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IN DEMOCRATIZATION**

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**Case Study
Guatemala**

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GUATEMALA'S CONSTITUTION-BUILDING PROCESSES

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CONSTITUTION-BUILDING PROCESSES AND POLITICAL REFORM

Guatemala's Constitution-Building Processes

Contextual Analysis

Introduction

While the political norms and institutions of Latin American countries are similar to those of democratically more mature countries, their societies remain profoundly different. Many of the continent's nation-states have been shaped by recent experiences of military dictatorship and internal armed conflict, which compounded the structural problems of social and political exclusion, poverty, political violence, discrimination and low levels of human development that plagued the continent historically. After the recent wave of democratisation in the 1980s, the region is now, in its entirety, governed by democratic civilian regimes. In spite of this new political landscape, however, Latin American countries remain severely unequal societies. Many states are marred by those characteristics typical of post-conflict societies: weak political institutions ill-suited for participatory political systems; vigorous power competition, hampering political development; weak horizontal and vertical accountability of the executive; and the limited legitimacy of political leaders, bringing with it polarization and lack of consensus (Ball 1996). These problems are further heightened by the dissociation between civil society and political society, where the latter is dominated by "unrepresentative, oligarchic, personalistic parties with weak roots in society, which obstruct the access of popular groups and peripheral populations to political decision-making spheres" (Van Cott 2001: 9).

The region then is characterised by the nexus of democracy, poverty and inequality.¹ The influence and dimension of these latter two factors means that the viability of the democratic political project is restricted, as are the expectations that democracy has itself generated (UNDP 2004). While human rights and citizenship rights exist 'in principal', enshrined in the region's progressive Constitutions and those international treaties and declarations that many countries have ratified, their everyday 'practice' is limited, as Foweraker and Landman (1997) and O'Donnell et al. (1999) have pointed out. The nature and degree of these "low-intensity" democracies (O'Donnell 1993) varies within the region, as does democracy's reach within the countries themselves. However, it has become clear that many Latin American countries possess similar democracy deficits, including the under-representation of women; voting systems which do not effectively represent outcomes; majoritarian governments which ignore the interests of minorities; non-accountable bureaucracies;

¹ Democracy is here understood as going beyond the mere procedural definitions that characterise the *proceduralist* school (see for example O'Donnell et al. 1986; Burton Gunter and Higley 1992; Higley and Gunther 1992; Mainwaring 1992; International IDEA 1998). Rather, we meld questions of 'deeper democracy' with procedural norms, insisting on the importance of human development, citizen participation and social equity as crucial elements of democratic governance, as in the social movement literature (see Escobar et al. 1992; Alvarez et al. 1998). As a result, it is perfectly acceptable for a procedurally democratic State to 'lack' democratic consolidation in areas such as social justice, income distribution et cetera. In the words of Bastian and Luckham "Democracy can contribute to the prevention and resolution of violent conflict through democratic institutions and through democratic politics. Institutions can create procedures under which conflict can be managed through negotiation and debate, rather than violence. Democratic politics *can pose democracy, along with social justice, more inclusive government, the rule of law and other values as substantive politics demands*, to counter the narrowed agendas of the conflicting parties...Democracy can thus be understood as a system for the peaceful management of conflicts. It provides a non-violent method for selecting rulers, a forum through which conflicts can be debated and resolved, and *an opportunity for inclusive participation*" (2003: 5-38; emphasis added). In this way, we view democracy as a process of norm creation and cultural change, as well as a process of implanting institutions and generating political procedures.

and little space for citizen participation arising from the globalised economy (Bastian S. and R. Luckham 2003). In such contexts, “democratic institutions may coexist with political violence, human rights abuses, discrimination against minorities, excessive influence of military and security services, and non-accountability of public officials” (Bastian and Luckham *ibid.*).² Guatemala is no exception.

Guatemala: a Fragile Peace?

If there is one country in the hemisphere where the nexus of democracy, poverty and inequality is most evident, it is Guatemala, the most violent country in Central America, characterised by alarming levels of social and political exclusion and extreme socio-cultural contrasts, where more than 25% of the population live in extreme poverty and 60% live in poverty (UNDP 2004).

In Guatemala, historical structural problems have, since 1960, brought about the rise of revolutionary and popular movements, which themselves provoked further State-led repression and political violence. Violent State reactions ensured that the said mobilisations did not achieve their goals, indeed that civil society organisations were decimated, and left the roots of the conflict both unaddressed and further exacerbated (Susanne Jonas 2000). Guatemala’s internal armed conflict of over thirty years only came to an end formally in 1996, leaving a legacy of violence and fear, weak political institutionalisation and ongoing exclusion of and discrimination against women and Guatemala’s majority indigenous population. Moreover, the UN-sponsored Truth Commission (CEH) concluded in its final report that State agents were responsible for acts of genocide in at least four regions of Guatemala during the armed conflict (1999).

Guatemala’s political transition (1982-1985) was precipitated and led by the military, with no determinant role played by civil society. In this regard, we would like to make clear that the said process was a *transition to democracy*, rather than a *democratic transition* per se. However, and significantly, the political transition came before peace was achieved and the internal armed conflict had been terminated, and was formalised with the writing of the 1985 Constitution, which institutionalised Latin America’s first Human Rights Ombudsmans Office (PDH) and, despite notable shortcomings, enshrined a broad spectrum of fundamental rights. After the political transition, two mutually reinforcing parallel processes took place that determined the country’s path to peace: the formal peace process (1987-1996) and the process of democratisation (see Azpuru 1999). The peace process brought with it a series of achievements that set important regional precedents, including the comprehensive content of the Peace Accords (see Annex 2) negotiated between successive governments and the guerrilla army the Guatemalan National Revolutionary Unity (URNG) and the formal participation by civil society in the negotiations through the Civil Society Assembly (ASC).

A crucial outcome of these processes was that the parties to the negotiating table came to agreement on the need for Constitutional Reforms, particularly relevant given that the accords themselves had no legal standing, making the reforms a necessary cornerstone of the peace process. The reforms were to take place in the aftermath of the signing of the final peace accord in 1996, approved by a

² Democratic institutions are defined as “a socially constructed set of arrangements routinely exercised and accepted. Democratic institutions are in essence a set of arrangements for organising political competition, legitimating rulers and ensuring accountable governance, typically through free elections to determine the composition of the legislature and the government. They also imply a liberal state and limited government... in which the basic rules of governance are established by the constitution and the rule of law. Furthermore, democratic institutions are underpinned by common citizenship, in which the rights and freedoms of all citizens are equally protected under the law” (Bastian and Luckham 2003: 18).

two-thirds majority in Congress, and then put to popular referendum. The Peace Accords framed (reform to) the Constitution as a social pact in which citizens would establish the basic principals and norms of their regime and the Rule of Law, norms that had developed out of the protracted internationally monitored peace process. In this regard, reform of the Guatemalan Constitution was to reflect the legitimate gains of the peace process. The reforms would also, to a degree, represent what Van Cott has called a “symbolic act of renewal” (2000: 7), as citizens rewrote and agreed upon the socio-legal foundations of a new, post-conflict Guatemala. In the words of Kritz, the Constitution is

“the foundational legal document from which the entire national system of rules will derive...the cornerstone for the rule of law...the constitution enshrines the vision of a new society, articulates the fundamental principles by which the political system will be reorganised, and *redistributes power within a country*” (1996: 599; emphasis in original).

Guatemala is a country with an indigenous population of approximately 60% - the second highest in Latin America after Bolivia.³ One of the key aspects of the peace process was that the indigenous question was addressed for the first time both formally (through the ASC) and informally through the mobilisation of social movements, to differing degrees, most comprehensively in the Indigneous Accord signed in March 1995. Importantly in this respect, central to Guatemala’s Constitutional reform process of 1999 was the Constitutional recognition of the country as a pluricultural, multiethnic and pluri-lingual nation-state. In order to retain legitimacy, it was critical the reform process have this componet as a central element of the reform. While the 1985 Constitution had gone some way towards recognising Guatemala’s pluriculturality, a key aspect of the reform process generated by the peace process was to address this issue directly, as a means of confronting the historically institutionalised exclusion and ‘invisibility’ of the indigenous population in Guatemala (through the legal system and the embedded institutional and cultural racism). This factor, however, was in itself to become one of the principal causes of the failure of Guatemala’s 1999 reform process, as we shall see below.

Constitutional Reform Processes in Guatemala

The introductory paragraphs above briefly set out the regional and national context in which the Constitutional reform process of 1998-1999 took place in Guatemala. The following report examines this process in detail within an historical framework that takes as its starting point the political transition (1982-1985) and the Constitution of 1985 that stemmed from it. It is argued that the country’s Constitutional reform process must be understood within the broader context of the political transition and the counterinsurgency politics that framed it, the internationally monitored peace process, the legacy of the internal armed conflict, and the ongoing resistance of conservative political and economic elites to ‘deepened’ democratic governance in Guatemala.

³ There are twenty-three ethnic groups, including ladinos (of Spanish descent) and Maya, Xinca and Garífuna indigenous groups. The Maya are the majority population, against whom the genocide of the 1980s was perpetrated.

CONTEXT

Political Background

The Political Transition (1982-1985).

Various factors precipitated a crisis of governability and the subsequent political transition in Guatemala in the early 1980s: the economic recession; the alleged imminent threat of revolutionary victory prior to the strategic defeat of the guerrilla in 1982; the rise in guerrilla forces (and civilian support for the insurgents); growing social mobilisation and organisation; fraudulent elections (in 1978) and increasing state corruption (Palencia Prado 1996: 6). The historical tension between the private sector and the military (intensified in the 1970s when the military became an autonomous, semi-professional and income-generating institution) exacerbated the crisis of governability (McCleary 1999: 2-16). Moreover, State revenue necessary for the counterinsurgency was sparse, given the high levels of capital flight and tax evasion within Guatemala, and the country's negative international image – meaning that international funds were almost impossible to procure. As a result, it is widely believed that the military adopted a strategy of slowing returning the country to civilian rule, albeit under its scrutiny and control: political and economic instability made the need for domestic reorganisation and the survival of the military institution a priority. It is in this context then, that Guatemala's political transition took place as a means of regaining international legitimacy, reconciling the military and the private sector and retaining the military's political prerogative within the context of legal civilian governance.⁴ The plan was purportedly designed by experienced high-level military officers including General Lobos Zamora and General Alejandro Gramajo and implemented under the *El proyecto político-militar* (Political-Military Project), implemented in April 1982 under the *Plan Nacional de Seguridad y Desarrollo* (National Plan of Security and Development).⁵

The project began with the overthrow of President General Romero Lucas García in a *golpe de estado* (coup d'état) on March 23 1982, by high-ranking military officials. The military *junta* was made up of General Efraín Ríos Montt, General Horacio Egberto Maldonado Schaad and Colonel Fernando Gordillo. The *junta* declared that it intended to confront corruption, consolidate the counter-insurgency offensive, generate confidence for the business sector, and modernise public administration. However, in just over a month, Ríos Montt assumed the Presidency, and the *junta* was dissolved. Soon afterwards, violence in Guatemala City decreased, although rural violence, including massacres and alleged genocidal military activity against the Mayan population escalated, under the military's strategic campaign *Victory 82*.⁶ Due to the de facto administration's pro-human rights discourse (in reality nothing more than empty words), it won the support of newly elected

⁴ Schirmer (1998) is one of the key proponents of this thesis. See Black, Jamail and Stoltz Chinchilla (1984), Barry (1986), Painter (1987), Carmack (1988) and Manz (1988) for analysis of military-state-civil society relations in the 1980s.

⁵ In contrast to Schirmer, McCleary (1999) emphasises the role of the organised private sector in the political transition, principally through the pressure of the organisation the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) on the military to return the country to civilian rule and economic stability.

⁶ Military offensive *Victory 82* was launched in July during a state of emergency after a 30-day amnesty was offered to insurgents and supposed guerrilla collaborators in June 1982. The campaign sought to eliminate the guerrilla insurgency by following Mao Tse Tung's policy of 'taking the water (the civilian population) from the fish (the guerrilla)'. During this period, the majority of massacres against the civilian indigenous population were carried out by the armed forces. See Schirmer (1998) for detailed analysis of this period.

Ronald Reagan in the United States, bringing with it renewed US economic assistance, previously halted under President Carter.

However, Rios Montt was himself deposed through a military coup on August 8 1983, allegedly due to his divergence from the *military project*, and General Mejía Victores was imposed as the president who would return Guatemala to civilian rule.

There was initially little democratic substance to the political transition. In fact, what prevailed was the continuation of the counterinsurgency and the gradual military the defeat of the guerrilla, the pacification of the population and the embedding of national security within a national doctrine of civilian affairs (Schimer 1998: 31 - 34). However, as Jonas argues, after the writing of the 1985 Constitution and the return to civilian rule in 1986, as the peace process developed the political transition shifted away from the civilian-led politics of counterinsurgency and what had been an “authoritarian transition” became, more broadly, a “democratic transition” (Jonas, 2000: 105). The role of organised civil society and the international community in the ensuing peace process was a critical factor in this process.

The National Constituent Assembly and the 1985 Constitution.

In June 1984, a National Constituent Assembly (ANC) was convoked as an integral component in the transfer of power from military to civilian rule. The National Constituent Assembly was called to discuss the reform of Guatemala’s Constitution and also had powers to propose national legislation. However, as former general and political analyst Hector Rosada has stated, “During this time, despite overtures of regime change, in 1984 the political apparatus of the state continued to be dominated by the military institution”.⁷ Furthermore, the counterinsurgency war continued to frame and determine Guatemalan politics and military strategy, as indigenous communities in the western highlands were subjected to severe military control and hundreds of thousands of refugees and over a million internally displaced people, primarily from the same region, fled from the violence.

The ANC elections were celebrated with great enthusiasm and accompanied by high levels of participation, despite a large proportion of null votes. In total, 2,554,002 Guatemalans were registered to vote (61% men; 39% women); 78% of whom actually finally voted. Of those who voted, 28.4% did so in the capital city. There were 88 places on the ANC, and a total choice of 1174 candidates from 17 political parties and 3 civil committees. However, according to Edelberto Torres-Rivas, the elections took place in a non-democratic, repressive climate, framed by authoritarianism and with restricted debate.⁸

The voting tendencies in the ANC were the following: the Christian Democrats (DC) gained 21 seats – mostly in the highlands, but not the departmental capitals; the National Central Union (UCN) won 20 seats – above all in urban areas; and the National Liberation Movement (MLN) gained 6 seats (23 altogether through its coalition) – principally in eastern Guatemala. As a result, the right won a total of 30 seats. Success for the DC meant it became the strongest political force in the country, which established the grounds for its victory in the 1985 elections. However, there was severely restricted political debate, and the Left – through the United Revolutionary Front (FUR) – sustained a not unsurprising defeat, due to the ongoing counterinsurgency and the fear that the population felt for voting for the left. The NCA elections were seen as not being fraudulent, which, by all accounts, increased public optimism and belief in the subsequent Presidential elections.

⁷ Interview, Guatemala City, August 2004.

⁸ Interview, Guatemala City, August 2004.

As a result, the ANC became a body that with a fair degree of representation of a variety of political currents (not, of course, the Left) and obliged its members to carry out permanent negotiation (García Laguardia 2000: 7).

Box 1. Results of the National Constituent Assembly Elections of July 1984

Party	%of vote in national list	Seats in national list	% of vote in district list	Seats in district	Total seats
DCG	16.4	6	13.1	14	21
UCN	13.7	5	14.0	16	20
MLN-CAN	12.5	5	13.1	18	23
PR	7.3	2	9.0	8	10
PNR	6.7	2	6.3	3	5
PID	5.3	2	5.5	3	5
PUA	3.1	1	2.7	-	1
FUN	2.0	-	2.4	1	1
DCG-PNR	-	-	0.8	1	1
OCAS	-	-	0.6	1	1
TOTAL		23		65	88

Source: Database of the Americas. Georgetown University and Organisation of American States (2001)

The authoritarian political environment, restrictions in the political options available, the narrow agenda of the individuals elected and the political parties represented in the ANC, meant that it did not achieve the necessary inclusiveness to create a fully representative and progressive Constitution. However, the new Constitution did establish the Human Rights Ombudsmans Office (PDH), the Supreme Electoral Tribunal (TSE) and the Supreme Court of Justice and the Constitutional Court, instruments that, to differing degrees would later be a focus of organised civil society. Above all, the new Constitution of 1985 was a contradictory document then, as we shall see below. It did serve, however, to legitimise the political transition and between 1984 and 1985, the military gradually withdrew from directly governing.

It is worth underlining that military control of civil and political society remained the key determining factor during this period, in spite of their ‘return to the barracks’. While the military did not get directly involved in the ANC, according to Hector Rosada, they did dictate the content of the reforms concerning the military institution, threatening to dissolve the ANC if their demands were not met: in particular regarding the role of the military in internal security operations; the continuing existence of military courts and the necessity for the Defence Minister to be a member of the military.⁹ Furthermore, and in this context, the weakness of Guatemalan political society played a decisive role in the limited scope of the resulting Constitution. Political parties almost all followed a strongly anti-communist tendency (ongoing political violence and assassinations of party activists straying from this line reinforced this tendency); parties were governed by clientalism and *caudillismo*; and they sought above all to represent their own interests, and not

⁹ Interview, Guatemala City, August 2004.

those of the electorate. Moreover, all parties were at this point militarily led, further limiting the political and ideological spectrum.¹⁰

After various months of negotiations, the ANC concluded its work on May 31 1985, with the finalisation of the 1985 Constitution and two new laws: the Law of Elections and Political Parties and Law of Appeal, Habeus Corpus and Consitutionality.

The Constitution, which remains Guatemala's present Constitution as of time of writing, was divided into two parts: a dogmatic part enshrining individual and social rights, and a general part regulating the diverse powers of the State.

Opinions differ as to the degree of consultation that the ANC had carried out regarding the Constitution. Arnaldo Ortiz Moscoso, present Coordinator of the Commission to Support the Strengthening of the Administration of Justice and former Ex-Minister of both Labour and the Interior, who was, in 1985, the President of Guatemala's College of Lawyers, argues that the ANC did consult a wide range of social sectors, including unions, public sector workers and the College of Lawyers. According to Ortiz Moscoso "the 1985 Constitution was the most historically complete Constitution ever written in Guatemala and represents serious advances, not only for its mostly progressive content, but also because although it was written by elites, they sat down with other social sectors and citizens". However, Alejandro Rodriguez of the PDH refutes this claim, stating that there was almost no civil participation in the process.¹¹ According to a wide range of analysts, however, it is clear that the Constitution was in the most part written behind closed doors by elites, meaning that, ultimately, it lacked a certain degree of legitimacy. Moreover, it was criticised by both the political Right and Left, for its omissions and content – commentaros on both sides of the spectrum argued that it was too detailed for a constitution, engaging too much in the minutiae of particular legal points, rather than establishing a moral order and socio-political norms.

Perhaps the most important contextual factor shaping the new Constitution, however, was that had its origin in restricted political space and repression, and, undoubtedly as a consequence, institutionalised military privilege and prerogative, conferring on the military what Alejandro Rodriguez has called "relative constitutional autonomy". It paved the way for military immunity from prosecution; control of the judicial apparatus (military courts); no control over military intelligence and the ongoing legitimacy of and budget for undercover counterinsurgency operations (interview cited above). In this regard, the Constitution "was and remains to be vulnerable in a country without a broad democratic tradition and a history of military intervention in politics" (Ortiz Moscoso, interview cited above). Two further aspects of the Constitution remained weak: the institutional nature of the judicial system, and the only marginal extent to which it conferred constitutional recognition on indigenous culture – it did not officialise indigenous languages, nor the use of indigenous customary law, despite partially recognising indigenous rights to cultural expression. These three factors were key elements of the 1999 constitutional reforms, as we shall see below.

However, it must be acknowledged that the Constitution demonstrated politically and represented juridically the shift from an authoritarian regime to a democratic one, with special emphasis on the generation of a system that emphasised the respect for and protection of civil and human rights, both nationally and internationally, as its guiding principal. In spite of this, and given the time of its writing, it quite clearly was not able to include the ideological, cultural and social developments

¹⁰ Interview, Alejandro Rodriguez (Human Rights Ombudsmans Office, PDH), Guatemala City, August 2004.

¹¹ Interviews, Guatemala City, July/August 2004.

and norms that were later to be generated by the peace process, nor the diversification and redefinition of human rights that accompanied it. As a result, by 1999, the Constitution was in serious need of reform, if it were to be seen as legitimate, if the gains of the peace process were to have any legal foundation or were to be seen as part of the unifying and consolidating principals that undergirded Guatemalan society, or if Guatemala were to consolidate its democratic regime.

The Serrano Government and the Constitutional Rupture.

Only 7 years after the new Constitution came into force, it suffered a severe crisis and subsequent reform, amidst the institutional breakdown and severe levels of corruption that took place under the government of Jorge Serrano Elías.

In January 1991, the first transfer of power between civilian Presidents since the revolution of 1944 occurred in Guatemala, as President Vinicio Cerezo of the DC (1986-1991) handed over power to Serrano Elías of the National Solidarity Movement (MAS). However, institutional breakdown, lack of support in Congress, accusations of corruption and acute political mismanagement led Serrano in May 1993 to dissolve Congress, the Supreme Court of Justice and the Constitutional Court, and suspend other State institutions, including the PDH, as well as 10 articles of the Constitution protecting fundamental liberties and guarantees.¹² Serrano's 'self-coup' emulated the actions of President Fujimori in Peru in 1992, and he sought support from distinct social sectors in the following weeks, calling for another ANC within 60 days to reform the Constitution.

Reaction against Serrano's actions, defined by UN Special Rapporteur Monica Pinto as "an authentic rupture of the democratic institutional order" (Report 20, 1993), came from across all sectors of Guatemalan society, as well as from the international community, in particular the OAS. Guatemalan citizens formed the National Coalition of Consensus (INC), as well as the Multisectoral Social Forum, and included political parties, unions, civil society organisations (from both the popular and business sectors), and indigenous organisations. Statements of opposition to Serrano's actions also came from State institutions, including the Presidential Coordinating Commission of the Policy of the Executive in Human Rights (COPREDEH), the PDH, the Supreme Court of Justice (CSJ) and the Supreme Electoral Tribunal (TSE). The Centre for the Defence of the Constitution (CEDCON) also publicly declared the unconstitutionality of Serrano's actions.

However, perhaps the most emphatic role played by a publicly respected State Institution was that played by the Constitutional Court (CC). On the same day as the self-coup, the CC adopted resolution 225/93, which declared the unconstitutionality of his actions and call for an ANC, due primarily to his lack of observance/violation of the Constitution. The CC proceeded to declare Serrano's Vice-President ineligible to take over as President, and called for a new President to be elected within a period of 24 hours.

For several weeks, the crisis escalated, in particular as the military deliberated over what role it should play in the crisis and what stance it should take towards Serrano's actions. Pressure from Guatemalan society and the international community gradually alleviated the crisis, however, and it was determined that a new President be elected. Due to the lack of consensus amongst parliamentarians, the INC proposed a series of candidates, including the Human Rights Ombudsman at the time, Ramiro de León Carpio, whom Congress subsequently elected President on June 5 1993.

¹² Specifically, Serrano suspended articles: 5; 6; 9; 23; 26; 33; 31; 35.1; 38.2; 116.2; 157; 183.

The failed self-coup, the intent to legitimate the coup under the rubric of constitutional arguments, and the problematic and protracted solution to the institutional crisis itself provoked a degree of burnout in the constitutional system. However, the constitutional resolution of the problem demonstrated that the Guatemalan system could provide for peaceful political solutions to a crisis that would probably in the past have been resolved through illegitimate military intervention (a further coup d'état). Immediately after his election, De León Carpio launched an ambitious campaign to 'purge' Congress and the Supreme Court of those involved, demanding the resignations of the members of the two institutions involved. The new President sought to eliminate State corruption and achieve more evident transparency in the management of public administration by restructuring and purging Congress and the CSJ through proposing a series of constitutional reforms. The constitutional reforms would also remove the privilege of Congressional immunity and the immunity of other State officials and the provision of confidential expenses for members of the legislative and judicial organisms, amongst other aspects.

The mechanisms that led to the failure of Serrano's 'self-coup' specifically brought with them a series of changed public perceptions in urban Guatemala

- The active participation of institutions such as the Constitutional Court and the PDH created the perception that, for the first time, Guatemala possessed institutions that were able to resist those that sought to interrupt the democratic process. As a result, the credibility of and confidence in both institutions grew dramatically, and today these institutions enjoy a perception of being 'infallible'. This perception brings with it possible risks, of course.

- The use of the 1985 Constitution by the said institutions as a means of overturning Serrano's 'self-coup', as well as by other social and political actors, brought with it the perception that, in the aftermath of the coup, not only had the Constitution survived, but it had itself been instrumental in the prevention of further breakdown of the Constitutional order. This has created the perception that the Constitution itself is also 'infallible', which has problematized any attempt to reform it, and suggested that, in so doing, Guatemala's constitutional order might be threatened.

After the inevitable political wrangling, the constitutional reforms, which in sum affected 43 articles, were approved by Congress on November 17 1993, and by popular referendum on January 30 1994. Levels of participation were exceptionally low, however, with 16% of those registered actually voting. Among other changes, the reforms established the election of a new Congress to see out the period until January 1996, and the reduction of the Presidential term from five to four years. As a result, in August 1994, the major political players in the newly elected Congress were the political parties the Guatemalan Republican Front (FRG – led by ex-General Ríos Montt) and the Party of National Advancement (PAN).

According to Ortiz Moscoso, these reforms were "neither profound nor positive". Rather, analysts including Hector Rosada and Alejandro Rodriguez coincide that the reforms were actually carried out to defend the interests of the assuming political elite, as well as the economic elite. In fact, Alejandro Rodriguez goes so far as to say that the reforms followed the agenda of privatisation to such a degree that they strengthened the private sector's political impact. For example they broadened the membership of the College of Lawyers to include the private universities (which would allow the Deans of these universities to sit in State appointed positions) and determined that the State would only be able to lend money to private banks and not the Bank of Guatemala (interviews cited above).

The 1994 Popular Referendum took place before the end of the internal armed conflict, a context that was not conducive to citizen participation, particularly given the lack of emphasis placed upon this by all parties involved. The government, political parties, a weak civil society and the URNG

failed to carry out systematic popular education or political campaigns on the reform process. The reforms had very little relation to substantial issues concerning the reform of the State (militarisation, indigenous issues etc). Rather they were principally technical and perceived by those actors mentioned (with the exception of the government, whose interest the reforms clearly favored) as less a priority than engagement with the peace process in general. As in 1999, lack of popular education campaigns and dissemination of the reforms, general apathy and lack of confidence in political institutions also contributed to the low level of voter participation and disinterest in the reforms. It must also be underlined that, with the absence of any serious national campaigning, low levels of education and literacy considerably hindered any real understanding of or engagement with the reform process. Notably, neither did the international community play any major role in the 1994 popular referendum process.

However, most significantly, it became clear during and in the aftermath of the 1993 crisis that certain sectors of Guatemalan society were quite prepared to place the Constitution at the heart of their political project. Consequently, and in this regard, its significance went beyond its importance as a foundational legal document, the blueprint for the Rule of Law, and a statement of normative socio-political intent. Rather, Guatemala's Constitution became a key instrument of political conflict between political parties and opposing social sectors in defence of their interests. Moreover, the Constitutional Court became visible as the central institution in this strategy, and clearly a possible target for political manipulation.

The Peace Accords and Constitutional Reform.

Guatemala's process of democratisation is distinct from other Latin American transitions. Civil society did not take part in the political transition or the initial period of liberalisation, both of which were elite-driven. Contrary to the processes of political transition that took place, for example, in Argentina and Chile, civil society organisation did not occur until the late 1980s, after democratisation had begun and a civilian government had been in place for several years. The lack of participation by civil actors in the political transition, which was only challenged with the emergence of popular organisations after 1987, meant that the norms of political engagement under which elite and oppositional actors interacted remained unstable until the early 1990s, when developments within the continent-wide popular movement, the increasing momentum of the regional peace plan, Esquipulas II, and the broad social consensus articulated in reaction to the attempted *auto-golpe* by Jorge Serrano in 1993 contributed to stabilisation of the rules of the game. The most salient factor that led to a closer alignment of sectoral norms of political engagement, however, was the initiation of the peace process after the beginning of 1994, that brought with it international monitoring and promises of finance, as well as the formalised role of civil actors and their participation in the peace process. This culminated in a closer relationship between organised civil society, political society and the state. Hence, by 1997, once formal steps got underway to implement the constitutional reforms stemming from the peace process, there was a certain degree of political stability and the legitimate recognition of the necessary participation of the broad spectrum of civil society actors in peace-building and democracy-making in Guatemala.

However, whilst such a context would have seemed propitious for a popular referendum, structural problems remained almost unchanged in the country: these included extreme poverty; the legacy of the internal armed conflict (fear and political violence¹³); weak civilian institutions, particularly in

¹³ It is important to note that human rights violations continued during this period, including some high profile cases, for example brutal murder of Bishop Juan Gerardi took place in April 1998. Furthermore, a serious 'anti-peace' sign was given by the Arzú government, when the President failed to attend the formal public launch of the final report of Guatemala's truth commission (the CEH) in April 1999.

the justice sector; impunity for human rights violators – particularly the military; illiteracy; discrimination against indigenous peoples. All these factors were reinforced by the division between urban areas and rural Guatemala, where the indigenous population mostly resided under extreme levels of poverty and socio-political exclusion. Furthermore, Guatemala's democracy was disjunctive; not only did its extent vary according to region – Guatemala City and some beneficiary indigenous communities in the western highlands being the most evident manifestation of a peace process (signalled by the blue stars of the European Community or the Stars and Stripes of USAID) – its reach and impact was not the same across Guatemala's diverse population. For victims of the internal armed conflict (in particular the indigenous population) and civil society activists, the peace process had raised some hope of redress, raising a necessary interest and residual effect amongst their ranks. Similarly, the URNG had clear vested interests in peace and its longer-term consequences, as did some political parties and elements in the military. However, other sectors would take longer to convince, not only those who to differing degrees opposed the peace process (including civilians in both rural and urban Guatemala, members of the military, some sectors the economic and political elites), but those that, at least in their own perception, had not been directly affected by the conflict.¹⁴ In these latter social groups, there was clearly either disinterest or antagonism toward the formal mechanisms of the peace process. These divisions would become acute and highly significant during the Consulta Popular.

The Peace Accords

Fourteen Peace Accords were signed between successive Guatemalan governments and the URNG in the 1990s, aimed at terminating the internal armed conflict and establishing a firm and lasting peace in Guatemala. One of the last accords to be signed, the Accord on Constitutional Reforms and the Electoral System, signed 7 December 1996 in Stockholm, Sweden, brought together the Constitutional reforms contained in the previous peace agreements, as well as recommending reforms to the electoral system, such as ceilings on campaign funds, monitoring of party finances and allowing armed forces personnel to vote. With the signing of the final Peace Accord in December 1996, the reform proposals were discussed in commissions that would then design the final proposals for constitutional reform.

The Commissions:

The deliberations carried out within the Commission on Constitutional Reforms were carried out in Guatemala by Guatemalans of distinct levels of expertise. Those that participated in the commissions on the side of civil society included individuals representing organisations that had participated directly in the peace negotiations through membership in the Civil Society Assembly and that proposed themselves as potential participants (see below). While the public was not invited to the deliberations of the accords, their findings (the final proposals) were published formally and in the popular press. According to interviewees, many of the proposals from the wide range of civil society organisations involved (including women's, indigenous, human rights and peasants's organisations) came about as a result of consultation between the leadership of those organisations involved and their social base. In this way, interviewees have argued that the consultation process was itself representative of a broad range of social actors. For example, the Indigenous Accord created five commissions that were to present proposals, three of which were bipartite (of equal government and indigenous representation), to work on educational reform, political reform and participation and rights related to indigenous peoples' lands. The Commission of Accompaniment

¹⁴ Interviews carried out in Guatemala in 1998/9 by the author clarified that some sections of the population, if they did accept that the internal armed conflict had actually taken place, had no idea of the gravity or the nature of it. These views are less prevalent at the time of writing, although many Guatemalans still have almost no understanding of the significance of Guatemala's internal armed conflict.

to the Accords was consulted in order to approve or not the proposals put forward by civil society for individual participation. The other two non-parity commissions were to work on the officialisation of indigenous languages and the definition and preservation of sacred places. The process of writing proposals for the constitutional reforms and, subsequently, of negotiating with elite State and political actors and Congress gave civil society actors in general, and indigenous and women social actors in particular, key political experience and demonstrated important changes with regard to popular participation in decision-making at the national political level. However, the participation of key actors within these commissions sidelined resources from those civil society organisations that had voluntarily incorporated themselves into the said commissions (civil society representatives, unlike government participants, received no remuneration for participation). As a result, their work with grass roots members was weakened by the activity of the commissions, as important activists took part in the said negotiations.

It was agreed that, once ratified by two-third majority vote of the Congress, the reforms should be approved through a popular national referendum, termed the *Consulta Popular*. The following section outlines briefly some of the main content of the substantive accords (Annex 1 presents the actual proposals agreed upon by Congress and sent to popular referendum in May 1999; Annex 2 lists the Peace Accords). The accords signed under the De León Carpio government did not include many reforms, with the exception of the Indigenous Accord (five reforms proposed), in contrast to those accords signed under President Arzú, that included the majority of the later proposed reforms related to the peace process.

As previously stated, the Peace Accords, lacking legal standing in themselves, brought with them the obligation to carry out reforms to the Constitution; the constitutional reforms were, therefore, central to the peace agreements and the “lynchpins” for the (judicial) sustainability of the entire peace process.

Under the De León Carpio Government:

The Framework Agreement for the Re-initiation of the Peace Accords (January 1994)

Brought with it the agreement of the parties to accelerate the process, scheduling talks to be completed by the end of 1994. Jean Arnault, the UN observer, became the UN mediator. The accord established the body through which civil society would participate in the peace negotiations, La Asamblea de la Sociedad Civil (ASC).¹⁵ The ASC, made up of the sectors from the Oslo process and representatives of the increasingly dynamic Mayan movements, would formulate consensus positions on the substantive themes, transmit non-binding recommendations to the parties and the UN and consider and endorse the bilateral agreements as national commitments.

The Comprehensive Agreement on Human Rights was signed (29/3/94)

Tied the government into reaffirming and implementing its commitments under the 1985 Constitution, strengthening judicial institutions and the PDH, updating criminal codes to combat impunity, regulating arms and illegal militia groups, guaranteeing freedom of movement and association, ending forced recruitment, protecting human rights workers and compensating and/or assisting victims of human rights abuses. Both parties in the conflict also recognised the rights of the civil population and those wounded in combat. The accord also established the UN Human Rights Verification Mission (MINUGUA) to support the negotiation process. MINUGUA prioritised the rights to integrity and security of the person, individual liberty, due process, freedom

¹⁵ The ASC was constituted of 69 delegates and 55 organisations, representing women’s, business, indigenous, campesino, church, human rights and displaced people’s groups.

of expression, freedom of movement, freedom of association and political rights. While the accord came into immediate effect, MINUGUA was not installed until November 1994.

The Accord for the Resettlement of the Populations Uprooted by the Armed Conflict (17/6/94)

This accord was signed in an attempt to resolve the massive displacement of at least 150,000 – 200,000 refugees and one million internally displaced Guatemalans as a result of the conflict. According to Holiday (2000: 80-81), the accord was a statement of overall development policy toward the integration and resettlement of these populations, building on a series of prior agreements that dated back to 1991. It provided the impetus for the return process.

The Accord Establishing the Commission for the Historical Clarification of Human Rights Violations that have Caused Suffering to the Guatemalan Population (CEH) (23/6/94).

Civil society groups received this accord bleakly as it was considerably weak, giving an investigative body six to twelve months only to investigate thirty-six years of conflict. The investigation was to begin after the signing of the final accord. The final report would have no judicial effect, nor would it be able to individualise responsibility.

The Accord concerning the Identity and Rights of Indigenous Peoples (AIDPI) (31/3/95)

Perhaps one of the most important accords for the indigenous population, which had a profound impact upon the path taken by the peace negotiations and the subsequent policies and political strategies adopted by the popular movement. The content of the AIDPI was based very much on the International Labour Organisation Treaty 169, the Convention Concerning Indigenous and Tribal Peoples in Independent Countries.¹⁶ Whilst this was, in part, due to the hardening of the URNG after capitulation to the government and military over the CEH, and to an effort by the guerrilla to raise its profile with the indigenous population, other factors can be cited. The continental popular and indigenous mobilisation and the award of the Nobel Peace Prize to Rigoberta Menchú in 1992 contributed to the increasing prominence of indigenous leaders and movements, both the culturalist (*Mayanista*) and popular tendencies, at local and national level.¹⁷ Furthermore, the shift away from traditional leftist politics and the growing popular interest in *particularist* politics (political platforms articulated around specific issues such as gender, ethnicity, environment, locale) was an important factor. In this context, national popular organisations had begun to shift toward combining human rights policies with ethnic platforms. Movements began to rethink basic interpretations of human rights, so crucial during the early stages of democratisation, extending them to include claims to entitlement based upon their indigenous identity. Protest politics combined with formalised participation in the negotiations, which raised the confidence of indigenous activists and placed political pressure on the national agenda, imbuing it with an ethnic dimension.

The accord created five commissions, three of which were bipartite (of equal government and indigenous representation), to work on educational reform, political reform and participation and rights related to indigenous peoples' lands. The other two non-bipartite commissions were to work on the officialisation of indigenous languages and the definition and preservation of sacred places. The agreement was to come into effect after the final accord was signed, except for those elements that related to human rights issues, which were of immediate effect. Clearly, the thematic proposals

¹⁶ ILO Convention 169 was ratified by the Guatemalan Congress in March 1995.

¹⁷ See Brysk (2000) and Kearney (1996) for further discussion of the regional context.

for constitutional reform that arose from this accord were crucial to the redefinition of the Guatemalan nation-state and to the consolidation of the democratic transition.¹⁸

Under the PAN Government of Alvaro Arzú Irigoyen (1996-2000):

The Agreement on Socio-Economic Aspects and the Agrarian Situation (5/6/96)

The accord presented a formula to modernise the Guatemalan state and economy through enhancing the role of the state in distributional and social issues via a framework of market-oriented policies. It stipulated the increase in the tax burden and the increase in campesinos' access to credit through a trust fund and bank credits, and increased marketing and technical assistance, thus facilitating the purchase and development, rather than the redistribution of land. The accord also agreed to raise the percentage of the GDP allotted to education and health by 50 per cent by the end of 1999, to reallocate budgetary spending to social services and strengthen the social security system. A concession of 100,000 hectares of land was allotted to poor families and it was agreed to spend \$50 million annually on rural infrastructural improvement. The document also stipulated the resolution of land conflicts and mechanisms of compensation and the creation of channels to ensure popular participation in socio-economic policy-making. Finally, it was agreed to make the tax system more progressive and to raise the overall tax burden as a percentage of GDP by 50 per cent by 2000 (from 8 per to 12 per cent).

The Accord on Strengthening Civilian Power and the Role of the Army in a Democratic Society (19/9/96)

This accord agreed to restrict the duties of the armed forces to the defence of the nation's sovereignty and the protection of its borders, to abolish the Civil Defence Patrols (PACs) (the army's civilian adjuncts during the internal armed conflict), the Presidential Guard (EMP) and the Mobile Military Police (PMA) and to cut the army's budget and size by 33 per cent. The military was also to mobilise forces to facilitate the demobilisation of the URNG. The accord also agreed the establishment of a national civilian police force. It aimed to strengthen the rule of law, democratic institutions and civilian oversight and to dismantle the mechanisms of the counter-insurgency that had been responsible for gross violations of human rights.

Accord on the Legal Integration of the URNG (12/12/96)

Whilst this provided financial aid, scholarships, training, housing and health care for demobilised URNG members, it also included a highly controversial amnesty for the armed forces and URNG that would apply to cases where crimes could be demonstrated as having been committed for political motive.

¹⁸ According to Plant (1997: 319), the AIDPI established: "unique mechanisms for indigenous participation in the manifold legal and administrative reforms that will be necessary to end centuries of discrimination, to provide for meaningful indigenous participation at all levels, and to promote and recognise the role of indigenous institutions in a new multiethnic society". These included the commissions, three of which were composed of equal numbers of indigenous and government delegates (educational reform, institutional reform and participation, indigenous land rights).

Stakeholder Analysis

Political Parties

As we will detail further below, despite otherwise expected, the Consulta Popular eventually took place in 1999, an election year. In this respect, the approval of the reforms and their subsequent implementation would clearly take place under different political administrations. In this regard, political parties were reluctant to invest funds in the campaign for the referendum that would later be necessary for the 1999 elections. Importantly, as we have mentioned above, the historical division between civil society and political parties is extreme in Guatemalan society, political parties (with the exception of the FRG) having little organic relationship with civil society and principally being the vehicle for personalistic, clientalist politics. In this regard, parties showed little interest towards the referendum, despite necessary overtures to the contrary to appease the concerns of the international community. Moreover, political parties have traditionally shown little regard for the electorate, sowing their alliances, and later directing their political policies (if indeed implemented any substantial ones) towards the political and economic elite, as well as the population of the capital city. For the PAN government, therefore, the Consulta was a severe problem. Its social base – the economic elite – was, in principal, not overly in favour of a ‘Yes’ vote, although PAN clearly had to appease the international community, as well as, to some degree, having to accept the referendum as an indicator of its performance, in one way or another.

As a result, political parties complied with the requisite formalities of the Consulta, but went little beyond their formal duties and social expectations (mostly of the international community and the popular pro-peace sectors). They did not seek to mobilise across the entire social spectrum of society that would, subsequently, assume these changes, nor to convince them of the necessary importance of the ‘Yes’ vote. Moreover, political parties did not attempt to attain the necessary budget to carry out an intelligent popular education campaign that would reach all social groups, in particular illiterate indigenous and ladino communities. In this regard, no party sought to assist with transport to and from the voting urns on the day of the Consulta – in complete contradistinction to their extraordinary efforts during national elections to move the electorate physically and mentally.

Political parties also failed to comply with their duty to orientate and guide public opinion: those sectors within parties that were in favour of a ‘Yes’ vote did so discretely, allegedly in order not to lose future voters in the imminent elections. Above all, the parties remained indifferent to the campaign, failing to mobilise their social constituencies even in the slightest of manners. There was little public debate spearheaded by political parties on the issue, including by the URNG, now a political party, which seemed to be most concerned with the upcoming elections and divisions within their own ranks.

Once the transition from authoritarianism to democracy had begun, many of the hopes for the consolidation of that transition were placed in the political parties, some of which were active in the authoritarian period, and others that had formed in the democratic era.

However, the institutional weaknesses of these political parties - between 1984 and 1999 in 11 elections of different types, around 50 political parties came and went (ASIES 2000) - had affected not only political stability, but also the creation of stable government policy.

The Guatemalan political party system, has been characterized by, and is characterized by, the absence of ethical ideals or statements of principles and values, the lack of a political project and its

corresponding programmatic platform, the persistence of *caudillismo* and the prevalence of clientism.

Its strength has depended too heavily on the charisma and influence of its founders and members, which has resulted in its political underdevelopment. On the other hand, the history of authoritarianism experienced by Guatemalan society, and the closure of spaces for expression and organization, as well as channels for political participation, and in addition the internal conflict, have not contributed to the institutionalisation of the political party system.

As such, the lack of values or ideals - clear evidence of ideological ambiguity or pragmatism - the prevalence of *caudillista* and authoritarian conduct, both at the national and at the local levels, as well as a severe rejection of the demands of new social actors, clearly was going to influence support for the reforms both at the time they were considered by the Congress and in the later referendum.

Adding to this in Guatemala the clustering of influential individuals and social groups around the various existing parties seem to respond more to personal interests than to common ideological beliefs (ASIES, 2000). It is for this reason that such interests prevailed at the time of deciding whether to support the reforms or not, wholly aside from the opinions of the party leaders.

This system of clientism and nepotism may have been threatened by another reform that ran parallel to constitutional reforms: the reforms to the electoral and political parties law, which were contained in the Stockholm Accord and which sought the creation of a participatory and functional democracy, by promoting the legal and constitutional modifications necessary to correct the deficiencies and limitations of the system.

Civil Society

The most interested parties in supporting a 'Yes' vote in the referendum were those individuals and groups that identified with the objectives of Guatemala's popular and indigenous movement or had been directly affected by it: victims of the conflict (including indigenous and ladina widows; peasant farmers; indigenous communities; urban unions and university students; progressive academics and members of the legal community; ex-members of the URNG). It was these groups that sought to orientate public opinion on the Consulta, although lack of funds and experience in such an enterprise meant that their campaign lacked efficacy.

However, with the notable exception of the indigenous movement and the women's movement (through the Women's Forum), many organisations were resigned to the fact that the population would approve the constitutional reforms and, as a result, did not dedicate serious energy to a 'Yes' campaign (lack of funding and serious further commitment were of course factors here). However, even these sectors overlooked major flaws in their campaigns, such as a lack of emphasis on directing the campaign towards the many indigenous people living in urban areas, as well as towards the ladino population. Indeed, it was only when it became clear to civil society activists that there was a distinct possibility in a rejection of the reforms, that organisations such as Coordinating Body of Mayan Organisations of Guatemala (COPMAGUA), the Citizens for the 'Yes' Vote (including ex-General Julio Balconi), unions, the University of San Carlos, the Lawyers' Association, the Unity of Union and Popular Action (UASP), the ASC, among others, mobilised through their social bases and by using press releases through distinct media and developed a range of pro-reform activities. However, as we shall see below, in the end, there were only 76 days for popular education initiatives prior to the Consulta.

The role of the Church was crucial, however, in the referendum, as it has been historically. In those departments of majority indigenous population in the western highlands, the Catholic Church sought to mobilise people for the 'Yes' vote, above all due to the importance it placed on demilitarisation of the country and the modernisation of the armed forces, the recognition of the cultural complexity and nature of the nation, and the modernisation of the judiciary (crucial components of the reforms).

However, with a few exceptions, Guatemala's many evangelical churches convoked their congregations and systematically campaigned for a 'No' vote, using disinformation and propaganda. Congregations were told that a 'Yes' vote would mean obliged religious conversion to Catholicism or Mayan religion; that those who voted 'Yes' were guerrillas; that lands would be taken away; that Guatemala would lose its sovereignty. A key proponent of this discourse was Francisco Bianchi of the Church of the Word.

Finally, the private sector, so keen on the constitutional reforms under De León Carpio, was a serious opponent of the 'Yes' vote, in particular the ultra-right Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). It perceived that its economic and political interests would be adversely affected by the reforms proposed – indeed it had been a long-term opponent of the peace process in its entirety. As a result, in the week leading up to the referendum, it published a severe anti-reform press statement and lodged a suit of unconstitutionality with the CC, which was subsequently rejected.

The Media

In the weeks leading up to the referendum, the debate between the 'Yes' and 'No' camps was played out in the capital city, the most determinant constituency in any Guatemalan election or referendum, in the written press. Clearly, the reach of this debate was limited to Guatemala's insubstantial literate population. The debate followed two principal themes.

Firstly, it expressed the fear of a politically and economically important sector of the ladino population that the constitutional reforms would alter the balance of power in Guatemala, initiating a dangerous movement towards the recognition of Guatemala's majority indigenous population. This discourse has always been a major element in conservative thinking in Guatemala, traceable to editorials in, for example *Prensa Libre*, during the reform period of the latter 1940s and early 1950s. While racism was hidden under questions of legalism, journalists talked of fears of possible *balkanisation* and division within Guatemala, and espoused on how the approval of the reforms would undo equality before the law, by allowing indigenous people special privileges (see below).

The second theme of the debate, however, expressed the legitimate concern that a reform process carried out through legislative decree and a subsequent popular referendum (inevitably with low levels of participation as had occurred in 1994), would open the way to reforms of the constitution that were unrelated to the peace process. As we shall see below, these fears were in fact realised in 1999, as Congressional deputies representing their political parties increased what had originally been 13 constitutional reforms (related to the peace process) to an unimaginable and politically unmanageable package of 50 reforms. Those who followed this line proposed that the reforms be passed by ANC, as a means of appropriately addressing the reforms.

The Armed Forces

In general, there was little public statement by the military either in favour of or against the constitutional reforms in the run-up to the Consulta. However, unsurprisingly, the reforms sought to reign-in and transform the historically unbridled power of the armed forces in the areas of public security, the autonomy of the National Civil Police (PNC) and intelligence and, implicitly, of political influence. As a result, the majority of the military institution saw the reforms as a threat to the integrity of the armed forces. However, given the delicacy of the relationship between the Executive and the international community, it was important for the military, which had after all participated willingly in the peace process, to remain publicly neutral during the process. A notable exception to this was the attitude and work of ex-General Julio Balconi, who participated in the organisation *Citizens for the 'Si' Vote*.

However, in contrast to their public silence, according to a wide range of interviewees and consulted documents, the armed forces operationalised their previous counterinsurgency networks in rural areas to disseminate propaganda against the 'Yes' vote; including through the PACs and the Military Commissioners, the point of contact during the armed conflict between the military and civil society throughout the country. In this respect, Alejandro Rodriguez stated that the military's approach to the reforms was "counterinsurgent in its methodology and effect" (interview cited). As with the propaganda of the evangelical church, former PACs and Military Commissioners articulated a discourse of anti-indigenous sentiment that manipulated the historical divisions between communities. Their discourse, moreover, played upon and reinforced the culture of fear that had been embedded during the conflict by assassinations, torture, rape and political repression and intimidation carried out by the military and the PACs against progressive social forces and ordinary citizens.

The International Community

The international community's approach to the Consulta was, to say the least, positive. Given the vast quantity of time, effort and funds proportioned by the international community, both through the UN and the Group of Friendly Countries (Spain, Colombia, the US, Mexico, Norway and Venezuela), throughout Guatemala's peace process, any other approach would have been improbable. There was a clear desire on the part of international governments and donor agencies that the reforms be approved. Moreover, the 1998 meeting of the Consultative Group was postponed to a later date in order to be able to pressure the Guatemalan government for the process to take place.

However, the approach of the international community was also noticeably unsubtle, and, in an environment of polarisation, fear and disinformation, served the purposes of the anti-reformist camp. For example, television broadcasts in favour of the reforms by Guatemalan NGOs and pro-'Si' groups and financed by the European Union and USAID ended with the EU/USAID ensignia and the statement 'This has been financed by the European Union or USAID'. It must be noted that this approach was not advisable given the evident and documented tendency of Guatemala's military, political and economic elite to react against international intervention by playing the 'sovereignty card'. This reaction, predictably, played into the hands of the anti-reformist sectors who seized the opportunity to alert Guatemalans to the fact that the international community should not be allowed to dictate the way in which Guatemalans freely vote. Moreover, the same sectors raised the fear that, if the 'Yes' vote won, then the peace process would be over, and there would be neither finance nor further political support from the international community.

We raise a serious concern at the close of this section. In order to block the reforms through a 'No' vote, anti-reformist sectors took advantage of historical and structural problems, including poverty

and the inappropriacy of the Electoral Law (which obliges voters to vote in the departmental capitals – implying an expenditure that most rural Guatemalans could not afford), a culture of fear, ongoing political violence and discrimination, illiteracy, the underdeveloped nature of political society and culture and the continued breadth of militarisation (particularly in rural Guatemala), as well taking advantage of the lack of education initiatives concerning the Consulta to which the State was formally committed, which facilitated their disinformation campaigns.

This approach has been utilised to varying degrees in every national election in Guatemala since the return to democracy in 1986. Moreover, it was a decisive factor in the 2003 elections, as pointed out in the final report of the Carter Center Observation Mission (2004, forthcoming).

Our concern is simple. These conditions should have been anticipated or taken into account in the design of the reform process during the negotiation of the Stockholm Accord.

In sum, as has been made clear, the international community was a critical factor in the democratic transition and peace-building process in Guatemala due to international interest and concern, as well as to the severe intransigence of national elites. Its role, however, was complex.

Given that the approval of constitutional reform meant legal recognition at the highest level of the content of the Peace Accords, MINUGUA and the international community were involved in the process from the beginning. However, the government considered whatever process to facilitate the CBP, including support to civil society, or to make it more transparent to be an affront upon the internal matters and sovereignty of the country (Jonas 2000).

Moreover, during the CBP, as mentioned above, the international community was seen as biased as a result of a series of public information campaigns calling for the ‘Yes’ vote. In short, however logical this position might have been given its prior support of the peace process, the international community was perceived as being too closely allied to the pro-reform camp. According to interviewees, this questioned the image of independence of the international community and tarnished their credibility. Moreover, interviewees also stated that the international community’s support of civil society’s role in the peace process, including in the CBP, created a “new social class of individuals and groups involved in the peace process, which alienated the vast majority of Guatemalans who did not have access to these funds and jobs and, in some cases, created antagonism towards these sectors”. During the CBP, the international community exerted pressure on the government, including postponement of the Consultative Group Meeting of 1998 and indirect threats to withhold funds to the government if the referendum was not promptly carried out. On the other hand, funds were channeled towards those groups seeking a ‘Yes’ vote through donor agencies. According to one interviewee, such an approach only helped to distortion and to polarize further the situation, rather to bring different groups together in a national debate over the importance of the reforms (interviews remain anonymous in this case).

ANALYSIS OF THE CONSTITUTION-BUILDING PROCESS

STAGE ONE

Chronology

The Guatemalan Constitution establishes that the approval of whatever constitutional reform must be done so through a two-thirds majority of Congress. It is only with this majority that the reforms can pass to a popular referendum. The process through which this majority was obtained took place between the middle of 1997 and October 1998, during which time those political parties represented in Congress added a further 37 constitutional reforms to the package, principally in order that they could use the proposed reforms as part of their electoral campaign for the 1999 elections. Other reforms that were added allegedly favoured Congressional deputies. As a consequence, once the final packet of reforms was ready, it was extraordinarily complex and considerably difficult to 'sell' to Guatemalan society.

The PAN government complied with its obligation as was stipulated in the Stockholm Accord, and presented the reforms resulting from the peace process to Congress by May 1997. Given that the PAN had the parliamentary majority, it would have been relatively easy, in conjunction with other political parties openly interested in the peace process, such as the New Guatemalan Democratic Front (FDNG), to attain the two-thirds majority vote necessary for approval of the reform packet in a comparatively short period of time.

The reforms that were presented to Congress were elaborated principally from the Stockholm Accord, which stated that the said modifications should provide "the substantial and fundamental base for the reconciliation of Guatemalan society within the framework of the Rule of Law, democratic co-existence, the full and strict adherence to human rights, and the end of impunity" (Stockholm Accord).

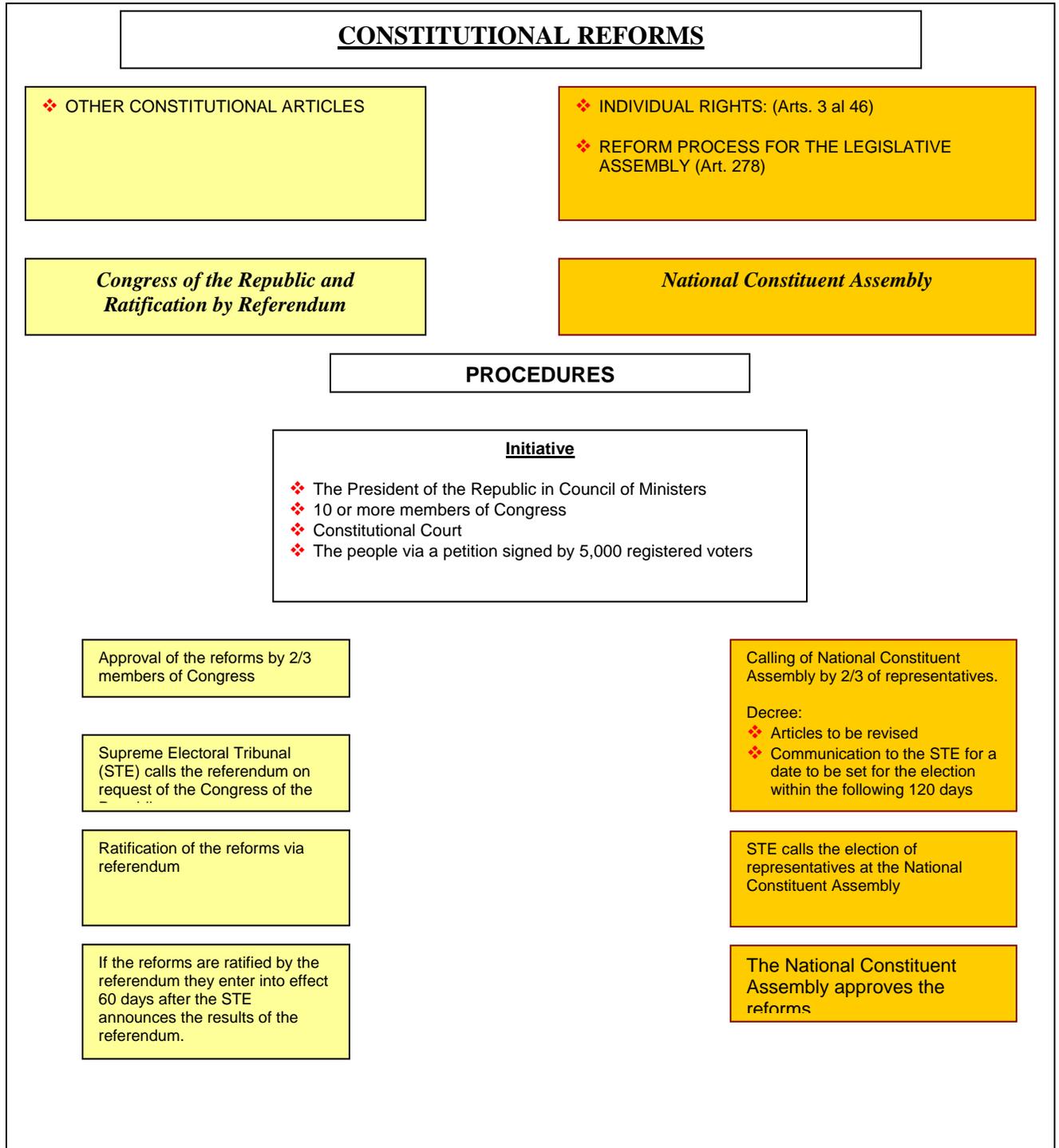
However, the government opted to develop what it called a "consensus strategy" with opposition parties, with the supposed objective of giving the reforms a greater legitimacy and avoiding the possible sabotage of the reforms by other political parties after the referendum. A further objective was apparently to overcome inter-party and governmental secrecy and a lack of participation by all parties represented in Congress, as had been the case during the negotiation of the Peace Accords.

Consequently, the reforms were discussed within the framework of the newly formed Multiparty Platform (IM), established by the PAN in 1997 and were later to be approved subsequently through the torturous path that ordinary legislation follows within Congress. According to Jonas, 'Multiparty Forum' was where the reforms were 'sent to die' (2000: 190).

From the moment that the IM began to discuss the reforms in August 1997, other reform initiatives began to emerge, proposed by represented political parties, that had no relationship whatsoever to the Peace Accords. As stated, the end result was the bloating of the constitutional reform package to include 50 reforms (many of which were unrelated to the peace process). The reforms soon became hostage to and hijacked by the interparty skirmishes, political agendas and politicking of political parties inside of Congress, including those of the governing party PAN.

During the nine months that followed, the reforms disappeared from public view, and were lost within the IM. In the process, important constitutional reforms that could have consolidated the

Box 2. The Reform Process.



peace process were mixed with unrelated, or only marginally related proposals that served the ends of political parties.

In this regard, the most obstructive oppositional force was the FRG that had, from the beginning of the peace process, opposed the Peace Accords and which constantly opposed or sought to lenthen the process of approval of the constitutional reforms within Congress.¹⁹ However, at the same time, the FRG constantly sought to impose its own political agenda on the reforms, seeking to reform Article 186 of the Constitution that impeded its leader, ex-General Ríos Montt, from running for President due to his participation in the coup of 1982, and through which he became de facto President.

Given that national political actors within the Legislative and Executive were unwilling or unable to take the process forward, it was the international community that gave impetus to the process of constitutional reform, as it had done during the peace negotiations themselves. It was only one month before the June 1998 Consultative Group meeting, and in light of pressure from the international community, that the government began to take steps to take the reforms forward. The government dissolved the IM and returned to the process of parliamentary procedure, sending only those proposals related to the Peace Accords to Congress. However, the summer Congressional recess took place, with no reforms having been approved. Only three months later was the packet approved by Congress, and by now it had swelled to include the entire 50 reforms, many of which were themselves legally problematic.

In parallel to the process within Congress, other developments were taking place. Cumplying with the Consitutional requisite, COPMAGUA had collected 5,000 signatures in order to form a Commission that would create its own reform proposals and subsequently negotiate directly with the government. The proposals related directly to those themes most pertinent to indigenous peoples, including land, customary law and the officialisation of indigenous languages, as was contemplated in ILO 169, already ratified by Guatemala in 1996. Eventually, after prolonger negotiation and consultation with their social bases and community organisations, the Indigenous Commission of Constitutional Reforms presented 10 reform proposals to the government that were accepted as part of the broader package by Congress.

Hardly a week before the 1998 meeting of the Consultative Group in October 1998, and almost one and half years after their first appearance in Congress, the package of constitutional reforms was approved with the necessary two-thirds majority, despite the abstention of the FRG, the principal opposition party, in the vote. Congressional approval came more as a result of the pressure of the international community and the activity of civil society organisations than due to the goodwill of those parties involved. Furthermore, the original packet of 13 reforms was now a package of 50 constitutional reforms.

According to Ortiz Moscoso, the Executive itself abused its power by introducing legislative proposals and broadening the constitutional reforms in the Consulta. The government imposed unnecessary reforms and demonstrated a “nasty arrogance”. Moreover, this attitude allowed elites to develop further amunition against the process and subsequently to use it to distance themselves from the proposals as well as to paint the entire constitutional reform process it negatively (interview cited above).

¹⁹ The FRG’s political strategy during the 1999 elections further demonstrated this, as it flatly opposed any progressive measures for which the ruling PAN government could take credit.

A further factors that contributed to the protracted nature of the CBP and presented a serious obstacle it was the disjuncture between actors involved in the negotiation of the Peace Accords and the CBP in itself. Over a prolonged period of time, various governments and the URNG negotiated the accords, with contributions by the Civil Society Assembly and mediation by the United Nations. On the other hand, once the constitutional reforms emanating from the accords had been formulated by the relevant Commissions, they were sent to a Congress that was composed of political parties that had had very little to do either with their content or with the negotiation process in itself. As a result, given the conservative, unrepresentative and self-interested nature of political parties in Guatemala, they did not identify with the reforms, and perceived them to be a threat to their traditional interests: the Stockholm Accord proposed not only constitutional reforms that were perceived to reign in the instruments of elite ladino dominance, but reforms to the Law of Elections and Political Parties.

The setbacks and protracted process had meant that the public had gradually lost faith in the reforms and their significance and, once again, that Guatemalan public institutions had been further discredited; nothing could have been further from the original objectives of the reforms.

As Jonas has argued, moreover, the process to secure approval for the constitutional reforms demonstrated that “The internal peace coalition in Guatemala was not strong enough *by itself* to counter the pressures from the peace resisters; hence, even on the issues that it was committed to, the government needed pressure from the international community” (2000: 193).

In conclusion, it is worth noting that each time that there has been a change in Guatemala’s political trajectory (either by democratic or authoritarian means), almost without exception there has been a change in Guatemala’s political constitution. Prior to 1985, the only period of real democratic change was in 1945, which clearly did not become the subsequent model of reference. As was made clear in the original text, the objectives of the 1985 Constitution were: to permit liberalization of the economy through a Constitution that contemplated a broad range of individual rights, very few collective rights, and a non-interventionist State; to try to re-establish international credibility (and international investment) in order to break Guatemala’s political and economic isolation brought about by the actions of the internal armed conflict; and to find a way out of the political stalemate and severe institutional fragility resulting from the military’s assumption of political dominance. As a result, Guatemala’s model of constitutional reference could not be the ‘revolutionary’ 1945 Constitution. However, a primary aim of the political transition was also to permit the military to maintain its institutional control over civilian politics within a democratic framework; as General Hector Gramajo has stated: ‘politics was a continuation of war by other means’.²⁰ Consequently, the military needed to relinquish control through apparently legitimate democratic means. As a broad range of commentators have stated, at least until 1996, civilian oversight over military intervention in politics was extremely weak in many aspects, a process that had been a direct result of the 1985 process and of the military’s continuing dominance during this period (up until the closure of the armed conflict).

The Referendum (October 1998 – May 1999)

A further setback to the reform process occurred in Autumn 1998, when in the aftermath of Hurricane Mitch, the PAN government declared a ‘state of calamity’ in Guatemala, which had not taken place in any other of the worse hit Central American countries. As a result, certain constitutional guarantees were restricted and the calling of the Consulta by the TSE was prohibited.

²⁰ Interview, Guatemala City, September 1998.

This action was criticised by MINUGUA, precipitating a backlash of anti-interventionist statements against the international community, including by the government.

The next series of challenges to the constitutional reforms came in the form of suits of unconstitutionality, filed by various anti-reformist actors, including the Pro-Fatherland League, the Centre for the Defence of the Constitution (CEDECON),²¹ and CACIF. The demand that the reforms were unconstitutional due to their being presented as a single question was, however, accepted by the CC, and the reforms were declared unconstitutional on February 8 1999. Consequently, the package was returned to Congress that proceeded to divide the reforms into four thematic blocks, each with a 'Yes' or 'No' vote.

Block 1. Nation and Social Rights: including reforms to 7 constitutional articles and 3 transitory articles.

Block 2. The Legislative Organism: including reforms to 7 constitutional articles and 1 transitory article.

Block 3. The Executive: including reforms to 9 constitutional articles and 1 transitory article.

Block 4. The Judicial Organism and the Administration of Justice: including reforms to 16 constitutional articles and 3 transitory articles.

As a consequence of these changes, those articles pertaining to the Peace Accords were placed together with other constitutional reforms that had little or nothing to do with the peace process, resulting in an extremely complex package and four complicated questions. In this regard, it was, according to a wide range of interviewees, very difficult to explain to the population what they were voting for.

With this final change, the TSE convoked the Consulta Popular for May 18 1999, meaning that there were only 76 days for popular education initiatives and voter education programmes. However, at various stages prior to the referendum itself, the TSE prohibited other institutions from actually divulging the content of the reforms, allegedly in order to maintain consistency and uniformity. A range of analysts has declared that this process has no historical precedent elsewhere in the world.

Significantly, the final indignation came just 3 days before the vote, when 2 high profile indigenous and leftist leaders were assassinated – Roberto González, the Deputy Director of the FDNG, the most overtly pro-‘Yes’ vote party, and the indigenous leader Juana Lucía. Interviewees claimed that this message was not ignored by those voters who had intended to vote for the reforms, but were unsure due to fear of what their actions might provoke.

As we have seen, reluctance on the part of all of the either overtly or covertly anti-reformist sectors was consistently evidenced during the process that led to the Consulta in May 1999, including by the government itself. Moreover, the process of constitutional reform that had been contemplated in the Peace Accords was not initiated immediately after the signing of the final accord in December 1996, when the PAN government had only recently come into office and, despite ongoing difficulties, whilst Guatemalan society was riding on a wave of euphoria. In the end, this meant that the Consulta took place in 1999, an election year, towards the end of the PAN’s political term, at a time when reform concerns were less immediate than the upcoming election, the peace process was less of an intimate daily reality and the electorate had begun to feel disenchantment with the PAN administration, ultimately weakening whatever influence it may have had on the process. In some

²¹ At the time when the CC ruled in favour of CEDECON’s suit of unconstitutionality, several of the judges on the CC were founding members of CEDECON.

sense, and given the process of disinformation outlined above, the Consulta, therefore, took on the form of a referendum over the PAN's performance, rather than reflecting a deep engagement by Guatemalans with the question of constitutional reform.

RESULTS

TSE figures prior to the referendum revealed 4,085,832 registered voters. However, as in the 1994 Consulta Popular, abstention was acute in the 1999 referendum and reached 81.4% (11-13% of those eligible to vote actually went to the polls). Voter participation was a bleak 18.5% of registered voters. The low level of voting was attributed to various factors: popular and social disinterest; lack of understanding of the reason for the vote; lack of orientation by political parties of their social bases; lack of immediate identification of the electorate with the objectives of the referendum; the disinformation campaign carried out by economic and political elites and the military; the fundamental distance between civil society and political society and the accompanying lack of confidence felt by citizens in their institutions.

In Guatemala City, the 'Yes' vote was 23% and the 'No' vote 77%, whilst in the rest of the country the voting average was 47% and 53% respectively.

Geographically, the vote demonstrated that those departments with a majority indigenous population where the internal armed conflict had been of most intensity inclined towards the 'Yes' vote. Quetzaltenango, Sacatepéquez and Suchitepéquez, 3 majority indigenous departments where the armed conflict had been less intense, voted 'No'. The pro-reform departments also evidenced a lower than average rate of abstention (the highest levels of participation were in the departments of Sololá with 44% and Alta Verapaz with 27%).

Thirteen of the country's twenty-two departments voted 'No' to the reforms. Of these, ten were those with minority indigenous populations in the centre, east and south of the country. The nine departments that voted 'Yes' to the reforms were clearly those affected most gravely by the internal armed conflict, and thus those where there had historically been higher activity of international donor agencies, peace programmes and popular education work by human rights organisations, both national and international. The Petén, where the internal armed conflict has left a lasting impression on socio-political, cultural and economic organisation, despite its majority ladino population, also voted 'Yes'. The pro-reform departments were also those that demonstrate most vehemently a lack of infrastructure, thus affecting the capacity of voters to reach the departmental capitals, where voting took place. As previously mentioned, in contrast to national elections, there was no free transport provided by political parties.

The pertinence of the Consulta Popular as a means of achieving the greatest legitimacy for the constitutional reforms in Guatemala was unquestionable, particularly given the character of social pact that a Constitution represents.

However, as previously stated, in societies characterized by the triangular nexus between democracy, poverty and structural inequality, where low levels of development, structural-historical racism and fear of the military persist, constitutional reform may not only *not* be the solution to a country's problems, but it might also bring about negative repercussions and encourage anti-democratic practices. In this regard, the following factors prevailed during the CBP in Guatemala:

1. The lack of scruples of political leaders and political parties who on many occasions sought to legitimate constitutionally their personal or sectoral interests.

2. Lack of citizen education regarding the role of a Constitution and the meaning of the reforms, which facilitated the above anti-democratic practices.
3. Lack of infrastructure to guarantee voting registration.
4. Lack of serious information campaigns to generate the conditions for citizen participation, in particular regarding the meaning of the reforms, the history of the internal armed conflict, and the multicultural nature of Guatemalan society.
5. Lack of transparency regarding the process of negotiation of the reforms within Congress.

Theme	% in Favour	% Against
Nation and Social Rights	43.3%	48.5%
Legislative Organism	37.5%	53.1%
Executive Organism	38.92%	51.78%
Judicial Organism and the Administration of Justice	41.8%	49.24%

Box 3. The results of the *Consulta Popular* by Theme.

STAGE TWO

Thematic Perspectives

“The creation of a new constitution, or the reform of an existing one, is a particularly intensive phase of democratisation, when both the regime and the state are transformed in a short period of time in significant and presumably enduring ways. Constitutional politics absorbs the energies of a greater number of people in society than does ordinary politics. *The stakes are higher because major changes will be made in a short period of time and the decisions made will persist in time to govern future deliberation*” (Van Cott 2000: 11-18; emphasis added).

Van Cott’s analysis of the socio-political significance of the experience of constitutional reform processes is particularly salient in the case of Guatemala for the following reason: given that the stakes were ‘higher’, and in light of the enduring resistance to the peace process, there was likely to be intense opposition to the significant changes that the reforms represented. The question remains, however, as to why such potential obstacles were not anticipated.

The following section outlines the structural issues that shaped the reform process and, in particular, details the *spoiling factors* that contributed to the rejection of the reforms through the Consulta Popular.

Gender perspective

As immediate historical antecedents of the women’s movement in Guatemala, it is important to mention the advances represented by those instruments that emanated from the various United Nations’ international conferences that addressed the theme, in particular in those in México in 1975 and Beijing in 1995, the International Human Rights Conference in Vienna in 1993 and the Conference on Population and Development in Cairo in 1994.

Ana Silvia Monzón has defined the women’s movement in Guatemala as:

A coalition of groups, organizations, spaces in mixed organizations, and individual women that recognize, identify and carry out action in order to eradicate the effects – those that are evident in the precariousness of life, lack of power, and social exclusion – of discrimination, subordination and oppression that women live in relation to men within society, and that themselves present certain difficulties in relation to the ethnic group or class to which they belong (Aguilar 1997: 106).

Women’s right to suffrage was recognized in the 1945 Constitution. Apart from being 18 years old, women had to be able to read and write. The Constitution of 1965, however, extended the right to vote to illiterate citizens, nine years after the first female deputy had been elected to Congress.

In 1982, Guatemala ratified the Convention concerning the Elimination of all forms of Discrimination against women, approved by the United Nations in 1979. Internal legislation, as a consequence, must be adjusted according to the dispositions of the Convention.

Traditionally, women have participated in political parties at a general level as party members to a far greater extent than as party officials or elected members. For example, during the 1980s, women represented between 20 and 25 per cent of political party members in Guatemala.

In this regard, historically, the participation of women in formal political mechanisms has been severely restricted. There were seven women members of Congress elected in the national elections of 1986 and 1990, out of a total of 100 deputies (constituting 7 per cent). Similarly, and of course of significance to this report, three women members were elected to the National Constituent Assembly of 1984.²²

A broad spectrum of diverse impediments have limited or, at the very least, presented disincentives to the participation of women in political parties. Culturally, the macho culture perceives political party activity as an unfeminine activity. Rather, women's traditional roles are perceived of as restricting them to the reproductive sphere and domestic spheres, preventing them from broad involvement in the education system and the public sphere, a factor that has contributed to the high level of female illiteracy.

Within civil social organizations, the increase in the economic participation of women after the 1970s in urban Guatemala, brought with it the growing incorporation of women in unions and in the professional sphere. The process of agricultural modernization, moreover, provoked an increase in the presence of women activists and members alike in cooperatives, agricultural unions, and other development organizations.

Between the end of the 1970s and the beginning of the 1980s, Guatemalan women increased their level of socio-political activism and involvement in the professional sphere. However, with the internal armed conflict, all levels of political participation and social organizing, including that of women, were severely restricted and subject to military repression. An acutely high level of women, moreover, were victims of the conflict itself. In combination with the accompanying economic crisis, this phenomenon brought with it the development of human rights organizations with a distinctly female-focus (due to their nature as victims), as well as the generation of networks of family groups and female-led households.

The Mutual Support Group (GAM) and the Guatemalan National Widows' Coordination (CONAVIGUA) were formed in 1984 and 1987 respectively. Both were formed to address the urgent needs of victims of the armed conflict by widows of those killed or disappeared – and the latter with an emphasis on indigenous widows of the violence in the highlands. Both organizations were represented directly in the Civil Society Assembly (formed in 1994) and both participated in the broader activities of the human rights movement more generally during the peace process. These organisations were, and continue to be, an integral part of the human rights movement, rather than being perceived of exclusively as 'women's' organisations. It must be noted that, with the above exceptions, and the indigenous women's organisation Mama Maquin, the women's movement in Guatemala, now an important political and cultural force, was slower in developing a protagonistic role in the peace-building process than other sectors (such as peasant organisations and human rights). This can be explained by the following factors: emphasis (by national actors) on the direct victims of the internal armed conflict framed within the human rights discourse; the *machista* culture, which undervalued the importance of the women's movement, even within the human rights movement; the historical invisibility of women within all levels of Guatemalan society – including in civil society, political society and the State. As a consequence, until the latter stages of the peace process women remained represented within *women's areas* of organisations, rather than through a movement in itself.

²² Aída Cecilia Mejía de Rodríguez, Graciela Eunice Lima Schaul and Ana Catalina Soberanis Reyes.

These factors impeded the participation of women in the CBP in general – only overcome by the activity of the Women’s Forum – and, along with the factors already mentioned, contributed to the low turnout of women voters in the referendum. However, key female figures in the popular movement and in the leftist political party the New Guatemalan Democratic Front (FDNG), including Nineth Montenegro, Rosalina Tuyuc and Rigoberta Menchú, have played an important role in challenging the historical and structural factors that have impeded greater women’s participation. At the same time, the links between the ‘women’s’ movement and the human rights movement reinforced by these activists have facilitated the generation of a broader political discourse based upon a more integral understanding of rights and justice, including demands for the full exercise of women’s rights.

In conclusion, formal representation of women in the negotiation of the Peace Accords through the ASC was a key moment in the precipitation of national and international recognition of the role of women in the generation of the national agenda and the peace-building process. In similar regard, the role of the Women’s Forum in the CBP generated a further space for women’s participation in formal politics, as well as strengthening democratic political culture. In this regard, while the ‘end product’ was not approved, the process in itself was engendered and established further foundations for women’s participation.

Political Parties.

The transition from authoritarianism to civilian democracy initiated in the 1980s placed serious hope in Guatemala’s political parties, some of which had previously operated under authoritarian rule, others more recently formed with the democratic opening.

However, the statistics are irrefutable. Out of 11 electoral processes of different content and level between 1984 y 1999, there have been approximately 50 parties on the political scene, none of which has governed for more than a single term. In the Guatemalan case, such parties of weak institutionality rise and fall and disappear rapidly, demonstrating significant transference of power between leaders or sectors. Clearly such processes affect the political stability within a country, as well as jeopardizing the possibility of long-term stable government. In particular, the development of a multiple array of parties, especially during election periods, contributes to the dispersion of the vote and diminishes the degree and quality of representativity, as well as the minimal nature of citizen identification with the parties. In this regard, there exists little mediation between the State and civil society, one of the key roles of a political party within a democracy, which in turn severely restricts the breadth of spaces available for civil society to influence, regulate and hold accountable political power.

In short, according to ASIES (1999), the principal deficiencies of political parties are the following:

- Lack of any consistent statements of principles, values, and ideas that represent the daily reality of Guatemalans; in short parties suffer from ideological ambiguity.
- Lack of a long-term political project that might identify and distinguish parties as an ideological-political option, and, subsequently, influence government policies.
- Lack of internal democracy, permitting personalistic and authoritarian politics within the parties themselves. This model in turn reproduces itself at national, departmental and local levels, closing all possibilities for democratic development.

- Lack of any organization that has the scope of national level coverage and permanence, due in part to the lack of belief in political parties as an option and the subsequent lack of membership in them. As a result, after each election, a high percentage of political parties disappear from the national scene.
- The existence of parties that are closed to the suggestions and demands of new social actors, producing in turn a vicious circle, through which the latter question the legitimacy of the former as vehicles for citizen participation.

In this context, and given the low level of political education and knowledge of the peace process in itself amongst voters, during the 1996 elections there was almost without exception scarce mention of the commitment tying elected political party representatives to the future passing of the constitutional reform package. No party made it a priority to disseminate information concerning such commitments (if indeed the candidates were themselves aware of them). Elections have historically been won or lost on issues that are much more immediate and with which the general populace is able more readily to identify, such as the addressing by candidates of voters' local needs (roads, development projects), and shifts in the local power balance.

It is, therefore, unlikely that deputies themselves would have been aware of their own responsibilities in this regard when elected to office prior to the popular referendum, perhaps with the exception of the popular leftist party the New Guatemalan Democratic Front (FDNG), whose ex-guerrilla and popular movement activists won 6 seats in Congress.

Spoiling factors

- Political Parties:

The combination of indifference towards and opposition to the reforms that political parties demonstrated, leading to their failure to adhere to their political and social responsibilities, most notably by the principal opposition party the FRG, although also by the PAN government itself, was critical in initially stalling the reform process, and subsequently facilitating its failure. The lack of experience of the URNG, its limited resources and weak message meant that a key actor of the formal political Left also failed to galvanise its support base to vote for the reforms.

- Structure of the Ballot:

While it appears that little regulation carried out by or of TSE during the reform process, the following crucial factors contributed to the 'No' vote. The ballot was unacceptably complex, with the inclusion of proposals for 50 reforms, through four distinct questions, many of which had been included by political parties for their own interest. Due to this complexity, it was very difficult, even for those interested parties, to communicate the content, meaning and reason for the reforms to the population. Only 19 of the reforms had a direct relationship with the Peace Accords, 28 of them referred to themes that were very distant from the peace negotiations themselves, and 26 could have been included as secondary laws. With a majority illiterate population that did not know the Constitution and did not understand the content of the reforms and the reform procedure, this led to acute levels of abstention. Moreover, the reforms themselves were too detailed and should have rested on moral or political values, rather than detailed provisions. In particular the added-on reforms meant that, according to interviewees, some voters *who would have voted 'Yes'*, actually voted no because of their inappropriateness.

- Timing of the Referendum:

The government did not take advantage of the adequate political moment or context (closer to the signing of the Peace Accords) when the result might have been more positive. Instead, the Consulta took place in 1999. The coincidence of the Referendum and the 1999 elections was key to the rejection of the reforms, in particular due to the focus that political parties had on the election campaign. The carrying out of an opinion pole concerning the government's performance in the run-up to the Referendum only reinforced this problematic.

- The Formidable 'No' Campaign:

While the overtly pro-reformist stance of the international community played into the hands of the anti-reformist sectors, the 'No' Campaign was sophisticated in its approach and both relentless and socially irresponsible in its manipulation of Guatemala's historical divisions.

In a context of general conservatism and fear of change, heightened by the culture of fear imposed on the country during and in the aftermath of the internal armed conflict, the successful 'No' campaign was carried out by those who had previously resisted the Peace Accords. The campaign enjoyed considerable levels of funding and was mounted by politically experienced actors with substantial networks of supporters (in rural and urban areas) who coherently expressed the fears of the oligarchic sectors (actors included CACIF; CEDECON; the Pro-Fatherland League; the Association of Dignitaries of the Nation; the Association of Military Veterans of Guatemala (AVEMILGUA); sectors of the military and of the political and economic elite; and the Evangelical Church.²³

The campaign played into popular fears by generating a discourse of racial prejudice, segregation, revenge and interethnic confrontation, raising the spectre of the balkanisation of Guatemala and suggesting that those who voted 'Yes' would be seen of as 'guerrillas'. Moreover, the anti-reformists adopted a very intelligent approach, telling Guatemalans "if you don't understand, vote no". The campaign also played on fears that ladino Guatemalans would lose fundamental rights, such as the right to private property and the freedom of expression, while indigenous peoples would gain preferential treatment, possibly leading to the emphasis of indigenous languages in the classroom, amongst other dangers.

- Shortcomings in the 'Yes' Campaign:

As previously stated, the 'Yes' campaign was implemented principally by civil society organisations, COPMAGUA and the Catholic Church, enjoying minimal financial resources, restricted political access, limited political experience and, in the aftermath of the armed conflict, low levels of legitimacy. Further to these structural factors, there were shortcomings in the campaign in itself that limited its potential impact.

The 'coalition' failed to 'sell' their reform proposals effectively, in part due to the failure to direct the campaign at several key social constituencies: the middle-class (both indigenous and ladino); grass-roots indigenous communities in the most remote areas of the country; indigenous peoples living in the capital city and other urban areas (approximately 50% of the population). Moreover,

²³ Two weeks prior to the Referendum, various political parties and institutions initiated a massive 'No' campaign. These included Reconciliatory Democratic Action (ARDE); the DC; the Federation of Small and Medium Businesses (FEPYME); CACIF; the Foundation for Analysis and Development in Central America (FADES; the Association of Friends of the Country; the Solidarity Union (US). ASIES (May 1999)

despite the murder of Bishop Gerardi, the Catholic Church did not successfully mobilise its supporters around human rights issues and demilitarisation.

Furthermore, according to Alvaro Pop, who was at the time the Coordinator of COPMAGUA's campaign, despite their having worked with and consulted the Indigenous Peoples' Congress of the USA and with the UN Indigenous Working Group in Geneva, the campaign suffered from the following defects:

- (1) the proposal was 'too indigenous' and sectoral, focusing too emphatically on indigenous revindication and not enough on reconciliation or national diversity;
- (2) it was unable to stem ladinos' fears of balkanisation (perhaps as a result);
- (3) COPMAGUA was not able to transform the message of constitutional reform to communities so that indigenous people would have been able to identify with the process and realise that there were tangible benefits to be gained from it.²⁴

- Lack of Information:

Borge y Asociados carried out a poll in the aftermath of the Consulta Popular, asking "Why do you think that the 'No' vote won?" The majority answer of 30.3% stated 'because of lack of information'.

There was a degree of debate and information available in the written press. Columnists in the editorial pages of the major newspapers also made their opinions known. *Prensa Libre*, the daily paper with the highest circulation in the country, sought to maintain a balanced stance between 'Yes' and 'No'. In *El Periódico*, Guatemala's most balanced investigative newspaper, pronounced more frequently in favour of the reforms. The paper announced that the article seeking to legalise telephone espionage should not be passed, although it later refuted this claim. While *Siglo XXI*, the paper closest to the military line of thought, announced in its editorials that it was against the reforms, there was a certain degree of liberty for journalists to expound their personal views.

Above all, the contrary campaigns centred more upon whether to vote 'Yes' or 'No' to the reforms, rather than seeking to generate with a profound engagement with what the reforms actually meant. As a result, the entire campaign became an ideological confrontation that polarised the country, resulting in no common points between the two camps; very little constructive analysis of the significance of the reforms for the country; and generalised confusion of the electorate. In the end, it was, according to all interviewees, impossible to know exactly for what one was voting. The Final Report of the Organisation of American States Observation Mission (1999) made clear that interviews with voters and local electoral officials at the time indicated that they did not understand the substance of the ballot or its meaning.

- Legacy of the Internal Armed Conflict:

As previously stated, the 'counterinsurgent' methodology discretely employed by the military, using counterinsurgent structures and networks, particularly in rural Guatemala, was a key element in both the high levels of abstention and in the 'No' vote. In the run-up to the Referendum, the impact of such 'military' operations was reinforced by the ongoing legacy of violence and fear that continued to shape political culture, and allowed anti-reformists to take advantage of ethnic and racial cleavages and discrimination.

- Lack of Trust in and Legitimacy of Political Institutions:

²⁴ Interview, Guatemala City, July 2004.

Political institutions in Guatemala have historically suffered from low levels of trust and legitimacy, given their ineffectiveness, corruption and the social perception that political parties and other State institutions do not serve the population, but rather those integrated into them. The 'No' vote reflects this apathy toward the political system. At the same time, there remains an lack of ownership of the political system on the part of the general population, including of electoral processes; such perception were evident even during Guatemala's peace process. In the previously cited poll, for example, 73% of those consulted declared that Congressional deputies did not carry out their work effectively or comply with their public duties; that 69.7% of political parties did not comply with their obligations; that 66.4% of courts did not carry out their official duties; and that 54.4% of the government did not comply with their State obligations.

As a result, for many analysts the 'No' vote demonstrated a lack of confidence in the legislative activity of Congress and of political parties more generally. The hijacking of the proposals once they arrived in Congress, the lack of transparency according to public perception, and the manipulation of the reforms by parties for their own political interest, over and above national interest, provoked disinterest and malaise amongst Guatemalans.

- Problems with the Electoral Law:

Problems with voter registration and access to voting centres compounded the structural and perceptual problems set out above. According to the Electoral Law, voting could only take place in the departmental capitals: poverty and lack of infrastructure (and the lack of free transport provision), particularly in rural areas, meant that this legal provision caused serious difficulties and augmented the abstention rate. As a result, those voters in urban areas, in their majority against the reforms, had better access to voting centres, allowing this to determine the swing of the final vote, principally in the capital city. In this regard, it should be noted that in those departments that voted in general in favour of the reforms, voting actually went against the reforms in the urbanised departmental capitals, including in the towns of Chimaltenango, San Marcos, Huehuetenango, Salamá and Cobán.

- The Decisive Vote in the Capital City:

In the capital city, the 'No' vote almost tripled the 'Yes' vote. The capital city holds 26% of the national electorate, and almost 20% of those registered voted in the Referendum: this figure was too great for the 'Yes' vote in the remainder of the country to counteract it. Relatedly, according to the Inter-American Human Rights Commission (CIDH 1998), a large part of the Guatemalan urban ladino population it would not be affected by issues of pluriculturalism and militarisation, precipitating further disinterest or anti-reformist tendencies. A diverse range of analysts have coincided in their assessment that the massive 'No' vote in the capital is related to the (latent) racism that characterised much of the 'No' campaign.

According to the PDH, the disproportionate weight of the capital city vote demonstrated how urban ladino Guatemalans continued to impose their will upon the majority rural indigenous population (cited in CIDH 1998).

Accordingly then, the refrain of the pro-reformist sectors after the failure of the Consulta Popular became "It is a legal no, but not a very representative No" (*Es un NO legal, pero muy poco representativo*).

- The Role of Perception:

While the structural and historical factors outlined above limited the scope of the pro-reformist campaign, they also influenced public perception, which in turn was a critical contributing factor to the approval of the reforms. In the wake of the internal armed conflict, lack of information about and disinterest in the reforms (and in politics in general), particularly after a long and not transparent period of negotiation within Congress, were key factors that precipitated negative perceptions of the CBP in itself. However, racism and social fragmentation (rural-urban divisions; ethnic tension between ladino and indigenous populations; and divisions between Catholics and Evangelicals), reinforced by continuing poverty and widespread fear of a return to violence, meant that the actual objectives of the CBP were in themselves subject to negative social perceptions. These conditions were seriously underestimated by pro-reformists and taken advantage of by anti-reformists in their campaigns. The political miscalculation by pro-reformists was most likely based upon a lack of serious investigation into public attitudes concerning the reforms (exacerbated by a limitation on funding for such an exercise) and an underestimation of the capacity and recalcitrance of the anti-reformist camp. However, given the almost systematic opposition to the peace process itself previously manifested by these sectors, the lack of political astuteness shown by pro-reformists prior to and during the CBP is striking in its absence.

- Lack of participation.

A basic analysis of electoral participation levels (not just the lack of voter registration) in Guatemala from 1984 to 1999 reveals disenchantment and mistrust, a lack of representation of the populace's interests by political parties, geographic exclusion, linguistic barriers, and so on. These conditions should have resulted in a broad public information campaign in order to produce greater participation levels.

- Lack of transparency.

The lack of transparency while the reforms were being discussed in Congress confirmed the public's mistrust not only in the constitutional reforms but also in the entire peace process. Public perception came to see the agreements as "deals between politicians".

- Lack of information.

The Guatemalan public's lack of information and knowledge regarding the reforms was used by their detractors to vilify them. The exploitation of racism, lack of political culture, fear of change and international intervention — all attributes of a society forced to live under restrictive and authoritarian conditions for decades — contributed to the failure of the reforms.

- Errors of timing.

A long period of time was not needed for drafting the reforms – they were already drafted during the negotiations of the Peace Accords. More interest should have been placed in having a long period of time for dissemination and civil society education campaigns.

Instead, the reverse happened: a long and uncertain period of negotiation, followed by a short period of campaigning that led to a shortage of information among the public and the exploitation of this fact by those opposed to the reforms.

With regard to errors of timing it should also be emphasized that a *consulta* of this nature should never have coincided with elections. A basic understanding of the functioning of political parties in Guatemala — focused on attaining power rather than representing the citizenry — and a glance at the 1996 election results where the governing party won by a very small margin, would have led one to believe that on the eve of an election the primary opposition party would oppose whatever initiative could be viewed as a success for the government.

- Too many reforms.

The quantity and complexity of the reforms that were approved by Congress produced discontent among groups that, if not in favor of the reforms, were at least indifferent to them. Many of the reforms were legitimate, but could have been passed by way of ordinary law. Instead, the situation that developed greatly complicated the task of explaining the reforms to the public.

Inclusiveness.

In the case of Guatemala, it is suggested here that it not be assumed that ‘an inclusive process is better’. As mentioned above, inclusiveness was hindered by historical and structural problems, including poverty, the inappropriacy of the Electoral Law, a culture of fear, ongoing political violence and discrimination, illiteracy, the underdeveloped nature of political society and culture and the continued breadth of militarisation (particularly in rural Guatemala). Whilst there was no direct exclusion of groups wanting to participate, these conditions meant that, even before a single cross was placed on the ballot papers, marginalised groups – those that were to benefit most from the constitutional reforms – had been less capable of asserting influence in the CBP and of mobilising their social base (particularly given the bias of the media). In these conditions, in spite of the popular education work carried out by the pro-reformists in the last weeks of the CBP, and particularly in rural areas, all that was necessary to block the constitutional reforms was inaction and passivity on the part of those State, civil and political sectors opposed to them.

Formal space existed for the participation of all social and political sectors in the 1999 CBP (in contrast with the 1985 process, where there was no representation of the left in the ANC). However, some groups, particularly CACIF and those that defined themselves as ‘defenders of the 1985 Constitution’, ‘self-excluded’ themselves from the process and later launched an anti-reformist campaign.

Pro-reformist civil society groups sought to influence the referendum through a range of strategies including: mass demonstrations; popular education campaigns (particularly in rural areas by indigenous groups); televised and public debates on the reforms; press releases; and in some cases popular theatre. For example, the *citizens working sessions* were initiatives that stemmed from the activities of pro-reformist groups aimed at consulting with civil society in order to develop a range of proposals for the reforms. In particular, through COPMAGUA the indigenous movement developed a series of consultational forums to engage the social base of the indigenous movement in discussions concerning the nature of constitutional reform and which sought to collect specific ideas for the final proposals. While the ultimate number of reforms proposed to Congress was dramatically cut for political expediency, the spirit of those proposals closely resembled the results generated through consultation with citizens working groups; in this respect, the consultation process was successful not only in its final product, but in the dialogue and social capital that it generated.

In the Guatemalan case, the most critical factor in blocking these initiatives was not lack of time: as already mentioned, historical and structural factors and the closure of the internal armed conflict only a year before presented formidable obstacles to the consolidation of the democratic transition.

Whilst a prolonged period of time might have given pro-reformist groups greater opportunity to generate debate on the fundamental issues represented by the constitutional reforms, it is unlikely that it would have impacted profoundly on the result itself. Rather, the following factors would have been important elements in assuring a more representative CBP: State policy commitments to popular education throughout the country concerning the reforms; commitments by political parties to address publicly the issues of the reforms; commitment to an audited, transparent and equally funded campaign by both pro and anti-reformists; a formal agreement by pro and anti-reformists not to utilize racist and divisive language in their campaigns; and the prior commitment by Congress to a limited time period for discussion.

With the subsequent and, given the conditions, inevitable 'No' vote, it was then easy for the anti-reformists to wash their hands at a 'legitimate popular rejection' of the reforms. In this case, it must be asked whether the CBP in Guatemala was *too inclusive* given the conditions and moment in which it was carried out.

The Consulta Popular and Indigenous Participation

Reflecting Hector Rosada's argument that "There was little sensibilidad cultural reflected in the process" (interview cited above), Ordoñez Cifuentes has argued that the Consulta Popular was fundamentally illegitimate because it did not take into account ILO 169, ratified by Guatemala in 1996 and did not engage sufficiently with the community level and social base of indigenous organisations. The Treaty obligates the Government of Guatemala to consult the population through a series of formalised processes, which did not take place in the run-up to the referendum (the Stockholm Accord was signed *after* ILO 169) (2003: 171). In other words, despite the potential of broad direct electoral participation in the Consulta, the nature of social inclusion was inappropriate and did not take into account the Guatemalan State's international obligations to provide legitimate indigenous participation in the design of the reform process. This question remains to be answered in detail.

However, according to Alvaro Pop (interview cited above) the process, despite its lack of clarity and direction, did provide the framework and basis for broad consultation amongst interested sectors, most effectively demonstrated by the consultations and community-led processes implemented by COPMAGUA. For Pop, the reform process demonstrated the "exercise of citizenship, par excellence", albeit of the citizenship rights of a group of urban elites.

Pop stated that, through the Indigenous Reform Commission, indigenous peoples participated in and had the opportunity of confronting and engaging with the State in democratic terms and concerning democratic issues. Furthermore, the national negotiating table allowed indigenous people to engage with the State *as indigenous people* for the first time. Importantly, this took place without indigenous representatives having legal education or training. As previously stated, the Commission proposed reforms to Congress, starting initially with 157 and finally, through a broad process of negotiation and consultation, ending up with 10 proposals (ultimately accepted by Congress). The reforms themselves had a direct relationship to indigenous rights and were framed within the Peace Accords, and specifically within AIDPI.

This section has set out the structural issues, including the considerable *spoiling factors* that framed the Consulta Popular and decisively influenced its outcome. We raise our same concern once more: why were these factors not anticipated and such concerns not previously incorporated into the design and mechanism of the process. As Susan Jonas has stated

“Given these conditions (*including those set out above*), and given the vast disparity between the make-up of the population and the make-up of the voting population, the most fundamental structural problem was the very requirement that the reforms be approved in a referendum” (2000: 208).

Our final section provides an impact assessment of Guatemala’s constitutional reform process, and seeks to answer some of the concerns presented above.

STAGE THREE: IMPACT ASSESSMENT

This impact assessment refers not only to the reform process of 1999, but also to the creation of the Constitution in 1985. This is due to the continuing relevance of both processes to political life and democratic consolidation.

Negative Impact

A constitution can be neither created nor reformed without the total conviction of national actors regarding the need for such transformation.

Latin American constitutions that arose during the transition from authoritarianism to democracy, such as Guatemala's, are framed by fairly uniform models of norms intended to promote peace and development, limit military authority, and respect citizenship and human rights. For this reason, they traditionally include the creation of mechanisms that check government authority (Constitutional Courts), the incorporation of new internationally recognized rights (particularly with regard to human rights), the introduction of means to hold to account the government and State institutions through Public Administration (an Ombudsman), and an attempt to improve the administration of justice.

In Guatemala, however, the true reasons for the creation of the 1985 Constitution by those elites – military, political and economic - that had enjoyed control over the State and considered themselves the victors of the internal armed conflict were the international situation (particularly in El Salvador and Nicaragua) and an acute economic crisis. These elites perceived themselves to be under no obligation to take into account the crisis of representation, participation, and legitimacy faced by the State during the political transition. Moreover, the ongoing armed conflict and the weakness of civil society during this time meant that there was no internal pressure on the political and military elites to do otherwise. As a result, the roots of social inequality within Guatemala's exclusionary State were not confronted during the 1985 constitution-building process.

If the resolution of such structural problems does not serve as the point of departure for a constitutional reform process, any attempt to enact such reform will be limited in its capacity to manage the armed/political conflict and transform society, even if it appears to have been formally successful. As Alejandro Rodríguez observes, Latin American constitutions were created to protect the interests of the elite and preserve their fields of domination. In his words “They tend to be replaced when a new faction of the elite seizes power, amid great fanfare about the birth of a new era, while in fact reflecting substantial continuity” (interview cited).

For this reason, given the nature and function of a constitution, an inclusive design for the creation of such a document would imply a real process of national dialogue. This would allow for a discussion of the perceptions, perspectives, and grievances of previously conflicting parties, facilitating reconciliation amongst these groups.

In the case of Guatemala, the Constitution of 1985 and the process and actors that were involved in its drafting did not represent all parties to the conflict. Even though one must acknowledge the advances that its promulgation achieved, non-inclusiveness in the drafting process - the lack of *representativity* of the political parties participating in the ANC, the limits placed by military officials and economic elites on the decisions that the Assembly could take, and the absence of actors from such important sectors as civil society, the indigenous movement, and the guerilla - did not allow for a way out of the conflict.

For this reason, the promulgation of a constitution drafted and imposed by the small group of elites who were in control of the State in 1984 not only failed to halt the conflict (there was a guerilla resurgence in 1987 and the elites' most radical sectors did not recognise the Constitution) but in fact destabilized the country. During the first civilian government (1986-1991) there were three attempted coups and in the second, the civilian president himself, Serrano Elfas, attempted to suppress all state institutions.

The procedures as well as the institutions directed at monitoring the Constitution - principally the Constitutional Court and the remedies of appeal (*amparo*) and unconstitutionality - must be designed very carefully so as not to weigh down political life and in fact impede political development.

With regard to the Consulta of 1999, it must first be noted that any attempt at constitutional reform intended to transform a conflict cannot be a mere imitation of legislation that was previously successful in other countries and created under different social conditions: *national realities must be the guiding framework within which a constitution-building process takes place.*

A basic analysis of electoral participation levels (not just the lack of voter registration) in Guatemala from 1984 to 1999 reveals disenchantment and mistrust, a lack of representation of the populace's interests by political parties, geographic exclusion, linguistic barriers, and so on. The prior (and unavoidable) recognition of these conditions should have precipitated a broad public information campaign in order to encourage greater understanding of and participation in the Consulta. Only MINUGUA and a spectrum of civil society organisations, supported by the international community sought to address this issue, a fundamental problem that limited participation and intensified socio-political exclusion even before a single vote was cast. It was also critical to create the physical infrastructure necessary for the vote, but the state actors entrusted with this task never did so.

An understanding of social and cultural factors is critical to the success of a campaign of this nature. The lack of transparency while the reforms were being discussed in Congress confirmed the public's mistrust not only of the constitutional reforms but also of the entire peace process. People came to see the accords as "deals between politicians", an ongoing perception today regarding not only the Peace Accords, but political life in general.

As so often happens in deep-rooted conflicts, the Guatemalan public's lack of information and knowledge regarding the reforms was used by their detractors to vilify them. Structural and historical formations of racism and ethnic discrimination, low levels of political culture, fear of change and distrust of the international community - all attributes of a society forced to live under restrictive and authoritarian conditions for decades - contributed to the failure of the reforms.

A process for drafting or reforming a constitution should be guided by transparency and the continuing effort to inform the populace, at all levels of society and in their own language. In the case of Guatemala, it was not sufficient to respond to detractors in the written press when only a small percentage of the population - mainly in the capital and far removed from the armed conflict during its final years - had access to this information. Journalistic debate does not compensate for the lack of informative popular education campaigns. Methods of communication like radio, so important in the Guatemalan context, were not fully utilized.

Like the negotiations, the 1985 drafting as well as the 1999 reform process of the Constitution were opportunities that could have gone beyond the transformation of the internal armed conflict. Had

they been transparent and supported by a policy of national education, they could have resulted in a process of public empowerment leading ultimately to democratic auditing regarding governance, the problems and concerns of different social and ethnic groups in the country, the development of civil society, and the duties of citizenship. The fact that elite aspirations for the reform process did not coincide with popular aspirations for constitutional reform – it remains unequivocal that the political and economic elite would have been very happy *without* what was, in effect, *an internationally imposed process of constitutional reform brought about by the peace process* - only reinforced this tendency.

Proper scheduling of the both the drafting of the reforms and their approval was essential to their success. The Peace Accords functioned as a sort of pre-negotiation where the parties established the guidelines that should govern the reforms. Because of this, a long period of time was not needed for drafting the reforms. More interest should have been placed in having a long period of time for dissemination and public education.

Instead, the reverse happened: a long and uncertain period of negotiation, followed by a short period of campaigning and limited education initiatives. The result was a shortage of information among the public and the exploitation of this fact by those opposed to the reforms.

With regard to errors of timing it should also be emphasized that a referendum of this nature should never have coincided with elections. A basic sociological understanding of the function and nature of political parties in Guatemala - focused on attaining (personal) power rather than representing the electorate - and a glance at the 1996 election results where the governing party won by a very small margin, would have led one to believe that on the eve of an election the primary opposition party would oppose whatever initiative could be viewed as a success for the government. In this regard, the strengthening of political parties in Guatemala remains an urgent priority factor if democracy is to be consolidated.

However, and significantly, it is essential to recognize that not all societal problems can be resolved by a constitution. Visualizing the drafting of a constitution or reforms thereto as an opportunity to re-examine every social group's grievances can result in topics being placed on the table that are not appropriate to this sort of process and can be addressed and resolved through other legitimate mechanisms. Reifying the constitution and elevating its potential impact in this way may provoke a rejection of the process by certain factions, or the inclusion of promises in the new document that are impossible to keep. This in turn damages the credibility of the process and of the new constitution.

The twelve reforms proposed in the Stockholm Agreement were sufficient to lay the foundations for peace-building and conflict transformation (engaging as they did with some of the roots causes of the armed conflict), and to reinforce the role of the State (the executive, Legislative, and Judiciary) in spearheading this transformation.

The quantity and complexity of the reforms that were approved by Congress produced discontent and confusion among groups that, if not in favor of the reforms, were at least indifferent. Many of the reforms were legitimate, but could have been passed by way of ordinary legislation. Instead, the situation that developed greatly complicated the task of explaining the reforms to the public.

As García Laguardia has noted: “There arose a premature movement in favor of constitutional reforms. One should be very cautious in taking this path, analyzing the advisability of any reforms and, in any case, opening a process of broad consultation with extensive participation. The

consolidation of a new democratic system happens mainly through the fulfillment of the Constitution, rather than via reforms” (2000: 28).

Another aspect that should not be forgotten is the failure of the reform process to affect political participation. Throughout the process of transition to democracy, begun by Guatemala for the second time in its modern history in 1984, the electoral participation has been declining.

The highest participation level was achieved during the election of the ANC in 1984, evidence of the hope the electorate placed in the reforms they were promised and the desire for the conflict to be ended through a political solution. On that occasion, some 78% went to the polls. In the next election, to elect the first civilian president since 1966, participation declined to 69%. In 1990 only 56.4% of registered voters participated in the first round of the presidential election. In 1995, just 45% of those registered voted in the elections won by Alvaro Arzú. Arzú was elected in the second round in January of 1996 with little more than 12% of the registered population.

This decline is continual and consequential: in eleven years participation has effectively declined from 78% to 45% (at least without taking into account overall population figures and changes). In the 1994 Consulta Popular, 15% went to the polls, while in the 1999 Consulta Popular, 18.5% did so.

The 1994 Popular Referendum took place before the end of the internal armed conflict, a context that was not conducive to citizen participation, particularly given the lack of emphasis placed upon this by all parties involved. The government, political parties, a weak civil society and the URNG failed to carry out systematic popular education or political campaigns on the reform process. Moreover, the reforms were principally technical and perceived by those actors mentioned (with the exception of the government, whose interest the reforms clearly favored) as less a priority than engagement with the peace process in general. General apathy and lack of confidence in political institutions also contributed to the severe lack of interest in the reforms. It must also be underlined that, with the absence of any serious national campaigning, low levels of education and literacy considerably hindered any real understanding of or engagement with the reform process. Notably, neither did the international community play any major role in the 1994 popular referendum process.

This is the principal reason why the *failed* reform process was able to impact negatively upon the entire process of conflict management. According to Jonas (2000), the failure of the reforms produced a decisive tendency toward reduced political participation. The peace resisters and the military were strengthened by the ‘No’ vote, and the peace process was, to a degree, discredited, as was the international community.

On the same note, Alejandro Rodríguez observes that the effects of the failure of the Consulta Popular were the strengthening of the military, the freezing of reforms to the justice system, the continuation and consolidation of the economic elites’ control over the State and political life, and a loss of legitimacy for the Peace Accords and their implementation process (interview cited).

In conclusion, it is worth mentioning the possible negative impact of the role of the international community. As has been made clear, the international community was a critical factor in the democratic transition and peace-building process in Guatemala due to the severe intransigence of national elites. During the CBP, the international community was seen as biased as a result of a series of public information campaigns calling for the ‘Yes’ vote. In short, however logical this position might have been given its prior support of the peace process, the international community was perceived as being too closely allied to the pro-reform camp. According to interviewees, this

questioned the image of independence of the international community and tarnished their credibility. Moreover, interviewees also stated that the international community's support of civil society's role in the peace process, including in the CBP, created a "new social class of individuals and groups involved in the peace process, which alienated the vast majority of Guatemalans who did not have access to these funds and jobs and, in some cases, created antagonism towards these sectors". During the CBP, the international community exerted pressure on the government, including postponement of the Consultative Group Meeting of 1998 and indirect threats to withhold funds to the government if the referendum was not promptly carried out. On the other hand, funds were channeled towards those groups seeking a 'Yes' vote through donor agencies. According to one interviewee, such an approach only helped to distort and to polarize further the situation, rather than bring different groups together in a national debate over the importance of the reforms (interviews remain anonymous in this case).

Positive Impact

In spite of everything, the rejection of the reforms did not signify that a majority of the population was against the peace process, as a range of analysts has pointed out. Low participation deemed the result legitimate but not representative. This is demonstrated by the efforts (primarily undertaken by civil society) to develop ordinary legislation over the past four years (2000-2004) that is in harmony with the Peace Accords and addresses those issues that were reflected in the constitutional reforms.

While the constitutional reform process did not reconfigure power relations in Guatemala, it did strengthen the formal political capacity and experience of new social actors. In this regard, the issue of the participation of groups traditionally excluded from the decision-making process, principally the indigenous movement, during the drafting of the constitutional reforms had a positive impact even though the reforms failed. An inclusive constitutional reform process strengthens the exercise of rights and liberties by groups previously marginalized from political life, as it did with Guatemala's indigenous population, the youth movement and women's groups, making these sectors and their political demands more visible. Hence, as Van Cott (2001) demonstrates for similar cases in the region, the generation of political culture in this way was a critical positive impact of Guatemala's constitutional reform process, as it had also been during the process of democratisation (Brett 2002).

Traditional constitutionalism attempts to establish the principle of legality and enshrine the rights of citizens within that legal framework. Confronted with this, indigenous groups always sought to redefine both individual and collective rights. If these organisations get an opportunity to act as participants in the creation of the political regime rather than objects of legislation created and imposed by a distant and hostile state (as has traditionally occurred throughout Latin America), both the indigenous movement itself and the legitimacy of the process and its results will be strengthened.

The effort that the indigenous movement in Guatemala made to negotiate directly with the government regarding constitutional reforms put into play questions about the meaning of democracy and the nature of the State. It also created indigenous leaders totally conscious of their rights, able to negotiate, and represent the interests of their communities, a process that, it is hoped, will be irreversible. In this way, as was the case elsewhere in the region, social movements (including, for example, indigenous, victims', women's, and youth movements), played the role of 'schools of rights' during the democratic transition and, in this case during the constitutional reform process (Foweraker and Landman 1997; Alvarez et al. 1998).

According to Alvaro Pop, the process of negotiating the constitutional reforms generated and precipitated the construction of new/youth leadership within the indigenous movement and towards the State and other sectors. Their proposals were not just legitimate but based in legality. From this moment on, indigenous actors began to achieve if not acceptance, then at least visibility in the eyes of the political class - the Government and Congress - even though they were defeated in the referendum (interview cited above).

The reform proposal to recognise indigenous peoples was the one that received the highest number of favorable votes. In two majority indigenous departments, and despite the extremely difficult voting conditions, participation levels higher than those in the capital were achieved. This represented an important advance for the formal political participation of indigenous people, including women's organizations such as The Mayan Women's Foundation (*La Fundación de Mujeres Mayas*). It also laid the foundation for future political and cultural mobilisation of indigenous people and broader legitimate engagement in the State at local and national levels. Furthermore, the indigenous observation mission spearheaded by Alvaro Pop during the Consulta was the first of its kind in Guatemala, leading to the formation of the indigenous organisation NALEB and laying the foundations for similar future initiatives. As was evidenced in the 2003 Guatemalan national elections, the process of national electoral observation has become a key element of democratic consolidation in Guatemala and an important component of democratic auditing. International donors are encouraged to think about ways in which such initiatives and processes could be strengthened and developed.

Like the indigenous movement, the women's movement – formalised within the Civil Society Assembly during the peace negotiations - was strengthened by the constitutional reform process. Conscious of what the reforms represented in terms of achieving complete equality for women, it was one of the most active civil society sectors during the campaign in favor of the reforms. This produced a new generation of leaders who, little by little, are consolidating their political influence, attaining key posts in Congress, Ministries, international organisations, the judiciary, and social movements, among others. Despite the great challenges that they confront, names such as Nineth Montenegro, Rigoberta Menchú, Margarita Lutz de Cojtí, Rosalina Tuyuc, Marta Altolaguirre and Helen Mack are absolutely indispensable when evaluating the political environment in modern day Guatemala.

With regard to the question of sustainability, we would like to mention the following points.

Given the character of the social pact inherent to a Constitution, it appears obvious that an inclusive reform process should lead to a more sustainable Constitution, as should a higher level of participation in the consultation process, particularly if the leaders at the negotiation table are able to inform their constituencies about the negotiations and demonstrate real political will to get the reform approved. Moreover, a high level of participation in the referendum will lead to a public perception of “ownership” of the Constitution, as was the case in countries like Spain in 1978.

With regard to the way to deal with those stakeholders who seek to undermine the outcome, it is not easy to give solutions. Primarily, a long history of power accumulation and influence at all levels can not be changed within a short period of time, above all if such social transformation is sought exclusively through the drafting of a new or reformed Constitution. If existing social conditions benefit empowered elite groups, then it will clearly be of utmost difficulty to convince these groups to enter in a process to change the status quo. In the case of Guatemala, as indicated in the original text, elite groups did not need to negotiate.

As previously noted in the investigation, a failed process as in the Guatemalan case, not only does not contribute to reconciliation, but also impacts negatively upon the entire process of conflict management, making further steps difficult and long-term peace precarious.

In conclusion, as argued above, despite the rejection of the reform package in the Consulta Popular, there were a series of positive outcomes and contributions to democratic consolidation that resulted from the CBP. However, these outcomes occurred within the historical context of the preceding peace process. In short, it is highly unlikely that the positive developments of the CBP would have emerged without the prior foundations established by the peace process; it is therefore more appropriate to understand the democratising impact of the CBP as building on and strengthening the pre-existing impact and results of the peace process in general, rather than as a series of independent and unrelated positive outcomes.

In this regard, as suggested the CBP further strengthened the formal political capacity and experience of new social actors and 'brought-in' groups traditionally marginalised from decision-making processes, principally the indigenous movement, the rural population and women. It also assisted in the development of new leadership within these groups. Building on the participation on the ASC during the negotiation of the Peace Accords, this strengthened political culture by continuing to pressure and lay the foundation for State-civil society dialogue regarding the development of national policy and the national political agenda. Such a process has challenged the historical invisibility of these groups, in terms of their capacity to pressure at the national level for representative State policies and for State protection of their rights. However, as documented, in spite of its seemingly inclusive nature, the incapacity of the CBP to manage divergent interests and to reconcile prior antagonists was more than evident and was facilitated by historical and structural problems, including racism, extreme poverty, illiteracy and the legacy of the internal armed conflict. In this context, elite intransigence continues to overshadow seemingly significant gains in democratic procedures and democratic culture.

ANNEX 1 - THE CONSTITUTIONAL REFORMS CONTAINED IN THE STOCKHOLM ACCORD

- The Accords differentiate between those of a substantive character and those of an operational nature. In fact one of the great differences between the Guatemalan peace process and other such processes was that the substantive accords were negotiated before the operative accords.
- As such, the Accord on Constitutional and Electoral Reforms (*Acuerdo sobre Constitucionales y Regimen Electoral*) signed in Stockholm, Sweden, on the 7th of December 1996, between the Government and the URNG with the mediation of MINUGUA, is one of the most important operative accords committed to by both parties. This is because in order to reform the existing legal framework in Guatemala and make effective the accords with a substantive character, it was necessary to modify the Constitution, as the foundation of the legal system.
 - From the beginning of the negotiations both the Government and the Guerrilla agreed that the political accords would reflect the legitimate aspirations of all Guatemalans, and that they would be established in accordance with the existing Constitutional framework.
 - Later, the URNG and the political parties committed to promoting those reforms of the Guatemalan Constitution that may be necessary “*for the reconciliation of all Guatemalans; an end to the internal armed conflict; a peaceful solution to the national problem by political means; and the strict respect for and application of the law*” (Acuerdo de El Escorial, Madrid, 1991).
 - Both parties to the Stockholm Accord (the Government and the URNG), considered that the constitutional reforms it proposed constituted “*the substantive and fundamental basis for the reconciliation of Guatemalan society within the framework of the Rule of Law*”.
 - In other words, reform of the existing legal framework was necessary for compliance with the Peace Accords, and such reform had to begin with modifications to the Constitution, as the fundamental basis of law.
 - The Constitutional Reforms contained in this Accord are divided into three parts: those that derived from recognition of indigenous peoples; those related to the demilitarisation of Guatemala; and those related to the justice system. All of these were integrated in such a way as to impact on the functions of three branches of the State.
 - The first sets of reforms contained in the Accord were those deriving from the Accord on the Identity and Rights of Indigenous People (*el Acuerdo sobre Identidad y Derechos de los Pueblos Indígenas*). Express constitutional recognition of indigenous people identity was necessary, for which it was considered necessary.
 - A criticism of the 1985 Constitution was that it is not only recognition of the existence of different ethnic groups and identities – as in Article 66 of the present Constitution – but recognition that the very structure of Guatemalan society, without prejudice to its national unity and the State, is characterized by the existence of such groups, which implies a recognition of indigenous spirituality as an essential component of their cosmivision and transmission of values, as well as formal recognition of indigenous languages in the Constitution.

The proposals were:

➤ **Reform 1.**

Within the definition of the Guatemalan state, it is considered necessary to characterize and define Guatemala as multiethnic, multicultural and multilingual within a national unity.

➤ **Reform 2.**

Official recognition of indigenous languages, and the obligation of the State to respect and promote them. Given the ethnic composition of Guatemala this point was of primary importance, above all for public policy reasons. The lack of official documents in languages other than Spanish was, and continues to be, one of the largest obstacles for many indigenous communities. On the other hand, it was necessary to include the reforms, which derived from the work of the Officialization Commission (of Indigenous Languages) which the AIDP established.

➤ **Reform 3.**

The recognition, respect and protection of different forms of indigenous spirituality.

- The second set of reforms concerned the operational aspects of the Accord on the Strengthening of Civil Society and the Role of the Army in a Democratic Society (*Acuerdo sobre el Fortalecimiento del Poder Civil y Función del Ejército en una Sociedad Democrática*) and provided for related constitutional reforms to the Congress, the Judicature, the functions of the President and of the Guatemalan Army.
- In the first case, the Congress, the Accord criticized both the number of representatives as well as the renewal system. As such, the proposed reform was:

➤ **Reform 4.**

To establish a fixed number of representatives, their number not set by law, to prohibit the re-election of representatives for more than two consecutive terms. The objective was not to impede parliamentary careers but to ensure a renewal of political leaders in the Congress.

- With respect to the administration of justice, the reform package proposed strengthening of the court's functions, to ensure that that all citizens, regardless of their ethnic origin or economic status, could access them freely. The proposed reforms were:

➤ **Reform 5.**

Constitutional reform in order to establish an initial express reference to the guarantees of the administration of justice, including free access to the justice system and in their own language, respect for the country's multiethnic, multicultural and multilingual character, free access for those unable to pay, the impartiality and independence of the Judiciary, the prompt and reasonable resolution of social conflicts, and the availability of alternative methods of conflict resolution.

➤ **Reform 6.**

The reference to the *Ley de la Carrera Judicial*, which established rights and responsibilities of judges, the dignity of their position and an adequate level of remuneration, a nomination and promotion system on the basis of a public competition which seeks professional excellence, the right to vocational training and improvement, a disciplinary regime, with pre-established guarantees, proceedings and penalties, as

well as the principle that a magistrate cannot be investigated and penalised other than with respect to his or her judicial functions.

➤ **Reform 7**

An article dedicated to non-judicial personnel of the Judicature.

➤ **Reforma 8.**

The creation of an article regarding the National Civilian Police. On this point the Accord gave the complete text of the cited article. In summary, it stipulated the professional and hierarchical character of the institution, being the only armed police body whose function was to protect and guarantee the exercise of people's rights and freedoms, prevent, investigate and combat crime and maintain public order and internal security, strictly in compliance with a respect for human rights and under civilian authorities.

- Another key aspect of the reforms was the modification of the role of the police in the Constitution as an essential step for the demilitarisation of Guatemala. As such, the proposed reforms were:

➤ **Reform 9.**

The elimination of maintenance of internal security as a function of the Guatemalan army. It was believed that in a democratic society, the function of the army relates to the defence of sovereignty and territorial integrity, anything else being atypical and extraordinary, requiring in such case the previous decision and control by the branches of the State.

For this it was necessary that any extraordinary function of the Army be decided by the President, and approved by the Congress.

➤ **Reform 10**

As such it was necessary to reform the functions of the President, and among other things, grant special powers to use the Army "*when the ordinary capacities for the maintenance of internal peace and public order are exceeded*".

The use of the Army in these cases would be temporary, would be under civilian authority and would imply no restriction whatsoever to the exercise of citizens' constitutional rights. In the same way, an obligation was imposed on the President to keep the Congress informed of the Army's actions, and the Congress could decide at any time to cease such actions.

➤ **Reform 11.**

The possibility that a civilian may be Minister of Defence. It was argued that as in the case of other ministers of state, the political functions performed by the Defence Minister do not necessarily require strictly technical knowledge, and as such there is no justification for the existing requirement that the Minister be of the Military.

➤ **Reform 12.**

Consistent with a modern conception of the Judicature, it was considered necessary to reform private military jurisdiction in criminal matters, limiting it to strictly military

offences. In this way, the proposed reform limited the jurisdiction of military tribunals to those offences set out in the Military Code.

- This was important because it prohibited such tribunals from judging civil offences and misdemeanours committed by members of the Military, and in all cases from judging civilians.
- Under the Stockholm Accords, the Government committed itself to promoting these reforms before the Congress, within 60 days of the Agreement for a Firm and Lasting Peace (*Acuerdo para una Paz Firme y Duradera*), which was signed on the 19 of December 1996, entering into effect.
- Perhaps one of the causes of what later occurred were the sections of the Accord which established that for those constitutional reforms whose text may not have been expressly drafted, and for those that were not identified by the number of the corresponding article, it was understood that their location and drafting corresponded to the Legislature. If the Government had taken the initiative to draft proposals for presentation to the Congress, these problems may have been reduced.

ANNEX 2 – THE GUATEMALAN PEACE ACCORDS

1 October 1994.

- **Framework Agreement for the Resumption of the Negotiating Process between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca**

29 March 1994.

- **Comprehensive Agreement on Human Rights**
- **Agreement on a Timetable for Negotiations of a Firm and Lasting Peace in Guatemala**

17 June 1994.

- **Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict**

23 June 1994.

- **The Agreement on the Establishment of the Commission to clarify past human rights violations and acts of violence that have caused Guatemalan population to suffer**

31 March 1995.

- **Agreement on Identity and Rights of Indigenous Peoples**

5 June 1996.

- **Agreement Concerning Socio-economic Aspects and Agrarian Situation**

19 September 1996.

- **Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society**

4 December 1996.

- **Agreement on the Definitive Ceasefire**

7 December 1996.

- **Agreement on Constitutional Reforms and Electoral Regime**

12 December 1996.

- **Agreement on the Basis for the Legal Integration of URNG**

29 December 1996.

- **Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements**
- **Agreement on a Firm and Lasting Peace**

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