Peru's prison system. The Commission's work, which included reviewing cases and recommending presidential pardons where it found no evidence of terrorism, resulted in the release of 460 people. However, the Government terminated the Commission's charter at the end of 1999 and passed its functions to the Ministry of Justice. It is uncertain how strongly the Ministry of Justice is picking up where the Commission left off.

The arbitrary detention of citizens by the police and the detainees' abuse or torture are serious and recurrent problems, according to human rights groups. Such abuses have created a need for the Public Ministry to monitor and punish police performance and for the Ombudsman to inspect the police forces to ensure their training in due process and citizen rights. Intimidation campaigns promoted by government authorities have also been criticized by human rights groups. Public figures and journalists vocal in their opposition to government policies or actions are usually the targets of these campaigns, which manifest themselves as legal proceedings or as attempts to collect tax arrears.

Among the more serious breaches of human rights include the government's failure to obey two verdicts rendered by the Interamerican Court of Human Rights, one requiring the release and indemnification of a defendant acquitted by a military trial, and the other compelling the government to hold a new civil trial of several Chilean citizens convicted by military courts for treason and terrorism without respect for due process. Expecting adverse verdicts, the government withdrew its recognition of the Court's jurisdiction. In withdrawing its recognition of the Court, the government not only abdicated its international commitment to human rights (agreed to in the American Convention of Human Rights), but it also ensured impunity for human rights violations perpetrated by the regime, since it prevents the tribunal from reviewing Peruvian human rights cases.

5. Role of the Ombudsman

As chartered by the 1993 Constitution, the *Defensoría del Pueblo* or Ombudsman protects and defends the fundamental rights of citizens, supervises public administration and the performance of public officials to ensure that they fulfill their duties, and supervises the provision of public services. The Ombudsman has no coercive or punishing power, but authorities are obliged to cooperate with him. The Ombudsman can also handle individual complaints or make recommendations for public sector reform.

The Ombudsman is seen as a prestigious, trustworthy and credible state institution. Its work on the Ad Hoc Pardon Commission, its defense of democratic institutionalism, its declarations on important issues, and its attention to citizen complaints, have all fostered an excellent public image for both the institution and the current *Defensor*, Dr. Jorge Santistevan.

The Ombudsman has also served a quasi-judicial review capacity, successfully challenging the constitutionality of certain laws. There were supportive rulings from the Constitutional Tribunal, in some cases forcing the recession of such laws by the Congress. Many other recommendations have been accepted and put into practice. Recently, however, high government officials and sectors of the press linked to the Government have launched attacks against the Ombudsman and against the *Defensor* himself, in an attempt to cast doubt on the performance of the institution and undermine its authority.

The Ombudsman can and does exert important political and moral influence in the political arena, particularly in the enforcement of human rights, constitutionality, and democratic institutions. Public opinion and influential sectors of the free press remain important backers of the Ombudsman. The agency's continued effectiveness as an oversight authority, however, seems to depend to an uncomfortable degree on the forbearance of the government, whose differences with the Ombudsman grow deeper by the day. The future of this agency will be tested when the current *Defensor* concludes his term in April 2001, as much seems to depend on whether Congress will re-nominate the present *Defensor* or designate a credible successor.

In summary, the primary actors responsible for the current limitations on the legal and judicial arena in Peru include the Congressional majority, acting in the interests of the Executive and, in recent years, primarily dedicated to assuring the reelection of President Fujimori. Those authorities designated to undertake judicial reform are also responsible, to the extent that they have instead collaborated with the current political manipulation of this sector.

While limitations on the rule of law is a fundamental problem in Peru today, to date there has been no political will in the central government to reform this sector "from above," and there are few effective allies within the current Judiciary or Public Ministry working for a strategy of reform "from within." The primary exception has been the Ombudsman. There are also honest magistrates within the system who remain committed to reform, as well as individual figures within the Lawyers' Association. The former are few, and they fear for their job stability. The Lawyers' Association has not an effective agent for change in recent years because it is grappling with its own internal problems.

The OAS mission gave judicial independence and reform the highest priority in the list of proposed reforms it presented to the Peruvian government in June 2000, and specifically cited the need to dissolve the Executive Commission, reestablish the Tribunal Constitucional, and resolve the problem of the provisionality of judges. However, it is too soon to tell whether the government will respond favorably to recommendations in this sphere.

B. Competitive Arenas

Democratic theory and historical practice demonstrate that competition lies at the heart of a democracy, permitting citizens to choose and change their government and hold authorities accountable. A fully competitive democracy involves a free and fair electoral process and a working party system. It also involves the free competition of ideas and public policies, which requires a broadly permissive political

arena (allowing for a range of debate and disagreement between government and citizens), a strong and plural civil society, and a free and independent media. Furthermore, democracy requires institutionalized competition within the government itself, through a balance of power between its branches and levels that serves as a check on potential abuses of power.

The quality and effectiveness of political competition in Peru has steadily eroded over the last decade. Although the country has a strong presidentialist tradition and abuses of Executive power were not uncommon in the 1980s, the various arenas of competition have become far more restricted since President Fujimori took office in 1990. Now there are few adequate counterweights to executive authority within the government itself. As mentioned above, separation of powers between the executive, legislature, and judiciary branches has been undermined by measures that are widely considered to be unconstitutional. The process of electoral competition has also been increasingly questioned since the 1995 elections, and charges of abuse of incumbent advantage and outright elections fraud reached a high point in the 2000 campaign. Political parties remain weak and fragmented, a phenomenon which has been exacerbated by new rules in the 1993 Constitution and a new elections law in 1997. Furthermore, Peru's diverse and largely private media has been increasingly restricted in its coverage of the political competition and in the ability to investigate and denounce abuses of power.

1. The Electoral Process

Suffrage is universal and obligatory in Peru. National and local-level elections were largely considered free and fair throughout the 1980s, although there were numerous technical difficulties such as inaccuracies in the voter registration rolls and high levels of nullified votes. Nevertheless, no electoral outcome was seriously contested and no sectors of the population were formally excluded from participation.

This situation changed over the 1990s. Suspicion that the government had not played fair in the 1992 congressional elections or the 1993 referendum undermined public trust in the government entities responsible for guaranteeing the transparency and validity of the electoral process, which led to a call for domestic and international observers to monitor the 1995 elections. Observers conceded those elections were free and fair, but there were enough irregularities in the preferential vote to cast doubts on the government's parliamentary majority. By the time President Fujimori declared his a candidacy for a constitutionally dubious third term (2000-2005), public confidence in electoral institutions were very low indeed,⁵ precipitating another call among opposition leaders for international observers to monitor the 2000 campaign and the vote on election day. The resulting process was one of the most questioned and problematic in Peru's history, marred by abuses of power by the Executive and ruling party in their effort to remain in power for a third consecutive term (see additional details, below).

⁵ A poll rated JNE a 10 out of 20 points in terms of institutional quality; ONPE received a 9. A total of 1,100 people were interviewed. The margin of error is plus/minus 3.0%. Source: *Gestión*, 20 April, 2000.

a. Presidential Elections

The President is elected to a five-year term by direct vote and s/he must attain an absolute majority (50% plus 1 of all valid votes) in order to win in the first round. Otherwise, there is a second round run-off between the first two leading candidates. This system seeks to assure that the President will enjoy strong legitimacy through securing majority approval. The 1993 Constitution allows for the president to be re-elected to one consecutive term, a departure from the 1979 Constitution that limited the presidency to a single term.

There was considerable controversy surrounding President Fujimori's eligibility in elections for a third term. When the 1993 Constitution was passed, permitting the president to be re-elected to a second term, the question arose as to whether he would be eligible to be "re-re-elected" in 2000. President Fujimori and his supporters argued that he should be eligible because his first term in office was under the 1979 Constitution. His opponents challenged this position and the constitutionality of his candidacy in 2000.

In 1996, the Fujimori-controlled Congress passed a Law of Authentic Interpretation stating that President Fujimori could stand for re-election in 2000. This law was widely criticized since the Constitution does not give Congress powers to interpret the Constitution. Therefore, the Law of Authentic Interpretation went to the Constitutional Tribunal in 1997. Three of its seven members declared the law inapplicable to President Fujimori's re-election and four abstained. The three ruling judges were impeached. Since that time their seats have not been filled, making the entity inoperative. Furthermore, the number of magistrates needed to rule legislation as unconstitutional was increased from 5 of 7 to 6 of 7, raising the bar higher than for almost any similar body around the world.

Next, civil society organizations moved to challenge the Law of Authentic Interpretation and campaigned for a referendum on the subject. While civil society organizations worked to collect the requisite number of signatures, Congress passed a law modifying the referendum process to require that two-fifths of Congress vote in favor of holding the referendum. In August 1998, Congress defeated the referendum. In December 1999, President Fujimori presented his candidacy to the National Elections Board (JNE). The JNE was the final arbiter on whether or not President Fujimori could participate in the 2000 elections and ultimately rejected 18 different objections to his eligibility that were submitted by opposition figures, political parties and other civic groups.

b. Congressional Elections

Until 1992 the Peruvian legislature consisted of two chambers, a Senate and a Chamber of Deputies, with a total of 240 members. Under the new 1993 Constitution, the Congress is unicameral, with 120 members who are elected for five-year terms representing a single electoral district (*districto unico*). Because Presidential and Congressional elections are concurrent, the "coat-tail effect" is stronger, increasing the likelihood that the President will have a majority control in Congress. Moreover, there is a single ballot for both President and Congress, making a split vote less likely even though voters have the right to do so.

In both 1980 and 1985, presidents were elected in the first round and had Congressional majorities that enabled them to govern with and little opposition. However, because Congress is elected definitively in the first round, this system leaves opens the possibility that a presidential candidate, who wins in the second round, may not have a Congressional majority, as was the case in 1990. Although Fujimori won 63% of the popular vote in a second round run-off, his movement won just 18% of the Chamber of

Deputies and 23% of the Senate. One of his arguments for closing Congress in 1992 was precisely this lack of a supportive majority.

The 1997 electoral law extends the single-district Congress, which was implemented for the 1995 elections and was to have lapsed with the 2000 elections. The switch from multiple districts to the current system is largely a result of the decline in public support for Congress, which was seen as too large, inefficient, and prone to corruption. The change to a single district carries implications for party competition as well as for representation. Multiple districts permit a more direct relationship between representative and voter, obliging representatives to pay greater attention to constituent interests and favoring the consolidation of a smaller number of parties. While the unitary district enables more groups to compete and achieve representation and tends to create cohesive majorities, it also weakens regional representation, attenuates the link between voter and representative, and induces or exacerbates party fragmentation.⁶ Electoral campaigns under this system are primarily concentrated in the capital city of Lima where many candidates and a large proportion of the electorate reside, and they are weighted towards television advertising rather than local organizing. Both factors are disincentives for establishing regional party structures or including provincial representatives on party lists. The 2000 election was no exception. The majority of candidates in the top 10 positions all congressional lists hailed from Lima and environs.

Another factor that contributes to party fragmentation is the preferential vote. This mechanism, in effect since 1985, allows voters to select their preferred candidates from within their chosen party's list of 120 congressional candidates, rather than having to accept the order presented by party leaders. Although the preferential vote allows the voters greater freedom of choice, it also weakens party unity and discipline and reinforces "personality politics." Each of the 120 candidates from a given political party must run separate campaigns and compete against each other for voter preferences. Candidates with more economic resources have an advantage in running a national campaign. As a result, there are even more campaigns and messages, often confusing the average voter. Furthermore, when combined with the single electoral district, the preferential vote can work against rural candidates who may not be known in other parts of the country and who lack the financial base for a regional campaign.

In summary, the congressional election process favors a multiplicity of weak and divided competitors rather than strong and cohesive parties. In turn, the number of parties presenting candidates (14 in 1995 and 10 in 2000), the proliferation of individual congressional campaigns (1200 candidates in 2000), and the rules regarding split ballots and preferential voting all contribute to make the electoral system confusing to most citizens and poorly understood by both voters and poll watchers. In the 1995 congressional elections, for example, an estimated 38% of the total vote was annulled, due largely to incorrect tallies of the preferential votes.

c. Two Steps Forward: Municipal Elections and the "Quota Law"

While the national electoral process became increasingly problematic as an arena for democratic competition and consolidation in the 1990s, there were two bright spots in the system in regard to inclusion: municipal elections and the participation of women.

⁶ This is the view of many leading experts on electoral systems. For more information, refer to the interview with Dieter Nohlen, *Cuestión de Estado*, Number 24 (August 1999), pp. 50-51.

There are 2,020 district-level municipal governments in Peru. Since 1980, all district mayors and city council members are directly elected by local residents. This is unusual in Latin America, where municipal elections are often limited to the provincial or capital-city level, and marks a sharp contrast to the growing distance between congressional representatives and voters. Over the past two decades, there have been more opportunities for local leaders and grassroots activists to participate in the electoral process at a local level, providing an important arena for public participation in decision making. In addition, the close link between citizens and local governments contributes to local governments' relatively high degree of public legitimacy.

The 1997 election law included a new measure designed to accelerate the participation of women in both municipal-level and congressional politics. Dubbed the "Quota Law," this measure stipulates that at least 25% of the candidates on all party lists for congressional and municipal elections must be women (or men, should there be a female-dominant party). In effect for the first time in the 1998 municipal elections, this law prompted all parties to compete for eligible women, and mobilized over 3,000 female candidates in Metropolitan Lima alone. As a result, there was a modest increase in the number of female city council members elected. The total number of female candidates competing in the 2000 congressional elections increased to 26% (up from 10% in 1995), and 19% of the new Congress is female. USAID grantees such as the PROMUJER alliance of NGOs have played a key role in preparing women for competition under this new law as well as monitoring its overall impact.

d. The Guardians of the System: Actors, Interests, and Possible Allies

Prior to 1993, the National Elections Board (JNE) was the sole public agency responsible for organization and oversight of the electoral process. Although it suffered from resource and technical limitations, its work was largely considered to be professional and fair. The 1993 Constitution divided this oversight responsibility among three distinct institutions: the JNE, the National Office of Electoral Processes (ONPE), and the National Registry of Identification and Civil Status (RENIEC). This division created confusion and competition among these agencies, and is considered to have weakened the capacity of the oversight system as a whole. Furthermore, opposition parties and nonpartisan civic groups have expressed concerns regarding the independence and impartiality of all three electoral bodies.

Prior to the 2000 election, all three agencies had medium to low public approval ratings. A 1999 survey by the *Instituto de Estudios Peruanos* reported approval ratings of 40.3 for the JNE, 42.3 for the ONPE, and 45 for the RENIEC. By early 2000, polls indicated that a majority of the public already believed that the 2000 electoral process would be fraudulent (*viciado*) in some way, and in the wake of the actual vote count the majority of the population as well as most international observers came to share this view (see below).

The JNE remains the most powerful of the three agencies. It rules on all questions or complaints regarding the electoral process, announces the outcomes, and serves as the official watchdog of the process. Originally structured to ensure relative independence and freedom from political influence, the JNE is composed of five individuals. Its President is a representative of the Supreme Court, one representative is from the Public Ministry, one representative comes from each of the leading public and private university law schools, and a representative is selected by the Lima Bar association. Before 1998, the JNE could issue rulings based on a simple majority (three out of five). However, the Congress issued a law changing this to four out of five, making it easier for a minority to block action. Critics charge that this change was intended to prevent the JNE from ruling against the future candidacy of President Fujimori. Today the majority of those serving on the JNE are considered to be loyal to the President. The JNE was the final arbiter on Fujimori's participation in the 2000 elections and the final result.

The RENIEC and the ONPE are also subject to controversy and allegations of political manipulation. The presidents of both agencies are appointed by the National Judicial Council whose membership is largely beholden to the Executive. There have been numerous investigations of RENIEC, examining whether agents of the National Intelligence Service (SIN) had infiltrated the agency, whether staff were engaged in corruption, and why 50,000 military and police personnel were able to vote, illegally, in the 1995 elections. Members of ONPE staff were also cited for their collaboration with the massive falsification of signatures in the registration of the pro-Fujimori party, Peru 2000, and actual manipulation of the vote count on election day.

In summary, not only has the electoral process become limited as an arena of free and fair competition and as a means for reigning in state authority, but also the official arbiters of the “game” themselves have been called into question. There are other actors who can or should serve as allies in an effort to restore fair play. First, the competitors themselves – parties and movements – are allowed and encouraged to field poll watchers to observe the voting booths on elections day, to assure that there is no fraud. However, the sheer number of voting locales (over 3,000) and individual voting tables or booths (87,000 *mesas de votación* nationwide) makes this a daunting task; in the 2000 election, none of the competing parties had the social bases or local on-the-ground structures to cover this. Although opposition parties had originally agreed to coordinate their poll watching activities in the 2000 contest, the ultimately were unable to do so. Parties, civic groups, and international observers all pointed out that in the charged political climate of 2000, unless a voting booth was monitored the potential for errors and abuse was quite high. Because of this, the Ombudsman’s staff and volunteers also played an important role in monitoring approximately 30% of the voting locales during the first round election on April 9.

Within civil society, the most important actor is the *Asociación Civil Transparencia*, a non-partisan NGO that has observed all general and municipal elections since its founding in 1994, using a national network of volunteers. Its goal is to enhance participation and transparency in the electoral process by training poll watchers, conducting voter education efforts, and promoting legal initiatives related to reform of the electoral system. *Transparencia* is a membership organization, but its main financial support comes from international donors. Other key allies in *Transparencia*’s efforts are Catholic, Jewish and Protestant churches, which assist in providing local offices, transportation, and volunteers. *Transparencia* also has collaboration agreements with approximately 250 NGOs throughout Peru and coordinates closely with the *Coordinadora de Derechos Humanos*.

In the first round of elections on April 9, 2000, *Transparencia* fielded 19,000 volunteer observers and did a parallel “quick count” of a sample of 1,020 voting tables which became the center of public debate about the first round results (see below). It also monitored all issues of concern during the pre-electoral campaign, including media coverage of candidates, the use or misuse of state resources, and the accuracy of the electoral registry. Between elections, however, *Transparencia*’s role is less well defined. The relative emphasis that core staff places on activities such as ongoing civic education or advocacy for political reform depends in part on the willingness of donors to support them.

2. Parties and the Party System

Peru has never had a strong party system. Throughout the 20th century, authoritarian rulers generally proscribed and persecuted reform-oriented parties, or made efforts to replace them with various forms of corporatist state control. Even when party competition was permitted, it involved just a small elite and excluded a significant share of the population until 1980.

The new party system which emerged in the 1980s was broader and more representative than in the past and potentially more capable of aggregating and articulating the interests of a larger and more socially diverse electorate. There were four main parties in the 1980s: the center-left populist APRA, the center-right populist Accion Popular, the right-of-center PPC, and the socialist United Left coalition. Each party governed or shared power sometime in the 1980s. Each was troubled with acute internal divisions and by the predominance of short-term electoral objectives over the establishment of lasting party structures and constituency building. Furthermore, they all seemed incapable of governing effectively.

In was in this context that independent candidate Alberto Fujimori came to power with a platform that was critical of political parties, proposing to replace them with more a efficient Executive and with mechanisms of “direct democracy” linking the President directly with the masses.⁷ This proposal resonated with the electorate, and since 1992 the government has attempted to carry it out by changing the structures of congressional representation, electoral rules, and oversight mechanisms.

Peru’s party system today is characterized by the predominance of independent political movements that are largely transitory in nature, organized around the electoral candidacies of personalist leaders (generally “outsiders” and nontraditional politicians in the Fujimori mold) rather than specific ideologies or government programs. In the 2000 elections there are 10 different congressional lists and nine presidential candidates, and those leading in the polls are new, rather than established, parties. Fujimori himself has not established a permanent party, opting instead to form new political ones for each electoral campaign.

The political party system thus involves three sets of actors and interests.⁸ The first group, involving President Fujimori and his supporters, depends almost entirely on the use of public agencies and resources to retain popular support. As this group has neither been able or willing to organize a lasting political organization with bases in society, keeping Fujimori in power is fundamental for its survival. Hence, their willingness to bend the rules in order to win the elections of 2000.

The second group is composed of the so-called “traditional” parties (APRA, AP, PPC, and what remains of the socialist left). Their main interest is in sheer political survival. They have turned inward, focusing on cultivating their remaining traditional support bases, hampering their ability to join forces in broader coalitions around common objectives. For the most part, these parties have displayed a lack of internal democracy, leadership turnover, or new political messages. This, combined with an inability to propose convincing economic and social policy alternatives, has led to their persistent political marginalization. In fact, in the 2000 election the PPC did not participate at all because it could not get the minimum signatures needed to registrar with the JNE, and AP lost its registration as a result of the 2000 contest because it did not reach the minimum number of votes required to maintain its standing as an official political party.

The third set of actors are the emergent “independent” movements vying to replace Fujimori, including *Perú Posible*, *Somos Perú*, *Solidaridad Nacional*, *Avancemos*, and other contenders at the national and municipal levels. These movements, usually created around the candidacy of a popular figure, are sustained by the mass media and shifting citizen preferences as transmitted by public opinion polls. Their

⁷ The rise of independent candidates preceded Fujimori, with the election of popular television personality Ricardo Belmont as Mayor of Lima in 1989.

⁸ This characterization of the party system draws on the work of political scientist Martin Tanaka, “*Los partidos políticos en el Perú, 1992-1999*”, IEP Working Paper No. 108, noviembre 1999.

strategies focus on media-politics and “electoral marketing” rather than on the development of party structures or specific governance proposals.

The significance of this combination of party actors for the future of democracy is still unclear. On the one hand, the current party system favors a high degree of pluralism. On the other hand, the weakness and fragmentation of these groupings reinforces the political weakness of civil society and provides a fertile terrain for authoritarian populist leadership. This pre-dates Fujimori and may persist well beyond his last term of rule. The emergent movements are all small in size, personalist in nature, and virtually nonexistent between elections. They have been largely ineffective at aggregating diverse interests into clear programmatic and policy alternatives. Furthermore, proposals for legislation to reform the party system have been thwarted in Congress since 1983, by both old and new parties and movements. According to political scientist Fernando Tuesta, to date there has been an “implicit pact” among all parties to avoid state involvement in this sphere.⁹

In summary, the competition of ideas and potential leaders, and the representation and defense of citizen interests in the public sphere, are basic elements of democracy. Theoretically, these should be the functions of political parties. In its present form, however, the party system does not offer genuine competition of ideas and serious governance options, and it has been virtually incapable of serving as a counterweight to excessive Executive power.

3. The Media as an Arena for Competition

Although new movements are particularly dependent on the media for their existence, all candidates and parties have had to adapt to the growing importance of the mass media in creating and sustaining a sphere of public debate. The media play a key role in shaping public opinion, but it has also become increasingly vulnerable to political control.

Since 1995, observers have watched with great concern as Peru’s once free and vigorous media have become increasingly subject to government intimidation. As a result, media owners and journalists have engaged in considerable self censorship surrounding issues such as the human rights abuses, the structure and behavior of the Armed Forces, and President Fujimori’s possible third term. At the same time, journalists still receive high public confidence ratings. For example, in a 1999 survey that compared public confidence in 16 different actors and institutions, journalists ranked the fourth highest.

a. Fragility of the Sector

Most observers of Peruvian press freedom point to the financial fragility of this sector as one of the main factors that facilitate political harassment. In Lima alone, 25 newspapers, eight non-cable and numerous cable television stations compete for the attention of the capital’s seven million inhabitants and for the limited advertising resources available. For most media owners, the last few years have not been prosperous. Most commercial television stations have changed ownership and incurred large debts, including tax debts and social security contribution arrears that are owed to the government. Furthermore, dependency on government advertising revenues is extremely high for the non-cable TV stations. The government is the single largest advertiser in the country and experts estimate that in 1999

⁹ Interview with Fernando Tuesta Soldevilla, Lima, July 3, 2000.

alone public sector agencies, particularly the Ministry of the Presidency, have spent at least \$76 million in advertising, double the amount spent by the second largest advertiser, a local beer company.

The media that do engage in critical and investigative journalism are able to do so because they are financially secure, do not depend on government advertising, and/or not in arrears. Free political debate and critical opinions are aired on a few cable TV stations – Canal N and Cable Canal de Noticias – and are published in national daily newspapers such as El Comercio, Gestion and La República, and in weekly and monthly magazines such as Caretas and Debate. However, these media also have fairly reduced circulation.

b. Absence of Political Information and Debate

Over the last year, one of the most notable trends in non-cable television programming has been the gradual elimination of programs with explicit political content – investigative news reporting, interviews, or talk shows. Media owners justify these programming decisions because non-political shows received higher ratings; journalists see their displacement as a political move by owners who fear government reprisals when the news shows take a critical perspective. Celebrated cases include the cancellation of the news and talk program “*En Global Con Hildebrandt*,” run by well-known government critic César Hildebrandt, and the pressure exerted on the host of the popular Sunday news and features program “*Revista Dominica*,” Nicolas Lucar, to present reports in ways that reflect favorably on the government (Lucar eventually resigned and publicly criticized this trend.) The result of these cancellations is that there are few outlets for political reporting or debate on non-cable television.

Although radio is less restricted than television, and 52% of Peruvians report using the radio as their main source of political information, it is also subject to self-censorship. For example, the *Instituto de Defensa Legal (IDL)*, a prominent human rights organization that receives funding from various external donors and publishes a monthly magazine, recently had its radio program removed from the air. The station owner admitted that in the current environment, he could not air the show.

Although only 34% of Peruvians cite newspapers as their main source for news, the role of the country’s widely read tabloids, known collectively as the “*Prensa Chicha*,” is important in the current political process. Seen hanging on kiosks throughout the country, near bus stops and markets, the tabloid headlines and stories are almost uniformly pro-government and identical in their messages. Allegedly subsidized and influenced by the military and intelligence service, the tabloids publish scandalous stories that aim to discredit opposition politicians and journalists through references to their sexuality, business affairs, patriotism, and other topics.

In the pre-2000 election context, media watchdog groups and elections monitors note that the media often served to constrain meaningful political participation. Even before the 2000 election campaign, international observers raised concerns. The Committee to Protect Journalists listed President Fujimori among top ten enemies of the press worldwide. In 1988, Freedom House ranked Peru along with Cuba as the only two countries in the hemisphere as having a press that is “not free.”

c. Intimidation and Self-Censorship

Several incidents have collectively discouraged freedom of expression and have encouraged self-censorship. Over time, these incidents form patterns, such as the following:

- Journalists or media owners who are investigating cases of government corruption or abuse may be harassed, intimidated, slandered, or they may receive death threats. According to the Institute for Press and Society (IPYS) which has set up an emergency network for journalists, 108 complaints were received between November 1998 and February 2000. Of the complaints, 33 concerned defamation, 22 involved verbal or physical aggression including death threats, 14 involved direct censorship and the closure of news programs or radio stations, seven involved sabotage attacks, eight involved judicial harassment and prosecution, five involved harassment by the police or armed forces, two kidnappings and two murder attempts (IPYS, 2000).
- Journalists and media owners are prosecuted by judicial authorities to thwart their investigations (e.g., Enrique Zileri of Caretas; Genero Delgado Parker, owner of Channel 13; Radio Senorial in Huancayo; Guillermo Gonzales of Prensa Libre; and Radio Libertad in Trujillo). Baruch Ichver, majority owner of Channel 2, had his Peruvian citizenship revoked and ownership taken away, under laws that require majority national ownership of television stations.
- Media owners, most of whom are heavily indebted to the state for back taxes, are selectively threatened with sanctions by tax authorities.
- Advertisers are dissuaded by Fujimori loyalists from advertising in independent media.

d. Media in the Provinces

Reportedly, greater media freedom exists outside of the capital. Nevertheless, when a controversial issue arises, media outlets in Peru's provinces may be equally if not more vulnerable. Of the 108 complaints received through the IPYS emergency network for journalists, 105 came from the provincial journalists. IPYS noted a recent trend of harassing provincial radio stations to prevent opposition candidate access to the airwaves.

Although there are reportedly 120 television stations operating outside of Lima (over 40 of which participate in a USAID-sponsored civic education network), many of them are also financially vulnerable. In addition, they have to compete with Lima media for scarce advertising revenues. Hence, the provincial media may be subject to intimidation. Nonetheless, some of the more stable and relatively free media throughout the country are community radio stations that are controlled by churches. These simple, relatively inexpensive operations are allowed greater freedom of expression, given their affiliation with churches.

In summary, private media engage in significant self-censorship, and are subject to outright political harassment. For many mass media owners, their immediate financial interests are so pressing that they are forced to sacrifice their commitment to critical news reporting. Although these conditions have been exacerbated under the current election campaign, prominent journalists, media watchdog organizations, and media owners believed that the current restrictions on freedom of expression are unlikely to improve in the post-electoral environment. It is generally perceived that the present restrictions work to the advantage of the Executive, so even a new President may not willingly relinquish such a powerful force for shaping public opinion.

4. The General Elections of 2000: Competition and Controversy

Many of the obstacles to democratic competition mentioned above came to a head during the general elections of 2000, which experts consider to be among the most irregular and controversial in recent Latin American history. During the campaign itself, the main charges documented by national and international observers included the use of public resources to support the President's party, harassment of the press and opposition candidates, inadequate opposition access to the media, and the falsification of signatures for purposes of registration of the pro-Fujimori Peru 2000 movement. The vote count on election day was also rife with charges of irregularities and outright fraud.

The idea that the opposition parties and movements might field a unity candidate and platform for the presidential race this time around was laid to rest in a joint announcement by Alberto Andrade of *Somos Peru* and Luis Castañeda Lossio of *Solidaridad Nacional*, the two leading contenders at the outset of this race, who confirmed that they would pursue separate campaigns. The decision came after months of talks between the candidates and their staffs failed to produce any agreement on which camp would cede the presidential slot and prospective appointments in a new government. With the unity candidacy shelved, nine parties and movements vied to replace Fujimori in the presidential slot.¹⁰

Complaints that the government was masterminding a "dirty war" against its opponents became a permanent feature in the political discourse. The first and most vicious personal attacks were launched by the major broadcast media against Andrade and other *Somos Perú* candidates, and Andrade accused the Peruvian intelligence service of directing this effort. For his part, the President shunned participating in formal debates and avoided head-to-head exchanges with its opponents during the campaign.

Unequal treatment of candidates by television outlets emerged as another key issue in the campaign. *Transparencia* produced a series of reports showing that President Fujimori was the subject of most television news coverage while his rivals received next to none between October 1999 and January 2000. In response to the criticism, Prime Minister Alberto Bustamante announced the government would insure fair treatment of candidates by the government-operated television station, including an extension of the number of days that the public Channel 7 would provide free air time to candidates. Opposition candidates also charged that television stations were refusing to sell commercial time for campaign advertisements. Concerns about media manipulation also surfaced in the public debate about polls.

Serious questions about the credibility of the official electoral institutions also remained throughout the process. *Transparencia* issued a critical report on the state of the voter registration list, calling it obsolete. The report estimated that the names of at least 345,851 deceased individuals remained on the rolls. Since such errors created a margin for fraud on election day, *Transparencia* recommended the JNE disapprove the voter registration list and continue to allow it to be updated as late as thirty days prior to the election. JNE approved the voter registration list, but gave ONPE permission to correct errors until February 15.

The government also came under harsh international criticism on issues related to election conditions. The second Carter Center-NDI mission issued a report concluding that, "the political conditions for free and fair elections have not yet been established." It urged the government to improve opposition media access through the government purchase of television space for parties, take measures to stop the harassment of opposition candidates, and assure no misuse of state resources for electoral ends. Other

¹⁰ Fielding a presidential candidate is considered to be a way of increasing the visibility and appeal of a party's congressional list. Peruvian electoral law allows candidates for the vice presidency to run concurrently for Congress.

missions rendered similar verdicts.¹¹ The government reportedly lobbied for the OAS observation on the supposition that the OAS would act as a counterweight to the more critical Carter Center-NDI. Guatemalan foreign minister Eduardo Stein was appointed to head the mission.

Peruvian electoral law prohibits a president from campaigning while exercising official duties and from using public funds to promote his candidacy.¹² However, all of the international observers expressed concerns about the possible misuse of state resources by officials to promote the electoral fortunes of the government's Perú 2000 alliance. President Fujimori's February announcement of a program to distribute public land to thousands of urban squatters (PROFAM) was viewed by the opposition as a blatant wielding of state resources for electoral ends. Government propaganda painted on public sites was also an ongoing issue in the campaign, particularly since some of the slogans were painted on the hillsides of military installations with the approval of the Ministry of Defense. There were also accusations that officials associated with the food aid program (PRONAA) were advising recipients that food assistance would be removed from soup kitchens unless participants voted for Perú 2000, or that extra food rations would be rewarded in neighborhoods with a strong vote for the president.

An ostensible "opening" of commercial television to opposition candidates was slated to begin in March. After prodding from the JNE and international observers, television outlets agreed to provide fifteen free minutes of television time to the ten registered political organizations. The "fifteen minute solution" did little to remedy the continued inequalities in access and coverage of the candidates. Channels 4 and 5, for example, aired their free time close to 11:00 pm to a reduced audience. Other developments raised questions about the nexus between business and politics in the world of journalism. Radio 1160 in Lima was shut down when its equipment was confiscated in legal proceedings aimed at settling the station's debt. The confiscation coincided with the launching of the station's new political program, "Waves of Freedom" hosted by Fujimori critic César Hildebrandt.

When Alejandro Toledo of *Perú Posible* surged to second place in the March polls, he replaced Andrade and Castañeda as the principal target in what fellow candidates called the government's "dirty war" against the opposition. New media attacks involved accusations about wrongdoing in his personal and financial affairs, along with what Toledo maintained were distorted representations of his policy positions, including his position on food aid. Toledo was also accused of close ties with ex-president Alan García, the symbol of the worst excesses of the populism of the 1980s.

On 29 February, a scandal broke involving an alleged forgery of a million voter signatures by the *Frente Nacional Independiente Perú 2000*, one of the four political organizations forming Perú 2000. An informant involved in the scheme described the operation and its supervision by a Lima district councilman and close associate of a high-level presidential advisor. While officials reacted by calling for an investigation and scrambling to distance themselves from *Frente's* felonious actions, government opponents lodged petitions with the JNE to annul Fujimori's candidacy on the basis of the fraud allegations. ONPE chief José Portillo suggested that all political organizations trafficked in forged signatures and that signatures on the petitions submitted by political organizations would be reviewed.¹³

¹¹ The International Federation for Human Rights coincided with Carter-NDI, while the British-based Electoral Reform International Service (ERIS), pointed to the inequities in media access and the government's unwillingness to remedy problems in the election environment.

¹² Article 361 of the law specifically bans the president from making political statements when inaugurating or inspecting public works projects.

¹³ Portillo's remark provoked Acción Popular to file a defamation suit against Portillo for suggesting that all parties were guilty of a criminal act.

The JNE ruled against challenges to Perú 2000's legal status, arguing that time for challenging parties and candidates had expired.

The scandal reinforced the consensus that Peru was failing to meet standards for free and fair elections. The OAS mission issued bulletins stressing that conditions remained far from satisfactory, and reiterated concerns regarding inequities in media access, the lack of confidence in institutions, and the need for timely results in the investigation of the Perú 2000 forgery case. A third report by the Carter Center-NDI mission concluded that "conditions for a fair election campaign have not been established."¹⁴ The White House released a statement voicing its agreement with the Carter Center and OAS missions and called on Peru to restore confidence in the electoral process and guarantee vote counting procedures. The United States Senate introduced a resolution proposing that the U.S. withdraw aid and consideration in international financial institutions should the elections be deemed unfair by international observers.

a. The Vote Counting and its Aftermath

The counting of the votes cast in the April 9 first round election proved as controversial as the campaign that preceded it. The process extended from the evening of April 9 until the evening of April 12. Between Sunday (4/9) and Wednesday (4/12), the ONPE issued reports with partial results, raising suspicions that ONPE was preparing to declare Fujimori the winner in the first round, though quick count projections by *Transparencia* indicated that he had not won fifty percent of the valid vote. The ONPE's announcement on April 12 that Fujimori had failed to win the fifty percent of the valid vote by a razor-thin margin put an end to the immediate crisis, but suspicions remained concerning ONPE's conduct during the first round.

Even before the polls closed on 9 April, ONPE was being criticized by *Transparencia* and the OAS electoral observation mission. Two simulations of vote counting staged by ONPE failed to produce successful results. Anxiety over the count grew when initial exit poll numbers were reported by Peru's leading pollsters, then reversed several hours later by the same pollsters when they announced their quick count figures. All three companies contracted by Peruvian television stations showed Toledo ahead, but Toledo's lead vanished in the quick counts--all of which showed Fujimori getting close to but not clinching fifty percent. *Transparencia* put Fujimori's vote at 48.7 percent.

By night of April 10, however, President Fujimori stood less than one half of a percentage point away from being declared winner of the first round, and he publicly underscored that the final determination rested with ONPE and the JNE. The reaction to ONPE's possible deviation from the quick count figures was swift. In a joint press conference with *Transparencia* officials on 10 April, OAS chief Eduardo Stein said that delays and lack of explanations by ONPE gave Peruvians reason to believe that "something sinister" was going on in the counting process. ONPE's vote count came to an end on Wednesday, 12 April, when José Portillo declared Fujimori the winner of the first round with 49.84 percent of the vote and Toledo trailing with 40.31 percent. The ONPE did not deliver the official results of the election to the JNE until April 29, and a second round runoff was immediately set for May 28.

The delay in the reporting of congressional results also raised questions about alleged manipulation of the preferential vote. *Transparencia* noted that parties were actually losing votes as ONPE's process of

¹⁴ It recommended the cessation of harassment against candidates, the Defensoría del Pueblo, and election observers; the return of television channels 2 and 13, and radio station 1160 to their original owners; and vigorous investigation into the Perú 2000 forgery scandal

partial reporting proceeded. Discrepancies in copies of ONPE's reports of vote counts reaffirmed suspicions. *Transparencia* counted 608 irregularities on election day. The distribution of propaganda at polling places and irregularities in voting materials were among the most frequent complaints.¹⁵ Neither ONPE nor the JNE had provided the public with a comprehensive accounting of what happened on election day and the days that followed. A congressional commission to investigate the electoral irregularities was appointed, but its independence was called into question by the designation of a C90-NM Congresswoman as president.

Some analysts characterized the announcement of a second round as a political decision. Officials denied any manipulation of the results, but the decision took place amid mass protests and mounting international pressures aimed at securing a second round. Prior to the Sunday election, the OAS issued its final bulletin, concluding the government had failed to remedy the problems marring the process. Eduardo Stein held a press conference on election night, stating that the quick count tallies provided evidence that a second round would be mandated. US officials reinforced the OAS position.¹⁶

During the vote count process, masses of Peruvians took to the streets and plazas of Lima and other provincial cities, in an impressive show of support for opposition leader Toledo and for a second round. In the view of most analysts of Peruvian politics, the mobilizations that occurred between April 9 and 12 constituted the most significant mass protests to take place during the last decade. The protests attracted impressive numbers of university students, who have been increasing in their demands for democratic reform since 1996.

Toledo threatened to withdraw from the runoff if election conditions were not improved. Yet, little headway was made in hammering out the details regarding conditions under which the second round would take place. Ombudsman Jorge Santistevan tried to lay the basis for negotiations on second round conditions by framing five "conditions" designed to insure the runoff's credibility and legitimacy.¹⁷ Perú 2000 balked at Toledo's proposal that the Catholic Church mediate between the two camps, and Church officials eventually announced that they would not seek to take on the mediator role.

Resolving questions concerning the management of the second round by ONPE remained high on the agenda of the opposition and international observers. ONPE's response to criticism was to create "working groups" charged with implementing recommendations made by the OAS. The *Defensoría* assigned representatives to the working groups, and Perú Posible also agreed to incorporate representatives. One key demand of the OAS was that ONPE provide "electronic windows" so the

¹⁵ One problem discussed in regard to the adulteration of voting materials was the discovery of ballots where Perú Posible (on the bottom of the ballot) was cut off.

¹⁶ US State Department spokesperson James Rubin endorsed *Transparencia*'s quick count figures and said that they indicated that a second round was warranted. White House press secretary Joe Lockhart indicated that the Peruvian government should prepare for a second round. In Lima, US Ambassador John Hamilton underscored the reliability of the quick count and voiced support for *Transparencia*. US Secretary of State Madeleine Albright observed that "inconsistencies" between the projections and official count threatened to undermine the legitimacy of the election. The United States House of Representatives passed Resolution 43, approved previously by the Senate, recommending that the United States review its political, economic, and military relations with Peru if the elections were judged by observers to be unfair.

¹⁷ They included 1) Safeguarding public resources from electoral uses; 2) Creation of a code of ethics that candidates would agree to abide by; 3) Equitable access to public and private media, and use of public funds to support such access if necessary; 4) Oversight to insure the competence and impartiality of ONPE; 5) Efforts at improved public education of polling officials and poll watchers.

computation could be monitored in real time. While officials responded to OAS recommendations, the government engaged in a diplomatic crusade to contain international criticism. Foreign Minister Fernando De Trazegnies called meetings with all ambassadors to discuss what the government termed a breach of “international norms and diplomatic custom” during the elections.¹⁸ Diplomatic efforts turned to rallying Latin American nations against outside interference in domestic political affairs.

On May 22, however, Toledo notified the ONPE of his decision to withdraw from the May 28 election. He reiterated that he was not withdrawing from the election altogether, but that his participation was contingent on the postponement of the election to June 18. The OAS, which had attempted to postpone the election by two weeks (to June 11) announced it was suspending its observation of the elections. The Carter Center-NDI mission and *Transparencia* soon followed suit and withdrew from their respective planned observations. In its final bulletin before withdrawing, the OAS mission chief, Eduardo Stein, stated that the government had failed to address problems detected in the first round, ranging from inadequacies in the computer system and election management, to inequities in media access and inappropriate use of public resources and concluded that the process was “far from being free and fair.”

An election season that had started with a bang thus ended with a whimper in the May 28 runoff in which only one candidate, Alberto Fujimori, had officially agreed to participate. Only one group, the Andean Parliamentary Commission participated in the observation of the balloting. The level of invalid voting in the runoff, at 31 percent null, blank or spoiled ballots, was unprecedented, as many Toledo supporters as well as other citizens fed up with the process opted to spoil their ballots. On June 1, ONPE announced the official results. Fujimori won the race with 51.2% of the total votes cast. Toledo, who remained printed on the ballot but opted for a boycott stance, formally took 17.68%. During and after the vote, another massive wave of peaceful demonstrations and protests took to the plazas in cities throughout Peru. The reaction of the international community was mixed. While the United States State Department declared the outcome “invalid,” a divided OAS, in its annual meeting in Canada, eschewed making any strong pronouncements on the outcome of the electoral process, preferring instead to focus on the broader issues of institutional reforms and political reconciliation in Peru.

C. The Governance Arena

Good governance requires transparency, efficiency, and accountability. Over the last ten years, Peru has made major gains in government efficiency and some improvement in transparency. Through a sweeping public sector reform, the Fujimori government has created the regulatory framework for a functioning market and provided support to areas affected by economic crisis and violence. State capacity to enforce public order has also improved in contrast to the 1980s, as military, police and civil society collaborated to defeat *Sendero Luminoso*. Nonetheless, many gains in governance have come at the explicit expense of democratic norms and institutions.

1. Governance in the Legislative Branch: Representation

As explained in the previous section, Peru’s legislative branch consists of a unicameral Congress, with members elected by universal vote every five years, coinciding with the presidential elections. The 1993 Constitution invests the Congress with significant powers and prerogatives, including debating and passing legislation, creating investigative commissions, and forcing cabinet members to step down

¹⁸ The government’s top grievance was the French and Portuguese ambassadors’ meeting with Toledo prior to the delivery of ONPE results.

through censure, impeachment, and votes of no confidence. In practice, however, the legislature has not played an autonomous role. Seldom has the Congress had the opportunity to function as a forum for debate over major policy issues, or as a vehicle for the representation of citizen interests. As a result, public confidence in Congress remains low.

The 1993 Constitution also reduced the legislature from two chambers to one unicameral Congress with 120 members who represent a single electoral district. Peru's Congress was never a showcase of representative government. But the change from multiple districts to the *distrito unico* has further diluted voter representation in the legislative branch. In 1990, there was one member of Congress for every 30,000 voters. In 1995, the ratio rose to one per 111,345 voters, or 206,675 residents per Congressman, the highest ratio in the Andes. Since the unitary district was adopted, provincial representation in Congress has decreased, while Lima's influence rose disproportionately.

In 1990, 165 of Peru's 240 provinces were represented in Congress, holding 69 percent of the seats. As of the 1995 elections, only 68 provinces are represented (56 percent of the seats). The lack of proportionality widens the gap between citizens and the political process and reinforces public perceptions that Congress does not represent its interests. It also keeps campaigns focused in Lima.¹⁹ An unintended consequence of the unitary district is that it has revitalized the push to strengthen municipalities to compensate for the absence of regional interest representation at the national level.

a. *Legislative Decision-Making, Debate over Public Policy*

Peru's Congress falls short of the ideal deliberative body. Fujimori's Cambio 90/Nueva Mayoría alliance holds a majority in the Congress, 67 members out of 120²⁰. Congress is authorized to pass legislation in one of three ways: by initiating and passing laws, by granting legislative authority to the Executive, and by passing emergency decrees that originate with the Executive. Since 1995, Congress has favored the latter two alternatives, either accepting legislation put forward by the Executive or granting the President authority to legislate, with little deliberation. From 1995 to 1999, half of all legislation was issued by the Executive, given extraordinary powers by the Congress.²¹

Congress has a mixed record with respect to basic rules and procedures. Innovations in procedural operations in recent years have permitted greater transparency and public information regarding the legislature's inner workings. Following recommendations developed by the *Comisión de Modernización del Congreso* (1995), in 1998 the Congress obtained an electronic board for its chamber floor, to indicate how members voted on legislation. Congress has also used the Internet to disseminate information about legislative proceedings, maintains a web site that monitors the progress of bills and other legislative actions when Congress is in session, posts transcripts of daily debates, lists initiatives

¹⁹ A team member visited Piura, where complaints were heard about the region having been all but ignored during the campaign by all candidates except Fujimori, who had visited the department repeatedly, inaugurating public works marked by huge signs bearing the President's likeness.

²⁰ The pro-government alliance Perú 2000 currently claims 57 of the 120 new congressional members elected in April 2000, just four votes short of a new majority.

²¹ These laws are also the most significant. In its first report to Congress, the Peruvian Defensoría del Pueblo criticized "the tendency of the Congress to delegate legislative functions to the executive." Santistevan de Noriega, Jorge, *Primer Informe del Defensor del Pueblo ante el Congreso de la República, 1996-1998*. Lima, Peru: Defensor del Pueblo, 1998, p. 668.

introduced by congressmen, and offers a subscription-based online library. In recent years, Congress has also held more open hearings and brought in experts to testify at them.

Despite these improvements in information flow, however, deliberation in Congress still leaves much to be desired. On some issues, Congress has permitted open debate, for example, in regard to recent environmental and domestic violence laws.²² In such cases, the debate tends to center on issues that are peripheral to Fujimori's main, non-negotiable agenda, which has included his own re-election as well as protection of the military from accountability for human rights violations.

The Congressional majority has also shown disrespect for the minority in opposition. In fact, the majority has earned a reputation for "surprise" laws, legislation introduced quickly and pushed to a vote by the full body, bypassing debate. Parliamentary rules require only a single reading of a bill, which means that legislation can circumvent committees and be brought to the floor for a vote. Congressmen have called votes on major, politically charged laws early in the morning, when most opposition members are absent.²³ On issues related to presidential re-election, Congress has shown a propensity to pass laws construed to violate the Constitution. Since the Constitutional Tribunal was disbanded, such laws may be implemented without any review of their constitutionality.²⁴

So far, Congress has failed to take additional measures recommended by independent analysts to strengthen legislative debate. It could stimulate a broader and more informed public debate over key issues of public policy. It could reduce the number of legislative initiatives of minor importance. Congress is known for initiating laws of commemoration and recognition, rather than laws of substance. It could improve public information flow regarding the agendas of parties with parliamentary representation. Finally, it could require a vote on whether a bill can be exempted from the normal procedure and brought to an immediate vote by the full body in order to reduce "surprise" laws. Any of these measures could improve the legislative environment and provide for more transparent and wide-ranging debate.

2. Governance in the Executive Branch: *Cara Buena, Cara Mala*

Peruvian analysts describe a *cara buena* and a *cara mala* (a good and a bad face) of the Executive branch. Elements of *cara buena* include the legacy of an ambitious reform, which dismantled one of the region's most inefficient states and created in its place a free market, more efficient economic policymaking institutions, and a cluster of parastatal organisms that channel resources to needy areas. Elements of the *cara mala* include Executive predominance over the Judicial and Legislative branches, the arbitrary exercise of executive power, the concentration of authority in the central government, the relationship between the President and the Armed Forces, and the political use of parastatal agencies. So

²² Interview with Gabriel Ortiz de Zevallos, Instituto Apoyo, March 6, 2000.

²³ An example of these "surprise laws" is one that modified city tax rates throughout the country. The law deprived municipal governments of fiscal control and forced them into a subservient position vis á vis the central government. Another example is the 1995 amnesty to civilian and military officials convicted for human rights violations. The law was brought to a full chamber vote with no advance warning in the middle of the night on June 14, 1995, and signed into law by President Fujimori the next day.

²⁴ The *Instituto de Defensa Legal* (IDL) compiled a list of nearly 100 laws or resolutions passed either by the Congress or decreed by President Fujimori since the 1992 *auto-golpe* that are of dubious constitutionality or are clearly unconstitutional. Instituto de Defensa Legal, *Trabajo Sobre Normas, Hechos Controversiales y Atentados Contra la Libertad de Prensa*, unpublished background document, 1999.

dominant is the Executive in Peru that observers say that the regime can best be characterized as a “soft” authoritarianism that permits civil society to thrive but prevents interest aggregation, and limits citizen participation and political competition.

In the 1990s, Peru overhauled a public sector which was insolvent and in crisis. Beleaguered by money-losing firms and a corrupt and dysfunctional bureaucracy, in the 1980s, Peru was incapable of economic management, ineffective in providing services, and unable to maintain order in the face of the *Sendero Luminoso* insurgency. Reform became imperative by the time Fujimori took office in 1990. In this precarious context, the government launched a sweeping economic program that included privatization as well as other reforms intended to strengthen state capacity.

State reform was a central component of economic restructuring. The creation of a market economy required shrinking the public sector and establishing a legal and institutional framework to regulate market activities. This included restructuring several prominent agencies, including the Central Reserve Bank (Banco Central de la Reserva or BCR), the National Tax Authority (Superintendencia Nacional de Administración Tributaria or SUNAT), and the Office of Customs (Superintendencia Nacional de Aduanas, SUNAD). In addition, regulatory agencies were established, including Indecopi (market competition, consumer protection, and intellectual property rights), Osiptel (telecommunications), Osinerg (energy), Conasev (National Supervisory Commission of Business), the Superintendency of Banks and Insurance Companies, and Ositran (private investment in infrastructure and public transportation).

These institutions are considered “islands of modernity” in a sea of bureaucracy. They have resources that enable them to recruit qualified people. Also, they have a stable legal framework that affords them a reasonable degree of autonomy. Finally, they employ incentive policies to develop specialized technical staff. As a result, many of these entities have a reputation for independence, efficiency and positive public relations, in contrast with other state entities. The following example illustrates this:

INDECOPI (The National Institute for the Defense of Competition and Protection of Intellectual Property) is an independent agency that fulfills a promotional role (*rol promotor*) with respect to the market. It monitors market competition, ensures that firms follow norms and meet technical standards, provides consumer protection services, and works to prevent marketplace discrimination.²⁵ Indecopi enjoys a good reputation, and although it has been criticized for administrative delays it has never been charged with corruption or political bias. Analysts attribute this in large part to the talent and prestige of Dr. Beatriz Boza, its founding director.

Although a market regulator, Indecopi provides mechanisms for market conflict resolution and has the power to sanction companies found to violate laws. It also serves as a first-instance administrative decision-maker and an appeals tribunal in intellectual property conflicts. In enforcing market fairness, Indecopi performs a quasi-judicial role, protecting rights of “economic citizenship” (as Dr. Boza describes them), but is by no means sufficient to compensate for the deficiencies of the judicial branch. In addition, Indecopi is committed to market decentralization, working with municipal chambers of commerce and regional universities to strengthen the dialogue with local businessmen and the central government. These efforts to promote decentralization are not enough to stem the centralizing thrust of the government.

²⁵ See Beatriz Boza, ed., *Peru's Experience in Market Regulatory Reform* (1998).

This and other “islands of modernity” are touted as models to be replicated throughout the public sector. In reality, the process of applying the models has been slow. That they are considered “islands” suggests they represent exceptions to the rule in a public sector still in need of institutional and above all democratic reform.

a. Cara Buena: Social Investment, Infrastructure Development

In the early 1990s, the government created a set of agencies designed to foster development, build infrastructure, and provide food and other assistance to needy citizens. The more prominent of these agencies include FONCODES (National Development and Social Compensation Fund), PRONAA (National Nutritional Assistance Program), INFES (National Institute of Education and Health Infrastructure), FONAVI (National Housing Fund), and COFOPRI (Formalizing Commission of Informal Property). Funds for these programs are all channeled through the central Ministry of the Presidency (MIPRE) and the Presidency of the Council of Ministers.²⁶

Staffed by technocrats and initially supported by international donors and creditors, these agencies produced dramatic results, from new road construction on an unparalleled scale, to construction of schools and medical clinics in the most neglected areas, to short-term job creation in economically hard-hit areas. In some areas of Peru, the scale and quantity of the works in progress and the number of persons employed to carry them out are staggering. These agencies are seen as effective but also highly politicized. Many are viewed as mechanisms to maintain electoral support for Fujimori and are infused with huge increases in funding during campaigns. At the provincial level, they are viewed with ambivalence. *Provincianos* need assistance and hesitate to “bite the hand that feeds them.” Yet, there is a clear recognition that central government spending usurps the power and initiative of regional actors.

FONCODES (*Fondo de Compensación y Desarrollo Social*) was created in 1991 to finance projects in employment, health, nutrition, basic education, and other areas benefiting the population in poverty. Foncodes was to have been an autonomous agency reporting directly to the President, with funds allocated in response to proposals from community organizations, local governments and NGOs. Funds were to be used to build infrastructure with a social purpose – schools, roads, hospitals or clinics – using labor-intensive techniques to maximize employment generation. By 1994, Foncodes had become the government’s main instrument of social policy, managing thousands of local support projects and generating tens of thousands of short-term jobs. Its beneficiaries were residents of the poverty-stricken highland departments, areas also afflicted by political violence. Once bastions of opposition (voting against the 1993 Constitution that permitted Fujimori’s re-election), these areas were converted into votes for Fujimori, prompting criticism that Foncodes was being used to bankroll his re-election.²⁷

The same criticism was directed at Foncodes (as well as Fonavi and Pronaa) in the 2000 campaign. Piura, the coastal epicenter of El Niño, was devastated economically and in its physical infrastructure, requiring a reconstruction of bridges destroyed by flooding and the restoration of potable water sources and sewage lines. Over the last year, Fujimori paid dozens of visits to Piura to inaugurate public works.

²⁶ Gustavo Guerra-García, *Reforma del Estado en el Perú: Pautas para reestructurar el Poder Ejecutivo*. Lima: Agenda Perú, 1999.

²⁷ Regarding the 1995 elections and campaign spending, see Kenneth Roberts and Moisés Arce, “Neoliberalism and Lower-Class Voting Behavior in Peru,” in *Comparative Political Studies* (1998), 31(2), April. See also Norbert Schady, “Seeking Votes; The Political Economy of Expenditures by the Peruvian Social Fund” (FONCODES), 1991-1995. Washington: World Bank Group. Unpublished Manuscript, 1998.

While these works are viewed positively by citizens in hard-hit areas, they also are seen as election-inspired “assistentialism,” detrimental to the ability of local governments to respond to local needs.²⁸

COFOPRI (*Comisión Formalizadora de la Propiedad Informal*) is one of the most politicized agencies in the electoral campaign of 2000. With PROFAM (*Programa de Lotes Familiares*) as its new counterpart, Cofopri has provided formal, legal titles to more than half a million heads of household who “invaded” and squatted on land on the southern outskirts of Lima, along with promises to deliver housing, electricity, water, and sewage. The programs are aimed at helping to remedy a land and housing deficit, but the process of land titling, which coincided with the 2000 campaign, and the fact that land distribution is slated to occur only after the elections, have renewed charges that the Government was using public resources for electoral purposes.

b. Cara Mala: Concentration of Power

One of the characteristic features of the current government has been its tendency to centralize the administration of resources in Lima, particularly in the Executive branch. The budget breakdown for 1998 among the 25 main public sector institutions indicated that only two ministries, the Ministry of the Presidency (MIPRE) and the Ministry of Economy and Finances (MEF), consumed more than half of the entire national budget (53%). Add the ministries of Defense, Interior, and Transportation and Communications, and the resources consumed by just these five institutions represented three quarters of the entire national budget, a trend that has continued.

This concentration of resources, due to the different decentralized programs in sectors like education, agriculture, energy, health, and sanitation administered by the MIPRE and the MEF from Lima, has adversely affected the accountability of the public sector. Resources are dispatched based more on political than technical criteria. Decisions are often made from Lima without taking into account regional diversity or needs.²⁹ MIPRE itself has risen from insignificance (0% in 1990) to become one of the government’s most powerful ministries, with a budget equivalent to that of the Education, Health, Labor, and Agriculture ministries combined. In 1996-1998, spending rose to above 20% of a much larger budget, more than double the Defense budget.³⁰ The MIPRE manages virtually every facet of social policy.

c. Executive Branch Accountability

As noted previously, Peru never consolidated structures of “horizontal accountability” or created a system of checks and balances among branches of government. Under Fujimori, the notion of checks and balances on the exercise of power by the Executive branch has been virtually obliterated, though, again, the 1993 Constitution endorses the notion of accountability.

²⁸ Interview with Eva Boyle, *Diaconía para la Justicia y la Paz*, Piura, March 2, 2000. Interview with Maque Ruiz, CIPCA, March 3, 2000. Interview with Luz María Helguerra, Director of Piura daily newspaper, *El Tiempo*, March 3, 2000. Helguerra affirmed that there were 20 different agencies funded by the central government carrying out works in the department of Piura.

²⁹ Regarding the concentration of budget authority, see Gustavo Guerra-García. *Reforma del Estado en el Perú: Pautas para reestructurar el Poder Ejecutivo*. Lima: Agenda Perú, 1999, especially pp. 81-129.

³⁰ *Perú en Números*, 1999.

Regarding the issue of vertical accountability, or the accountability of government to the people and the accountability “upward” to bilateral or multilateral partners, the verdict is mixed. Actors in and outside Peru recognize that the government practices sound macroeconomic management and has gone a long way toward meeting its external financial obligations (debt repayments), protecting the rights of foreign investors, and in fighting drug production and trafficking. On the other hand, the government has been dismissive of international norms of behavior with respect to human rights and democratic institutions.

Many interviewees who were not sympathetic with Fujimori suggested the government has achieved improvements in some areas, such as in information accessibility (i.e., Congress, regulatory agencies), and in the delivery of public goods. Between 1994 and 2000, the Support Program for Extreme Poverty, which includes social support, infrastructure development, and social expenditures nearly tripled.³¹ There is a strong sense that the government has delivered public goods in a way that no preceding elected governments have done. Few argue the Executive is accountable, however.

3. Civil-Military Relations

Another characteristic of the Fujimori government has been its symbiotic relationship with the Armed Forces. Analysts who have witnessed civil-military relations in Peru over the last ten years characterize the relationship as a civil-military pact brokered in large part by the National Intelligence Service (SIN).³² Alan García (1985-1990) pioneered the strategy of using the SIN to control the Army, but Fujimori, with the aid of Vladimiro Montesinos, a former army captain who had worked with the SIN under García, perfected it into an art. Without the backing of a formal party, military support has proved critical to Fujimori, especially in the early, vulnerable stages of his presidency, when his isolation prompted fears of a coup. Montesinos served in a key liaison function, helping the President identify and promote loyal officers or force disloyal officers into retirement. Key institutional reforms also afforded Fujimori greater latitude with respect to the military.³³

The pact with the military, which enabled the President to execute his April 5, 1992 *auto-golpe*, thwart a coup attempt, and defeat the Shining Path had evolved into symbiosis by 1995. A loyal military leadership has stood by the President in exchange for protection against prosecution for corruption and human rights violations. Festering discontent among lower ranking officers against loyalists occasionally surfaced in acts of insubordination, as in 1993, when an army faction tipped off the media with proof that the army directed the assassinations of nine students and a teacher at “La Cantuta,” Lima’s primary teachers’ college. Dissenters may also have leaked information about the involvement of high military command members in drug trafficking corruption, triggering an investigation that yielded more than 100

³¹ Ministerio de Economía y Finanzas, Dirección Nacional del Presupuesto Público. *Programa de Apoyo a la Pobreza Extrema*. February 2000. The Team would like to thank Cuánto, S.A. for generously providing this data.

³² Enrique Obando, a military analyst suggests that the relationship has passed from symbiosis to submission, in which Fujimori retains the upper hand. With collaboration from the intelligence services, Fujimori has effectively “de-institutionalized” the armed forces. Interview with Enrique Obando, February 27, 2000. On Garcia’s use of the SIN to control the military, see Obando, in Crabtree (1998), pp. 196-197.

³³ In 1991, Fujimori scrapped the promotional system based on seniority, and succeeded in getting a law passed allowing the President to name the military commander-in-chief and permit the appointee to serve as long as the President saw fit. The law allowed Fujimori to retire the senior tier of *institutionalista* officers in line for the post and appoint General Hermosa, a Fujimori loyalist, for seven years. (Noted in an Interview with Obando).

military culprits. Montesinos became a liability for Fujimori, especially after revelations that he had accepted bribes (\$50,000 per month) in exchange for tip-offs about counter-narcotics activities.

Since 1995, civil-military relations have been rocky, but the threat of a military coup has been neutralized. In December 1996, an MRTA detachment occupied the Japanese ambassador's residence and took a number of prominent politicians, diplomats, and businessmen as hostages. A well-planned and executed commando raid stormed the compound and liberated the hostages. The team that executed the mission came from the Navy and Air Force, not the Army, and Fujimori gave primary credit to Montesinos for orchestrating the raid, depriving the Army of all credit. From 1996-1999, tension between Fujimori and General Nicolas de Bari Hermosa, military Chief of Staff, heightened after information was leaked to the media about a plan to silence a critic of the government. An Army intelligence operative presumed responsible for the leak was interrogated and tortured, though she escaped and denounced her treatment to the media. Baruch Ichver, the director of Channel 2, a television station that ran stories revealing military abuses was stripped of his citizenship and ownership rights over the channel. Reports of espionage and phone tapping by military and security services became commonplace. In 1999, Fujimori finally replaced Hermosa with another loyalist officer.

Nevertheless, the military seems to have less institutional autonomy now than at any point over the last several decades. Over the last six years, the military has appeared to function as a surrogate party for the President. In 1994-1995, soldiers in rural areas distributed Fujimori campaign paraphernalia, food items and services, organized presidential visits and campaign rallies, and passed out Fujimori campaign literature. In the 2000 campaign, the military continued to play this role, reinforcing the message of stability, and capitalizing on fears that terrorism would re-emerge in Fujimori's absence.

In some areas, military relations with civilians are constructive. In highland provinces until recently under states of emergency, for example, military commanders collaborated with the civilian population to form and arm civil defense committees (*rondas campesinas*) in an effort to combat *Sendero Luminoso*. This strategy succeeded not only in diminishing violence, but also in creating relationships with peasant communities that helped isolate the guerrillas. Critics of the *ronda* strategy emphasize abuses of human rights and point out that military authorities in certain regions have been used to spread propaganda for presidential campaigns. The Team did not travel to the areas in question to investigate this claim, but opportunities for such abuses still exist, albeit on a reduced level.³⁴

4. Patronage and Public Sector Corruption

State reform has sealed off many opportunities for the patronage that took place under previous governments. Yet corruption continues to be a problem in Peru. There is no shortage of laws intended to fight this problem, with an overabundance of basic legislation purporting to investigate and prosecute abuses of public office. However, the problem appears to be one of enforcing laws already on the books.

In 1991, the Fujimori government approved the Penal Code, laws intended to prevent the use of public office for private gain. What has yet to occur is the promulgation of the Code of Penal Procedure, which transfers responsibility for investigation into crimes committed by public officials to the Public

³⁴ While the Team was carrying out its investigation, President Fujimori announced the suspension of all states of emergency decrees throughout the country, in part to rectify certain wrongs identified by international observers.

Ministry, leaving the investigative authority in the hands of the police. There have been other anti-corruption initiatives within key ministries as well. In 1997, Blanca Nélica Colán, the President of the Public Ministry proposed the *Fiscal Supremo Antocorrupción*. In 1998, the President of the Council of Ministers proposed an “Anticorruption Czar.” In 1999, the Comptroller General announced “a legal anticorruption project,” which featured an Anticorruption Tribunal.”³⁵ None of these efforts have borne fruit, suggesting a lack of political will.

Fighting judicial corruption was invoked by Fujimori to justify his 1992 *auto-golpe*, and one reason why the coup enjoyed broad support. However, to date, no progress has been made. Attempts to fight judicial corruption have ended in failure, and those responsible for the initiatives have been dismissed. The President, Congress and various judicial actors have occasionally joined forces thwart anti-corruption efforts. In one case, a law obliging the Armed Forces and other public officials to make sworn declarations about their salaries and properties was vetoed by President Fujimori.

In 1996, some 46 emergency decrees were passed that eliminated oversight of the financing and implementation of public works, such as competitive bidding. These measures have paved the way for greater corruption of the social support program. “Irregularities” detected in the financing of protective public works to repair damage caused by El Niño, for example, were so flagrant that they led to a request to the Congress for a special investigative committee.³⁶ This has yet to be formed, nor has the Comptroller shown interest in exercising its investigative prerogatives. Therefore, the actual extent of corruption in these sectors is unknown.

D. Decentralization and Local Government

Peru has bucked regional trends toward government decentralization. Although direct election of mayors was introduced in the early 1980s, there has been only limited progress in creating a functioning decentralized system that brings government closer to the people, and provides sufficient resources for local actors to effect change.

The history of local democracy in Peru is one of a few periods of experimentation with decentralized authority in the 19th and early 20th centuries, and long periods of strong central domination. This tension between central authority and regional and local democracy has been critical in Peru’s political system and continues to be a source of conflict today. In a country as diverse as is Peru, this unresolved issue is likely to emerge as a key component of Peruvian politics over the next decade.

1. Regions and Departments

In the contemporary period, Fernando Belaunde, during his first period of office (1963-1968) attempted to return democracy to local authorities, only to watch the military government that seized power in 1968 reverse his inchoate decentralization project and reassert central control. In 1980, when civilian rule was

³⁵ Edmundo Cruz, “En El Combate a la Corrupción, Nota Desaprobatorio,” in *El Perú Realmente Existente*, Lima: CEDEP, 1999, pp. 55-64.

³⁶ It was alleged that public funds were being “skimmed,” and “steered” by INDECI (*the Instituto Nacional de Defensa Civil*), operatives to certain firms in certain areas in exchange for bribes. (Interview with Alberto Joo Change, Executive President of the Consejo Transitorio de Administración Regional, Piura. Also, interview with Luz María Helguero de Plaza, Director, *El Tiempo*, Piura’s daily newspaper.)

restored and Belaunde was returned to office, he introduced a new decentralization program based on the 1979 constitution and scheduled direct elections for mayors and city councils. In 1984, Belaunde transferred more authority to the local level, stimulating for the first time processes of community participation in local planning and development. Still, at this time, neither the central government nor the local administrations had sufficient resources to invest in the districts and provinces.

Alan Garcia (1985-1990) introduced reform at the regional level by implementing the decentralizing orientation established in the 1979 Constitution. Between March 1988 and April 1989, eleven regions were created, integrating up to three departments in one region, but leaving out the key areas around Lima (Callao, Metropolitan Lima, and the provinces of Lima.)³⁷ In 1989, taking advantage of scheduled municipal elections, Garcia organized elections in some regions, using a complicated formula of direct elections and elections by representative social, economic, cultural, and political sectors. Additional elections for regional authorities were held in 1990. Decentralization had been a major project for APRA. In power, Alan Garcia made some effort to advance it, yet also took significant steps to undermine it. The results were chaotic, introducing a new area of democratic participation without a clear delineation of responsibilities, limits, or available resources.

Once in power, Fujimori did not support the decentralization efforts of his predecessors. He shunned the newly elected presidents of the regions and limited the transference of funds to this level of government. Fujimori then offered 50% of the funds earmarked for the regions to the municipalities, seeking to create a direct link between the Executive and the local level of governments. He would later repeat this divide-and-conquer strategy between the provincial and district municipalities, limiting funding of the provinces while increasing the authority of the more numerous districts. The most current “Decentralization Law”, approved in 1998, actually reinforced the centralist nature of the Executive branch.

Under the 1993 Constitution, the regional governments were recognized as transitory units with appointed heads until elections could be convened. The regional government is headed by the President of the Transitory Committee of Regional Administration or CTAR. (Prior to 1998, a region covered one to three Departments. Since then, each department is considered a region.) The CTAR president is appointed by the Ministry of the Presidency and answers to the central government. The new Constitution called for the election of the CTAR and its president within six months of its promulgation. This has not happened.

2. Municipalities

The system of democratic levels of government providing competition, checks and balances and channels of representation breaks down in two critical areas: first, at the intermediate levels of government – the level of Region and Department, and second, in access to and control of resources, particularly at the municipal level. Peru has yet to introduce an adequate form of funding for local government. Currently

³⁷ The new regions were: Grau (uniting Departments of Piura – Tumbes), Amazonas (Department of Iquitos), Chavin (Department of Ancash), Arequipa (Department of Arequipa), Ucayali (Department of Ucayali), Libertad-San Martin (Libertad and San Martin), Nor Oriental del Marañón (Department of Lambayeque, Cajamarca, Amazonas) Andrés Avelino Cáceres (Huánuco, Pasco y Junín), Los Libertadores-Wari (Huncavelica, Ica and Ayacucho) Inca (Cusco and Apurimac, and Madre de Dios) and Moquegua-Tacna-Puno (later renamed José Carlos Mariátegui).

about 3.8% of the national budget is returned to the municipalities.³⁸ Moreover, of the 3.8%, over half of this is destined for Lima.

There are 2000 municipalities, or more institutions of local governance per capita than in most neighboring countries. Of the 2000 municipalities, 1800 are district municipalities, the basic unit of governance, and 200 are provincial municipalities, which aggregate the district municipalities. Each Department (State) is divided roughly into six or seven provinces, which in turn are divided into a similar number of municipal districts. Mayors are elected at the district and provincial levels, as are city council members, in Peru known as *regidores*.

The large number of municipalities is somewhat misleading in terms of citizen access to local government. There are many municipalities with large extensions of territory but with relatively few inhabitants. There are a few municipalities with large populations, particularly within Lima. For example, of the 1800 districts in Peru, 75 contain 50% of the population, and 1,725 represent the other 50%. The municipal structure is like a pyramid of districts with a large base of very small municipalities at the bottom, with few resources and scant institutional development. At the top of the pyramid, there are perhaps 150 to 300 municipalities that have the capacity to generate their own revenue and collect local taxes.

In general, municipal funding is dependent on central government revenue collection and transference. Since 1994, special taxes earmarked for municipal development are used to create a Municipal Compensation Fund (Foncomun). The new fund supports privileged District Municipalities over Provincial Municipalities. Twenty percent of these funds are distributed to the Provinces and 80% to the Districts, following criteria based on population, poverty, urban development, violence and natural resources. Distribution criteria are determined by the Ministry of Economy and Finances. Of the total transfer payments received by a municipality, 30% can be used for operating expenses and 70% must be used for investments. Although this is designated by law, many people interviewed indicated that the 30% was insufficient to meet basic payroll and expenses, and invariably the municipalities had to draw from the other 70%, despite the potential for legal problems over the misuse of funds. At the same time, it is important to point out that even those municipalities with the capacity to generate their own revenues are often reluctant to do so, for political reasons. Electoral law allows mayors to be re-elected indefinitely, which in turn makes them reluctant to tax their constituents or raise fees.

Additional revenues are also directly transferred to municipalities through the “Glass of Milk Program” (*Vaso de Leche*), and charges and surcharges on oil and mining activities. For about half of all municipalities, the Municipal Compensation Fund and the “Glass of Milk Program” are their only sources of revenues. For many others, with the exception of Lima and a few other important cities, these form the principal source of funding. When the Fund is added to the “Glass of Milk Program” and the other special surcharges, the municipal share in the central budget rises to about 5.5%.

3. Central Government Control

Despite the reluctance of the state to transfer resources to local control, over the past decade the central government has dramatically increased spending at the local level to promote infrastructure and rural development. From 1992 to 1999, the central budget expanded by 500%. The central government manages 94% of the budget, while the municipalities manage under 6%. In this period, two Ministries

³⁸ Comparatively, Bolivian and Colombian municipalities each receive 20%.

have come to control almost 80% of the budget: the Ministry of the Presidency (MIPRE) and the Ministry of Economics and Finances (MEF). These institutions now reach directly into the municipal districts. Further, officials of all ministries and agencies of the central government in the provinces are paid by the Ministry of the Presidency. As such, the financial authority over the rest of the ministries are largely limited to Metropolitan Lima. Together with the concentration of power in a few areas of the Executive branch, there has been a sharp rise in social spending throughout the country. In 1990, the year Fujimori came to power, 17% of total expenditures went to social programs. By 1998, this had climbed to 40%.

The problem repeatedly cited at the local level is that the Executive agencies are operating in the municipalities, yet elected authorities and the citizenry have little or no say in programs, public works or investments that affect their lives and their communities. Power is concentrated in a distant capital within powerful central bureaucracies. Foncodes, as an agency within the Ministry of the Presidency that is a major actor at the local level, has a budget which is two-thirds that of the Municipal Compensation Fund. Although communities and local governments have participated actively in the identification of local projects for funding and their prioritization by Foncodes, charges of political bias and lack of transparency in that agency have increased in recent years.

As the MIPRE and other central government institutions expanded their role in financing local projects, the role of local officials was transformed. The challenge became how to develop relations with the Executive branch and persuade Executive officials to invest in their areas and provide services. The relationship became either partisan or clientelistic, with the Executive playing the role of patron and the municipalities as client. Oppositional politics became fruitless. Governing party officials had a built-in advantage; opposition party officials were forced to adapt to the circumstances or perish at the polls for not delivering the goods.

4. Democracy at the Local Level

Despite the overwhelming presence of Executive authority at the local level, one of the unexpected consequences of the new relationship among levels of government is that local governments, to a surprising degree, have become a space of “concertación” or reunions and consensus-building between local officials, NGOs and citizens in search of coalitions to lobby for state investment in local development. Since the central government controls 94% of the resources, local politics has been converted into a search for access to resources.

Democracy at the local level is as diverse as Peru itself. In rural Peru, “communities” predominate – human settlements with common ethnic, linguistic, historical, ancestral, religious or cultural ties. The 1993 Agrarian census found 5,168 communities, though there are likely more (Diez, 1999, p. 20) For many, these continue to be the prime referent for political and social organization, particularly in parts of the sierra such as Cuzco and Ayacucho. In other parts of the country, the community has given way more to the District.

In a given community, one might find a great variety of organizations, such as mothers’ clubs, committees for specific services (potable water, electricity, and sports clubs). Such organizations have been found throughout the sierra. On the coast, there are more producers’ associations within the structure of local power. In the north, and in the areas of violent conflict during the 1980s, self-defense organizations, or what have become known as *rondas campesinas*, have emerged as key forces within

local organization. In the north, the *rondas* have been largely autonomous organizations. In the central and southern sierra, these have worked closely with the Army.

Because of the new politics of centralized power and patron-client resource networks, district municipalities have convened a wide range of community leaders to support district and regional development plans. Often meetings are organized by a group of NGOs or other private entities, together with the mayor, councilpersons, and state representatives in the zone. Typically, these groups will form commissions, identify problems, and discuss strategy. Such experiences have been found throughout the country, in districts in Piura, Cuzco, Apurimac, Puno, Ayacucho, San Martin, Ancash, Arequipa, and elsewhere. This type of community organizing takes place in urban areas as well, particularly in marginal areas. Three urban experiences which have come to serve as models for other poor urban zones are the cases of Villa Salvador for Metropolitan Lima, and the provinces of Ilo in the south, and Cajamarca in the north (Zapata, 1999, p. 103). Both rural and urban experiences offer differing degrees of success, but they underscore a movement of local actors creating stronger intermediate level organizations to better mediate relations with the state.

The Association of Municipalities of Peru (AMPE) was formed to bring together local efforts throughout Peru. However, this effort soon became too politicized, dividing into pro-government and independent factions. More promising have been the regional efforts to coordinate community and municipal activities. One of the most successful has been the Association of Municipalities of San Martin (AMRESAM), discussed in detail below. National and international NGOs, some with the assistance of foreign donors, have also contributed to this process. With the waning of the conflict with Sendero Luminoso, NGOs began to work with the displaced communities, in assisting to return entire communities to their homes and land. These NGOs have become an important voice for articulating needs, aggregating interests, and channeling representation, particularly in Ayacucho.³⁹

The answer to the question of who governs at the municipal level is varied. There are mayors who represent the old relations of power and others who have roots in the old parties, such as APRA. However, there is also an emerging generation of technocrat mayors, trained as engineers, agronomists, economists, lawyers, and in other professions. Some community and peasant leaders have reached the mayoralties of some districts. However, most of the NGO leadership that has become active at the municipal and local level has not, thus far, moved into positions of local authority. There are two exceptions: leaders from the *rondas campesinas* and leaders from women's organizations, both of whom have begun to produce candidates for local office.⁴⁰

Who supports decentralization? Who opposes it? Alliances and Interests in the On-going debate

As currently constituted, municipalities have few independent functions. Almost all of the functions enumerated in the Organic Municipality Law (*La Ley Orgánica de Municipios*) are also assigned to other levels of government at the regional and national level. Furthermore, the lack of political will has blocked changes to the current law since 1983 (eight bills are pending for debate in Congress). The central government has moved forward in "deconcentration" of authority, which means that Executive agencies can maintain local branches. But deconcentration is not decentralization. Power still remains with the Executive. It does not pass to locally-elected officials. Mayors and councilmen have been directly elected for 20 years. Initially elected for three-year terms, their term of office have gradually

³⁹ See CEPRODEP, 1999, and interviews with CEDROPEP officials.

⁴⁰ Diez 1998, 35.

been extended to four and now five-year terms. Yet, as one study explained, “except for maintaining public cleanliness, decorating the city, and running the Civil Registry, legally, all the other activities of the municipalities are shared in greater or lesser degree with entities from the central government”.⁴¹

Given this state of affairs, there is overwhelming support for decentralization among mayors, councilmen, NGOs and much of the citizenry. There is a belief that a centralized system cannot adequately understand, reflect or meet the needs of local citizens; and that centralized government removes citizen control over spending, thus allowing more room for corruption. Most local officials interviewed by the team have found strong support for bringing government closer to the people. In practice, decentralization would entail a) clearly defining the functions of different levels of government – district municipality, provincial municipality, department, region, central government; increasing the proportion of the budget which is directly administered at the local level; and providing for direct elections for officials at the regional level.

However, unanimity does not exist on these issues. In practice, the debate during the last decade has taken a different direction. For many in the Executive branch, there is strong support for increased spending at local levels. Budget expenditures confirm significant increases in spending by the central government at the regional and local level. For many within the Executive branch, the issue of local control is secondary to directing spending outside the capital. It is this logic that has propelled the push toward “deconcentration.” Few expect major decentralization to be enacted over the next five years, as there is too much resistance from the Executive to decentralizing reforms that would wrest power from the central government.

Nevertheless, some key changes could be enacted, such as direct election of regional officials and decentralization of certain services, particularly health and education. Local mayors’ associations, including the divided AMPE, have organized forums to discuss the issue. Congress could play a role in advancing the debate and laying the groundwork for future reforms. The debate must go beyond the need for revenue transfers to articulate the necessity of creating vertical checks and balances on executive authority as well as the need to allow for greater participation at the local level on the issues, policies, programs and services that affect citizens’ daily lives.

5. Indigenous Peoples and Local Government

Peru has begun to recognize the rights of indigenous peoples beyond the mostly formal provisions that have existed in the past. It signed the International Labor Federation convention 169 on indigenous rights in 1993, which obligates signatory states to recognize customs, religious practices, lands, languages, traditional law, and political organizations of indigenous peoples. Because of its particular historical development, the Peruvian state recognizes indigenous peoples in the Amazonian lowlands as “native communities.” The highland indigenous peoples (largely Quechua and Aymara) are largely recognized as being members of “peasant communities.”

Estimates of the total indigenous population in Peru are notoriously weak, given the complexities of ethnic self-identification and *mestizaje* in society. According to the last general census of 1993, the indigenous population of the Amazon was estimated at 300,000. Thus far, the state has legally recognized 1,297 native communities in the Amazon. To these numbers could be added the estimated 3.6 million people who indicated Quechua as their mother tongue, and 420,000 Aymara. Most Quechua and Aymara peoples reside in Peru’s estimated 5,680 “peasant communities,” located primarily in the sierra.

⁴¹ Ortiz de Zavallos and Pollarolo, 1999, p.13.

Because of the formal duality between “native peoples” and “peasants,” the state continues to orient its outreach programs toward the Amazonian lowlands. (Interview with Javier Aroca, Human Rights Ombudsman for Native Peoples). The process is slow and painstaking. Peasant and native communities can formally register as “communities” and these, in turn, have begun to forge in some regions a role within the political arena at the local level. The state has created a few agencies within the central government to facilitate the recognition of indigenous peoples and communities.⁴² Yet, there are only minimal resources and, beyond these programs, there is even less political will.

Both the state and communities themselves are pressing for change. The state has begun to formally demarcate and grant title to indigenous territory in the Amazonian region, and to recognize traditional legal systems and political organizations. In visits to San Martín, the team learned that of the 180 Quechua speaking communities comprising 30,000 people in the Department, only 15 had been recognized.⁴³ The Ombudsman has recently begun a program that will recognize three indigenous judges in San Martín to resolve disputes using customary law. The communities will elect these judges.

Local communities are beginning to assert their interests and authority. They have received some support from the central government, their own organizations, and some NGOs. Yet they report that they are excluded or marginalized from the local power structure, and that elected local officials rarely take their needs and interests into account and only minimally consult with them. They also demand input into the economic development of their regions, which in the lowlands are fragile, bio-diverse areas with little capacity for mono-crop development. Indigenous groups claim that political incorporation is both a moral and political necessity and the key to sustainable development.

6. Local Government in Coca-growing Zones

During the last 10 years, there have been extraordinary transformations in the Peruvian lowlands east of the Andes. Ten years ago, the region was the center of guerrilla activities and drug trafficking. The absence of state presence made the rise of Sendero Luminoso and a boom in illicit coca production possible. Over the last 10 years, there has been a steady expansion of state presence, bringing electricity to most inhabitants of the region, as well as roads and schools. In addition, the state has worked with the coca growers to provide alternative crops and access to credit and markets.

USAID has worked in the region since 1992 as part of its anti-narcotics assistance. One major activity assists AMRESAM, Regional Association of Mayors of San Martín, the association of municipalities of the region. AMRESAM has achieved legitimacy as a non-partisan association that provides technical assistance and training and has become one of, if not the most, successful regional associations of municipalities in Peru. It has reasonably good relations with the central government and has learned to pool its collective weight as a bargaining tool. One hundred municipalities can jointly go to the regional or central government and make a case for specific needs, such as roads, electrification, schools, and economic investments.

⁴² These are principally the Special Program for Indigenous Peoples of the Ombudsman, and special sections for Indigenous Affairs within the Ministry for the Promotion of Women and Human Development and the Ministry of Agriculture.

⁴³ Interview with Toribio Amasifuén Sangama.

In the absence of a better decentralization structure, organizations such as AMRESAM should be viewed as ad hoc intermediaries that can meet some of the demands and channel others to the central government. Moreover, as the issue of decentralization moves further into the political arena, organizations such as AMRESAM will likely play a key role in advancing the debate. When and if a decentralization program is implemented that leads to greater local control over decisions and spending, and which contains viable revenue mechanisms, those regions that have already developed some form of intermediate-level institutions will be better prepared to govern in the new environment.

E. The Civil Society Arena

Political theory and historical experience suggest that the development of a strong and autonomous civil society is fundamental to sustaining political democracy. Private civic associations of all sorts played an important role in pressing for the transition to democracy in Peru as in much of South America in the 1970s and 1980s. Today, given the decline in credibility of most governmental institutions and political parties, there are increased expectations that civil society organizations will assume greater responsibility for the expansion of citizen participation and the articulation of interests in the public sphere. “Strengthening civil society” has become a priority for the World Bank, the Inter-American Development Bank, and other bilateral and multilateral agencies operating in this region, as well as for USAID.

How realistic are these expectations? Who actually *comprises* civil society in Peru, and what are the real capacities and limitations of private civic associations? Which actors in civil society are the most effective advocates for democracy as it is understood in this report (i.e., consensus, rule of law, competition, inclusion, and good governance), and which actors might be obstacles to such objectives?

1. The Fabric of Civil Society: Diversity and Fragmentation

Civil society in Peru is much like pre-Colombian textiles: it is beautifully woven and richly textured, has an infinite variety of colors and designs, and is also extremely fragmented and in need of conservation. Based on ancient traditions of solidarity and mutual self-help, Peru’s civil society has increased in size and organizational capacity over the past 20 years. Today’s dense social fabric includes over 110,000 private nonprofit organizations working in such areas as education, health and community-based social services, involving more than a million and a half persons or 11% of the population between 15 and 65 years of age. This number, which underestimates the total amount of associational activity, includes 64,905 socially based organizations, 29,491 sports and cultural associations, and 14,346 educational institutions, as well as an estimated 1,600 self-denominated non-governmental organizations (NGOs). Additionally, an estimated 250,000 persons belong to trade unions and 400,000 belong to peasant self-defense leagues (*rondas campesinas*), while millions of Peruvians belong to the traditional peasant and native communities mentioned above (Portocarrero and Sanborn, 1998; Sanborn, Cueva and Portocarrero, 1999).⁴⁴

Although few Peruvians participate today in explicitly political or partisan activity, they clearly organize in other forms to achieve common objectives. In recent surveys supported by USAID, nearly half of the population (48.7%) claimed to participate in some form of social organization (Tanaka and Zarate,

⁴⁴ Peasant and native communities are not generally considered private and voluntary associations; however, membership is defined by birth and family ties, and in many parts of Peru these organizations assume the functions of municipal government.

2000). In a National Giving and Volunteering Survey conducted in five cities in 1998, 31% of adults claimed to do volunteer work in a wide variety of organizations, including local church groups, sports clubs, neighborhood associations, and community service organizations, while 24% declared themselves formally members of an organization, and 35% of those surveyed made financial contributions to nonprofit organizations.⁴⁵ Despite limitations on the rule of law and political competition mentioned in previous sections, most civil society organizations still enjoy considerable freedom of association and expression.

As in most countries, Peruvian civil society is characterized by a multiplicity and fragmentation of interests, and by the institutional weakness and economic precariousness of many organizations, particularly those of the rural and urban poor. The decline of national-level political parties, labor federations and other *intermediary* or aggregate forms of association has left numerous sectors of society without an effective voice in national political debates and with a limited capacity to hold government accountable.

Given the current incapacity of government institutions and political parties to reform themselves “from within,” *key civil society organizations remain the leading actors in the effort to promote greater democracy in this country*. Certain kinds of NGOs, religious and educational institutions, and grassroots community organizations offer much needed spaces for the defense of basic rights and the promotion of citizen participation. They work to hold the government accountable in various spheres, propose new policy alternatives and promote debate thereof, and help to train and prepare new leadership. The current USAID program in Peru supports many of these efforts, and our assessment Team recognizes the importance of this arena.

However, in order for civil society organizations to be effective agents for democracy in the kind of political context described in this report, two conditions are critical. First, “political society” needs to be (re)constructed, drawing together the subset of organizations which are capable of bridging the gap between the broader civil society and the exercise of real political power, and of proposing viable governance alternatives. Second, it is necessary to create a better enabling environment for civil society development itself. This means assuring the defense of basic civil rights and the rule of law, constructing alliances across diverse interest groups, and strengthening the autonomy and accountability of the private, nonprofit sector.

2. The Basic Conditions for Civil Society: Legal Framework and Finances

Formally, Peru has one of the most free and flexible legal frameworks in Latin America for private associational activity. The 1993 Constitution recognizes the freedom of association as one of the basic human rights, and nonprofit organizations are regulated by the Civil Code through three basic legal figures: associations, foundations, and committees.

The most widely used legal figure is the association (*asociacion civil sin fines de lucro*), as this is the easiest form to establish. An organization of two or more members needs only to record incorporation acts before the Public Registry to receive legal existence as a nonprofit association, and the law does not

⁴⁵ The Catholic Church and church-related organizations account for a considerable share of the donations of persons from all social strata except the very rich. See Armando Millan, *¿Somos solidarios los peruanos?*, Punto de Equilibrio No. 55, July- August 1998, pp. 53-56, and *¿Ayuda mutua o egoismo? Reflexiones acerca de la sociedad peruana a partir de un encuesta sobre donaciones y trabajo voluntario*, Lima: CIUP, unpublished document, 1998.

distinguish between “public interest” associations and those exclusively serving their members. Hence, cultural and educational institutions, NGOs, grassroots community organizations, churches, and even political parties register as associations in order to undertake fundraising and organizational activities. Associations are subject to little public regulation of their operations or finances, and they may undertake a wide variety of activities, including profit-making enterprises to generate income. The legal governance body of an association is its Assembly of Members. Associations are neither required nor encouraged to have separate Boards of Directors (and this is not a common practice).

While the Peruvian state does not *interfere* in the associational life of most nonprofits, it does little to *encourage* them. Direct public sector support accounts for less 5% of the income of nonprofit organizations for which financial data is available. There are few tax incentives for nonprofit activity or private philanthropy. All nonprofit organizations are exempt from the payment of income tax (although this is set to end in 2001), but they are subject to most other taxes, including valued-added or sales tax (IGV) on the sale of goods and services and regular import duties. Donations to most private, nonprofit organizations are not tax deductible, and donors of in-kind goods to private charitable organizations must pay IGV on the value of their contribution. There are modest tax credits for donations made to certain educational and cultural organizations, but donors and beneficiaries must register previously with SUNAT and are subject to review of their financial reports and possible audits. For most potential corporate donors, the tax credit is insufficient in contrast to the risk of the opening their books to the SUNAT, in a country in which tax evasion was widespread until the 1990s.

The tendency has been to concentrate social programs and spending in the central government, and particularly in a few key Executive agencies. This is consistent with the establishment of an overall national plan for the struggle against poverty, which concentrates public spending on the pursuit of specific policy objectives, such as eliminating adult illiteracy. However, such concentration of resources is unhealthy for the development of a strong democracy and civil society. Executive branch agencies have been increasingly tempted to skew spending priorities toward presidential reelection goals and other forms of political clientelism, while private, nonprofit organizations have often demonstrated greater efficiency, innovation, and political objectivity in providing services at the local level.

Meanwhile, efforts at public sector regulation of the nonprofit sector and of private philanthropy have been weak and inconsistent. Private foundations are the only form of nonprofit organization with a special regulatory agency, the Consejo de Supervigilancia de Fundaciones (CONSUF) within the Ministry of Justice. By law they are required to submit annual financial reports and may be subject to audits. Restrictions on their governance structure and financial decisionmaking make it difficult for living donors and corporations to create foundations and be actively involved in them (though legislation is currently before Congress to modify these restrictions). At the same time, foundations are notably lax in their reporting to CONSUF, and to date the agency has not succeeded in promoting the accountability or effectiveness of this sector.⁴⁶

Other forms of nonprofit organization are not subject to obligatory registration or supervision by any public sector agency. In a partial exception, NGOs are required to register with the Secretariado de Cooperación Técnica Internacional (SECTI) within the Ministerio de la Presidencia if they wish to receive international assistance that is channeled through the Peruvian government. This involves submitting financial statements and annual reports, and has apparently led to some self-censorship on the part of smaller NGOs in the registry (interview with Sofia Macher, CNDDHH). Recently, the SECTI has

⁴⁶ Felipe Portocarrero S., Cynthia Sanborn, Sergio Llusera and Viviana Quea, Empresas, fundaciones y medios: La Responsabilidad Social en el Perú. Lima: Universidad del Pacifico, 2000.

also tried to deny renewal of registration to certain NGOs known for their criticism of the government (interview with Javier de Belaunde, NGO lawyer). This registry is not obligatory, however, and nonprofits can and do receive direct support from external donors without submitting to SECTI review.

If the public sector does not support civil society organizations in Peru, who does? In large part, the participants themselves. Nearly 68% of the income of nonprofit organizations for which financial data is available is *self-generated*, through fees and charges for the services these organizations provide, as well as membership dues. Another 22% of nonprofit income comes from international donors and lenders, aimed primarily at a subset of NGOs, and roughly five percent from national philanthropy. In other words, neither the public sector nor private elite donors make significant contributions to organized civil society.

Although this funding picture suggests considerable autonomy from the government, it also means serious resource limitations and financial precariousness for the majority of organizations. While there are numerous private foundations in Peru, and nearly 80% of major corporations claim to make charitable donations, national philanthropy does not go to the most organized and socially influential civil society groups. Almost none of it goes to NGOs. Organizations of the urban and rural poor and other disadvantaged groups tend to be the weakest, and thus always potentially subject to political manipulation. Even large organizations with international connections often operate on limited budgets and are highly sensitive to the vicissitudes of international donor priorities and agendas. Clearly, efforts to strengthen civil society in Peru need to address the longer-term financial stability and sustainability of this sector.

3. NGOs and Civil Society

Although in international parlance, “NGO” refers to any type of nongovernmental organization, in Peru this term is used almost exclusively to refer to a subset of organizations that were born in the context of the intense social and political mobilization of the 1970s and 1980s. The Liberation Theology movement, the emergence of a grassroots-based political Left, and the evolution of feminism all contributed to the growth of this organized community. Initially, these self-identified NGOs shared a common commitment to social and political change, similar structures of internal governance, and a similar dependency on international funding. Although there is no separate legal status for NGOs, existing directories estimate their numbers from as low as 738 to as high as 2,000, while a USAID-PACT study identified 1,614 NGOs back in 1996. NGOs account for an estimated 14.5% of total nonprofit sector employment in Peru, which is double the Latin American average.

Although small in relation to the overall civil society, the social and political impact of NGOs is considerable. Staffed largely by middle class professionals, NGOs today offer a diversity of services, primarily although not exclusively to the poor and disadvantaged sectors of society, in the areas of urban and rural development, legal services, employment generation, education, health, microenterprise promotion and environmental protection, as well as the defense of human rights and civil liberties. They specialize in technical and social training (*capacitación*), in scholarly and applied research, and in technical assistance to various social groups. Their greater visibility in Peru in recent years can be attributed to international agencies, such as the World Bank, IDB, and USAID, who have increasingly found them to be attractive partners.

The international funding and contacts obtained by the most capable NGOs in Peru has been largely beneficial, enabling them to maintain a significant degree of autonomy vis-a-vis the State and to survive

periods of severe economic crisis, political violence, and persecution. This is particularly crucial in the case of human rights and democracy advocates, who do not receive public funding and rarely find support in the corporate sector. However, it also encourages dependency on external donors, and has prevented many NGOs from attending to the sustainability of their organizations and to policies that might strengthen this sector.

One of the most important functions that certain NGOs play in Peru is through their efforts to build bridges and channels of communication across broader civil society, and between different social and political actors. Born in a climate of political confrontation, the role of NGOs as “facilitators” has evolved over three decades of experience, through successive periods of internal self-criticism, readjustment to changing times and (in the most successful cases) generational turnover among their leadership. Although increasingly pragmatic in their politics and market-oriented in their strategies, most NGOs continue to maintain a broad commitment to social justice and to the empowerment of the disadvantaged. This, and the past political histories of many of their founders, has occasionally provoked oral attacks and “witch hunts” on the part of government officials. However, no systematic attempt has been made to restrict their activities to date, and public perception of NGOs as a whole is fairly positive. In a recent USAID-funded survey, for example, respondents placed NGOs and human rights organizations third, after the Catholic Church and municipal government, as the institutions most capable of administering resources at the community level.⁴⁷

4. Critical Actors and Allies for Democracy

Within broader civil society, and within the NGO community, certain actors are particularly critical for democracy in Peru, either because of their direct efforts to defend democratic practices and curtail government abuses, or because of their potential role as allies. In the first case, these include human rights and legal defense organizations, including those that defend women’s rights and opportunities, and organizations that undertake specific democracy-related tasks such as election monitoring, leadership training, and media watchdog activities. In the second case, potential (but not always actual) allies for democracy include business and labor organizations, grassroots community groups (the most important of which are the *organizaciones femininas para la sobrevivencia* or OFAs), the Catholic Church and other churches, and academic research and training centers, as well as private foundations and donors.

Although there is not sufficient space in this report to describe each of these actors in detail, and some of them are mentioned in previous sections, our team consider the following to merit particular mention:

a. Human Rights Organizations

The Peruvian human rights movement is widely recognized as one of the strongest and most united in the world. Human rights activity can be traced to the lawyers and members of the clergy who defended indigenous peoples in the Colonial period and in 19th century Republican Peru. In recent decades, a fundamental role has also been played by the progressive Catholic Church movement known as Liberation Theology which, from the 1960s onward, has involved clergy and law workers in more egalitarian ways of working with and empowering the poor. *The Episcopal Commission for Social Action (Comision Episcopal de Accion Social or CEAS)* established a human rights department in 1976 and was

⁴⁷ Martín Tanaka and Patricia Zárate. *Valores democráticos y participación ciudadana en el Perú*. Lima: IEP, 2000, p. 23.

instrumental in the creation and institutionalization of the broader movement. Protestant churches, involving a far smaller proportion of the population, have also been active in the organized defense of civil and religious liberties since 1950 and are involved in today's broader rights movement.⁴⁸

The first human rights groups per se were created in the late 1970s. The "second phase" of the military government had begun to reverse some of the more popular reform measures undertaken by the preceding Velasco regime, had laid off thousands of public employees, and had applied an economic structural adjustment program which brought serious deterioration in living standards. From the start, therefore, human rights groups in Peru have combined the ethical perspective of the Church and a concern for social justice with conventional defense of human rights and civil liberties.

In the early 1980s, a number of other organizations were established to document and denounce the atrocities taking place in the fight against the Shining Path terrorist movement in remote regions of the highlands and particularly Ayacucho. Their efforts brought international attention to the "dirty war" between the terrorists and the armed forces, which claimed more lives and caused greater damage to the country under civilian rule than the previous twelve years of military dictatorship.

In 1985 the *Coordinadora Nacional de Derechos Humanos* (CNDDH) was formed as an umbrella organization to coordinate disparate human rights activities. Today the *Coordinadora* involves virtually all of Peru's main human rights organizations, which number more than 50 groups nationwide. With members ranging from small grassroots groups working in rural areas to Lima-based NGOs staffed by lawyers with international prestige and experience, the CNDDH is considered a model worldwide for its breadth and unity, ability to evolve its strategy over time, and effectiveness in curbing human rights abuses and raising public consciousness.

As the most grave human rights violations associated with the "dirty war" subsided in the 1990s, the human rights movement has been able to move effectively into defending democracy and documenting and denouncing a broader range of human rights and civil liberties. As noted by WOLA Senior Associate Coletta Youngers, "it has also made the leap from *denuncia* to *propuesta* (from denunciation to making proposals), encouraging legislative and other reforms to protect human rights and democracy" (Youngers, 2000, p. 5).

The Peruvian human rights movement is unique for several reasons, in addition to the outstanding unity and leadership of the *Coordinadora*. First, the nature of the "dirty war" in Peru led human rights groups to take a strong stand against violence of any kind, and to document and denounce abuses by the terrorists as well as the armed forces. This has provided them legitimacy with a population that suffered considerably at the hands of the Shining Path and MRTA. Second, although they have often been the targets of attacks by government, the military, and the terrorists, human rights groups have not suffered the same level of repression as their counterparts in Central America in the 1980s or in Colombia. Their relative freedom of association has enabled them to grow nationally, making the transition from traditional denunciatory work to addressing a broader agenda of democracy and civil rights concerns.

⁴⁸ Historical references in this section are drawn from Joanna Drzewieniecki, "The Coordinadora Nacional de Derechos Humanos: A Case Study," a draft document prepared for the Civil Society and Democratic Governance in the Andes and Southern Cone Project, Ford Foundation and PUCP, December 1999. The rest of this section draws heavily from Coletta A. Youngers, "Human Rights and Politics in Peru Today," a paper prepared for delivery at the 2000 Meeting of the Latin American Studies Association, March 18, 2000.

The strong network of human rights organizations in Peru was fundamental to the success of the Ombudsman's office since its inception in 1996, providing much of the professional staff of this agency as well as ongoing technical assistance. At the same time, the moral stature and perceived effectiveness of the Ombudsman has legitimized human rights work and helped to generate public awareness of human rights issues and interest in collaborating with the movement.

Another contributing factor in the quality and legitimacy of Peru's human rights movement is the ongoing commitment to education. Grassroots church groups are heavily involved in these activities, and there is a range of groups dedicated solely to education and training, which have their own national network. In addition to training individuals and small groups of citizens, these organizations are effectively conducting media outreach through radio and provincial television across the country. These efforts have extended the commitment to human rights beyond a core of committed professionals, to journalists, doctors and nurses, university students, peasant and community leaders, and schoolteachers and children.

In addition, the Peruvian human rights movement has been successful in mobilizing international support. This includes international financial assistance, media attention, and linkages with all major international human rights organizations. USAID has offered critical support, not only through financial assistance, but most importantly, by conferring legitimacy and the related protection it provides from domestic repression.

b. The Women's Movement: Grassroots and Professionals

The Peruvian women's movement, along with that of Brazil and Mexico, has also been one of the most successful in Latin America in the past three decades. Its strength, as well as its principal ongoing challenge, lies in its efforts to bring together diverse groups of women around common objectives, including a broad array of rural and urban grassroots community activists, feminist scholars and professionals, and women from political parties and government.

Women have long formed the backbone of collective activities in fighting poverty and ensuring family survival in Peru. Grassroots women's organizations proliferated as an emergency response to the economic crisis of the late 1970s, then became permanent fixtures in society as poverty and underemployment persisted in the 1980s and 1990s. The most important forms of poor women's organizations are collectively known as *organizaciones femeninas para la alimentación* (OFA), which include mothers' clubs, community dining halls (*comedores populares*), and "Glass of Milk" committees. In Peru today, an estimated 76,334 OFAs involve roughly 10% of the population as volunteer members, and are providing basic food assistance to an estimated 49.5% of all households, as well as promoting educational and income generation activities for women.

The relationships between these grassroots organizations and the State have always been problematic. On one hand, many of them originated from government initiatives and most of them rely on national or local government agencies for donated food and financial and technical assistance. While such public assistance may be well intended, it reinforces the pattern of trading political favor for food. The Fujimori administration has been no exception. Through the Programa Nacional de Apoyo Alimentario (PRONAA) hundreds of new OFAs have been promoted, receiving important resources while at the same time being encouraged to mobilize support for the President. Meanwhile, efforts to form intermediary associations in this sector (such as the *federaciones de comedores*) have met with official hostility, and individual OFAs are discouraged from joining federations with the threat of loss of food. Hence, it has

been extremely difficult for poor women to aggregate their interests and have a greater influence in the national policy sphere.

In 1979, the Peruvian and U.S. governments signed an agreement under which USAID would donate to Peru surplus agricultural products, thus linking food donations to U.S. foreign policy goals and playing a role (however unintended) in this chain of dependency and clientelism. In recent years, however, U.S. food assistance has been channeled primarily through private sector entities, including professionally-run NGOs and organizations linked to the Catholic church, and their programs have involved innovative efforts to strengthen the institutional capacity and self-sufficiency of poor women's organizations. An important step toward advancing this process would be for external donors to encourage the development of intermediary or umbrella associations in this sector, as they have done with the *Coordinadora* in the human rights field.

The feminist movement in Peru emerged roughly at the same time as the grassroots survival organizations. However, as in most countries, it took some time for the largely urban and middle or upper class feminist leaders to effectively combine their interests with the needs and organizations of poor women. During the late 1970s, several important feminist NGOs were formed as break-off movements from the political left, including the Flora Tristán Center for the Peruvian Woman and the Manuela Ramos Movement. Although their initial objectives remained within the framework of socialism, trying to link problems of class and gender and challenging social inequality, many women renounced traditional leftist politics and adopted openly feminist platforms. These included the decriminalization of abortion, as well as equal rights and opportunities in the economic and political spheres. With the collapse of the party system, the majority of feminist action became concentrated in NGOs.

By the 1990s, Peruvian feminists had gained considerable legitimacy and influence in national political and intellectual spheres. Gender studies have been "mainstreamed" into numerous universities and research centers, and the Gender Studies Program of the Catholic University of Peru is considered the strongest in the Andean Region. Feminist lawyers are members of prestigious law faculties, on staffs of organizations providing critical legal assistance to women, and serving in advisory capacities to local and national government agencies. In addition, they provide training in gender sensitivity and domestic violence issues for the National Police.

These efforts gained an unexpected and, for some, uncomfortable ally when President Fujimori joined the official Peruvian delegation to the IV United Nations Conference on Women in Beijing in 1995. There he was applauded by feminists worldwide when he promised to confront the Catholic Church on women's reproductive health and choice issues, and to enact sweeping measures to advance women's status in Peru, including the creation of a new *Programa para la Mujer y el Desarrollo Humano* (Promudeh), which has ministerial rank. Feminist NGOs have since provided staff and technical assistance to this new "women's ministry," as well as to a new multi-party Women's Commission in the Congress that enacted a variety of legislation favorable to women over 1995-2000. This new legislation includes the "Quota Law" mentioned above and laws against domestic violence. Women also serve on the staff of the *Defensoría de la Mujer* or Ombudsman for Women, which has provided critical legal services and support to needy women.

In addition, feminist NGOs have moved effectively into the management of important health and educational reform programs, with public resources and international assistance. Thus, feminist NGOs are important actors in Peru's efforts to strengthen democracy, advocating for women's rights and opportunities and assuming responsibilities in the public sphere. Furthermore, with the USAID-supported PROMUJER initiative and other efforts, diverse NGOs have promoted women's political participation

and helped prepare them for public office. However, several challenges remain: how to link these efforts to advance the social and economic needs of poor women, and most importantly, how to empower poor women's organizations and leaders themselves.

c. The Catholic Church and Democracy

The Catholic Church has not only been a fundamental influence on the human rights movement, but also it has traditionally been and remains the institution with far greatest credibility among all sectors of Peruvian society. An estimated 89% of the population is Catholic, and Church organizations are the primary beneficiaries of individual donations and volunteer work. For decades, Church and lay Catholic organizations have performed fundamental social promotion activities and have provided assistance to the neediest sectors of society. Public opinion polls consistently rank Church leaders among the most respected and influential figures in society, and the Church is also seen as the institution most capable of administering resources for community development.⁴⁹

The relationship between the Fujimori administration and the Church leadership has been difficult. Church leaders openly favored Fujimori's rival, Mario Vargas Llosa in 1990, and Fujimori's stances on birth control and family planning have been in direct confrontation with Church teachings. Furthermore, Church leaders have severely criticized the Ministry of Health for forced sterilization of poor women, an effort in which the women's movement coincided, and for the distribution of condoms in schools and health posts. On the other hand, conservative sectors within the Church, whose most visible head is the current Archbishop of Lima, have identified with some Fujimori government policies, including the counterinsurgency effort.

On the whole, the Church has kept a somewhat lower profile on national political issues in the 1990s than it had in the previous two decades. This is due in part to growing internal divisions between progressive and conservative factions and to changes in the ecclesiastic hierarchy. In the current electoral process, for example, Church leaders have made contradictory statements. While the Archbishop of Lima recently joined government leaders in launching strong verbal attacks on international human rights groups and elections observers, the head of the Bishops' Conference issued a very critical pronouncement on the development of the electoral process that shared many of the observations of these groups.

d. Business, Labor, and Democracy

In a strong democracy, the organized interests of workers and employers are represented in the public arena, and policy decisions are negotiated among all relevant actors. In an authoritarian context, strong and representative business and labor associations can be key advocates for the restoration of rule of law and for processes of democratic transition.

In Peru, the labor movement played a central role in the organization of protests against the military dictatorship in the late 1970s, contributing directly to the military's decision to retreat from power and return the country to civilian rule. During the 1980s, the General Confederation of Peruvian Workers (CGTP) was considered one of the most powerful institutions in the country, while national federations of schoolteachers, mineworkers, construction workers, bank employees, and public sector employees all had influence in the national political arena as well as in policy debates related to their specific sectors.

⁴⁹ Debate, Encuesta anual de poder, 1999 and Martín Tanaka and Patricia Zárate, Valores democráticos y participación ciudadana en el Perú, Lima: IEP, 2000.

Today, this picture has dramatically changed. The power of unions has eroded and labor leaders are virtually absent from national politics. This is due in part to economic and labor market changes and in part to politics. Unions were hit hard by the recession and crisis of the 1980s as well as by economic stabilization efforts and state reform in the 1990s. Membership dropped from a high of over 17% of the labor force in 1981-1982 to approximately 7% today, as an estimated 40 to 50% of the work force is presently in the informal sector.

Yet although unions have always grouped a minority of the Peruvian workforce, in previous eras they commanded public respect and were able to convene other sectors of civil society around shared platforms – defending human rights, democracy, and social justice as well as specific sectoral interests. Over the course of the 1980s, however, the extreme politicization and division of union leadership debilitated the broader representative capacity of organized labor, while the international crisis of communism contributed to the loss of power and resources for the CGTP, whose leadership had close ties to the Moscow-led Communist Party. For the most part, public opinion regarding union leaders met the same fate as that of party leaders at the end of the decade: they were seen as politically opportunist and/or self-interested.

The erosion of union power received a major blow with the dismantling of a wide array of labor rights and benefits that was part of the broader economic reform agenda of the Fujimori government. The Ministry of Labor no longer plays a significant role in resolving disputes between private employers and workers, nor does it encourage union development. Although basic rights to unionization, a minimum wage, safe working conditions, and health and pension benefits all still guaranteed in the Constitution, as well as protection against job discrimination on the basis of sex, race, ethnicity age or other factors, these rights are routinely violated in the private sector and not upheld by the Labor Ministry, the Judiciary, or Indecopi. Most human rights organizations have also not given priority to defending labor rights, which remain controversial in a context of high unemployment.

While unions have lost most of their power in recent years, the power and presence of business associations or *gremios* have increased significantly. The opening of markets and privatization of public enterprise brought increased vigor to certain sectors of private business as well as reviving the flow of international investment. The Fujimori government has been strongly pro-business, and business leaders have played a prominent role in the Cabinet, in key economic policymaking posts, and among the pro-government forces in Congress.

The Confederation of Peruvian Business Institutions (CONFIEP), the umbrella organization of all major *gremios* or sectoral associations, maintained a relatively low profile throughout the 1980s. After 1987, it became the voice of the private sector and a vigorous defender of private property rights in general. With support from USAID, the World Bank, and other donors, CONFIEP has professionalized its operations and significantly expanded its role in society. Other powerful *gremios* include the National Society of Mining and Petroleum, the Association of Exporters (ADEX), and the National Industrialist's Society (SNI).

Along with increased private fortunes and political clout among business leaders came increased public expectations that the corporate sector would be more “socially responsible,” investing greater time and resources in the resolution of the country’s many social problems. CONFIEP, and new business leadership organizations such as Peru 2021, have taken up the banner of social responsibility and have supported a number of philanthropic and community development activities, as well as promoting microenterprise development. However, the majority of this activity has been funded by international donors and lenders, rather than through direct contributions from national business. Corporate

philanthropy is still incipient in Peru and much of it is sporadic. Furthermore, most corporate philanthropy is not oriented toward widely recognized social priorities, but rather toward traditional charity or to activities benefiting middle and upper class groups, such as support for elite private education, fine arts, or scientific and cultural awards.⁵⁰

Furthermore, although some private business leaders were prominent critics of the military regime in the 1970s, their historical commitment to democracy and human rights has been weak and it remained so for most of the 1990s. CONFIEP and other business groups publicly supported the *auto-golpe* of 1992 and many private sector leaders encouraged Fujimori's reelection to a third term. Only recently have they begun to speak out in favor of restoring the rule of law and democratic institutionalism.⁵¹ In interviews with team members, the presidents of CONFIEP and the SNI cited fear of tax or judicial reprisals as one factor limiting the willingness of business leaders to take a stronger stand for democracy.

In summary, Peru has a diverse and dynamic civil society. Private, nonprofit organizations assume a great variety of responsibilities, ranging from providing basic educational and health services to defending women's rights and monitoring the electoral process. Certain kinds of civil society organizations are optimal partners for USAID and other donors in the effort to strengthen democracy and human rights, expand competition, and hold government accountable. Although there is still significant freedom of association in Peru, a number of other elements need to be addressed in order to overcome civil society fragmentation and create a more enabling environment for longer-term sectoral development.

F. The International Arena and Future Scenarios

In the wake of the problematic elections of 2000, the international arena has increased in importance for both the Peruvian government and its domestic opponents, with the former defending the principles of national sovereignty and non-intervention (e.g., in regard to the actual electoral outcome and legitimacy of the new government) and the latter calling for international sanctions and pressure for new elections.

In particular, the United States government and the Organization of American States have become lead players in the post-elected drama. While resisting U.S. pressures to consider stronger sanctions and refusing to pass judgement on the legitimacy of the election outcome itself, the OAS did send a high level mission to Lima in late June, led by Secretary General César Gaviria and Canadian Foreign Minister Lloyd Axworthy. The mission met with a wide array of actors and proposed a set of institutional reforms that should be undertaken in the short term, involving concrete government actions as well as dialogue and collaboration with the political opposition and civil society organizations. These include reestablishing the independence of the Judiciary, strengthening the rule of law and separation of powers, ensuring adequate protection of human rights and press freedom, and reforming the electoral system itself.

⁵⁰ In 1998 it was estimated that the 2,000 largest corporations directly donated just \$35 million total, most of which came from the two largest mining companies. Corporate leaders cite the lack of adequate tax incentives as one factor limiting philanthropy, along with the overall instability of the national economy. Comparative studies nonetheless suggest that tax incentives alone do not necessarily promote more private giving in the absence of other motivations. See Caravedo 1999, and Portocarrero, Sanborn, et al, 2000.

⁵¹ "Pensar en la re-relección le ha puesto limitaciones al Presidente Fujimori," *Entrevista con Roque Benavides, Debate* Vol. XXI, No. 108, diciembre 1999-enero 2000, pp. 10-14.

The troubled 2000 elections and their aftermath will have both immediate and lasting consequences for democracy and governance in Peru. It may be premature to speculate about what, precisely, these longer-term consequences will be, but a few general observations may be made about the elections and their immediate effects which affect the Team's strategic and tactical recommendations to USAID.

First, President Fujimori is likely to remain in power for the next five years. Although opponents have vowed to mobilize domestic and international opinion to force a new election in which Fujimori would be barred from candidacy, this seems unlikely given the reluctance of the OAS to challenge Fujimori's victory, and the extent to which the international community is adapting to the post-election status quo. Nevertheless, the solid popular backing and mandate for *continuidad* after the President's victory in 1995 has evaporated. While a hefty chunk of the electorate still supports Fujimori (indeed, close to a majority), the support seems softer and less enthusiastic than in 1995. More importantly, a stronger and vocal antigovernment contingent has begun to make its presence felt in Peru's largest cities. Whether this contingent materializes into an organized opposition or political party over the next several years is unclear. Whatever its fate, this newly mobilized sector has succeeded in casting doubt on the legitimacy of the government's third term. From a D/G standpoint, this could well be a positive development, since it puts pressure on the government to begin to enact long-delayed reforms in order to head off future protest.

Second, the government inaugurated on July 28, 2000 will be significantly weaker than that inaugurated in 1995. A main reason is the change in the composition of Congress. Although the Congress is as much a reflection of the flawed electoral process as the outcome in the presidential-vice presidential contest, few actors have challenged the fact that the President's party (Peru 2000) failed to win a majority of seats. Events following the election indicate that the government may have succeeded in cobbling together a new majority coalition through back-room deals between officials and elected or re-elected congressmen from other political groupings. Even if this is the case, the majority bloc is not likely to be as solidary as the majority that dominated the 1995-2000 Congress, and thus not as successful in blocking minority influence in legislative debate and policymaking as it has been over the past five years.

Moreover, the opposition parties that hold a larger share of the seats in the new Congress have more public support than in 1995-2000 -- a potentially encouraging development. A larger and less fragmented parliamentary minority could make the new Congress a more important forum for public debate, a source of initiative for reform, and an institution capable of fulfilling its oversight functions. In principle, members of government and some Congressional leaders have indicated a willingness to discuss reforms in existing electoral rules and in the size and structure of Congress. Their sincerity will be measured in both legislative process and output: whether lofty declarations translate into policy and whether policy reflects a process of negotiation and compromise within the Congress and among branches of government.

Third, the elections have enhanced vulnerability to political instability. The perception the government was disposed to commit fraud in the first round of the elections, whether true or not, triggered a national wave of peaceful mobilizations in Peru's ten largest cities. While related to the mobilizations that occurred in their wake, the elections and the controversy surrounding them are symptomatic of underlying public distrust of institutions. Now that the 2000 elections are a *fait accompli*, the issues underlying the antigovernment protest, many of which are identified elsewhere in this report -- the preponderance of power in the Executive branch of central government, the perceived influence of the National Intelligence Service, the lack of an autonomous Congress, the corruption in the Judicial branch -- all of these factors will likely continue to fuel discontent that may well manifest itself in violence directed against the government. While the mobilizations have begun to peter out, as has the early,

fervent support for Alejandro Toledo, there is still a great deal of residual disgust with the government. Whatever Peruvians think of him now (polls show his popularity is slipping), Toledo is the most visible leader of the opposition. As such, his public behavior and strategic decisions in the months ahead are critical. His actions and words thus far suggest Toledo is a politician interested in peaceful participation within a democratic process.

Fourth, the elections have generated both new constraints and potential opportunities in terms of working with government institutions, that may have implications for our recommendations. In the short term, the opposition protests, the public clamor for institutional reform, the pressures being applied by international actors, and the general need for the government to re-establish its legitimacy in the wake of the electoral process in order to govern effectively in its third term, seem to point the way toward a genuine opportunity for a political opening of sorts. While there is certainly cause for skepticism where the Fujimori government is concerned, the donor community should plan for a phased approach for democracy and governance efforts. In other words, if concrete progress is made on certain reforms, the benchmarks for which have been set by the OAS mission proposal, then USAID could consider moving forward on other priorities or partners, including government institutions. If, on the other hand, the government reneges on its promises to deliver reforms, USAID ought to maintain its emphasis on support for civil society activities that promote a system of institutional checks and balances.

CHAPTER V: STRATEGIC AND TACTICAL RECOMMENDATIONS

A. Strategic Filters

The analysis conducted in previous chapters suggests that an ideal strategy for strengthening democracy in Peru would tackle at least three of the major problem areas identified in the assessment framework: limitations on the rule of law, the lack of effective competition and balance of power, and the exclusion of traditionally marginalized populations from meaningful political participation. However, it is not possible for USAID to effectively address all of these problem areas at the present time. In order to make recommendations for a practical USAID/Peru democracy and governance strategy for the next five years, several “filters” or conditioning factors must be taken into account. Five of these merit special review: 1) political opportunity (an issue addressed in previous sections, but reiterated here); 2) U.S. foreign policy priorities in Peru; 3) time and resource limitations; 4) USAID’s existing program and the costs of changing course; and 5) other donor programs and priorities. The first section of this chapter reviews each of these filters briefly, and the subsequent sections present recommendations on strategy and tactics (section B) and a final summary of recommended priorities (section C).

1. Political Opportunity

Donors cannot make a difference in advancing democracy in the absence of political will and opportunity. If the main actors involved in a given arena are not interested in reform, and there are no clear and effective new allies on the horizon, then no amount of external funding will make a lasting difference. This has been the case with most *rule of law* efforts, particularly in regard to support for judicial reform. As described earlier, while lack of respect for the rule of law is one of the most critical problems in Peru today, to date the government has not been committed to institutional reform, and external assistance for this purpose has been largely stymied. Furthermore, although there are longstanding inefficiencies in the justice system that need to be addressed, the primary obstacle for reform in the short term does not lie within the Judiciary itself. Rather, it is due to Executive and Congressional intervention in this sector. Hence, there has been little opportunity for donors to make meaningful, *direct* contributions to judicial reform in this context.

In the wake of recommendations made by the High Level Mission of the OAS, there may be new opportunities for institutional reform in Peru, and these are mentioned in the following recommendations. The strengthening of the rule of law, restoration of judicial independence and reform of the administration of justice are among the highest priorities on the list of OAS proposals, along with general strengthening of the separation of powers, adequate protection of human rights and press freedom, and reforming the electoral system. These are also priorities cited in this report, and Team members consider their initial acceptance by the government as well as the political opposition to be an encouraging sign.

However, given the past record of this administration, the current polarization and the lack of any firm agenda for dialogue on the enactment of these proposals, it is too early to determine whether there is a genuine commitment to reform on the part of government authorities, and whether other political and social actors would participate in any such process. Hence the need for a cautious and staged approach is also stressed in these recommendations.

2. U.S. Foreign Policy Priorities

Democracy concerns have taken a very high profile in recent U.S. foreign policy towards Peru, particularly in light of the 2000 electoral campaign and post-electoral events. The U.S. Congress has taken a strong interest in this case, and the U.S. Department of State has insisted on the need to restore credibility in the electoral process and reform democratic institutions. Formally, the Department of State's most recent Mission Performance Plan states that "the overriding U.S. national interest in Peru is to promote genuine democracy, which is central to institutionalizing the rule of law, controlling narcotics trafficking and achieving economic prosperity."

Nonetheless, this statement also reflects the fact that democracy is not the sole priority for United States foreign policy in Peru, and there is an inherent tension in how the various foreign policy priorities are managed and funded. For example, the largest U.S. assistance program in Peru is the food security program (PL 480), and the second largest program is counternarcotics. Among counternarcotics programs in the hemisphere, Peru's is widely viewed as a success story. Continued engagement with the Peruvian government is considered critical for this effort.

The implication of this for our strategic recommendations is that the inherent tension in the management of foreign policy priorities means that democracy is not the single issue at stake for U.S. foreign policy. We recognize that a consistent and hard-line U.S. government position on democratic backsliding, for example, may affect relations with the Peruvian government on counternarcotics. At the same time, progress on counternarcotics is difficult in an undemocratic environment where the lack of checks on the authority of the Executive and the Armed Forces increases the risk of government impunity. It is precisely for this reason that we believe that it is important to focus on the domestic checks and balances to Executive abuse of authority.

3. Time and Resource Limitations

As USAID/Peru is developing its strategy for the next five years, strategic recommendations are intended to focus on what is feasible in a five-year time frame rather than over the longer term. Furthermore, Peru's democracy and governance program has been funded at an average annual level of \$3 million over the last three years. For a population of 25 million, this is a modest level of funding, which could present a potentially important constraint to the program. Both of these factors—the five-year time frame and the limited budget—have led us to recommend focusing on one major problem area, that of *competition and balance of power*, rather than dispersing limited resources across other areas.

Assuming that a choice must be made, why focus on the competition problem over issues of *inclusion*? Although the Team believes that the two are closely related, time and resource limitations are fundamental. The primary barriers to political participation for large numbers of disadvantaged citizens in Peru today are practical, not formal, and they stem from long-term structural and cultural problems in society, including poverty and illiteracy as well as underlying forms of discrimination. These problems will not be resolved in the political sphere in the next five years, although important strides toward their longer-term resolution can and are being made through other USAID programs.

Furthermore, although there have been new opportunities to undertake voter education and to expand the political participation of women in particular, the lack of effective competition in the political system as a whole, and the questionable legitimacy of the electoral process, serve as limitations on meaningful political inclusion, not only of women and the socially disadvantaged but of all citizens. Hence, although

it is always important to broaden the field of participants, we consider it a higher priority in the next five years to endeavor to improve the structures and mechanisms of competition themselves, and to hold government more accountable to all citizens between elections.

Nevertheless, it is important to emphasize that there is a great deal of absorptive capacity for donor support in Peru, primarily within vibrant civil society organizations. If additional resources were to become available to USAID's Democracy and Governance programs (which we would strongly endorse), much more could be done to promote a new and more diverse generation of leaders, and to involve larger number of citizens in positive experiences of democratic governance, particularly at the local level.

4. USAID's Prior Strategy and Existing Program

USAID/Peru made many sound strategic judgements over the last five years that need to be built into strategic recommendations. First, the Peru Mission concluded several years ago that both inclusion and competition issues deserved greater attention in the present context. In 1996 and 1997, it became clear that the initial optimism about direct support for government institutions and reforms following the 1995 elections was unwarranted. In response, USAID/Peru modified its strategy to focus directly on preparing for the 2000 Presidential elections, highlighting increased citizen preparedness to exercise their rights and responsibilities. USAID severely curtailed assistance to government institutions and initiated a series of pre-elections activities to obtain meaningful political participation (e.g., using the mass media, working with policy advocacy groups, targeting activities geographically to reach the most voters, integrating democracy themes and activities into USAID's work in other sectors, and highlighting election participation and observation).

The soundness of these decisions, in turn, earned USAID a great deal of respect within sectors formerly critical of U.S. policy, particularly within civil society and the human rights community. Most of Peru's democracy program continues to be implemented through grants to local NGOs, although USAID partners also include the *Defensoría del Pueblo*, one of the most autonomous and respected institutions within the government today. Since many local NGOs are proven and successful partners, a move away from the present strategy is likely to disappoint and even potentially alienate these groups. *The strategy recommendations outlined below seek to preserve the respect that USAID has earned and to build upon ongoing activities, to the extent that they are tied to the democracy priorities identified through our analysis.*

5. Activities of Other Donors

USAID's involvement in an active donor coordination group related to democracy and governance was effective in encouraging other donors to enter the Democracy and Governance area and to co-fund entities like the *Defensoría* and *Transparencia*, thereby guarding against criticisms that these institutions are controlled by the U.S. Based on this precedent, it seems likely that USAID could engage other donors to work together on a new strategy, and/or to assume responsibility for funding former USAID grantees that are less critical for this new stage, such as those partners that focus on conciliation and on general civic education. Similarly, because the World Bank and IDB give priority to government-led programs, USAID might explore the interests of these institutions in assuming potential future interventions with the Judiciary, Congress or local government, as opportunities arise, since these programs can be extremely costly.

B. General Recommendations on Strategy and Tactics

The next five years are critical for preventing further backsliding that might undermine Peru's democratic political system overall. Based on the analysis presented in previous sections, the team concludes that *the principal problem for democracy and good governance in Peru in the next five years is the lack of effective checks and balances on the exercise of Executive power*. This includes both a lack of real balance of power within the government, and limited mechanisms of government accountability to society. This lack of effective limits on Executive power, in turn, has led to political intervention in and manipulation of the Judiciary, disregard for the rule of law, violation of basic citizen rights and liberties, and limited government transparency or accountability. Most recently, it has also threatened the legitimacy of the electoral process itself.

In this context, the overriding objective should be to support those selected actors and institutions that are most effective at providing checks and balances on the exercise of state power. There are five spheres of influence in which checks and balances on centralized power may be established: the judicial and legislative branches of government, local government, the mass media, and what we call "political society" which includes political parties and other forms of civic association. In the rest of this chapter, the main problems, constraints and opportunities, recommended interventions, and potential results are highlighted for each of these spheres.

Although the main democracy and governance problems that the Team identified lie in the sphere of institutional politics and central government power, the strategies recommended for overcoming these problems lie primarily within the sphere of civil society. This is because to date most governmental institutions have not been capable of significant "reform from within", for a variety of reasons explained in the previous text. Hence these recommendations stress the responsibility of key actors in civil society, as well as within the international community, to provide checks on state power and hold government accountable for its actions.

As mentioned above, the OAS mission has recently proposed a set of institutional reforms that should be undertaken in Peru in the short term, involving concrete government actions as well as dialogue and collaboration with the political opposition and civil society organizations. It is too early to conclude whether this will provide a new opportunity for serious democratic reform, or whether it will result in a merely cosmetic government response and a repeat of the false expectations generated in 1995. Before turning to our issue-specific recommendations for the next five years, the Team recommends that *in the short term* USAID respond to this new framework in the following ways:

- **Monitor government/congressional response to OAS proposals**

USAID should support the efforts of qualified nongovernmental organizations to monitor government response to the OAS proposals, particularly in the sensitive areas of justice, human rights and press freedom. In certain cases, initial "good faith" actions on the part of the government may be expected by international observers as well as opposition leaders as a prelude to subsequent collaboration.

Many items on the reform checklist provided by the Gaviria-Axworthy mission are by definition not executive but *legislative* initiatives, and thus must originate in or pass through the Congress. Therefore, USAID should also support NGO efforts to track the progress of bills aimed at addressing the deficiencies identified by the OAS in order to identify the obstacles obstructing the path to legislation

and policy. USAID can then make a determination about whether it is prudent to change its posture with respect to legislative strengthening and support.

- **Encourage national dialogue and consensus**

While some of the proposed reforms require unilateral government action, others require negotiation among government leaders, Congress, elements of the political opposition, the media and civil society. USAID can play a role in bringing together these diverse actors and promoting dialogue and consensus around the proposed agenda for reform. Should opportunities arise, USAID should also encourage the generation of specific policy proposals in the above-mentioned issue areas, based on the considerable expertise and research experience of its current grantees.

If the political commitment to democratic reform increases dramatically over the next year or two, and significant progress is made in addressing the central problems of competition and balance of power, then it would make sense to work more directly with government institutions, and to include other strategic priorities. Some of these additional options are also mapped out briefly as part of the following issue-specific recommendations.

C. Issue-Specific Recommendations and Priorities

The following recommendations emphasize opportunities for the promotion of more effective democratic competition and balance of power over the next five years, in five critical issue areas. Clearly, they are not all of equal priority, and together they would well surpass the annual resource limitations of the current D/G program. In order to assign them relative priority, three criteria were considered: (1) their importance to addressing the central problem, (2) the likelihood that the recommended activities, if successfully implemented, would have the desired impact, and (3) the comparative advantages of USAID over other donors. When these criteria are considered, the following order of priority emerges:

1. Justice and Human Rights

Problem: In addition to its failure to uphold the rule of law, *the Judicial branch of government does not uphold Constitutional limits on Executive and Legislative authority, and in many cases, endorses abuses of power.* The Judiciary has failed to exercise its constitutional prerogatives largely because the Executive and Legislature have limited its independence and autonomy. While there is also a lack of an institutional capacity to deliver justice more broadly, this is not the primary strategic problem. Members of the Judiciary are endorsing executive abuses of power not because they lack capacity, but instead because the majority of judges and prosecutors are beholden directly or indirectly to the Executive for their positions, and because they allow politics to influence their decisions.

Constraints: There are many constraints to working directly with the Judiciary. First, it has been so politicized that any assistance at the present time may simply be subject to further Executive control. Second, the Judiciary is disempowered through the appointment of Executive Commissions that assume judicial authority. Third, the fact that roughly two thirds of judges are provisional means that they can be appointed and removed at will by the Executive, and therefore they will not take risks to challenge abuses of power.

Opportunities: There are no opportunities for working directly with either the Judiciary or the Public Ministry at the present time. However, there is an opportunity to support the important labor of the *Defensoría del Pueblo* (Ombudsman), a semi-autonomous state institution that responds to citizen concerns about abuse of power in all branches of government, including the Executive and the Judiciary. Outside of government, private human rights organizations can also serve to check official abuses of power and challenge judicial complicity.

Recommendations: In this area, the team recommends that USAID continue to work with both the *Defensoría del Pueblo* and leading human rights organizations – two efforts that have been judged very successful in evaluations and that still hold tremendous potential to make a meaningful difference.

The *Defensoría del Pueblo* has demonstrated its ability to mobilize public opinion and serve as a check against executive abuse of power. However, it is important to bear in mind that the term of the present Defensor expires in April 2001, and he must either be reelected or replaced by the new Congress. If a competent Defensor is again approved, and if other respected professionals in the institution are maintained after 2001, it should continue to be one of most important investments that USAID can make to promote democracy.

Peru's human rights community is also a critical partner in oversight of the Judiciary and executive branch, drawing national and international attention to situations in which the Judicial branch fails to do its job as a check and balance to the Executive. The strength of Peruvian human rights organizations is notable within the hemisphere, and USAID is fortunate to have such a capable and strong set of institutions to support. The *Coordinadora Nacional de Derechos Humanos*, the *Instituto de Defensa Legal*, and the *Comisión Andina de Juristas* are among the most likely partners in this area.

Together, the *Defensoría* and the human rights community can do much to draw attention to Executive abuses of power, and to potentially prevent such abuse. Furthermore, in light of the recent OAS reform proposals, each can play an important role in monitoring government response to short term recommendations (such as the elimination of the Executive Commissions), and encouraging dialogue and broad domestic consensus on the need for reform.

Human rights organizations are important allies of the *Defensoría*, and in the near term USAID should work with them to prepare for carrying on when the present Defensor's term expires. International and local pressure should be exerted to assure that a competent person is named to the position. However, if the *Defensoría* is significantly weakened or politicized, then USAID would need to compensate by increasing assistance to human rights organizations to fill the void.

Results: Sustained pressure on the Judiciary, the Executive, and other branches of government to make decisions based on the framework of the Constitution rather than political pressures. International pressure maintained to prevent future abuses of power and violations of human rights, and promote compliance with OAS recommendations. Effective monitoring of initial government actions in response to OAS proposals.

Scenario: Political will for judicial reform might increase over the next year or two, depending on government sensitivity to OAS concerns and the extent of national and international pressure in this area. If the Executive Commissions were eliminated, and the constitutional authority of the National Judicial Council and the Judicial Academy were restored, this might justify moving into some direct capacity development activities. In such a situation, the World Bank and other multilateral organizations might be expected to take the lead on funding more costly technical support efforts, but USAID has played an

important role in supporting such efforts in the past and has considerable expertise in this area. Activities to consider might include specific advisory activities as well as training and technical support for judges. Such activities could involve prestigious public and private sector law faculties with reputations for political neutrality, as well as institutions such as the *Defensoría del Pueblo* and the *Comisión Andina de Juristas*. Another promising area would be the training of elected regional justices of the peace, an activity currently being undertaken by the *Instituto de Defensa Legal* and other NGOs.

2. Civil and Political Society

Problem: *Weak parties and national-level interest associations do not effectively aggregate and represent the diverse interests of the citizenry in the political sphere, and do not serve as adequate counterweights to Executive power.* In Peru today there is a notable lack of effective, intermediary organizations capable of aggregating interests, building broad policy consensus, holding public authorities accountable, and proposing viable governance alternatives. In most democracies these tasks are assumed by political parties, but also by business and labor associations, NGO networks and other national-level nonprofit organizations. Together we call this stratum “political society”, to distinguish it within the broader array of particular and grassroots organizations that comprise the civil society sphere.

Constraints: While traditional political parties are largely discredited, new independent movements have few incentives to define clear doctrines and programs, or to build broader social bases between elections. This is in part because of their extremely personalist nature and also due to the ways in which current electoral rules and representation criteria structure their incentives. Meanwhile, although some civil society organizations are the leading domestic actors in the effort to strengthen democracy and protect human rights, the nonprofit sector as a whole is characterized by considerable fragmentation as well as important resource limitations.

Opportunities: Within the NGO community there are increased efforts to establish broader networks and national alliances in order to achieve common objectives. The organizations dedicated to human rights and democracy have made the most progress in this regard (e.g., the Coordinadora Nacional de Derechos Humanos, PROMUJER, and the NGOs working together on electoral monitoring and civic education). Such aggregating efforts are also evident among business associations, in the university community, and among research and action organizations in the anti-poverty and social policy sphere.

There is also a growing perception among diverse sectors of civil society that there is a need to recreate parties and strengthen the party system. Despite widespread indignation with the recent electoral process, and the persistence of President Fujimori’s anti-party discourse, *the public does not seem to want to do away with parties*; rather, it wants them to be more effective and inclusive. This is a concern shared by NGOs, the churches, and a diversity of other civil society organizations, because the weakness of political parties places greater burdens on each of them than they can assume.

Recommendations: The team believes that it is premature to engage in traditional party strengthening or leadership development activities, which might simply perpetuate transitory political movements lacking a firm commitment to democratic norms and values. Nonetheless, the Team recommends that this sphere of political society be given higher priority, with a possible two-track approach; (1) working with civil society actors that can play this intermediary role, and (2) seeking ways to advance the process of party strengthening directly.

Within this framework, we suggest the following activities:

- *Across program objectives, give priority to D/G partners that can play a broader intermediary role: i.e., aggregating diverse interests and representing them in the public sphere, influencing the accountability of public institutions, and offering viable governance alternatives. This generally means actors that have a national presence, have practical knowledge of the legal and political system, make use of applied policy research, and make use of the media for promoting campaigns.*

Potential partners that fit this profile include the *Coordinadora Nacional de Derechos Humanos* and certain other human rights organizations (IDL, *Comisión Andina de Juristas*), and other “watchdog” or advocacy organizations working on such issues as free and fair elections (*Transparencia*), press freedom (*Instituto Prensa y Sociedad*), women’s rights and opportunities (the PROMUJER alliance, *Demus*), and the transparency of public administration more generally.

Universities with historical traditions of academic excellence, political pluralism, and commitment to public service may also be ideal partners for sponsoring debates and convening different interest groups and actors around common themes (e.g., members of the Consorcio de Universidades). They also have the added advantage of considerable infrastructure and financial stability. Research centers with high credibility and a policy or advocacy bent can also be allies in efforts to reconstruct political society (e.g., IEP, GRADE, Apoyo).

- *Encourage greater coordination among donors interested in putting the issue of parties and political society on their agendas* (e.g., the German political party foundations, other European donors, NDI, IRI, the Ford Foundation). USAID/Peru has supported the APOYO Task Forces and *Agenda Peru* initiative, which have focused on building consensus around critical national policy issues, although their impact in revitalizing political society to date has been limited and the dissemination of their work is still in progress.
- *Sponsor public dialogue and related activities that address the problem of strengthening political society and overcoming both party and civil society fragmentation.* In the short term, for example, USAID should encourage broad debate and public education about recently proposed reforms of the existing electoral rules and structures of representation (e.g. multiple districts, new rules for party formation and competition). Future activities might also involve self-criticism on the part of current party leaders and efforts to draw lessons from the recent past, and might include party representatives from other countries to discuss their experiences in party renovation and survival.

While some applied research might be useful for these efforts (e.g., public opinion data, analysis of electoral rules and trends), the team believes it is important to avoid strictly academic exercises. Instead, USAID should promote dialogue and/or action-oriented activities, with broad participation by leaders of established parties and new movements, government and opposition, and diverse civil society groups. Sponsors should be credible and neutral entities, such as leading universities, business associations, and independent media such as *El Comercio*, along with organizations such as *Transparencia*.

- *Follow-up initiatives.* Ideally, such activities would encourage and inform legislative and constitutional reform efforts in the new Congress, and help to identify candidates for more specific leadership training or party development initiatives in the medium term. USAID would

then need to set aside at least modest support for such initiatives. Support might also be leveraged for such efforts from the PAS and Fulbright Commission (for overseas exchanges or study tours), the NDI and IRI, other private organizations such as the Inter-American Dialogue, and other U.S. and European donors.

- *Ensure diversity and inclusion.* Social elitism and the lack of generational turnover were among the many criticisms aimed at the parties of the 1980s. Although the priority problem here has been identified as competition, it would be important to ensure a concern for diversity and inclusion in these new activities. In particular, the involvement of women, youths, *provincianos*, and indigenous leaders should be promoted.

Results: A less fragmented but more socially diverse political society, consisting of stronger networks and alliances around holding government accountable on common concerns, and a broader and more diverse set of potential leaders in the effort to restore political parties as effective checks and balances on central power. Furthermore, increased public recognition of the importance of political parties and the need to rebuild a working party system in this case. Dialogue and consensus building about legislative and other reforms that could help overcome party fragmentation.

Scenarios: If such activities are effective, USAID will have identified opportunities for influencing legislative and constitutional reform in this area, and candidates for inclusion in more traditional political leadership and party strengthening efforts when future opportunities emerge.

Similarly (and more so if opportunities for party development prove limited), USAID could identify counterparts for broader civil society strengthening activities, such as the promotion of a more enabling tax and regulatory framework, mechanisms of self-regulation, the promotion of national philanthropy, and the development of greater “sectoral identity” and collective action among nonprofits through peak associations (such as the Independent Sector in the U.S. or *Comunidade Solidaria* in Brazil) or alternative media networks (such as *Tercer Sector* magazine in Argentina or the virtual *Red de la Sociedad Civil* in Chile).

3. The Legislature

Problem: *Congress does not fulfill its formal role as a counterweight to the Executive and passes laws of questionable constitutionality that undermine the ability of other actors to engage in free and fair competition.* Furthermore, Congressional majorities elected in 1992 and 1995 did not respect the rights of the opposition minority, restricting competition of ideas and policy positions in this arena itself.

Constraints: The legislative branch is weak for a number of reasons, including the current election rules, the structure and criteria of representation, and the weak and transitory nature of the political parties represented in Congress. Furthermore, to date a disciplined and submissive pro-government majority has delegated its legislative initiative and authority to the Executive branch.

Opportunities: Despite its weakness, Congress has become a more modern and transparent organization over the last decade. Information on the voting record of legislators and contents of bills passed is now publicly available. Although the link between legislators and constituents is weak, there are mechanisms in the Constitution that allow civil society organizations and local governments to initiate legislation, or to propose a referendum on current policy concerns.

Furthermore, while the new government elected in May 2000 may have already pieced together a new congressional majority, there is no guarantee that the new majority coalition will prove as cohesive as was the case during the 1995-2000 period. Opposition parties hold a larger share of the seats in the new Congress and have greater public support than in 1995-2000. These are potentially encouraging developments. A larger and less fragmented minority could help to make the 2000-2005 Congress a more important forum for public debate, a sphere for new leadership development, a source of initiative for reform, and an institution that is at last capable of fulfilling its constitutional oversight functions. Members of government and some Congressional leaders have indicated a willingness to discuss reforms in existing electoral rules and in the size and structure of Congress. The litmus test of their sincerity will be measured in both legislative process and output: whether lofty declarations translate into policy and whether policy reflects a process of negotiation and compromise within the Congress and among branches of government.

Recommendations: In this uncertain context, *the Team recommends conducting a formal sector assessment for legislative strengthening and complementary civil society activities, after the new legislature is convened.* This need not be a lengthy effort, but should be conducted by legislative development experts from within and outside Peru. It should emphasize what strategic interventions can address the main problem of legislative autonomy and checks and balances on state power, rather than just the technical aspects of building the legislature as an institution. Such an assessment could be coordinated by a prestigious national university or prominent nongovernmental organization.

Regardless of the balance of power in the new Congress, the Team also reiterates the abovementioned recommendation of promoting debate about the merits and disadvantages of existing electoral rules and structures of representation. Such efforts could constitute important steps towards overcoming both political party and legislative weaknesses. Recent statements by officials regarding proposals to modify the electoral rules are encouraging signals in this regard, although it is too early to tell whether these pronouncements will translate into concrete legislative change.

Results: Increased public recognition of the importance of the legislative sphere, and greater consensus around an agenda of electoral and legislative reform. More specific legislative strengthening efforts would depend on the outcome of the assessment.

4. Mass Media

Problem: The principal problem in this area is that the *broadcast media and portions of the print media practice self-censorship to avoid government retribution*, although there has also been a worrisome increase in direct violations of press freedom and political harassment of independent media in recent years.

To date, press restrictions and self censorship have centered around such “taboo” issues as the structure and behavior of the Armed Forces and the National Intelligence Service, official corruption and human rights abuses, the legitimacy of President Fujimori’s third term, and the plans and programs of the other political parties and movements. Such limits on the full exercise of media freedoms inhibit the competition of ideas, distribution of information, and the ability of opposition candidates to get their messages to the public.

Constraints: Self-censorship is difficult to target with donor interventions, especially with those media that are poorly managed, financially vulnerable, in arrears on taxes and social security contributions, and/or are heavily dependent on government revenues. Current restrictions on foreign and national

investment in this sector, which some have cited as partially responsible for the weakness of the sector, would require legislative change, and more effective lobbying for such by the major media interests themselves. Effective regulation of public advertising requires greater political will on the part of the government.

Opportunities: International pressure can play a critical role in assuring greater respect for freedom of the press, and numerous international organizations have focused attention on the Peruvian case. The OAS has included restoration of press freedom, regulation of public advertising, and legislative changes to assure equal access to the media by all candidates during electoral campaigns, on its agenda of proposed reforms, along with the resolution of certain high profile media freedom cases.

For leaders of the political opposition and civil society organizations, there is freedom in selected sectors of the media, such as on cable TV, a number of radio stations and newspapers in the capital, as well as a variety of TV, radio, and print media in the provinces. Although there is room for improvement, it appears that many journalists have the basic skills to do good investigative reporting.

Recommendation: *The team recommends modest support for media “watchdog” organizations that can monitor the media, document violations of press freedom, track the use and abuse of public advertising, and maintain international attention on these issues. It also recommends enabling such groups, or other human rights organizations, to provide legal assistance for journalists or media owners embroiled in high-profile cases. A few organizations are already doing these activities on their own, and some receive funding from other donors. USAID and the U.S. Embassy’s PAS might be able to complement these efforts in strategic ways.*

5. Decentralization and Local Government

Problem: *Municipal governments are underfunded through direct revenue transfers and are overly dependent on Executive-level budgetary authority and decision-making. This situation undermines an important element of competition between local and central levels of government and thwarts what should be a system of institutionalized checks and balances to Executive authority at the local level.*

Constraints: Although established as a national objective in the 1993 Constitution, formal decentralization is stalled and incomplete, due in large part to a lack of political will on the part of the central government to promote relevant legislation. Among the most important constraints on the autonomy and effectiveness of decentralized levels of government are the following;

- The regional and departmental levels of government (the same since 1998) are not elected, but rather, they are appointed by and dependent on the Executive.
- Although there has been an increase in resource transfers to the local level, decision-making and budgets are concentrated in the central government;
- The National Mayors’ Association (AMPE) is not currently viewed as an effective instrument to promote municipal interests; and
- Other donors (e.g., GTZ) are waiting for greater political will and progress on decentralization before making investments in this area.

Opportunities: A number of initiatives at the municipal level have attempted to aggregate interests beyond single municipalities, such as in Piura, Cusco, Cajamarca and Huancavelica. Some have been supported by other donors, such as the Canadian International Development Agency in Piura. USAID's Alternative Development Program continues to work closely with AMRESAM (Regional Association of Mayors of San Martin), which has begun to operate as an intermediary that can provide technical assistance to municipalities and pool information, resources, and a common agenda with central government authorities.

Below the glare of the national spotlight, it may be more possible to advance democratic institutions and lay the groundwork for a democratic decentralization program. Decentralization is already on the agenda. The question is not *if* this will occur, but *when*, though there may be only be incremental progress in this area over the next five years.

Recommendations: Donor support could strategically advance this dimension of democracy in the absence of formal decentralization, and would help prepare regional and municipal governments for the responsibilities that will inevitably come upon them. In the current environment there is a need to support the following kinds of activities:

- Local and regional initiatives that contribute to greater local participation in decision-making, community development and strategic planning and technical assistance to create capacity for municipalities to generate their own resources;
- Technical assistance to regional mayors' associations to develop as institutions, advocate for municipal interests, such as decentralization, and potentially propose legislation; and
- National policy debate on the need to carry out a democratic decentralization effort (rather than mere "deconcentration" of responsibilities), and to address resource insufficiencies at the local level. In the latter case, there is a need to reevaluate current tax policies and central government transfer schemes as well as the generation of local revenues.

More specifically, and bearing in mind the resource limitations of the current D/G program, the Team recommends the following actions:

- a. Work with the USAID Alternative Development (AD) Program to consolidate the San Martin effort as a model of democratic local governance that can be replicated in other areas of Peru.* Despite the success that USAID has had in this region, there remain important questions of sustainability and inclusion. Before the Alternative Development Program moves out of San Martin, it is recommended that the D/G program collaborate with AD colleagues to strengthen the sustainability of this effort (e.g., through providing technical assistance to AMRESAM to assure its longer term leadership role, and through proposal of means for longer term revenue generation).

In this effort, USAID should also work with a broader coalition of regional actors in San Martin, in developing and implementing their Ten-year Strategic Development Plan. This plan has been written by a coalition of local and regional actors, led by five key institutions: AMRESAM, Chamber of Commerce, CTAR, Association of NGOs, and the Catholic Church.

Moreover, through this local governance effort in San Martin, it is suggested that USAID D/G use its knowledge and influence to *make the strategic plan more participatory, inclusive, and*

democratic, including greater outreach to the region's 180 indigenous communities who have had only minimal involvement in the development plan and in local government.

Finally, DG staff should support the writing, publication and dissemination of a well-researched case study of the local government initiative in San Martin and the lessons that can be learned by others, as a way of disseminating this as a model of democratic local governance.

- b. Support efforts to extend this model to other parts of the country.* Initially, this would be focused on the other coca-growing regions where USAID is present. If additional resources become available this might also include non-coca-growing regions. USAID should also use the opportunity of the Peru-Ecuador border initiative to apply some key approaches and lessons learned from the San Martin project.
- c. Stimulate national debate on the need for democratic decentralization and more local control of resources.* In this effort, D/G staff should use the experience of San Martin, as well as other successful models of local governance and regional association in such areas as Cajamarca and Ayacucho.

Results: Selected municipalities and regional mayors' associations (San Martin, Peru-Ecuador border region) are more autonomous, better capable of governing at the local level, and more effectively support competition and inclusion through decentralization.

D. Summary of Recommendations and Priorities

As mentioned at the outset, the above recommendations are not all of equal priority, and if they were all pursued simultaneously they would well surpass the annual resource limitations of the current D/G program. For this reason, the Team assigned them a relative order of priority, taking into account the three criteria of importance, impact, and USAID comparative advantage. To summarize, when these criteria are considered the following prioritization and rationale emerged across the recommendations:

No. 1: Justice and Human Rights. Justice and human rights interventions are critical to check and balance the current exercise of Executive power, and will figure prominently on any proposed agenda for democratic reform. The *Defensoría del Pueblo* and the *Coordinadora Nacional de Derechos Humanos* have proven themselves capable of tackling issues of impunity, monitoring government actions in this realm, and generating concrete reform proposals. Although other donors are engaged in this area, USAID can be critical both for its willingness to offer institutional development support and for the political protection U.S. support can provide. In turn, USAID gains a great deal of benefit from remaining involved in supporting these activities.

No. 2: Civil and Political Society. Stronger parties and interest associations that hold government accountable and allows for potential new leaders to emerge are essential for more effective democratic competition. Although the strengthening of "political society" takes on new urgency in the wake of the 2000 elections, the likelihood of impact in this area is more difficult to anticipate. While some of our proposed interventions build on ongoing support for civil society groups, the emphasis on dialogue about electoral and party reform is new. Since few donors are engaged in the area of parties and political representation directly, and the fragmentation of the sector is a critical weakness, USAID assistance here could fill an important void.

No. 3: The Legislature. Within the political system, the Legislature, together with the judicial branch, should serve as the principal checks and balances on the Executive. Given the composition of the new Congress elected in April 2000, and the increased public support for the political opposition, this arena could become a more important forum for policy debate and new leadership development. Given the current uncertainty and polarization, however, we recommend caution in entering into this arena, starting with a formal sector assessment for legislative strengthening and a preference for complementary civil society-based activities.

No. 4: The Media. Freedom of expression and the exchange of competing views and information are essential to check and balance arbitrary use and abuse of Executive power, as well as to enable competition to take place. The main drawback in the media area is that the practical recommendations on how USAID assistance could help are limited in their anticipated impact. Specifically, if a major problem is financial weakness of the broadcast media, and hence self-censorship to avoid government retribution, monitoring the media and providing support to journalists and media owners who are threatened and harassed would help to cope with the problem, but would not address the root causes. Some other donors are already engaged in this effort in a minor way, but given its overall importance USAID could make a real contribution by drawing national and international attention to the problem as well as contributing modest resources.

No. 5: Decentralization and Local Government. Local government has the potential to serve as a check against the abuse of executive authority by exercising its power as a decentralized unit of government. An arena in which new political leadership sometimes emerges, local government assistance also may serve to increase quality competition among politicians. Additionally, local government is attractive to donors because it lends itself to tackling inclusion issues – getting people more involved in democratic governance close to home, reinforcing democratic practices and attitudes.

However, the likely impact of USAID assistance to local government will be seriously constrained by the size of the current D/G program budget, and by the absence of real decentralization coming from the national policy level. While we recommend specific, low cost actions in this area within existing USAID programs and budget levels, we would only recommend expanding these efforts if more overall funding were available.

APPENDIX A

PERSONS INTERVIEWED

USAID/PERU

Thomas L. Geiger, Mission Director
Carrie Thompson, Chief, Office of Democratic Initiatives (ODI)
Violeta Bermúdez, Activity Manager, ODI
María Antonieta Delgado, Activity Manager, ODI
Sobeida González, Activity Manager, ODI
Peter H. Deinken, Coordinator, Alternative Development Program
Michael Maxie, Alternative Development Program

PERUVIAN GOVERNMENT (*)

Executive: Rizo Patrón Velarde, Cristina. Advisor to the Presidencia del Consejo de Ministros.

Congress: Carlos Torres y Torres Lara, Presidente de la Comisión de Constitución and former President of Congress; Beatriz Merino, independent Congresswomen and former head of the Women's Commission.

Jorge Santisteban, Defensor del Pueblo
Javier Aroca Medina, Jefe del Programa Especial de Comunidades Nativas
Jose Ignacio Távara, Defensor Adjunto para Servicios Públicos
Rocío Villanueva Flors, Defensora Especializada para Derechos de la Mujer

Indecopi: Dr. Beatriz Boza, Presidente del Directorio; Ernesto Franco Temple, Gerente de Recursos Humanos y Cooperación Técnica; Myluska Lavalette, Indecopi-Piura.

*The preelectoral context made it difficult interview more members of the Government, Congress or political party leaders. Numerous interviews were cancelled for campaign reasons.

NONGOVERNMENTAL ORGANIZATIONS -- LIMA

Agenda Peru: Francisco Sagasti, Director; Jorge Chavez Granadino, Investigador Asociado.
CEAS: Laura Vargas, Executive Secretary.
CEPRODEP: Isabel Coral, Director; Alfredo Valencia Pozo, Coordinador del Programa. Desarrollo
Local: Yanet Palamono Madueño, Coordinadora del Programa Género y Desarrollo.
CONFIEP: Roque Benavides, Presidente.
Coordinadora Nacional de Derechos Humanos: Sofia Macher.
Federación de Comedores Populares de Lima y Callao: Relinda Sosa, Presidente.
Foro Democrático: Blanche Arévalo.
Instituto APOYO: Gabriel Ortiz de Zevallos, Executive Director.
Instituto de Defensa Legal: Ernesto de la Jara, Director.

Instituto de Estudios Peruanos: Romeo Grompone, Carlos Ivan de Gregori, Martin Tanaka, Antonio Zapata (researchers).

Instituto Prensa y Sociedad: Jorge Salazar, Director; Jose Ugaz Sanchez-Moreno.

Sociedad Nacional de Industrias: Emilio Navarro Castañeda, President of the Executive Committee; Ramon Morante Cervera, Manager of Foreign Commerce.

Transparencia: Rafael Roncagliolo, Secretario General; Miriam Palomino Pareces, Representative.

MEDIA/JOURNALISTS

de Althaus, Jaime. Journalist and talk show host, Channel N (8); Columnist for *El Comercio* .

Diario El Comercio: Alejandro Miro Quesada, Director; Eduardo Carbajal Arenas, Editor General de Informaciones.

Lauer, Mirko, independent journalist and columnist for La República.

TV Cultura: Luis Jochamowitz, Carlos Cárdenas Tovar.

OTHER PERUVIANS

Coello Guevara, Javier. Partido por la Democracia Social (PDS), Compromiso Perú.

Lynch, Nicolas: Universidad Mayor de San Marcos.

Montes, Yuri. Comité de Agrupaciones Juveniles de Lima y Callao.

Tuesta Soldevilla, Fernando. Political Science Professor, Universidad de Lima, and technical advisor to the ONPE.

Obando, Enrique. Political scientist, expert on civil-military relations.

OTHER INTERNATIONAL REPRESENTATIVES

U.S. Ambassador John R. Hamilton.

Carter Center: Barry Levitt, Field Representative for 2000 Elections.

Canadian International Development Agency (CIDA), Ivan Roberts.

GTZ: Peter Luhmann.

National Democratic Institute: Luis Nuñez, Field Office Director.

INTERVIEWS IN PIURA

CIPCA: Maria Isabel Remy, Directora; Bruno Revesz.

Diaconía para la Justicia y la Paz, Arzobispado de Piura y Tumbes: Eva Boyle, Director; Marita Orbegosos Alvarez, Director of Youth Training Program and Professor, Universidad Nacional de Piura; Julio C. Castro, Co-director of the Youth Training Program, Doctor of Psychiatry, Centro Medico San Sebastian, Piura; Alejandro Silva Reina, Lawyer and Director of Training Program for Justices of the Peace, Piura.

Helguero de Plaza, Luz María. Director, *El Tiempo*, Piura daily newspaper .

Joo Change, Alberto. Executive President of the Consejo Transitorio de Administración Regional (CTAR), Piura.

INTERVIEWS IN TARAPOTO

Asociación de Municipalidades de la Región de San Martín (AMRESAM), Tarapoto: Consuelo Rivera, Executive Secretary; Cesar A. Delgado Pizarro, Responsable de Capacitación; Hugo Sanchez Mercado, Ingeniero y Supervisor de Obras; Rufu Nuñez, Economista – Planificador.

Centro de Desarrollo e Investigación de la Selva Alta (CEDISA), Tarapoto. César Rengifo, Coordinador Regional; Max Rengifo, Programa de Desarrollo Local.

Centro de Estudios y Promoción Comunal del Oriente (CEPCO), Tarapoto. Teócrita Pinedo Arévalo, Director.

Jaime Doherty, Director of Bilingual Education, Universidad Nacional de San Martín.

Toribio Amasifuén Sangama, Presidente, Federación de Pueblos Indígenas Kechwas de la Región San Martín, “Fepikresan,” Lamas, San Martín.

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