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AN ASSESSMENT OF THE MINISTRY OF LABOR OF EL SALVADOR

U.S. DEPARTMENT OF LABOR/
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

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EXECUTIVE SUMMARY: KEY FINDINGS AND RECOMMENDATIONS

GENERAL

Key Findings:

- El Salvador's Ministry of Labor (MOL) has traditionally been one of the weakest and least funded agencies within the Government.

- Although some modifications in both the Labor Code and Organic Law are necessary to deal with modern economic realities, the labor laws and regulations are generally adequate and on a par with other countries of the region. The Ministry of Labor's insufficient capacity to enforce labor laws and regulations have contributed to an environment in which there have been historically poor relations between labor and management, weak enforcement of wage and hour laws, and in which workers are forced to endure poor working conditions while not being accorded internationally sanctioned worker rights.

- El Salvador retains a bureaucratic structure and culture unsuited for dealing with contemporary labor problems. Virtually no emphasis is placed on contemporary labor issues such as efficiency, productivity, innovative approaches to labor-management relations, and the development of a globally competitive workforce.

Recommendations:

- The mission of the Ministry must be more sharply defined and focused on the enforcement of fundamental worker rights, the enforcement of labor law, the promotion of cooperative labor-management relations, and worker training and education.

- The Ministry should strengthen its Planning Department and give it a prominent role in conducting research, developing policy options, and assisting the Minister in shaping policies and programs.

- The Ministry of Labor must develop stronger ties and an improved dialogue with other agencies within the Government of El Salvador, as well as with private institutions and international donors, in order to assure adequate budgetary support and to carry out its mandated functions.

- The Minister should appoint an immediate assistant--or use the legal advisor's office--to insure that all policies and programs are administered properly and are within the law.

- The MOL should develop a program to educate workers about their rights. Basic worker rights should be posted on plant walls alongside the plant regulations that govern working conditions.

- The Ministry should provide the public and trade unions information on industrial safety and health, wage and hour rules, and other worker rights. Such a program could be carried out at a relatively low cost through radio, television, and newspaper messages, as well as other means.

ADMINISTRATION AND MANAGEMENT

Key Findings:

- The Ministry's ability to effectively formulate and implement policies and programs is severely limited by a lack of political support. The business community is skeptical of the Ministry's ability to impartially promote fair and equitable labor relations. Organized labor, in turn, claims that the Ministry neither defends the rights and interests of labor nor adequately addresses the nation's outstanding labor problems.

- The present structure of the Ministry is cumbersome and somewhat incoherent. The organizational chart shows the Ministry to have 71 units--an immense number for a 400-450 person organization. Program units function independent of each other and overall policy objectives are not clearly defined.

- Ministry salaries are the lowest in the Salvadoran government, and the low wages are a major obstacle to the effectiveness of the ministry. Real wages today remain at the same level they were at in 1981.

- Morale and self-esteem within the Ministry are extremely low. Qualified personnel routinely choose to work in private industry or better-paying government agencies.

- The physical facilities of the Ministry are antiquated and unsuitable and often obstruct or hinder employers from properly carrying out their mission. Typewriters, telephones, chairs, and desks are often 40-50 years old. Essentials of the modern office such as fax machines, copying machines, and computers are available only to high-level ministry officials.

Recommendations:

- Improved effectiveness depends on the Ministry having better

trained, better paid, and better treated personnel. Over the long-term, salaries of professional staff must be raised to the level of comparable personnel in other government agencies.

- The Ministry's administrative structure should be simplified and centralized. A few large, responsible, empowered offices could operate more effectively and efficiently than the current myriad of small offices. This may result in the elimination of some offices, though not in the loss of any functions deemed necessary.

- The Ministry should provide ongoing education for Ministry employees on the Constitution, Labor Code, Organic Law, and other regulations, as well as in-depth information on current labor policies and issues and instruction on new techniques and methods. A permanent staff to accomplish this objective is not needed; this could be done by outside experts. To insure that employees take this seriously, attendance and absorption of material should be taken into account for evaluation and promotion.

- To operate more efficiently, the MOL needs better office and conference facilities, more vehicles, and equipment such as chairs, desks, telephones, computers, etc.

- MOL staff in the capital should be consolidated into one building. The number of regional offices should be increased and staffed to better serve the needs of the regions.

ADMINISTRATION OF LABOR LAW

Key Findings:

- The long and complicated administrative process for registering and recognizing unions in formation by the Ministry exposes organizers and members of newly created unions to immediate reprisals by management. Legal protection for organizers does not take effect until after the Ministry has officially granted recognition(which commonly takes up to 12 months.)

- While the Constitution guarantees the right to bargain collectively, the practice of collective bargaining is limited.

- Trade union activists in El Salvador do not enjoy full legal protection from arbitrary dismissal for union activities. Laws in place that accord protection to trade union leaders and workers are not regularly enforced.

Recommendations:

- The Ministry's procedures for registering and recognizing unions in formation must be streamlined to facilitate and not hinder the process. The process should not be unnecessarily prolonged for bureaucratic purposes, which often results in collusion between Ministry officials and Employers.

- To further strengthen the Labor Code with respect to the right to organize, the MOL should seek to bring labor standards to the levels prescribed by ILO Conventions 87 (Freedom of Association), 98 (Right to Organize and Bargain Collectively, 135 (Protection of Workers Representatives), and 151 (Right of Public Sector Workers to Organize).

TECHNICAL TRAINING

Key Findings:

- The GOES has appropriately responded to the politicization, and poor performance of the Ministry of Labor's Formacion Profesional program by creating an autonomous, national training institution, INSAFORP.

- The tripartite structure and role of INSAFORP as a policy-making, standard setting, and coordinating institution as prescribed in Decreto 554 are entirely consistent with the ILO and World Bank views regarding national, non-formal training institutions. At the same time, ILO and World Bank policies on this subject also suggest that in the case of Salvador it would be appropriate for INSAFORP to finance training, but not to deliver it directly.

- Through the payroll tax, the amount of government revenues available for Formacion Profesional will jump dramatically. Experience has demonstrated that few of these national training institutions are able to manage these funds well.

- The leadership of INSAFORP--representatives of the private sector, government, and organized labor--agree unequivocally that the paramount role of INSAFORP should be to coordinate, facilitate, evaluate, and assist the technical training now provided throughout El Salvador by other private and public training institutions, rather than compete with them in the provision of training.

- Private training institutions in El Salvador are considered to be of relatively good quality and have training costs far less than INSAFORP's, as concluded in a recently financed USAID/El Salvador education sector assessment.

- Fears of other training institutions that INSAFORP will become a large, ineffective deliverer of training, like many other national training institutions in the region, are well justified given the large amount of resources INSAFORP will have at its disposal.

- The three year operating plan formulated by INSAFORP and the GTZ rightly places a priority on developing the policy functions of INSAFORP. This plan represents a sound strategy for creating a first rate training institution that will respond to the needs of the national economy, employers, and other training institutions.

- INSAFORP has yet to determine its financial and staffing needs, within the context of its projected income. Such an analysis is an integral part of any institutional effort to manage resources efficiently.

- The Executive Director of INSAFORP appears well qualified for the challenge before him. Moreover, he is sensitive to the concerns of other training institutions and has committed INSAFORP to develop and maintain strong linkages with them and the employer community.

Recommendations

- INSAFORP should <u>not</u> provide any training directly. Instead, INSAFORP should contract out training to other organizations in order to: maintain a maximum degree of flexibility in responding to national training needs; minimize its fixed training costs, and; retain the high quality of training provided today by most private training institutions. Accordingly, INSAFORP should contract with FEPADE to serve as the major training broker of El Salvador, a role it has successfully played since 1987.

- INSAFORP should concentrate its efforts on developing a capacity to set general training policy for the country, coordinate training, provide technical assistance to other training institutions, and develop formal linkages with the business community as these functions, unlike training, are not being carried out on a national level by any organization in El Salvador.

- The leadership of INSAFORP should set as a priority the creation and maintenance of a streamlined, efficient, and accountable national training institution. Attaining such a structure will require INSAFORP to hire a strong management team and establish a modern system of accountability and cost control.

- INSAFORP should immediately conduct a number of financial

analyses of its projected revenues and needs, in terms of staff and other expenses. Such an analysis is a critical first step in the effort to create a sustainable and cost-effective INSAFORP. The analyses should reflect a number of different scenarios ranging from the least optimistic to the most optimistic projections of income.

- INSAFORP should immediately establish a national committee of representatives from other public and private non-formal technical training institutions to provide a steady source of feedback to INSAFORP so that it can better fulfill its principal role as training coordinator, evaluator, and provider of technical assistance. This committee would also address the role that INSAFORP should play as a financier and broker of training.

- INSAFORP should immediately establish a national committee of representatives from all sectors of the business community--industrial, agricultural, financial, commercial, and service--to advise INSAFORP on the priority training needs of the national economy. Similar inter-sectoral committees should be subsequently established in several local labor markets to obtain more precise information on the training needs of communities outside San Salvador. These employer committees, as well as the national committee of training institutions, should meet at least monthly.

- As a policy, INSAFORP should require all institutions with whom it contracts for training to charge a fee to those participants able to pay. Were INSAFORP to allow its contracted institutions to provide free training to everyone, such a policy would threaten the existence of many private training institutions which must rely on training fees for a substantial portion of their income.

- INSAFORP should conduct a financial analysis to determine the most efficient way to utilize its large training facility and mobile training units. Such an analysis should consider either privatizing those training assets or leasing them out to other private institutions.

- INSAFORP should immediately utilize its instructors to develop new curriculum, set training standards, and formulate a certification system; consistent with the recommendation to have INSAFORP serve as a training broker, these instructors should not conduct classes directly for INSAFORP, but rather play a supportive technical role for other training institutions in El Salvador. In a resource-scarce environment such as El Salvador, it is unconscionable to have a number of publicly paid, full-time instructors sitting idle as they are in INSAFORP.

EMPLOYMENT FACILITATION

Key Findings:

- It is not clear whether the DEA is cost-effective as currently structured, especially the San Bartolo office.
- It is not clear why the apprenticeship program is administered by the DEA instead of by INSAFORP.
- The DEA provides only the most basic services to its unemployed and underemployed clients.
- The DEA has no established relationship with any formal or non-formal training organization, not even INSAFORP, which is housed in the same office building as DEA.
- The lack of additional telephones and a personal computer in the San Bartolo office, and the lack of available transportation for staff of the regional offices, clearly has an adverse effect on DEA's efficiency and effectiveness.

Recommendations:

- The MOL should fund a tracer study of placed and unplaced registrants to determine whether the unemployed are placed faster and in better jobs with assistance from DEA than on their own. The results of this study would help the Ministry decide the extent to which the services of the DEA are cost-effective, or even necessary.
- The MOL should seriously consider transferring the work of the DEA to INSAFORP to guarantee the integration of training with employment. This should be considered regardless of whether the DEA is found to be cost-effective. Through its established linkages with employers and other training institutions, INSAFORP could provide timely information on employment opportunities to all participants of training programs in El Salvador. Such action would also save the Ministry about ¢800,000 ($90,909) annually, money which could be dedicated to higher priorities of the Ministry, such as the enforcement of labor law and the improvement of labor-management relations. At a minimum, the MOL should transfer the DEA's apprenticeship program to INSAFORP as the nature of the program is more closely related to the training and apprenticeship activities of INSAFORP.

Regardless of whether the functions of the DEA are transferred to INSAFORP, it is recommended that:

- Formal linkages should be established between the employment service and all nearby non-formal training institutions to exchange information regularly about the skill needs and employment needs of businesses, to help job seekers receive appropriate training and to provide training graduates with additional links to the employer community.

- The DEA should expand the number of services that it offers job seekers to include referrals to appropriate training programs, and assistance with resume writing, completing job applications and preparing for job interviews. These services should be provided by existing staff.

- The MOL should add several telephone lines to the section of the DEA responsible for job promotion to enable promoters to contact employers directly from the office. This would greatly expand the number of job vacancies identified by promoters, increase placement rates, lower per placement costs, and enhance the overall efficiency of this function.

EMPLOYMENT STANDARDS

Key Findings:

- There is a severe shortage of all office equipment -- chairs, desks, calculators, typewriters (electric or manual), filing cabinets, etc. Inspectors do not have their own desks and are forced to share one table that is too small to accommodate all of them simultaneously. There is no copying machine. Pens and paper are not always available. The letterhead has been reproduced so often that it is unreadable.

- The Director of Inspection of the MOL has the experience and knowledge needed to plan and carry out a comprehensive program of inspections on a national scale, if provided with the resources recommended above.

- There is no formal training for inspectors. Typically, one inspector is selected to train new trainees and gives them small informal classes, reading assignments, and exams. After nine months of such training, the trainee accompanies the inspector on several inspections. The trainee is then "kicked out of the nest" and graduates to inspector.

- There is no in-house educational program in which inspectors or supervisors can conduct lectures or seminars for the public about aspects of the labor laws. This apparently was once done, but was discontinued many years ago.

- The requirements concerning record-keeping are not well explained in the Labor Code. There is no requirement stipulating that either records or time cards must be kept; nor is there a time limit on how long records must be kept.

- Inspectors need office space. Inspectors are unable to meet with the supervisors in private. Even the Directorate General's office is noisy. Current offices are decrepit, and coordination with other offices is difficult.

- Corruption is rife in the inspection service, and supervisors are aware of this problem. It is not uncommon for inspectors to take small gifts from employers (food, shirts, etc.). More significantly, inspectors are purported to sometimes make blatant requests for cash for quashing a complaint and not enforcing the worker's rights. One source in the inspection service estimated that a payoff is made in one of every three inspections.

- There are no publications or other pieces of literature that provide employers, employees, or the public with information on their rights or on compliance with the laws.

Recommendations:

- The Ministry of Labor needs more labor inspectors. Labor law enforcement is absolutely critical to achieving fairness and justice for workers, and inspection is the key to enforcement. A well trained, adequately staffed, and qualified inspection corps, with <u>real</u> powers of enforcement can in and of itself enable El Salvador to turn the corner in establishing a fair and equitable labor system governed by law.

- The Ministry should initiate a formal training program for labor inspectors. Trainees should be taught the details of the Labor Code and Organic Law and its application to inspections. In addition, trainees should receive a substantial amount of practical training in negotiating with employers, conducting inspections, and resolving grievances in a timely manner. It would be useful for all inspectors to receive annual instruction in ethics.

- Inspectors' pay should be increased. The current wage--¢2000/month ($227.27)--is too low to attract employees who will stay in the long term. Employees are not reimbursed for local travel, and the ¢215/week ($24.43) paid for travel outside a 40 km. area does not even pay lodging. Reimbursements are currently (December 1993) being paid for out of pocket expenses incurred in June of 1993. This is a major reason why inspectors turn to corruption.

- Fines and Penalties must be increased. Current fines do not deter violators: the maximum fine of ¢500 is approximately a little more than $57 US. Fines should be in some proportion to the cost of living in El Salvador. This would result in a penalty range from approximately ¢2000 to ¢20,000 ($230-$2300).

- The industry and commerce department needs at least ten additional inspectors, especially agriculture inspectors in Santa Ana and San Miguel.

- The Department of Inspectors needs at least 7 more vehicles. Vehicles should be permanently stationed in Santa Ana and San Miguel for agricultural inspectors, and another should be assigned to the agriculture section in San Salvador. Many ministry vehicles were burned or destroyed during the war. Only three vehicle are currently assigned to the inspectors, none to the Agriculture Section.

- The Ministry should have a Labor Solicitor to prosecute cases suitable for litigation. Several positive outcomes in the courts would send a clear message to employers. This would require a change in the law and or the code. It currently takes 6 to 8 months for a case to be heard after the complainant takes it to the Procurador's Office.

LABOR STATISTICS

Key Findings:

- The MOL's Department of Statistics is a weak and marginalized office within the ministry as reflected in its physical isolation in San Bartolo, limited professional staff, and lack of telephone line and vehicle.

- The main product of the Department of Statistics, a monthly survey of business establishments, is considered to be of generally poor quality, the main deficiency being its reliance on data from a 1971 economic census. The cost of this survey is also expensive given its frequency, and the large amount of data entry and computing work that must be performed manually.

- The most useful component of the survey is the detail of information it provides on the status of organized labor in El Salvador.

- The collection, analysis and publication of internally generated MOL data by the Department of Planning is an important function within the Ministry, and is relatively well executed.

- There are several other government agencies, such as the Ministry of Planning and Ministry of Economics, and one NGO, FUSADES, that conduct surveys similar to those of the Ministry of Labor. These surveys are generally considered superior in quality and reliability to the MOL survey.

Recommendations:

Short Term

- The MOL's Department of Statistics needs a microcomputer. An expensive, powerful model is not needed. Using only a spreadsheet program, the data processing portion of the survey could be automated, resulting in a substantial savings in time and labor.

- The Department should be physically located with the Department of Planning (discussed below). In fact, the two Departments could probably be merged, since many of their tasks overlap. Ideally, the department would be located at or near the Despacho of the Minister, or perhaps a location convenient for the surveyors.

- An examination of raw data shows that employment and wages tend not to vary much from month to month. Consequently, it is probably not necessary to survey each establishment every month. Bimonthly or quarterly surveys are probably adequate. Establishments could surveyed on a staggered basis, as is done in a number of surveys in the U.S. The savings derived from this type of survey could be applied to either increasing the sample size or improving its quality.

- Labor-related statistics from other sources, such as the Consumer Price Index and the unemployment rate, should be added to the "Estadisticas del Trabajo" report issued by the Ministry. Such information would make the report into a more complete compendium of labor-related information.

Long Term:

- In 1992 an ILO expert visited the Department and generated a proposal for a United Nations program to improve the statistical efforts of the MOL. The proposal, which the Department chief feels is still timely, was ultimately dropped. Perhaps the proposal could be revisited.

- Another economic census is scheduled for 1994. Once completed, it is imperative that the employment survey be updated using its results. This updating will likely require some technical assistance.

- It is possible that the Department of Statistics would be better off being transferred entirely to one of the other statistical offices in GOES. Examples would be the economic survey group in the Economics Ministry or the survey group in the Planning Ministry.

LABOR-MANAGEMENT RELATIONS

Key findings:

- The lack of respect and trust for the MOL on the part of labor and management has resulted in the Ministry being bypassed. Disputes are dealt with either by the parties directly or by the labor courts.

- Trade union leaders tend to lack an understanding of modern approaches to labor-management cooperation. This is due in large measure to the failure of the Ministry to promote a national labor education program.

- The Ministry's role in resolving labor disputes is severely hampered by:

  -- a shortage of staff, including a permanent director;
  -- a lack of appropriate conference facilities in which to conduct meetings and negotiations; and
  -- a lack of general knowledge about alternative methods and criteria for resolving disputes.

Recommendations:

- Conciliation, mediation, and arbitration should be privatized. Instead of having these function performed by Ministry officials, the ministry should certify individuals. When labor intermediaries are needed, labor and management would agree on an individuals drawn from a roster containing all qualified intermediaries. Labor intermediaries would most likely be lawyers, academics, independent professionals, or persons with experience in collective bargaining. Payment would be made by the Ministry. The Ministry would also review outcomes, but only to insure that outcomes fall within the boundaries of the law.

  The creation of an independent mechanism would depoliticize the role of labor intermediaries while at the same time freeing the Ministry to take a more active role in the activities it ought to focus on first and foremost -- developing national labor policies and effectively enforcing labor laws and regulations.

The Labor Minister should aggressively continue its ongoing efforts to work with business and labor representatives to formulate of policy, guidelines, standards, and new ideas in industrial relations geared to modernizing El Salvador's economy.

A specialized labor-management service, outside the MOL, should be established. This service would educate trade union officers and advisors, as well as employers, about basic aspects of production and the distribution of goods and services in the new environment of international and regional open markets. This training would include issues such as productivity, efficiency, market economics, competitiveness, the proper use of resources, environmental protection, and other concerns.

The actual education and training programs could be established and implemented by private organizations duly approved by the MOL. The educational and training activities would be financed from private sources, regional or international organizations, and/or special government funds provided by this specific purpose.

The MOL's role, in additional to promoting the corresponding training and education programs, would be limited to setting standards and insuring that they conform with the main objectives of the government's labor policy of protecting worker rights and raising the standard of living of workers in general.

A bipartite advisory committee should be established by the Ministry to assist the minister to periodically evaluate the progress achieved and suggest changes to be introduced in the content and development of the program.

Non-governmental organizations (NGOs) can complement the MOL's activities in this area. Because of the inherent disposition of labor and business to distrust government involvement in the resolution of labor issues, the Ministry should coordinate its efforts with NGOs. NGOs can provide instruction on collective bargaining, dispute resolution at the company/plant level, conciliation, mediation and arbitration, and economic and social research relating to international trade, productivity and wage policies.

NGOs that promote better labor-management relations should actively encourage greater participation by government, labor, and the business community. These groups, in turn, must allow the NGOs to maintain a neutral posture.

INTRODUCTION

Labor relations have been troublesome throughout El Salvador's history and labor issues have never been satisfactorily addressed. While some Salvadoran governments have shown an interest in addressing the country's many outstanding labor issues, even the most progressive governments have been unable to combine sufficient political will and interest with the capabilities needed to address these issues. As with most countries of Central America, El Salvador has always had a highly stratified society in which business interests have traditionally dominated those of labor.

El Salvador's twelve year Civil War, from 1980-1991, further complicated the state of labor relations and created a host of new labor problems. On the one hand, the war precluded any opportunity for dialogue between business and labor and set back the role of the Labor Ministry for over a decade. On the other hand, however, the peace accord that ended the war and the subsequent discussions on National Reconstruction provided what may well be the best opportunity in El Salvador's history for restructuring the Labor Ministry, promoting better labor-management relations, and generally upgrading the conditions under which El Salvador's labor force has traditionally had to endure.

Although some modifications in both the Labor Code and Organic Law (the administrative law under which cabinet ministries operate) are necessary to deal with modern economic realities, the labor laws and regulations are generally adequate and on a par with those of other countries of the region. However, El Salvador today has an insufficient capacity to enforce labor laws and regulations, which has contributed to workers not being accorded internationally sanctioned worker rights, poor working conditions, limited enforcement of wage and hour laws, and historically poor relations between labor and management.

Since the end of the war in 1991, the Labor Ministry has been forced to deal with a far larger array of problems then ever before, with a budget and capacity to act that is extremely limited and incapable of achieving the mission with which it is charged. The Ministry today carries little weight either within or outside of the government. Employers and employees alike regard the Ministry as biased and ineffective. Added to this, the Ministry is beset by inadequately trained personnel, an insufficient number of professional staff members, inadequate and outdated facilities, low salaries, and poor morale.

Workers in El Salvador badly need a labor ministry that helps enable them to enjoy fair treatment under the law. The labor ministry today is weak, unfocused, and poorly equipped for this task. The role of the ministry must be far more sharply focused on two central objectives: enforcement and education. It is not the

ministry's job to fight labor's battles; it is its job, however, to insure that workers be allowed to play on an even playing field. A viable, adequately funded and staffed ministry can insure that workers are accorded their rights under the law and the proper training needed to create a modern, productive, and strong economy. A trained and well treated workforce can play a highly constructive role in creating economic growth and development.

I. ADMINISTRATION AND MANAGEMENT

Robert Shepard

El Salvador's Ministry of Labor has traditionally been one of the weakest and least funded agencies within the Government. Over the past decade, resources allocated to the Ministry decreased substantially, further weakening it. As a result the Ministry lost much of its ability to perform the functions assigned to it in the Labor Code and its Organic Law. While the Ministry has, in the past year, initiated several efforts to modernize and improve its capabilities and services, the Ministry requires substantial resources to address the enormous number of serious labor problems in El Salvador today. The Ministry currently has an insufficient capacity to enforce labor law, promote labor-management cooperation, conduct in-house staff training, collect labor information, upgrade occupational safety and health, safeguard worker rights, or initiate new human resources development programs or projects.

A. Office of the Minister of Labor

The Labor Minister plays several roles. He consults with the President on labor issues, initiates national labor policies, and is responsible for the functioning of the Ministry of Labor. Limited funds and limited technical and professional resources, however, make it extremely difficult for the Minister to effectively execute his assigned responsibilities. Compounding these problems is a political atmosphere shaped by a ten-year civil war, which has exacerbated an already hostile relationship between business and labor.

The Minister's ability to effectively formulate and implement policies and programs is severely limited by a lack of strong political support. The business community is skeptical of the Ministry's ability to impartially promote fair and equitable labor relations. Organized labor, in turn, argues that the Ministry neither defends the rights and interests of labor nor adequately addresses the nation's outstanding labor problems. While it appears that the Government has shown a greater interest in labor issues this year than before, it is unclear whether this interest will endure and result in greater support for the Ministry.

B. Organizational Structure and Procedures

The organization and functions of the Ministry of Labor are spelled out in the Organic Law, approved by Legislative Decree No. 455 on November 27, 1963. The Labor Code, approved by Decree No. 15, July 23, 1972, refers neither to the bureaucratic organization nor the functions of the Ministry. The Labor Code was amended in 1985 and left the administrative function intact as presented in the organic law.

At present, both the labor code and the organic law under which the Labor Ministry operates are outmoded. The present structure of the Ministry is cumbersome and somewhat incoherent; the various program units function independent of each other and do not necessarily conform to an integrated policy process. For example, Article 1 of the organic law identifies a number of objectives, including a) harmonization of labor relations; b) insuring compliance of labor standards; c) promoting the technical, economic, moral, and social well-being of worker, and other objectives as prescribed by the labor code and other laws and regulation as appropriate. These objectives are somewhat outdated in that they do not expressly recognize the Ministry as the principal agency responsible for formulating and executing national labor policy in such areas as employment, vocational training, and wages. In addition, the organic law does not designate the Ministry as the agency primarily responsible for promoting the tripartite and bipartite consultative mechanisms necessary to expand the scope of labor/management relations.

> Note: As this paper is written, parliamentary discussions are underway to change both of these codes. If the new code and law are passed, the ministry will be saddled with a greater number of responsibilities and requirements, for which it presently does not have the resources available to address. should these codes be adopted, a general restructuring of the Labor Ministry and its programs would be necessary.

The present structure of the Labor Ministry reflects the outmoded Organic Law as well as an approach to labor problems and issues that have been rendered largely obsolete. In a world where labor ministries must deal with problems such as efficiency, productivity, innovative approaches to labor-management relations, and other approaches designed to develop a globally competitive workforce, El Salvador's Ministry retains an antiquated bureaucratic structure and culture unsuited for dealing with contemporary labor problems.

C. Personnel

The ministry currently has 450-500 workers on it payroll, of which approximately 400 work in San Salvador and the others are assigned to two regional offices. In 1990 the Ministry had 750 employees nationally. The reduction in personnel was effected as part of a government-wide early retirement scheme designed to reduce expenditures. The reduction in force caused many of the ministry's most experienced officials to depart. To date, the ministry has failed to fill the slots with persons whose profession abilities are comparable to those who left. An internal audit in 1985 showed that 35 ministry employees had a university degree or higher; a current estimate is that the number of professionals in the ministry is about 50. A substantial percentage of ministry workers appear to be high-school or college students whose service may well be of short-term duration. Most ministry employees have Civil Service status, though one key category of employees, the labor inspectors, work under a distinct program.

Ministry salaries are the lowest in the Salvadoran government, and the low wages are a major obstacle to the effectiveness of the ministry. El Salvador does not have a government-wide pay scale and pay scales differ in each cabinet agency. Because of the Labor Ministry's low status within the government, ministry workers are the lowest paid of any government agencies. Real wages today remain at the same level they were at in 1981. Because of the low salary levels, the ministry has had a difficult time hiring or retaining well trained professionals. The labor inspector corps, for example, has been unable to find a qualified attorney. Many recent graduates and young employees use the Ministry as a first job to gain experience needed to obtain other positions. As a result, morale and self-esteem within the Ministry is extremely low. Qualified personnel routinely choose to work in private industry or better-paying government agencies.

Should a new labor code be passed, and/or a new organic law, the current staff would be incapable of enforcing it.

D. Facilities

The physical facilities of the Ministry are antiquated and unsuitable and often obstruct or hinder employees from properly carrying out their mission.

The physical plant itself is a major obstacle to efficiency and productivity. Since the 1986 earthquake, ministry staff in San Salvador have been based in two dilapidated and overcrowded downtown buildings, while high-level Ministry officials occupy a third building in a residential neighborhood several miles away. Officials are thus required to shuttle between buildings.

Office interiors are grim. Ministry offices are typically furnished with World War II-era typewriters, backless chairs with disintegrated seat cushions, file cabinets that don't close, and out-of-date telephones that may or may not function. one would more commonly find in an antique store. Essentials of the modern office such as fax machines, copying machines, and computers are available only to high-level ministry officials.

Space is scarce: the entire Ministry has but one small conference room, and when conducting negotiations, seminars, or other meetings it is forced to use local schoolrooms or other nearby facilities.

The Ministry has few vehicles available for use by employees. This severely hinders the ability of labor inspectors to perform their task.

The decrepit physical facilities impede efficiency and effectiveness, contributes to poor morale, and a sense of inferiority when compared to other government agencies and those businesses that the Ministry is supposed to regulate.

II. ENFORCEMENT OF LABOR LAW

Peter Accolla and Danilo Jimenez

The intensity of Ministry efforts to enforce labor law over past decades has been uneven. Workers' right to organize has not been properly protected; the use of collective bargaining has been erratic; it has often been alleged that the Ministry has been derelict in promoting and protecting union registration; and the right to strike has been very unevenly protected both in law and practice. For the Ministry to effectively enforce labor law, it must gain the confidence and trust of both workers and employers, in its role as impartial arbiter of disputes in safeguarding basic worker rights, and it must have the resources.

Since fair rules of play are integral to democracy, the ministry should insure that both parties trust the Ministry to

guarantee a level playing field. To accomplish this, direct participation of labor and management in discussing and resolving issues is critical to the proper operation of the Ministry.

It is therefore the role of the Ministry to insure that the process operates with fairness and freedom for both sides. This means insuring that neither side imposes outcomes on the other. Solutions should be jointly arrived at by the parties.

A. Protection of the Right to Organize

The right to organize and bargain collectively is provided for in Article 39 of the Constitution and Article 269 of the present labor code. Under the labor code, only private sector workers can exercise this right, but the Constitution is interpreted broadly to extend the rights to all workers.

The office of the Direccion General de Trabajo of the Ministry of Labor is responsible for overseeing the implementation of collective bargaining agreements and acts as a conciliator in labor disputes arising in the private sector and in autonomous government institutions. The Ministry of Labor appears to be more successful at resolving individual workers grievances than at resolving cases involving trade unions or other organizations.

In practice, however, employers do not seek the assistance of the ministry in resolving disputes and prefer to reach agreement in direct dialogue with workers and selected unions.

The relationship between the business community and organized labor is marked by distrust and their general low esteem for the ministry, which precludes an effective tripartite dialogue and resolution of disputes.

Trade union activists in El Salvador do not enjoy full legal protection from arbitrary dismissal for union activities. Laws in place that accord protection to trade union leaders and workers are not regularly enforced.

B. Registration of Trade Unions

For a union to receive legal status, it must be registered with the Department of Social Organization of the MOL. In order to be registered the following steps must be taken:

1. The leadership of the union must call a general meeting of those interested in forming a union to approve by-laws and elect officers. The law requires that a representative of the Labor Ministry be present at the meeting to verify that the procedures conform with legal provisions.

Alternately, the unions may request the presence of a public notary, whose function is similar to that of the Labor Ministry representative.

2. Once approved by the membership, the minutes of the general meeting are submitted to the Department of Social Organizations of the Ministry of Labor. The latter may decide to confirm that the names of the leadership and founding members of the union mentioned in the minutes are actually employed in the firm. In order to accomplish this task, the Department of Social Organization generally requests that the firm provides its payroll records. The firm is given 5 days to comply; in cases where the firm refuses to comply, the Minister may obtain the records by any other means, such as through the Social Security Institute of El Salvador.

3. Simultaneously, the draft bylaws are submitted to the Office of the Minister for his review. The Minister has 30 working days to comment on the content of the bylaws. If the bylaws are determined not to be in compliance with the spirit and letter of the law, they are returned to the union president for correction.

   The union is given 15 days to incorporate the Minister's comments and suggestions in its bylaws and reapproved by the union membership accordingly. Once the bylaws are sent back to the Ministry, the Minister has 30 days to issue his official approval of the union's bylaws in the form of an administrative decree, after which the Department of Social Organizations registers the union as a duly constituted trade union organization.

   It is the approval of the bylaws--not the minutes of the organizing union meeting--that leads to full legal status for the union in question.

   Union locals and sub-union chapters are not required by law to submit separate bylaws, as they officially exist and operate under the parent union organization.

Once legally recognized, the certified union is listed in the Ministry's official registry of trade union organizations. The registry is supposedly kept current by the Ministry staff on the basis of periodic reports submitted by the union, required by law, that note any changes in union leadership and organizational status.

The registration and approval process appears to be frequently subjected to political influence, which often results in unnecessary delays or actions that indefinitely postpone recognition.

firm;

-- the union's proposal to negotiate has been submitted while the current collective bargaining agreement is still in force.

5. Once the employer has rejected the union's demands for negotiations, the request is reintroduced to the Director General who has three days to issue a decision as to whether the employer has good grounds for his position.

   If the Director General rules in favor of the union, the matter is automatically referred to conciliation (a mandatory step).

D. Oversight of Right to Strike

Legally, only private sector, non-agricultural workers have the right to form unions and to strike in El Salvador. Workers from autonomous public agencies can form unions, but are not permitted to strike. Workers from other public entities are only permitted to form associations.

The Labor Code requires that disputes go through direct bargaining, conciliation, and arbitration before a strike can be called. Labor courts, which are part of the Judicial system and are ultimately responsible to the Supreme Court, can and do rule on the legality of strikes. In practice, labor and employers often ignore the complicated and time-consuming legal requirements and most strikes are therefore technically illegal. Over the last several years, and particularly during the twelve years of civil war, workers often occupied firms as part of a work stoppage. In cases where such activity was deemed to be part of an illegal strike--which was the case in nearly every instance--security forces have intervened.

E. Labor Education for Trade Unions: The Role of the Ministry

Prior to 1979, the Ministry of Labor conducted a limited labor education program for workers and interested trade unions on various trade union issues such as organization, bargaining rights, and other aspects of labor law and implementation at the request of workers and interested trade unions. This program came to an abrupt end in 1979 as a result of the civil war.

EMPLOYMENT AND TRAINING

This section evaluates the effectiveness, efficiency, and quality of the Ministry of Labor's non-formal* Vocational-Technical Training Program (Formacion Profesional) and Employment Service (Direcion de Empleo y Aprendizaje), defines the major constraints confronting those programs, and recommends a number of actions to help remove those constraints. The primary audience for this report is the Ministry of Labor, Salvadoran private sector and union organizations, other local vocational-technical training institutions, USAID, and other donors active in El Salvador.

A. Overview of the MOL's Employment and Training Programs

Non-Formal Technical Skills Training

The Ministry of Labor began to provide short-term (3-9 months) technical training in 1966 with the creation of the Technical Training Center (Centro de Formacion Profesional). The primary purpose of this training has been to provide basic vocational skills to those individuals with limited formal schooling in order to improve their opportunities for employment or, if already employed, to facilitate their advancement to higher skilled and, thus, higher wage jobs. Training has been conducted throughout El Salvador in a number of technical areas, such as automotive repair, electrical installation and repair, construction, and furniture making, all of which, in theory at least, are programmed to respond to the perceived labor needs of the private sector.

Until recently, this training was conducted under the administration of the Ministry of Labor's Direccion General De Formacion Profesional (DGFP), the largest Bureau of the Ministry, with fourteen sections and four departments, as of 1992. The training provided by the DGFP represented but one of many such training programs targeted at the poor, most of which were carried out by non-governmental organizations (NGOs). The combination of widespread emigration of skilled labor during the years of armed conflict and demobilization of GOES and FMLN soldiers following the 1990 Peace Accord has heightened the demand for skills training in El Salvador by employers and individuals. By 1993, a total of 54 institutions, mostly private NGOs funded with assistance from international donors, were providing non-formal technical skills training to unemployed and underemployed Salvadorans.

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* Non-formal technical skills training is defined as any organized training conducted outside the formal school system. This training is generally short-term, and targeted at out of school youth, the unemployed and underemployed, and employed individuals seeking to enhance their technical skills.

While the demand for skills training expanded in El Salvador during the last ten years, the MOL became less able to meet this demand as a result of shrinking financial resources. Competition for scarce jobs within government also led at this time to an increased level of politicization within the DGFP. The volume and quality of training conducted by the DGFP had declined to such a point by 1992 that a consensus emerged within El Salvador to radically overhaul the structure of the MOL's non-formal technical training program. Following many months of discussions among representatives of government, labor, and business, legislation was adopted (Decree 554) on June 2, 1993 to replace the functions of the DGFP with a new, autonomous, tripartite directed training institution, the Instituto Salvadoreno de Formacion Profesional (INSAFORP).

Employment Facilitation

In 1954, the Ministry of Labor created the Direccion De Empleo (DDE) to help reduce unemployment by matching the skills of registered unemployed workers with the skills required of local employers. Following the 1986 earthquake, the central office of the DDE was moved to the DPFG's training center in San Bartolo, located in the industrial zone just outside San Salvador. The DDE also has small regional offices in Santa Ana and San Miguel. The main activities of the DDE are to receive and register unemployed individuals and to identify appropriate jobs for them in the private sector. Jobs are identified by promoters who visit employers regularly searching for job vacancies and promoting for employment qualified individuals registered by the DDE. The vast majority of DDE registrants are unskilled, have less than 6 years formal education, a limited work history, and are young; approximately 35 percent are less than 18 years of age.

In a labor market with an abundance of unskilled labor, such as El Salvador's, it has been common for the number of registered individuals seeking employment to exceed the number of job vacancies by a margin of more than 3 to 1. The large migration of individuals to San Salvador during the last decade has aggravated the unemployment problem in the capital, and has resulted in a much worse placement record for the central DDE office as compared to the Direccion's two regional offices.

In 1991, following passage of a special apprenticeship law, an apprenticeship program was added to the Bureau's activities, resulting in a name change to the Direccion De Empleo y Apprendizaje. The apprenticeship program enables employers to hire registrants as apprentices and legally pay them a gradually rising sub-minimum wage during the period of training. The time of apprenticeship varies from 2-4 years, depending on the trade. Today, approximately 1,500 individuals are employed as apprentices in about 500 businesses.

B. Analysis of Formacion Profesional

The technical training formerly provided by the DGFP of the Ministry of Labor was considered to be extremely ineffective. The criticisms levied against the Ministry's training program by representatives of the private sector, the donor community, and other technical training institutions were legion: training was unresponsive to the needs of the business community; of poor quality; relatively expensive; and poorly planned. Moreover, the Ministry of Labor as the principal government provider of non-formal technical training took no leadership role in attempting to formulate a national training policy, develop linkages with other training institutions, nor systematically obtain information about national training needs. A recently concluded USAID/El Salvador funded education and training sector assessment describes the Ministry's formacion profesional program for similar reasons.

Legal Structure

By 1990, it was clear to everyone concerned with technical training that the Ministry of Labor was failing to adequately meet the training needs of prospective workers and the business community. This recognition led to efforts to overhaul the Ministry's formacion profesional program, a movement spearheaded by a tripartite commission formed in 1992, with input from the ILO and the German Development Agency, GTZ, which has been providing technical assistance to the DGFP since 1989.

This reform effort culminated on June 2, 1993 with enactment of Decreto 554, the "Ley De Formacion Profesional." By creating an autonomous agency, outside the Ministry of Labor, and granting it an independent source of virtually guaranteed revenue, this law responded directly to the two most serious problems of the formacion profesional program: politicization and insufficient finances. The law confronts a host of other noted deficiencies of the Ministry's training program as well. The policy oriented role prescribed for INSAFORP in the law has been endorsed by the private sector, organized labor, the international donor community, including the International Labor Organization (ILO), Fundacion Empresarial Para Desarollo Educativo (FEPADE), and the authors of the USAID funded education sector assessment. However, that part of the law which instructs INSAFORP to conduct training directly is strongly opposed by existing private training institutions and most members of the employer community.

The new agency, INSAFORP, is slated to be directed by a tripartite council consisting of a total of ten representatives from the private sector, government, and labor. The private sector is to have four members, two of which will be the positions of Council President and Vice-president; the government is to be represented by three representatives, one each from the Ministries

of Labor, Planning and Education; and labor is to have three representatives, presumably from the union community. INSAFORP is to be financed through a 1 percent payroll tax on non-agricultural employers, and .25 percent tax on agricultural employers; the tax will be subjected only to firms with at least ten employees and will be phased in gradually over a five year period beginning June 1994. In the first year, the tax is expected to generate about 10 million colones and five times that much by the time the tax is fully imposed in 1999. When compared to the 1990-92 annual budgets of the DGFP of 3 million colones, this payroll tax will enable the Government of El Salvador to dramatically increase the amount of funding for formacion profesional.

The new law also appears to place a greater emphasis on the coordination and oversight functions of INSAFORP than on its role as a direct trainer. Based on the findings of a recently concluded USAID/El Salvador education sector assessment, El Salvador has many private institutions providing good quality formacion profesional at a cost far below the average instructional cost of INSAFORP. As such, there appears to be no sound reason for INSAFORP to become a direct deliverer of training. The same USAID assessment did find, however, that El Salvador lacked a national leader in formacion profesional. Decreto 554 grants INSAFORP such legal authority, including:

- Formulation of general training policies
- Establishment of formal linkages with the private sector and other training institutions
- Investigations to determine the training needs of the private sector
- Development of a set of national quality standards for technical training institutions
- Certification of training programs and graduates
- Provision of technical assistance to other training institutions
- Designing of general and specialized training programs in coordination with other training institutions
- Coordination of formal and non-formal training programs
- Provision of training in priority areas

Except for the authority to directly train, the responsibilities given to INSAFORP under the law are perfectly consistent with the role that the ILO and World Bank consider most appropriate for national training institutions in developing countries.

Status of INSAFORP

Presently, INSAFORP staff are busy working to implement the provisions of the new law. The 1992 tripartite commission is currently overseeing INSAFORP's activities; the 10 member council

created under the new law is expected to replace the commission in January 1994. In May 1993, the commission after a long, competitive search hired an executive director to manage INSAFORP. A deputy director is expected to be appointed by the new council, soon after it is formed.

The Director, Ricardo Lopez Navas, appears well suited for the position. He has worked in the past for other government agencies as well as for private business, and has a graduate degree in public administration from a U.S. university. He views the new law as providing El Salvador with the framework and resources to create a first rate national training infrastructure. Thus far, the actions taken by Mr. Lopez appear to confirm that he is qualified for the job. He has correctly placed a priority on developing the internal policies of INSAFORP, enacting a work plan to implement the provisions of the new law, reducing training activity to a minimum until new policies are developed, and trying to work collaboratively with every major group involved in Formacion Profesional. In September 1993, INSAFORP developed a three year operating plan to implement the law. By 1997, INSAFORP is expected to be a fully functioning national training institute, as described in Decreto 554.

The Executive Director inherited a staff of 68 from the Ministry of Labor's former DGFP. While there is pressure from some quarters to "clean house" completely by replacing everyone under the Director, current civil service law makes it all but impossible to dismiss the staff until INSAFORP is able to assume their salaries in 1997, at which time they will lose their civil service protection. In the meantime, INSAFORP plans to "muddle through," utilizing the best talent available from within the organization.

To implement the operating plan, INSAFORP will receive technical assistance and financing from the GTZ, European Community, ILO and Spanish Government. These funds, when combined with those that INSAFORP is scheduled to receive from the Secretaria Tecnica y Economia de Finanzas Externas (SETEFE), the Ministry of Labor (to cover civil servant salaries), and the new payroll tax, should be more than sufficient for INSAFORP to develop into a formidable national training institute. In 1994 alone, INSAFORP is expected to receive a total of 12 million colones through the GOES (SETEFE, Ministry of Labor, and payroll tax), 5 million colones from the GTZ, and 20 million colones from a four year European Community project (1993-97); in addition, during the next three years the Spanish government and ILO will be providing on-going technical advice to INSAFORP. The funds of the GTZ will be used exclusively to strengthen INSAFORP over a three year period, while the European Community will finance both institution building and training activities.

Major Issues

a) INSAFORP as a Training Provider

In support of economic development, Article 6, h) of Decreto 554, states that INSAFORP will provide technical training directly in high priority areas. Yet, all members of the private training community object to INSAFORP's legislated role as a direct deliverer of training. This objection appears to be based on a perception that INSAFORP, funded by a generous payroll tax, will develop into a large training bureaucracy, similar to other national training institutions of the region, and eventually supplant the training now conducted by many NGOs. Based on estimated revenues from the tax of approximately 50 million colones annually when fully levied in 1999, this objection is well justified.

While the entire leadership of INSAFORP has indicated repeatedly that the priority role of the institution should be to coordinate, facilitate, monitor, evaluate, plan, and contract out training, rather than provide it directly, internal and external pressures to utilize existing training facilities and instructors, and carry out the letter of the law, could turn INSAFORP into a major training deliverer. A current example of such pressure comes from the European Community which is funding a project to expand INSAFORP's capacity to deliver training directly. Once that capacity is developed, internal forces within the organization will make it difficult to dismantle, even if the leadership of INSAFORP is inclined to do so.

The concerns of the private training community about the training potential of INSAFORP are so strong that they are working to modify Decreto 554 to prohibit INSAFORP from providing training directly. If unsuccessful in the legislature, the community is likely to seek a commitment from the Tripartite Council to limit INSAFORP's involvement in training to that of a broker, whereby private institutions would be contracted by INSAFORP to provide training. This could help mitigate the fears that INSAFORP, with its substantial income, will come to dominate the Salvadoran training market. In this regard, INSAFORP should look to FEPADE as a model training broker. Since 1987, FEPADE has been distributing USAID grants to private vocational training institutions. In addition to managing the allocation of these training funds, FEPADE has also been working to strengthen these same institutions through the coordination of USAID funded technical assistance. FEPADE has done this work extremely efficiently with a skeletal vocational training staff and minimal administrative costs.

The most recent policy papers from the ILO and World Bank contend that it is appropriate for government to subsidize some non-formal technical training, especially for the economically disadvantaged, but only deliver it directly if there is a lack of

adequate private training capacity. Such is not the case in El Salvador where many excellent private institutions have been established during the last twenty years, in part, to fill the void created by the weak training programs of the Ministry of Labor.

b) Financial and Staff Needs

While INSAFORP has developed a well structured three year operating plan, the institution has neither calculated the staffing and financial requirements to implement such a plan, nor attempted to determine the amount of resources INSAFORP will need to carry out its functions once external assistance ends. Too often in the past, recipient institutions of international aid have failed to plan for the day when they would become independent; consequently, their independence has been frequently followed by their disappearance. The lesson learned from these experiences is that it is never too early to develop realistic sustainability plans. This requires that the organization critically evaluate its mission, and determine the minimum level of resources, both financial and human, that will be required to carry it out.

c) Relationship with other Training Institutions and the Employer Community

The most important determinant of whether or not INSAFORP succeeds as a well respected, effective, and efficient institution will be the relationship it creates with its two principal clients: other non-formal training institutions, both private and public, and the employer community. The weaknesses of most national training institutions in the LAC region can all be traced to their failure to create and maintain strong linkages to the private sector and to the other training institutions in the country. Such action has resulted in a gradual deterioration in the effectiveness of these institutions as their activities and policies have become ever more removed from the needs of employers and the other technical training organizations of the country. By the time these national institutions have realized the impact of promoting their own "political" agendas, they have lost the confidence of their principal client groups--a situation that has proven very difficult to correct. As INSAFORP matures, it must never forget who it is intended to serve as an institution.

d) Determining Training Needs

Experience has demonstrated that the most effective method of determining training needs is to communicate regularly with employers. Elaborate, quantitatively oriented manpower forecasts that depend on complicated input-output models and economic forecasts have proven to be poor predictors of national and local training needs. Rate of return analyses have fared no better as a planning tool for determining where and how much a society should invest in education and training. The best approach, though less

than perfect, is to establish a formal mechanism to access information regularly from key informants, usually employer representatives, regarding their current and future (near term, 1-3 years) labor requirements.

e) Creating an Efficient Organization

Given the generous amount of funds that INSAFORP will be receiving through the payroll tax, there will be less of an internal incentive to minimize operating costs than there would be were funds scarce. The experience of similarly funded national training institutions of the region has been for them to become large, inefficient empires with multiple layers of bureaucracy. Absent a strong system of accountability, a management team which values efficiency over political patronage, and a meaningful set of administrative controls to regulate the use of funds, INSAFORP is likely to replicate the history of its sister institutions of the region. In establishing the internal policies and procedures of INSAFORP, the Executive Director and his team of collaborators from the donor community must ensure that INSAFORP becomes, and remains, an efficient, streamlined national training institute.

C. Employment Facilitation--Direction of Employment and Apprenticeship

Current Structure and Performance

The Direccion de Empleo y Aprendizaje (DEA) represents the smallest Bureau in the Ministry of Labor, with an annual budget of approximately 745,000 colones, of which 98 percent is dedicated to salaries. In addition to its San Bartolo office, DEA has small offices in San Miguel and Santa Ana. The DEA is divided into three sections: promotion; placement; and orientation. Staff size has been gradually reduced over the last decade from 42 in 1984 to 23 today, with 18 employees in San Bartolo, 3 in Santa Ana, and 2 in San Miguel.

Physically, the San Bartolo office appears more than adequate to house the staff and receive registrants. While the Director of DEA would prefer to be based in the center of San Salvador where the office would be closer to prospective unemployed and underemployed clients, DEA's proximity to the industrial zone provides the office with greater access to the employer community.

The services provided by the DEA are basic: to place registered unemployed and underemployed in jobs or paid apprenticeships with registered employers. The DEA has no formal links established with either INSAFORP or other similar pre-employment training institutions which would provide clients with employment enhancing skills and/or access to employers with strong ties to those same training institutions.

The staff of DEA is considered technically competent, although, according to the Director, the office is under-staffed and requires six additional employees: two social workers to deal with youth, another two registrants, a placement advisor, and a statistician. With just one telephone line and one vehicle for the entire central office, DEA is dependent on having its promoters visit employers by foot most of the time in order to identify job vacancies. Promoters are required to visit from 8-12 businesses daily in San Salvador, less in the regional offices. Between 1985 and 1991 promoters annually identified approximately 900 job vacancies. Not surprisingly, as the economy has expanded during the last two years, so to have the number of job vacancies identified by promoters.

Notwithstanding the greater number of job opportunities available to DEA clients, the office was able in 1992 to place only 1199 of 2983 registrants, or 40 percent. In 1991, the placement rate was nearly half as high at 22 percent, and during the mid-1980s, it averaged just 16 percent. The placement rate of the DEA appears to be more a function of the economy than of the amount of internal resources dedicated to that purpose. In fact, the DEA has been much more efficient in placing its registrants in jobs as its staff size has decreased. In 1984, for example, with a staff of 42, each placement cost DEA 1920 colones. By 1992, the staff had fallen to 23, and the per placement cost to 882 colones, resulting in a 54 percent increase in placement efficiency for the office; the number of overall placements also rose during this period.

Oversight of the regional offices is very weak. Due to budgetary constraints, the Director visits the Santa Ana and San Miguel offices only once annually, though he communicates with them more often by telephone. Promotional activities of the regional offices are limited to the two city centers, as neither office possesses a vehicle to venture to other neighboring communities. The offices of Santa Ana and San Miguel place about half as many individuals as the San Bartolo office, though they operate with far fewer employees, and in much smaller labor markets. However, the placement rates of Santa Ana and San Miguel are far better at 66 percent, and 84 percent, respectively.

Major Issues

a) Proper Size and Role of Employment Service

The employment services in most developed countries are very decentralized with offices located in every major labor market. These services have established, widespread networks with employers, strong linkages with nearby non-formal training programs, and computer systems that efficiently search files for appropriate matches between job seekers and job vacancies. The employment services in developed countries also provide more assistance to the unemployed than does the DEA in El Salvador. In

addition to matching job seekers with appropriate employers, they refer the unemployed to training programs to enhance their skills and, thus, value to employers, train them in job interview techniques, and assist them in resume writing. Developed countries are able to operate in so many locations and provide so many services because they have a reliable source of income, usually generated through an employer financed payroll tax.

While the DEA has nowhere near the revenues to expand its operations to other locations in El Salvador, it could expand the services it now provides in its three existing offices <u>without</u> hiring additional staff.

b) Effectiveness of Employment Service

In every country, the performance of the employment service is more a function of the local economy than of the amount of resources dedicated by the service to job placement. The experience of the DEA in El Salvador is no exception. Increasing the amount of resources dedicated to placing individuals in jobs has had no positive effect on outcomes. Similarly, reductions in staff size have had no negative impact on outcomes, but have greatly increased the efficiency of the central office. The Santa Ana and San Miguel offices are extremely efficient in this regard, as they place a much higher percentage of registrants with a fraction of the staff of the San Bartolo office.

Given the experiences of the Santa Ana and San Miguel offices, one could argue that the Ministry of Labor could save considerable funds by further reducing the size of the San Bartolo office without suffering any adverse impact on job placements. In fact, follow-up studies of registrants who are not placed by the DEA but who eventually secure employment through their own channels may indicate that the DEA does not facilitate employment any faster than individuals acting independently, in which case it may be economically rational to eliminate the DEA.

c) Establishing Links with Training Institutions

The relationship between training and employment is self-evident. As individuals increase their skill levels, they become more attractive to employers. For this reason, many unemployed and underemployed Salvadorans are enrolled in non-formal training programs provided by both public and private training institutions. Many of these institutions have placement services to facilitate the transition from training to employment. These institutions also have well established linkages with employers to help design demand driven training programs and to assist in placing training graduates. Strong linkages between employment services, such as DEA, and training institutions, such as INSAFORP, are mutually reinforcing and beneficial.

IV. EMPLOYMENT STANDARDS [Ricardo Muniz]

A. Inspectorate Staffing

There are three sections under the Directorate General of Inspectors: the Department of Industry and Commerce Inspectors, the Department of Agriculture Inspectors, and the Foreign Workers Section.

Twenty nine inspectors and two trainees assigned to conduct inspections of commercial and industrial establishments, and two inspectors assigned to conduct agricultural inspections. Length of service varies from 2 to 26 years. The last hirings were made approximately two years ago; the two trainees hired then still lack the title of inspector and are paid at a clerical rate, even though they functions as inspectors. All inspectors are paid the same salary of ¢2082 per month ($236.59), regardless of time in service. There are no grades or steps in the pay structure.

Staffing is as follows:

San Salvador	24 inspectors
Santa Ana	3 inspectors
Sonsonate	1 trainee
La Paz	1 secretary
Usulutàn	1 inspector
San Miguel	1 inspector, 1 trainee

Five persons are assigned to the Agricultural Section: one department Head, one supervisor, two agricultural inspectors (prior to the war there were 20 inspectors), and one secretary. Although the section is supposed to inspect all agricultural workers throughout the entire country, no vehicle is assigned to the section. No agricultural inspectors are currently assigned to the regional offices.

Unlike other personnel in the Labor Ministry, inspectors are not subject to the Civil Service laws. Instead, they are subject to the Laws of "Privileged Hearings", which are reserved for special public servants entrusted with a high degree of vigilance for the public good. Inspectors have a high degree of job security and cannot be transferred when new governments come to power, as is the case with Section Chiefs and the Director General of Inspectors.

Inspectors are required to have a high school level education and some education in labor matters. The background of inspectors ranges from practicing lawyers to secretarial employees that have been promoted into the job. Inspectors are permitted to have outside employment as long as it is unrelated to their jobs. There is no formal training conducted for trainees that is conducive to

a professional work force of inspectors. Trainees are assigned to an inspector who assigns them readings--usually sections of the Labor Code or Organic Law--and then conducts exams with or without the books.

Facilities are poor. The department that does calculations for employees who have been terminated desperately needs a computer. A December 15, 1993 visit to the Ministry found 80 terminated workers standing on line waiting to have their back wages calculated. Inspectors performed the calculations using hand- held calculators that were difficult to read because of the age of the liquid crystals. The entire inspector corps present was forced to work on the calculations because of the large number of employees requiring these service.

Such a predicament could be easily alleviated. In Guatemala, for instance, the Ministry provided two computers to calculate back wages; after one year, it was found that only one dedicated computer was needed. The increase in efficiency proved enormous.

B. Enforcement of Labor Code

Regulations Pertaining to Enforcement

There are no penalties to deter repeat violators, since there are no history cards or other records kept. In FY 1991, a total of 7 fines totalling ¢16,000 ($1,818) in penalties were assessed against employers nationwide; in FY 1992 the total for the country amounted to ¢22,700 ($2,579.54). It does not appear that there have been any fines imposed for child labor violations to date.

The statute of limitations is only 6 months, compared to two years (three years for willful violations) in the United States.

Employees have no Field Operations Handbook to provide guidance. Instead, they are forced to rely on the Organic Law and the Labor code directly, which can result in an inconsistent and uneven application of the law as different inspectors can interpret laws and regulations differently. A handbook would also be useful for preparing case files and furnishing forms used in the course of an inspection.

Key Data Available

The current minimum daily wage is ¢31.00 ($3.52) for commercial and industrial workers. Salaried employees are paid ¢930.00 ($105.68) per month for an 8-hour day, 44-hour work week. Overtime hours must be paid at double the usual wage, and there is a shift differential of 25% for hours worked past 7 PM. Agricultural wages vary, depending on the type of product and type of work (see attached Exhibit E-1). Agriculture is exempt from the

overtime requirements.

While the Organic Law makes mention of record-keeping, there is no formal requirement that time records be kept. Individual contracts delineate the schedule of hours to be worked, but if the employee works longer and the employer does not keep time cards, the word of the employee is left to stand against that of the employer. Final resolution is achieved either through bargaining or conciliation, and usually results in the employee receiving less than is due.

The Ministry's record of the number of inspections conducted during the last fiscal year is deceptive, since reinspections are counted along with inspections. Every inspection of a work place is counted as three inspections, since the inspector conducts (1) a general inspection; (2) an examination of payment of wages; and (3) a safety and health inspection. All follow up inspections are counted separately. Last year, 22,128 inspections and reinspections were conducted -- approximately 1,000 per inspector. (In the United States an investigator may conduct 80 to 100 investigations per year and another 75 conciliations.) Of these, 1,278 were in the agricultural sector, representing about 5.8% of the total number of inspections. Because the Ministry rations gasoline, and because there are a limited number of vehicles available to conduct inspections, most inspections are conducted close to the capital; rural farm workers are left almost completely at the mercy of the employers.

A total of ¢348,148.50 in back wages was paid to employees as a result of inspections. This amounts to approximately ¢11,000 per inspector, or ¢15.73 per inspection conducted. No records were kept on the number of employees that were paid backwages last year.

Amazingly, there is no backlog of complaints. All complaints are responded to as they are received. Inspectors are assigned to cases the same day that they are received and most conduct their inspection the following day. According to the Director General 90% of all complaints are resolved in favor of the employee.

The number of cases tried in the court system could not be determined. If a case is not resolved at the administrative level, the employee must hire his own lawyer or go the Procurador General to have a lawyer assigned to his case. Cases often get tied up in the court system. Employees are usually unaware of all of their rights and protections, and very few end up going to an attorney. If an employer refuses to pay back wages he is fined, but fines are relatively small and in most cases do not exceed $50.00 (US). In most cases the cost of fines is less than the cost of paying the back wages.

Complaint Procedures

The Directorate has a complaint procedure that tracks each case received. Typically a supervisor interviews the complainant, assigns a case number, and notes the type of complaint and date. The complaint is then assigned to an inspector either the day received or the following day. The directorate also does directed inspections (where there is no complaint)

Other Issues

- The law affords domestics the same protections as it does other workers, except for minimum wage and overtime laws. Domestics can be paid a sub-minimum wage of at least 85% of the minimum wage for these employees, especially since they work at least 12 hrs/day.

- Most child labor violations occur in the informal sector. While the informal sector is covered by the organic law and the labor code, it is intrinsically unstable and thus extremely difficult to track.

- There is no special criteria requiring employers who received government contracts to pay workers prevailing wage rates.

- There is no polygraph law concerning the testing of employees.

- Employees receive two days per month of paid leave for illness or the death of a family member. The total may not exceed more than 15 days per calendar year.

- Foreign workers are covered by the labor laws, but their total may not exceed ten percent of all workers.

- Agricultural workers are paid as outlined in Exhibit E-1. They are afforded a number of protections not normally seen in the commercial and industrial sector. The further they are from the capital, however, the less likely it is that their employers will be inspected.

C. Child Labor

The Ministry does not appear to have a child labor enforcement program. Although the code provides protections for minors under age 18, enforcement is extremely weak. Inspectors often ignore violations in recognition of economic necessity. In the agricultural sector, only the head of the family is found on the payroll registers. Minors who work in the fields to assist their parents, in violation of child labor laws, are not considered to be employees. The code requires than any minors under 18 register to work, but leaves room for some minors under 14 to register. This loophole should be closed.

Virtually no data on child labor is kept. No statistics are available on the number of minors found to be employed in violation of the labor laws; the number of child labor complaints; or the amount of fines assessed over the past three years.

The Ministry has no procedure for investigating child labor. Violations are noticed only if inspectors notice minors working, whereupon they are supposed to notify the employer; if the employer corrects the violations and dismisses the minors, no penalty is assessed.

Although there are directed investigations (general investigations) that seek to find minors employed in violation of child labor laws, no effort has been made to utilize child labor strike forces.

The Labor Code delineates hazardous occupations in which minors under the age of 18 may not work. The list is very explicit and appears to comply with internationally recognized standards. The penalty structure, however, is small. Penalties for violations do not exceed ¢500 per child.

D. Description of Inspections

Ricardo Muniz accompanied Salvadoran inspectors on a number of inspections. Following are descriptions of three such visits.

1

I accompanied an inspector and a supervisor on two inspections to the Free Trade Zone on December 9, 1993. One involved the illegal discharge of a sewing machine operator at a Korean Manufacturing facility. The employee had been absent for two days and was told to stand by her machine while her replacement did her work. She had told the employer about the problem, but had not brought back a doctor's excuse. She obtained a doctor's excuse concerning her child and complained to the Directorate about her termination. The employer stated that they had not terminated here but had replaced her for a week with another person, and said that they would not be able to use her at her sewing machine until the following Monday. The employee was present during the entire discussion--a practice that I considered unusual. The inspector supervisor convinced the employer to put her back to work.

No information was gathered on the firm during the initial conference and it appeared that the employer knew the supervisor from prior inspections. No interviews conducted of employees, or records checked. There was some negotiation prior to the reinstatement and a report was prepared upon return to the office.

2

The second inspection involved the mistreatment of employees at another Korean Manufacturer. This inspection also revealed other overtime law infractions. While interviews were conducted during this inspection, there was no formal initial conference other than to tell them why they were there. On December 14, 1993 the inspector reported that there had been a small number of infractions found due to the employer not paying for nocturnal hours, and that the firm has taken steps to insure that workers are treated with respect and dignity.

It is my impression that these inspections are not conducted in as formal a manner as they should have been, in order for the employer to have professional respect for the inspectors.

3

I also accompanied the department head for the agricultural section and the supervisor from that same department on a general inspection of a coffee plantation. The initial conference was more formal and the inspectors had forms on which employer, employee information is collected. This type of a checklist will assist any inspector in collecting the pertinent information required prior to interviewing the employees. The inspectors also had a checklist of items required to be kept in the dispensary. After the records check, the inspectors visited the site where the employer kept the dry beans and maize in a silo and inspected for dampness.(See Picture #) They then inspected the kitchen and the weight of the tortillas.(Picture #s) The inspectors then proceeded to interview the employees on the job. They observed the allotment of the rations to the employees(Picture #s) and then they watched as the daily weigh in was conducted in the afternoon. The dispensary was checked as well as the school facilities. The inspectors then conducted a final conference with the employer's representative. All in all, this was a more professional inspection than those observed in industry.

V. LABOR STATISTICS

Jeffrey Smith

A. Department of Statistics

Program Description

The Department of Statistics (Departamento de Estadistica) of the MOL is part of the Administrative Assessment (Assesoria Administrativa) branch of the Ministry. As such, it is not part of any of the major functional Departments of the Ministry, such as those involved in the enforcement of labor law and in labor-management relations. The Department is physically located in the San Bartolo facility of the Ministry.

The central staff of the Department consists of five people: a chief, one typist, and three analysts. The chief and one analyst are the only university educated staff members.

The main project of the Department is a monthly survey of establishments. The sectors covered in the survey are manufacturing, commerce, services, and transportation; agriculture is excluded. The survey covers the entire country, with the primary focus being the San Salvador metropolitan area. Only the formal sector (5+ employees) is covered. For all covered sectors, the survey collects information on employment, broken down by gender and by supervisory/non-supervisory status. In addition, hours worked and payroll information is collected for the manufacturing sector.

The data are collected through personal visits by the three analysts to a sample of establishments. Standard forms are used to report the requested information. Depending on the situation, the forms may be filled out during the interview, or they may be left with the informant who either mails the completed form back or returns it to the interviewer on follow-up visits.

The principal product of the Department is an annual report, entitled "Labor Statistics". The latest current edition is for 1991, but the 1992 report will be available soon. The report provides 11 tables of results from the survey.

In addition to the survey results, the report contains an additional ten sections reporting information obtained from the other sections of the MOL. This information could be referred to generally as administrative statistics. Included is information on Minimum Wages; Cooperatives; Inscription and Placement in the MOL's employment division; Professional Development; Labor Inspection; Accidents at Work; Individual Labor Disputes; Collective Labor Disputes; Unionization; and Collective Bargaining.

Assessment

Overall, the survey is not considered to be of high quality. The primary problem stems from the fact that the survey is tied directly to an economic census that was carried out in 1971.

The methodology used in the survey appears to be basically sound. The techniques used for drawing a survey from the census are proper, as are the techniques for estimating population values from the sample. Nevertheless, without data from a recent census from which to structure the sample surveys, the results cannot be trusted. For example, the methodology for measuring total employment will be subject to severe undercoverage if change in employment is due to growth or reduction in the number of establishments, as opposed to changes of employment within existing establishments. Given the changes that have occurred in the country since 1971, it seems clear that the former source of change is at least as important as the latter. Indeed, the aggregate employment figures contained in the "Labor Statistics" report appear to be extremely low, given the current population of the country and the coverage of the survey.

Statistics on hours and pay for the manufacturing sector, which reflect averages rather than totals, are probably more accurate than the employment statistics. Still, given the dependence of the survey on the 1971 economic census, the figures at best provide a very limited picture of trends in wages rates as only those establishments in existence before 1971 are included in the survey.

The department does practice an ad hoc but reasonable method for making substitutions in the sample when establishments drop out of the sample. Lists of business from the Social Security System (ISSS) are used in this process. Also, abnormal data are checked and occasionally revised when deemed necessary.

All data entry and subsequent calculations are done manually, a task which adds greatly to the delay in publication. There is limited supervision of the surveyors, with occasional independent checks made to see whether visits were actually made. Based on a review of the analysts' worksheet pages, the nonresponse rate for the survey seems to be high, but there is no record made concerning the reason for non-response.

The administrative statistics portion of the report seems to be the most useful. The ten sections provide good detail concerning the work of the MOL, as well as the status of organized labor in the country. This part of the report should be required reading for anyone interested in the labor situation of the country.

The department chief appears to be capable, and reasonably enthusiastic concerning the mission of his department. Nevertheless, he recognizes that his department stands at a marginal position inside the MOL.

The Department's physical facilities in San Bartolo are reasonably pleasant, and adequate in terms of office space. However, being located so far from other MOL offices creates numerous inconveniences and hampers communication with other MOL personnel, a situation made worse by the lack of telephone or vehicle in the Department. The physical isolation undoubtedly contributes to the Department's marginalization within the Ministry.

Department of Planning

Description

The Department of Planning, like the Department of Statistics, is part of the Administrative Assessment division of the MOL and serves as an information clearinghouse for the MOL.
The Department is physically located at the office of the Minister, and has a staff of six.

A principle function of the Department is to collect monthly reports from the various sections of the MOL. Quantifiable information from the reports is entered into central registries. Using information from these reports, a variety of documents is produced. Among these documents are the Annual Report of the Ministry, the MOL's official report of accomplishments which is submitted to the National Assembly.

Perhaps the most useful report is the Annual Operating Plan. This report provides detailed information on each of the MOL's programs. For the preceding year, quantitative performance statistics are presented. For the current year, the goals of the MOL are shown. This report provides a informative overview of the entire scope of Ministry departments and functions.

Assessment

Overall, the Department of Planning plays a useful role in the Ministry which it is now fulfilling quite well. The Department is able to operate reasonably independently of internal pressure.

The annual report shows both the goal for a program as well as what was achieved. Many, though not all, programs achieved results substantially below the goals.

The Department chief has been with the MOL for many years and

appears to have an almost encyclopedic knowledge of the work of the MOL. The staff appears qualified to conduct the work for the Department, though it is not clear if the Department as many staff as now exist.

The MOL has an internal auditing division. This division deals primarily with financial matters, but could also help to insure that the information collected from the other departments of the Ministry is accurate.

C. Other Sources of Labor Statistics

In order to adequately assess the effectiveness of the MOL's statistical departments, a review was conducted of similar statistical work performed by other organizations, both public and private. During the course of this review, it was discovered that not only do these programs complement the programs of the MOL, but they provide a more complete view of the labor situation in El Salvador. In summary, these programs appear to be of uniformly higher quality than those of the MOL. In addition to the survey conducted by the MOL, a total of three other major surveys are conducted outside the MOL which provide similar information on employment.

1. Household Survey

The Ministry of Planning (MIPLAN) conducts what are now annual household surveys (Multiple Purpose Household Survey). One component of this survey relates specifically to labor. Detailed questions are asked concerning labor force participation and employment-unemployment status. Distinctions are made between various concepts of unemployment and underemployment.

The survey is very well documented, better, in fact, then most surveys conducted in the U.S. The information is well presented, and is considered useful by researchers both inside and outside El Salvador.

2. Consumer Price Index

The Ministry of Economics, through its economic survey division (DIGESTYC) produces a monthly Consumer Price Index (CPI). This index is indispensable for judging wage and pay statistics. During the last few years, efforts have been undertaken to update and improve the quality of the CPI. Most members of government consider the CPI to be of generally good quality. The Central Bank of El Salvador produces its own weekly CPI which is based on a smaller sample.

3. Employment Survey

The private sector entity FUSADES conducts semiannual surveys of employment, hours, and pay. Their survey, according to their literature, was developed in response to a perceived complete lack of reliable information from other sources. In virtually every regard, the FUSADES survey overlaps completely the scope of the MOL survey, and is superior in every respect.

FUSADES has developed its own universe of establishments, derived from other projects. Like the MOL survey, the agricultural sector is excluded. The survey coverage extends only to the three major population centers. The survey has detailed occupational classifications based on the ILO occupational classification scheme.

The facilities at FUSADES are first rate, and the employees are far better prepared academically than the MOL staff.

Based on the superior quality of the FUSADES survey, one might be tempted to recommend having the MOL use it instead of conducting its own inferior one. However, private surveys do not carry the same perception of objectivity and neutrality that government surveys do; this is the reason why the public sector has historically been entrusted with the responsibility of collecting, analyzing and disseminating economic data.

VI. LABOR-MANAGEMENT RELATIONS/ DISPUTE RESOLUTION

Peter Accolla and Danilo Jimenez

A. The Promotion of Labor-Management Cooperation

Ministry's role in Promoting Improved Labor-Management Relations

Inadequate financial resources and a lack of professional expertise historically have been responsible for the Ministry's inability to create a climate for cooperative relations among workers and employers. The Ministry's Annual plan for 1993 acknowledges several deficiencies that hinder the Department of Labor Relations's ability to carry out its mission. These include a reduction in professional staff and the absence of a permanent director; a lack of appropriate conference facilities in which to conduct meetings and negotiations; and a lack of any labor education programs for trade union leaders or members labor negotiations and dispute resolution.

Objectives, Policies, and Programs

While the 1993 Annual Plan of the Ministry of Labor lists a series of objectives, the list does not constitute a comprehensive and effective plan for improving the labor relations climate in the country. Because of the Ministry's inadequate involvement with improving the industrial relations climate is being filled in part by some employer organizations who have out of necessity taken the lead in establishing direct contacts with select trade unions.

Trade union leaders tend to lack an understanding of modern approaches to labor-management cooperation. This is due in large measure to the failure of the Ministry to promote a national labor education program.

In discussions with the team, ANEP officials emphasized the need for modernizing the Ministry of Labor and providing it with the appropriate human and technical resources to enable it to meet its obligations. In this context, ANEP is prepared to recommend to the government that the a budgetary resources of the Ministry be increased accordingly.

B. Current Techniques for Dispute Resolution

The Ministry is far more capable in resolving individual labor grievances than collective disputes. According to the Ministry, of 235 grievances by individuals presented in 1992, 213 were successfully resolved -- a success rate of 90.6%. In contrast, only a very small percentage of collective disputes are successfully resolved through conciliation or mediation. This deficiency stems from a lack of clarity in labor law that permits great flexibility and in turn allows employers thwart the process.

The Conciliation Process

The conciliation process currently followed by the Ministry of Labor, as prescribed by law, is as follows:

1. The Director General appoints a Ministry conciliator or has the option to appoint himself. This step is not subject to a specific deadline, nor formal procedures.

2. The Ministry conciliator chairs the meetings and makes suggestions in resolving outstanding issues between the parties.

3. The conciliation process can be ended abruptly if (a) one of the parties decides not to continue to participate, and (b) the employer representative(s) fails to attend two consecutive meetings.

4. In cases where conciliation fails, remaining options are to for the union to go on strike or for the parties to submit to voluntary arbitration.

5. At the request of one of the parties (usually the firm), a labor court is petitioned to render a judgement as to whether the strike is legal or not. If the strike is declared to be illegal, the parties may be forced to undergo mandatory arbitration. Should the strike is declared legal, the Minister of Labor must see that the parties not resort to violence or unfair labor practices. He carries out this function through authoritative means under the law.

C. The Role of non-governmental organizations in assisting government policies and programs

Non-governmental organizations can and should play a fundamental role in the improvement of the labor relations climate in a country strongly oriented to class conflict and the use of adversarial approaches to resolving labor disputes.

The willingness to pursue new cooperative approaches and techniques for resolving labor management disputes cannot be overshadowed by political considerations and or economic expediency.

Several organizations (FUSADES, FOES, ANEP) indicated interest in activities that could improve labor-management relations. These activities include: creating and improving mechanisms that could better facilitate mediation and dispute resolution; undertaking research and publishing case studies; conducting certification training, and; promoting policies that create a positive industrial relations climate in the country. There have been some discussions about creating an institute or foundation of industrial relations,

with initial funding by the government and private donors (the latter would have to be limited so as not to allow domination of special interests). Such an institution, to be credible, would have to provide for carefully chosen members to serve on the board of directors. (Membership on the board would be tripartite, with-additional at-large members representing the widest spectrum of society possible.)

As a previous mission evaluation indicated, several non-governmental organizations, such as the Salvadoran Labor Management Foundation (FOES), are already seeking to promote improved labor-management relations through dialogue and cooperation. While FOES's notion of creating an institute of industrial relations to encourage labor-management mediation and train individuals from both labor and the business sectors has not yet materialized, this may be realized with time and some restructuring. The Center for Labor Studies (CENTRA), with financing from the Friedreich Ebert Foundation, is another organization that may also play a future role in this area.