

**The Popular Referendum (*Consulta Popular*)  
And the Future of the Peace Process in Guatemala**

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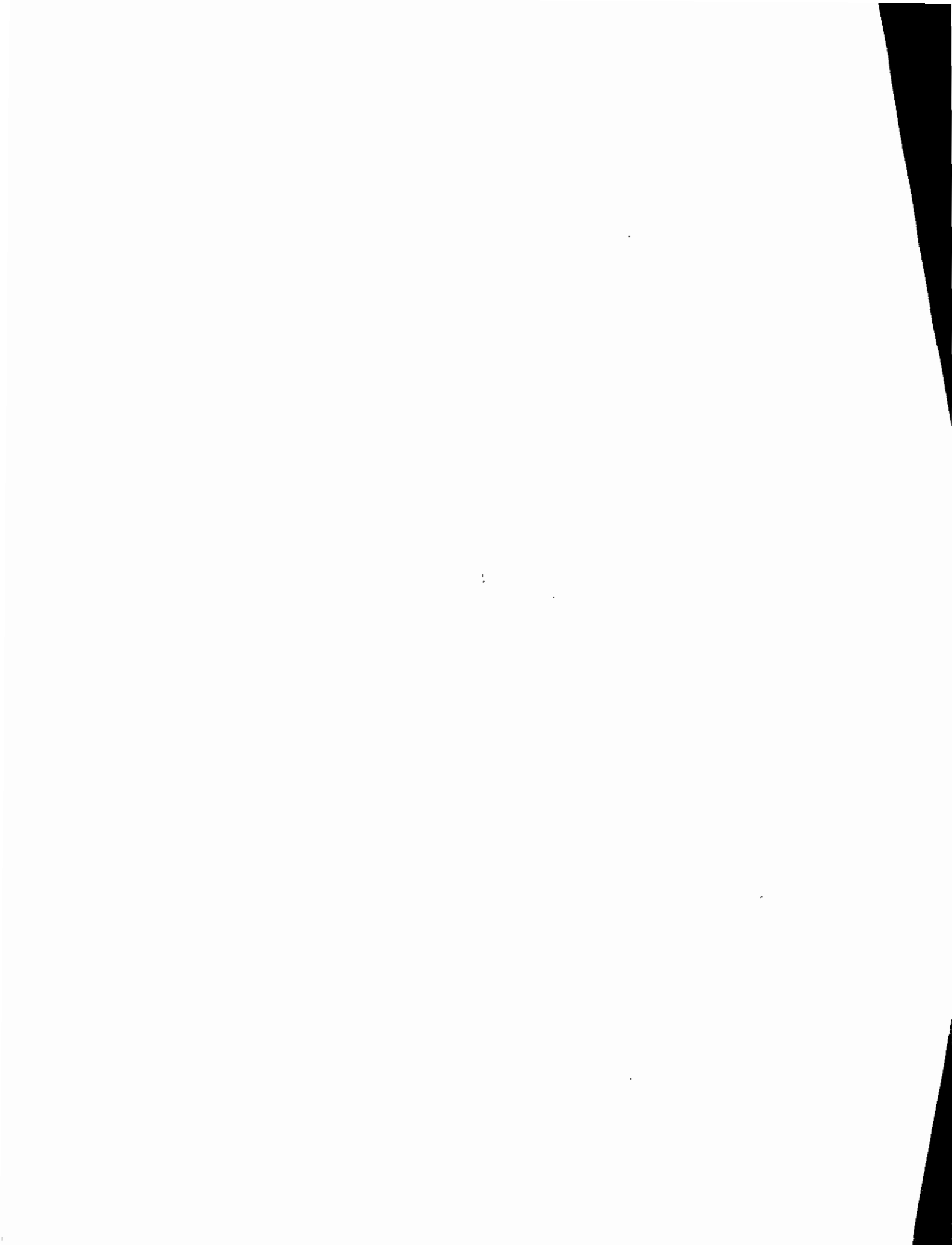
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## Introduction and Executive Summary

Cynthia J. Arnson

To followers of the Guatemalan peace process within Guatemala and in the international community, the results of the May 16, 1999 popular referendum (*Consulta Popular*) were both surprising and discouraging. Surprising because it would have seemed a foregone conclusion that Guatemalan voters would approve constitutional reforms deriving from the December 1996 Peace Accords; discouraging because the referendum, which represented the first opportunity for the Guatemalan public to express its views on the peace process, was overwhelmingly voted down. The future of the peace process was thus cast into doubt, just in advance of Guatemala's first post-war elections scheduled for November 7, 1999.

To explain and interpret the results and the impact of the Consulta, and speculate about the future of the peace process after a new government takes office in January 2000, the Latin American Program's *Project on Comparative Peace Processes in Latin America* asked several Guatemalan academics and policy analysts to address two basic questions: 1) What best explains the "No" vote in the Consulta; and 2) What are the implications of those results for future progress in implementing the reforms embodied in the Peace Accords? These questions are of obvious importance to Guatemala, but also to other countries of the region seeking negotiated settlements of internal armed conflicts. In addition, given Guatemala's history, we paid special attention to the key questions of indigenous rights and demilitarization. Both of these issues received significant treatment in the peace agreement and are critical to Guatemala's ongoing process of democratic consolidation.

Authors of the various articles included in this publication represent a variety of perspectives and research institutions, as well as varying degrees of optimism or pessimism regarding the future of the peace process in the short and medium term. There seems to be general convergence, based on public opinion polls taken since the Consulta, that support for the peace process among Guatemalan citizens continues to be strong, and that the defeat of the referendum must therefore be attributed to other factors. One such factor was the bundling of 50 reforms on disparate and at times unrelated issues into four questions that voters could only accept or reject in their totality. There is also agreement that the low voter turn-out – some 18% of those eligible – was discouraging, reflected poorly on the organization of the Consulta, and constitutes a key challenge for Guatemala's future democratization. As several authors also indicated, the major presidential candidates in the November 1999 elections have all felt compelled to express support for the continuation of the peace process; that, and the ongoing engagement of civil society, might bode well for the future.

Rather than artificially construct consensus among the various authors – each differs in his or her principal focus and conclusions – the following section summarizes the major points made by each contributor:

Using a statistical analysis of the vote results, *Dinorah Azpuru* indicates that despite high abstention rates overall, those areas of the country with the lowest rates of abstention during the referendum were those with the highest percentage of indigenous population, reversing usual trends and illustrating the potential for mobilization in these areas. Moreover, a statistical analysis reveals that the "Yes" vote was significantly associated with levels of illiteracy, unsatisfied material needs, rurality, and especially with the percentage of indigenous population. Geography was a major explanatory factor in the election, with the Highlands and North areas of the country voting "Yes," while the "No" prevailed in the East and South Coast, as well as in the Central region which includes Guatemala City. In contrast to perceptions that ethnic prejudice stood behind a rejection of the reforms, the statistical analysis would seem to point in the opposite direction: even in those areas of the country where the overall support for the "Yes" was weakest, the highest levels of support were evidenced on the question pertaining to indigenous rights.

*Demetrio Cojtí Cuxil* points out that the indigenous sectors of civil society did not have a unified position regarding the constitutional reforms, even though the bulk of the indigenous movement supported them. Moreover, the majority of the indigenous population did not vote, and even those communities that were highly mobilized experienced difficulty in getting to the polls. A result of the Consulta was to strengthen and legitimate racism and discrimination among some sectors of the population, even though some non-indigenous Guatemalans felt ashamed of the outcome and of the outright manipulation of racist sentiments. Following the Consulta, the work of various commissions tasked with implementing the Accord on Indigenous Rights has stagnated, and some sectors of the government have hardened their position with respect to indigenous issues. Within the Mayan movement, the results have been interpreted to mean that solutions to problems must be sought at the national and not just local level. There is a renewed determination to seek alternative paths for the realization of indigenous goals, including through national legislation and international treaties, and to forge alliances with progressive forces in civil society.

*Carroll Ríos de Rodríguez* attributed the organized productive sector's opposition to the constitutional reforms to their flawed design, the Congress' secretive and irregular procedure for approving and packaging the amendments (38 reforms not linked to the Peace Accords were added), and the pressures of the international community, perceived as interference in Guatemala's domestic affairs. The private sector organization known as CACIF was slow to come to a consensus position opposing the reforms, and did not make its position public until days before the referendum. Other groups more publicly advocating the "No" probably influenced CACIF's position; CACIF favored (and favors) the peace process overall, but feared the impact of defective laws at the constitutional level on the prospects for economic progress.

*Bernardo Arévalo de León* relates the nature of Guatemala's democratic transition to difficulties in implementing the accord on the armed forces and the strengthening of civilian power. He notes that the decision to undertake a democratic opening came from within the military itself, and that the ongoing political weight of the military within the



state has allowed it to administer the pace of advance in many key areas. Arévalo argues that the pace of demilitarization had stagnated even before the defeat of the constitutional reforms. However, the lost momentum has less to do with military resistance than with civilian indecision and the lack of an overall vision or political strategy for deepening the process of military transformation. Civilian authorities are not inherently weak *vis à vis* the armed forces; rather, they have been indecisive and their policies incoherent. Approval of the two constitutional reforms related to the military – the elimination of their internal security role, and the designation of a civilian as defense minister – would have been positive for the demilitarization process, but it is important not to exaggerate the impact of the referendum's defeat. The agenda of transformation set forth in the Peace Accords can be pursued through ordinary legislation (for example, in redefining the meaning of internal security and the respective roles of various state institutions); other initiatives, such as the elimination of the *Estado Mayor Presidencial*, depend on presidential directives, not constitutional mandate.

*Edelberto Torres-Rivas* underscores Guatemala's advances in terms of procedural democracy, but notes significant shortcomings in coming to terms with the substance of democratic governance: providing for citizen security, overcoming racism and incorporating Guatemala's indigenous majority, and advancing in the fight against impunity. Corruption and incompetence in the judicial system remain rampant, the military remains strong and ubiquitous, particularly in rural areas, and reform of the country's tax structure has been frustrated. These trends have been offset, however, by increased spending on education and health, the financial strengthening of municipal authority, the election of a new Supreme Court and Constitutional Court, and increased local participation by indigenous groups. Although the defeat of the constitutional reforms was a serious blow to the peace process, the Accords unleashed an unstoppable dynamic for change, which can be pursued through other means, including ordinary laws and executive decrees. The role of the international community has helped provide an essential guarantee of support for the process of democratic consolidation.

## **Acknowledgments**

In addition to the authors, the expertise and commitment of several people contributed immeasurably to this publication. David Holiday served as one of the initial architects of the entire document, provided liaison to authors in Guatemala, and assisted with translation and editing. Dinorah Azpuru also provided invaluable assistance with the overall conception and editing of articles commissioned for this report. Ann Robison Farah provided additional help with translation. I, alone, however, must bear responsibility for any errors of omission or commission that might remain in the pages that follow.

As on previous occasions, the Latin American Program is grateful to the Ford Foundation for its generous support of this publication and other Program activities.



# **The Consulta Popular: A Vote Divided by Geography<sup>1</sup>**

**Dinorah Azpuru**

## **Overview**

On May 16, 1999, Guatemalans went to the polls to ratify or reject a set of 50 constitutional reforms,<sup>2</sup> twelve of which were directly linked to the Peace Accords signed between 1994 and 1996 by the Guatemalan government and the armed opposition, the Unidad Revolucionaria Nacional Guatemalteca (URNG). The referendum on constitutional reforms (hereafter the Consulta) took place much later than expected by those who had signed the final Peace Accord in December of 1996. Moreover, the political discussion within the Guatemalan Congress that preceded the presentation of the proposed reforms to the general public turned out to be long, confusing, and anything but transparent, undermining the original intent of the Consulta.

In the end, to the dismay of several sectors of civil society, those who had signed the Peace Accords, and the international community, the constitutional reforms were rejected by the population in a democratic exercise that drew scant participation. The other contributors to this publication describe in detail the complex political process that took place before the referendum, and the implications that the rejection of the constitutional reforms may have for the peace process. The aim of this article is to examine the distribution of the vote of the Consulta Popular. This examination is of particular importance because, probably more than in any of the other elections that have taken place during the fifteen years of democratic rule in Guatemala,<sup>3</sup> the vote pattern was marked by sharp contrasts in terms of geography, socio-economic situation, and most importantly, ethnicity.

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<sup>1</sup> I am grateful to Mitchell Seligson and Barry Ames from the University of Pittsburgh for their valuable comments on this article. I would also like to thank Geraldine de Serovic for her comments as well as Carlos Mendoza from CIEN, Carmen Ortiz from ASIES, and Emilio Arroyave from Borge & Asociados for providing me with important and timely information.

<sup>2</sup> According to the Guatemalan Constitution enacted in May 1985, the Constitution may be reformed in two ways: 1) by a National Constituent Assembly; and 2) by a majority of members of Congress. In the latter case the reforms have to be ratified by the population through a referendum or Consulta Popular. There are some provisions that can only be reformed by a national Constituent Assembly. The procedure of having the population ratify the reforms is an unusual one compared to the way such decisions are made in most countries.

<sup>3</sup> Ten electoral processes have taken place since the so-called "democratic opening" in Guatemala in 1984. These elections include the election of a national Constituent Assembly (1984), three presidential (general) elections (1985, 1990, 1995), one congressional election (1994), two referenda for constitutional reforms (1994, 1999) and three mid-term municipal elections (1988, 1993, 1998).

To understand the vote pattern, I rely on a statistical (ecological)<sup>4</sup> analysis based on a dataset specifically constructed for this purpose. This dataset includes variables relative to the voting results and also variables related to the indices of rurality, literacy, ethnicity, and unsatisfied needs.<sup>5</sup> I also include a brief analysis of public opinion surveys that were carried out after the Consulta. The purpose of this article is to reveal the factors that explain the defeat of the “Yes” vote in the Consulta (and, by analogy, the victory of the “No”). The result was the rejection of the constitutional reforms that many deemed fundamental for the future of democratic development in Guatemala. I hope to clarify, beyond mere speculation, some of the actual factors behind the results.

### **What was at stake**

Before going into a detailed electoral analysis, it is useful to situate the options that were presented to Guatemalans during the Consulta. After the long and tiresome political discussion in Congress and the subsequent -- and equally long and confusing -- legal struggle undertaken by conservative organizations to stop or postpone the reforms, the Supreme Electoral Tribunal convoked the referendum. Voters were to be presented with a set of reforms grouped into four thematic blocs:<sup>6</sup>

- 1) The definition of the nation and social rights: these reforms included the recognition of indigenous peoples and several related rights, the recognition of the indigenous languages existent in the country, as well as other social legislation related to military/social service, compensation of government employees, and the extension of free health services to the population;
- 2) Reforms of the legislative branch: these reforms included the creation of an intelligence committee in Congress and changes in the number of representatives per electoral district;
- 3) Reforms of the executive branch: these reforms included the redefinition of the role of the army, the transfer of the security of the president from the army to other security bodies (which implied the disappearance of the *Estado Mayor Presidencial*), the appointment of a civilian as minister of defense, the creation of community-level development councils, and other duties of the president in security and tax matters;

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<sup>4</sup> The term ecological analysis is important in this article. It refers to the usage of aggregate data gathered at the level of some geographical unit in order to understand the behavior of individuals residing within that geographical area. In this specific case, the term refers to the analysis of voting behavior in accordance with the geographical, socio-economic, and cultural characteristics of certain geographical units.

<sup>5</sup> The indices of rurality, ethnicity, literacy, and unsatisfied needs were provided by the Centro de Investigaciones Económicas Nacionales (CIEN). Those percentages were used by CIEN in their publication “Diagnóstico de la Violencia en Guatemala” (1999) and are based on data from the Instituto Nacional de Estadística (INE). I acknowledge the collaboration of CIEN in providing me with these indices, which are fundamental to this article.

<sup>6</sup> For a more detailed description of the reforms in each one of these areas, see the article by Carroll Ríos de Rodríguez in this publication, in particular Table 3.

- 4) Reforms of the judicial branch: these reforms included the redefinition of the conditions for the administration of justice, the creation of the judicial career, reforms to the process for electing members of the Supreme Court, and the recognition of indigenous customary law.

## The Results of the Referendum

Other contributors to this publication describe details of the pre-electoral environment in Guatemala. Suffice it to say that confusion, misinformation and polarization regarding the reforms were present in the pre-electoral context, in particular in the last weeks preceding the Consulta.

A good deal of the analysis that follows is based upon the regional division of the vote. Guatemala is commonly divided into five major regions: the Central region (which includes Guatemala City); the South Coast or *Costa Sur*; the East or *Oriente*; the North; and the Highlands or *Altiplano* (the latter predominantly indigenous). Table 1 describes the departments that are included in each one of the regions, as well as the percentage of the population registered to vote that resides there and the index of indigenous population for that department. This selection was made in correspondence with a series of shared cultural and geographic characteristics of those departments (see also Map as an appendix). This division does not represent the official regionalization of the country.<sup>7</sup>

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<sup>7</sup> Some of the criteria I used to define the regions used in this analysis are the following: The *Central* region is comprised basically of metropolitan Guatemala and Sacatepequez; the inclusion of the latter in this region is justified in terms of its high percentage of urban population (73.9% according to an official business guide of Guatemala) and its geographical proximity with Guatemala City. The *East* region comprises several departments which are mostly populated by *Ladinos*, which, unlike the Central region, display high indices of poverty, rurality and illiteracy. The *South Coast* includes departments which have important coastal industries, ports, and tourism areas and which are located on the shores of the Pacific Ocean; the coastal areas are mostly populated by *Ladinos*, but these departments also have to the north some mountainous areas populated by both *Ladinos* and Indigenous. The *Highlands* are a region clearly identified by its topography: it is the most mountainous part of the country and the indigenous Maya are the dominant population; even more clearly than the East, it also displays high percentages of illiteracy, poverty and rurality. A good part of the population of the Highlands speaks one of the 23 indigenous languages existent in the country. Finally, the *North* is probably the least homogenous region selected for this analysis, and is defined basically by geography; it includes two departments with high percentages of indigenous Mayan population (Alta Verapaz and Baja Verapaz) and two with a relatively low presence either of indigenous Mayans or Garifunas.

**TABLE 1**

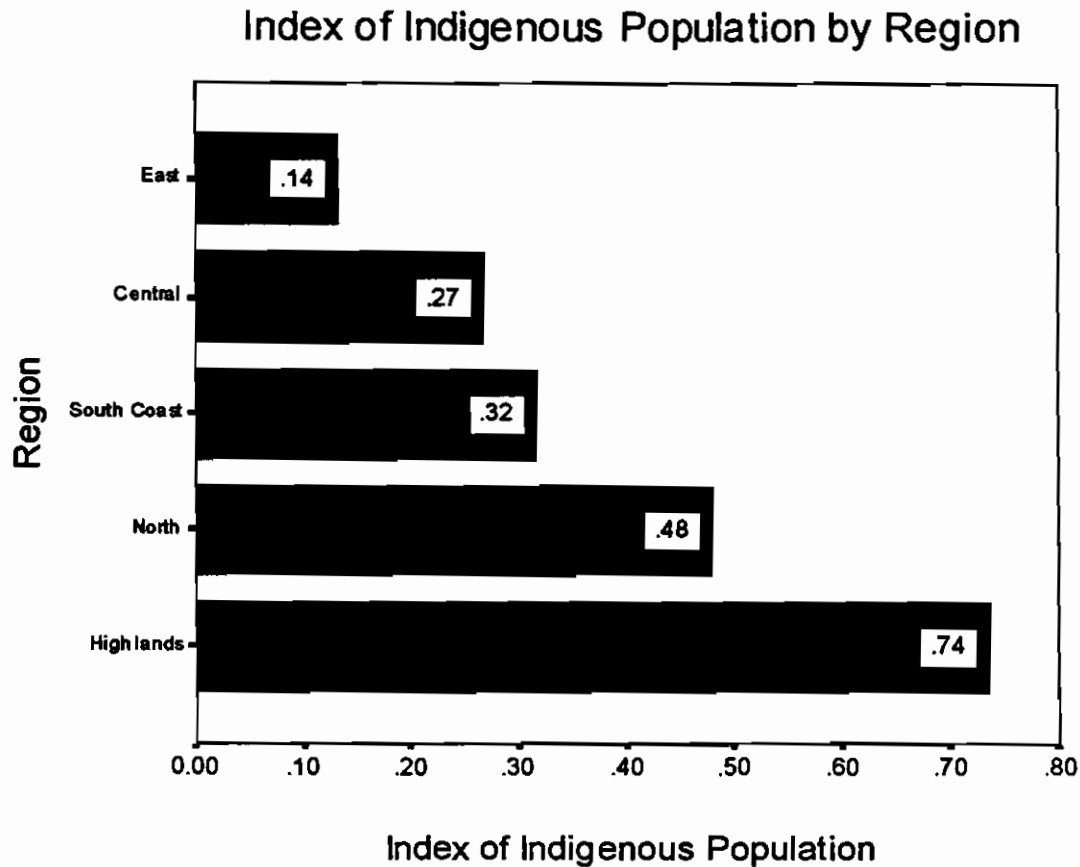
REGION	DEPARTMENTS	REGISTERED VOTERS*	TOTAL (%) FOR THE COUNTRY	INDEX (%) INDIGENOUS POPULATION
Central	Guatemala	1,082,352	26.5	.12
	Sacatepéquez	84,722	2.1	.42
		<b>1,167,074</b>	<b>28.6</b>	
East	Jutiapa	169,897	4.1	.05
	Santa Rosa	141,279	3.5	.03
	Chiquimula	116,313	2.9	.30
	Zacapa	83,818	2.1	.04
	Jalapa	77,686	1.8	.37
	El Progreso	57,250	1.5	.02
		<b>646,243</b>	<b>15.90</b>	
South Coast	Escuintla	222,102	5.4	.06
	Suchitepéquez	156,340	3.9	.57
	Retalhuleu	106,588	2.6	.33
		<b>485,030</b>	<b>11.90</b>	
North	Alta Verapaz	182,086	4.5	.89
	Izabal	117,722	2.9	.23
	Petén	110,700	2.7	.26
	Baja Verapaz	73,042	1.8	.55
		<b>483,550</b>	<b>11.90</b>	
Highlands	San Marcos	277,563	6.8	.42
	Quetzaltenango	267,386	6.5	.60
	Huehuetenango	247,423	6.1	.64
	Quiché	170,709	4.2	.83
	Chimaltenango	146,811	3.6	.78
	Totonicapán	95,855	2.3	.95
	Sololá	92,754	2.3	.94
		<b>1,298,501</b>	<b>31.80</b>	
<b>TOTAL</b>		<b>4,080,398</b>	<b>100 %</b>	

\*Registered voters up to February, 1999 (those who participated in the Consulta)

Source: Supreme Electoral Tribunal (TSE) and CIEN

The previous table illustrates that the divisions between regions are not clear-cut. In many departments, except for most of those in the East, the indigenous population is present. However, as is shown in Figure 1, it is in the Highlands where the percentage of indigenous population is much greater.

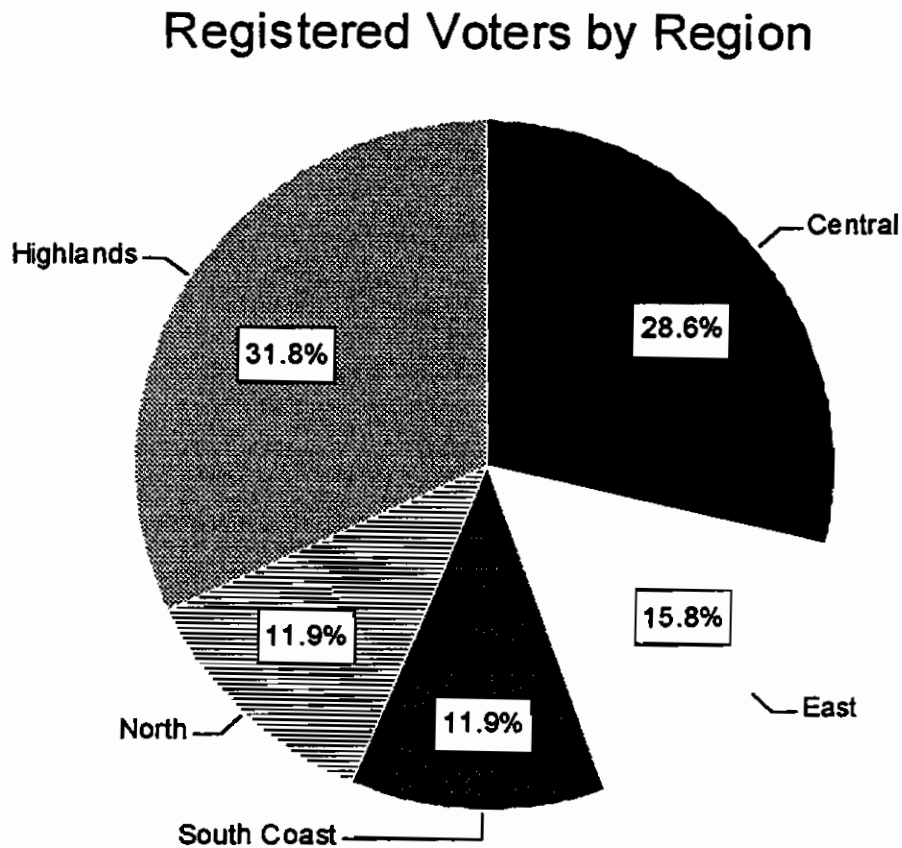
FIGURE 1



It is often considered that the Central region -- in particular Guatemala City -- has an overwhelming influence in the elections in Guatemala;<sup>8</sup> and indeed, it comprises roughly 30% of the registered population. However, as can be more clearly observed in Figure 2, the potential in terms of the number of registered voters is even higher in the Highlands. This factor has often been overlooked by analysts. If the potential (actually registered) voters in the Highlands are mobilized, their participation can have a decisive influence in a more participatory and more equitable democracy in Guatemala in the future.

<sup>8</sup> In the 1995 elections, the metropolitan vote made the difference in the presidential elections. The PAN party won the second run-off election by barely 30,000 votes, most of them from Guatemala City.

FIGURE 2



#### The Low Voter Turn-Out

Before entering into an analysis of the valid votes, it is necessary to address the most important characteristic of this election: an abstention rate of 81.45% of the eligible voting population. Guatemala has one of the lowest indices of electoral participation in the world.<sup>9</sup> Therefore it should come as no surprise that very few Guatemalans bothered to cast their vote on May 16<sup>th</sup> for the Consulta. In a previous referendum on constitutional reforms that took place in 1994, roughly 84.13% of the registered voters did not go to the

<sup>9</sup> See "Introduction," *Guatemala: setting the course, quickening the pace* (Stockholm: International IDEA, 1998), Introduction. The publication also mentions that approximately 40% of the adult population are not registered to vote. However, according to the magistrates from the Supreme Electoral Tribunal and some political analysts, the real abstention rate is uncertain given that there are many factors related to it. One of them is the fact that the electoral register (*padrón electoral*) needs an urgent update, since many Guatemalans who appear there as registered voters live outside of the country, thus inflating the seeming levels of abstentionism.



polls.<sup>10</sup> In comparison with the presidential elections, the complexity of the constitutional reforms and the divisive environment that prevailed during both referenda (1994 and 1999) can help explain this extremely low turn-out, lower even than the already low turn-out in regular elections.<sup>11</sup>

A statistical analysis<sup>12</sup> shows that the index of indigenous population is the only variable that appears to be significantly associated with the low voter turn-out for the Consulta (Table 2). However, the association is a negative one. In other words, those areas with the highest percentage of indigenous population had the lowest rates of abstention in the Consulta.

**TABLE 2**  
**CORRELATIONS BETWEEN ABSTENTION**  
**AND OTHER FACTORS IN THE CONSULTA POPULAR**

INDEX (%) OF INDIGENOUS POPULATION	-.725**
INDEX OF RURALITY	.169
INDEX OF UNSATISFIED NEEDS	.027
INDEX OF LITERACY	.326

\* Sig. at the .05 level

\*\* Sig. at the .01 level

Thus, even if the regions of the country with a high percentage of indigenous population are often perceived to be the ones with lowest voter turn-out,<sup>13</sup> on this occasion, as Figure 3 illustrates, abstentionism was lower in the Highlands than in the

<sup>10</sup> For a more detailed description of this and other elections, see Dinorah Azpuru, *Estudio de la Realidad Política de Guatemala*, 1994 (Guatemala City, Universidad Rafael Landívar).

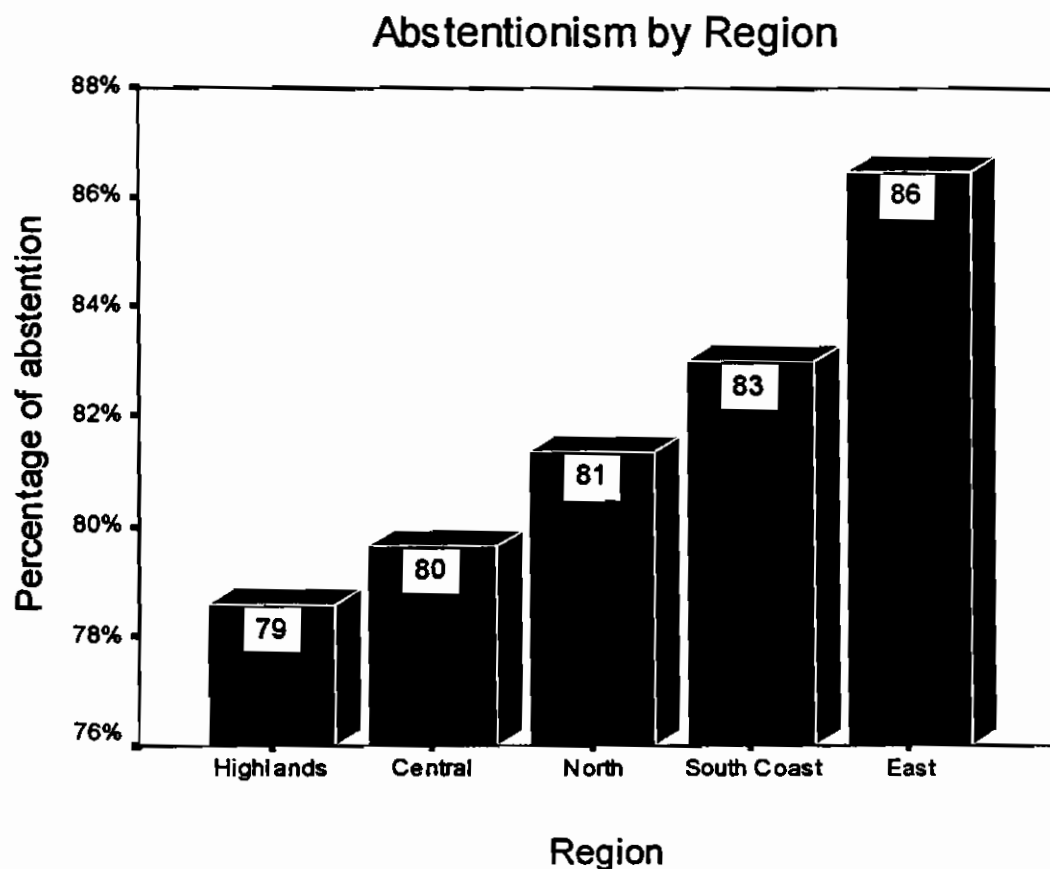
<sup>11</sup> In addition to the aforementioned factors, some analysts have pointed to the limitations of the present Electoral Law, which mandates that the electoral polls must be located only in the county seats (*cabeceras municipales*) of the 330 municipalities of the country, thus making it difficult for voters from isolated rural areas to cast their ballot. As a result of the Peace Accords, a Commission on Electoral Reform was created; it produced, after several months of deliberations, a report proposing reforms to the Ley Electoral y de Partidos Políticos. Among these proposals are the updating of the electoral register, through the use of a Cédula Única de Identidad (a new identity card), the placement of electoral polls beyond the county seats, and the regulation of campaign funds. Regrettably and unjustifiably, the proposal has been stranded in Congress for several months.

<sup>12</sup> This analysis includes bivariate correlations. In other words, each of the factors here considered (rurality, unsatisfied needs, index of indigenous population and literacy) is correlated individually with the abstention in that geographical area in order to determine whether there exists a significant association between those results and the characteristics of the area.

<sup>13</sup> A study found that in the 1985 election the indigenous areas displayed slightly higher levels of participation: D. Wall and E. Lehoucq, "Social and Spatial Characteristics of Voter Turnout in Guatemala: The 1985 Elections". Yearbook, *Conference of Latin Americanist Geographers*, 1997, vol. 23, 133-149. However, there is little academic research on more recent electoral behavior (including abstention) in Guatemala, that would allow one to sustain these assertions with concrete figures.

other regions of the country, including the Central region, where Guatemala City is located.

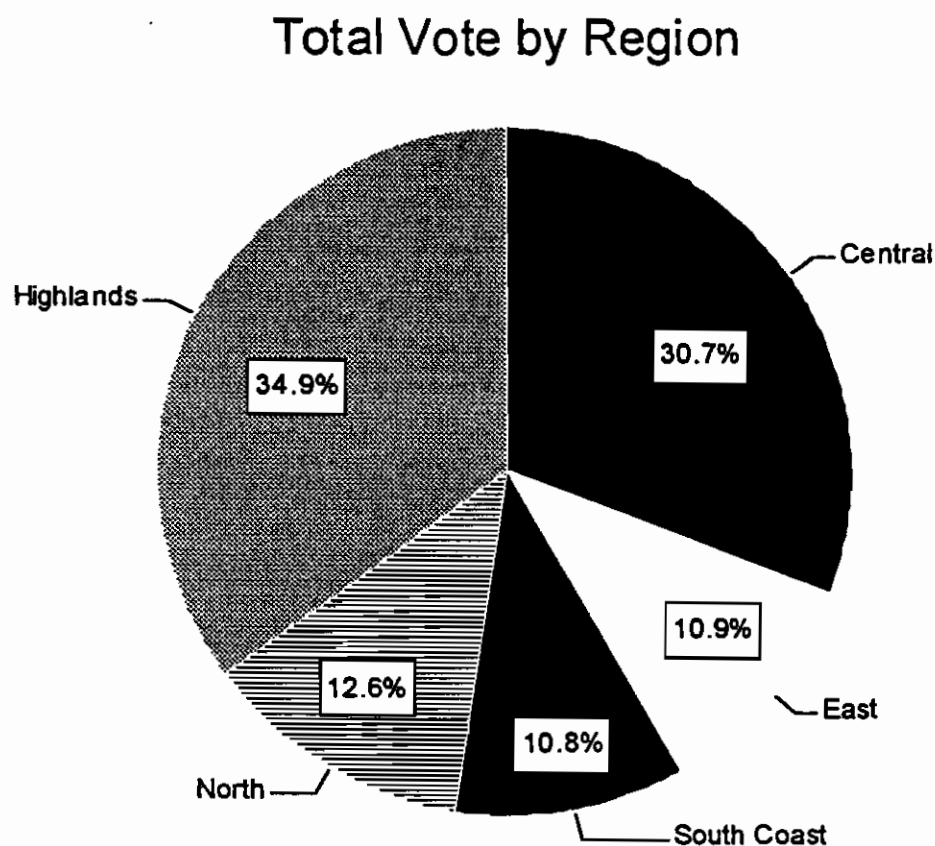
FIGURE 3



Part of the decisive influence of the metropolitan area vote in previous elections is probably associated with the low levels of participation in other regions. In the Consulta Popular, however, the distribution of the registered voters (Figure 3 above) coincides with the final geographical distribution of the total vote (Figure 4 below). This shows that registered voters across regions were overall equally interested in participating in the election, with the voters in the Highlands displaying a higher percentage of participation than the rest of Guatemalans. However, the increased participation in the Highlands was not enough to counterbalance the final outcome of the Consulta, due in part to the fact that one of the major departments in the Highlands, Quetzaltenango, opted for the "No."<sup>14</sup>

<sup>14</sup> See the article by Demetrio Cojtl in this publication.

FIGURE 4



It may well be that the importance of the constitutional reforms for the Mayan population elicited a higher interest in this election, that the indigenous leaders were actively promoting participation, or even that the peace process affected the democratization of the country, bringing about more political awareness and consequently, more participation by groups traditionally excluded from the decision-making process. It is difficult to draw conclusions about the reasons for increased participation in the Highlands, but it is nevertheless a hopeful sign for the future. Whether this trend is maintained will be seen during the presidential elections taking place in November 1999.

To summarize, the areas populated by indigenous Mayan Guatemalans displayed higher levels of participation than the other regions of the country during the Consulta Popular. However, the overall voter turn-out in all regions was extremely low. Thus, increasing voter participation in all regions of the country should be one of the fundamental tasks for those interested in strengthening democracy in Guatemala.

### A breakdown of the vote

The "Yes" vote was defeated on all four of the questions presented; therefore, none of the proposed constitutional reforms was approved. Table 3 contains an overall description of the final results of the referendum. Because of space limitations, only the valid votes will be included in this analysis; blank and null votes are excluded.

**TABLE 3**  
**OVERALL RESULTS FOR THE COUNTRY**

QUESTION #1		QUESTION #2		QUESTION #3		QUESTION #4	
YES	NO	YES	NO	YES	NO	YES	NO
328,061 (47%)	366,417 (53%)	284,403 (41%)	402,593 (59%)	294,823 (43%)	392,250 (57%)	316,782 (46%)	373,003 (54%)

Source: official results from the Supreme Electoral Tribunal

The overall depiction of the results tells us little about what really happened during the Consulta Popular. However, three things stand out: 1) Voters did make a distinction between the different questions posed to them. In other words, voters seemed to be aware of the different content of each of the questions, in spite of the confusion created by such a complex electoral process; 2) the number of "Yes" or "No" votes varied among the four questions. This indicates that some of the reforms were more acceptable to the public than others; and 3) overall, for most of the questions, the difference in number of votes between the "Yes" and the "No" are not broad. This in turn would show that the population was divided over the reforms and that a significant percentage of the voters -- although not in large enough numbers -- opted for reforming the Constitution.

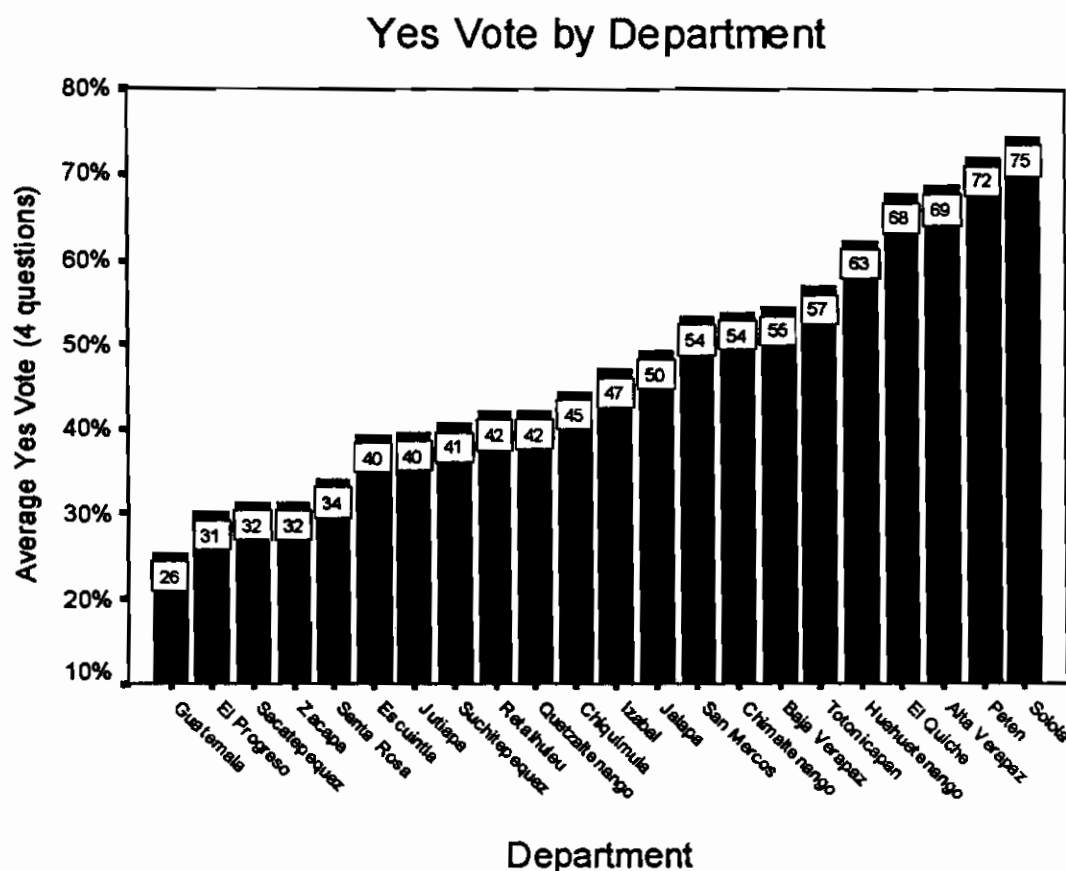
An exhaustive analysis of the voting results for each of the four questions in the referendum is beyond the scope of this article. Therefore this article will focus more on an overall analysis of the "Yes" vote. For this purpose, I will use as dependent variable an average of the percentages obtained by the "Yes" in all of the four questions in each of the 22 departments that comprise Guatemala.<sup>15</sup>

In view of the difficulty of making a detailed analysis of the 22 departments of the country, I have chosen to base a good deal of the analysis on the region as the independent variable. Nevertheless, it is important to show the division of the vote by department (Figure 5).

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<sup>15</sup> This can be justified on the basis that the voting pattern for the "Yes" or the "No" by department was stable in all four questions. Thus, in none of the departments of the country there was a split vote (some questions winning in the "Yes" and some in the "No").

FIGURE 5



As noted previously, the regions of Guatemala each have distinct characteristics that differentiate them one from another. It is particularly meaningful to note the voting pattern that took place in departments included in the Highlands region. This mostly rural region not only was the most affected by the armed conflict in the late 1970s and early 1980s, but also displays the highest levels of illiteracy and unsatisfied material needs in the country.

Table 4 shows the individual (bivariate) association between the "Yes" vote and the several variables that reflect some characteristics of the regions of the country. It is remarkable to note that the "Yes" vote is statistically significantly associated with all those variables, with rurality being the least important of all four.

**TABLE 4**

**CORRELATIONS BETWEEN THE YES VOTE  
AND OTHER FACTORS IN THE CONSULTA POPULAR**

INDEX OF INDIGENOUS POPULATION	.727**
INDEX OF RURALITY	.520*
INDEX OF UNSATISFIED NEEDS	.814**
INDEX OF LITERACY	-.840**

\* Sig. at the .05 level

\*\* Sig. at the .01 level

Table 5 shows the multivariate results (all variables considered at the same time). It confirms that the indices of indigenous concentration and unsatisfied needs are significantly associated with the "Yes" vote in the Consulta<sup>16</sup>.

**TABLE 5**

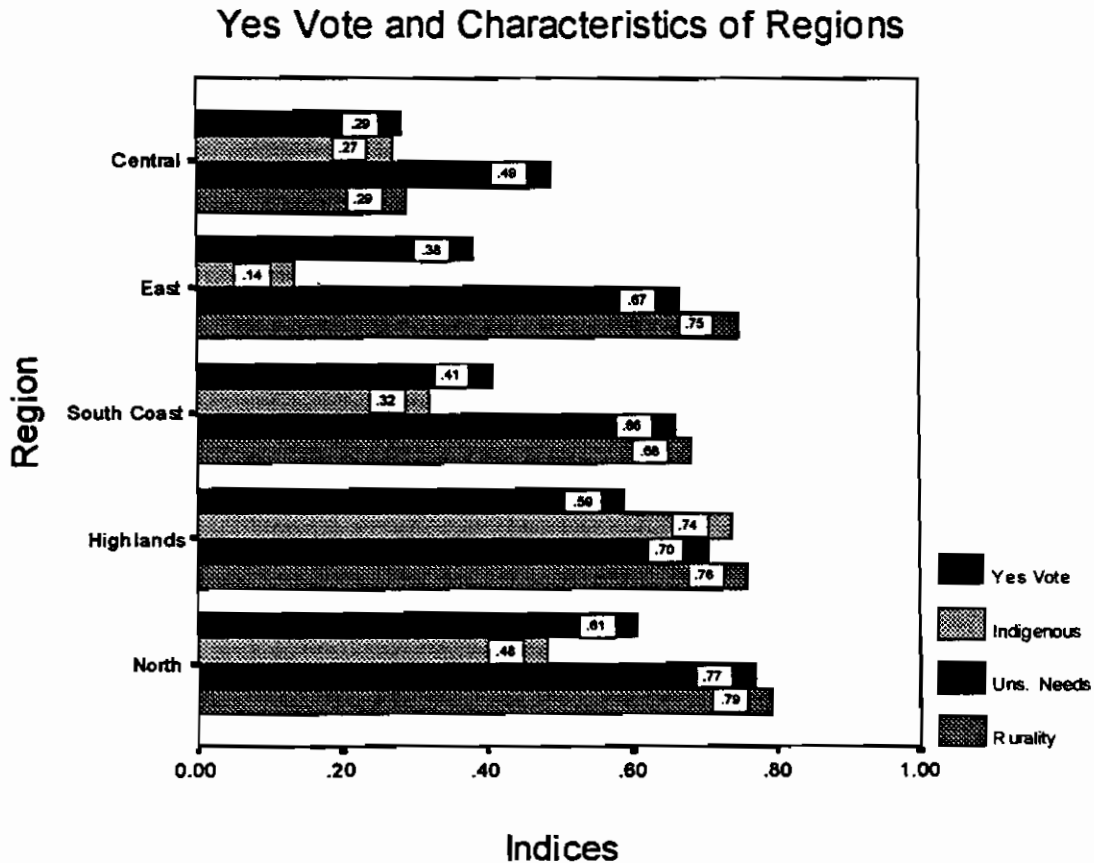
**REGRESSION RESULTS FOR THE YES VOTE**

	B	Beta	Significance
Constant	5.904E-02		.888
INDEX INDIGENOUS POPULATION	.171	.374	.045*
INDEX OF RURALITY	-3.561E-02	-.039	.826
INDEX OF UNSATISFIED NEEDS	.736	.522	.010*
INDEX OF LITERACY	-.205	-.182	.546

Figure 6 further clarifies the voting pattern that took place across regions in the country. It shows two different things. First, the chart highlights the characteristics of the regions of the country in terms of their indices of indigenous population, rurality, and unsatisfied needs. It confirms the high association that exists in the country between rurality and unsatisfied needs, but not necessarily between those variables and the index of indigenous population. This means that other regions of the country that are not predominantly indigenous (East, North and South Coast) also have high indices of rurality and unsatisfied needs. Second, Figure 6 shows the association between the "Yes" vote and the other variables.

<sup>16</sup> In other words, when all the variables are put together in an equation (and not individually as in the bivariate case), the importance of those factors is maintained. It must be noted that the variables included in this regression may overlap each other and thus cause a problem of multicollinearity in this regression. With that in mind, the results are presented only as a way to sustain the fact that these variables were closely associated with the "Yes" vote in the Consulta.

FIGURE 6



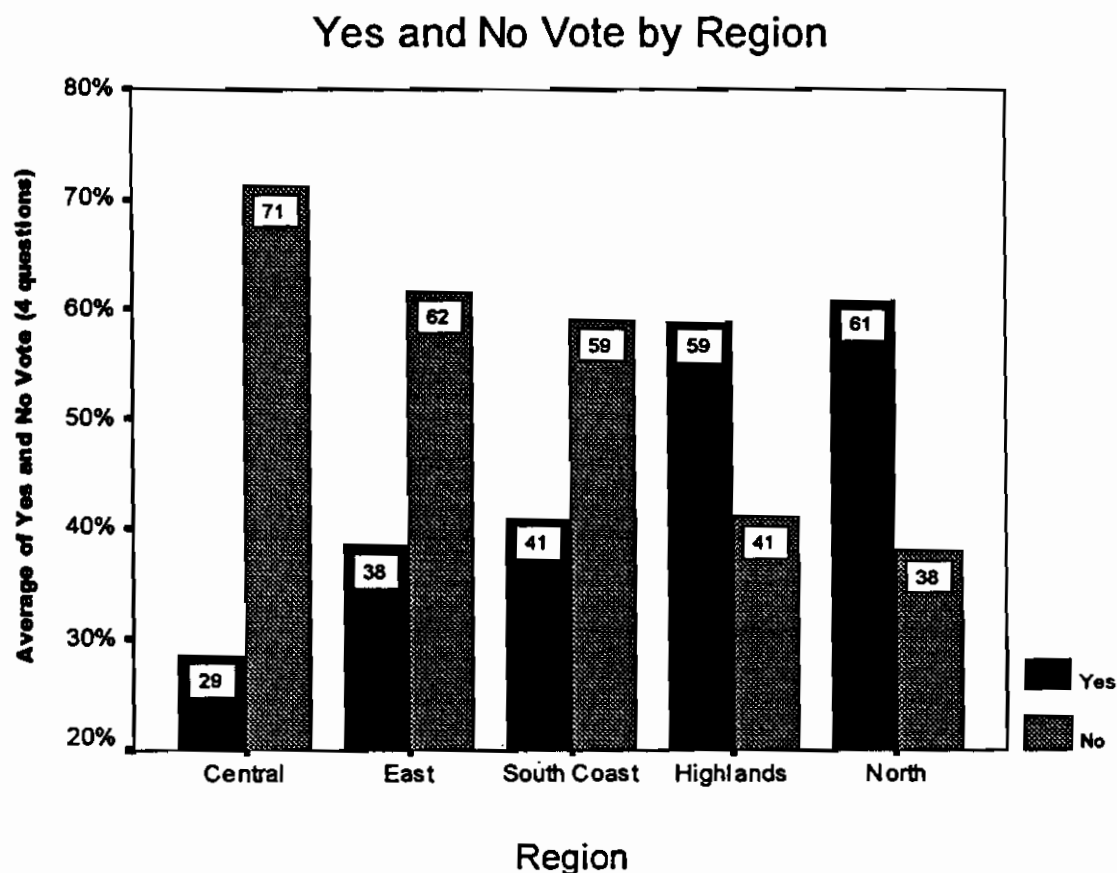
We now turn to a comparison of regions of the country with respect to their preference for the “Yes” and the “No” vote. Figure 7 shows sharp differences in the vote outcome by region, with the “No” vote predominating in three of the regions of the country (Central, East and South Coast), whereas the “Yes” vote prevailed in the Highlands and the North.

Several interpretations have been given for the results of the Consulta and for the prevalence of the “No” vote in urban and Ladino populated areas. While a discussion of those factors is beyond the scope of this article, it is important to briefly mention several explanations for the “No” vote offered by academics and newspaper columnists.<sup>17</sup>

<sup>17</sup> There are not many publications related to the results of the Consulta. These elements are derived from among the few available, including: Susanne Jonas, “The Hijacking of the Constitutional Reforms,” in *Centaur and Doves: Guatemala's Peace Process* (Boulder, CO.: Westview, forthcoming 2000); Siddharta Baviskar, “A long and winding road,” *Frontline*, Vol. 16, Issue 20 (September 25–October 8, 1999); *Prensa Libre*, Guatemala, articles and interviews published in the aftermath of the Consulta Popular by René Poitevin, Mario Antonio Sandoval, Dina Fernández García and others; Raquel Zelaya, speech delivered to the Consultative Group in Stockholm, May 1999.

Among these factors are: the confusion and the lack of transparency of the political process that preceded the Consulta, the lack of legitimacy -- or at least the shallow support -- of the political parties, the mistrust of the government, the weak campaign for the "Yes" as contrasted to an aggressive campaign for the "No," the religious issue, the limitations of the electoral laws, the fear of change, and even ethnic prejudice. An ecological analysis does not allow us to assess empirically the influence that those and other variables of similar nature may have had. However, it helps us to assess how much other variables of a demographic or geographic nature may have influenced the outcome. Overall, it stands clear that geography was a major explanatory factor.

FIGURE 7



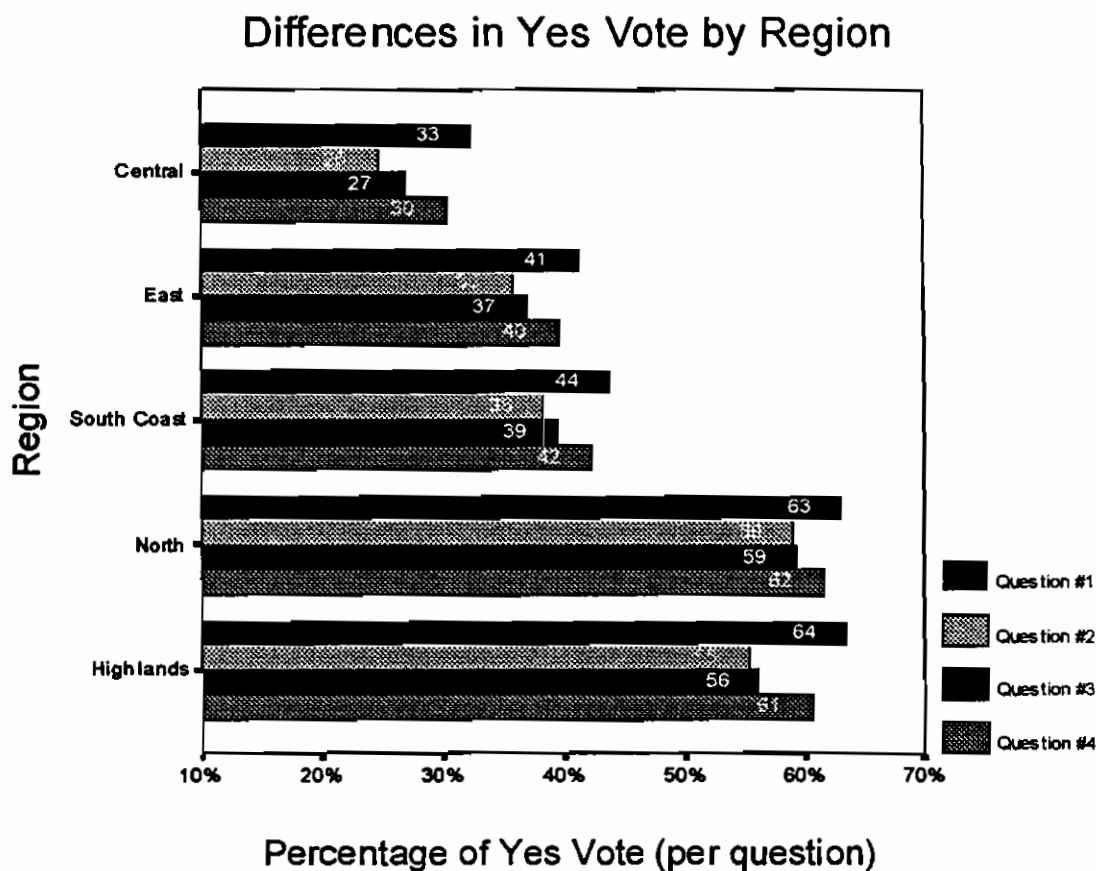
Finally, it is worth noting that there were some differences, albeit small ones, in the behavior of the electorate with respect to the different questions posed in the Consulta. Figure 8 shows the pattern of the "Yes" vote, broken down by question, in different regions of the country. Even though the "Yes" vote had overall weak support in the Central, East and South Coast regions of the country, the electorate expressed different degrees of preference for the "Yes" depending on the specific question. Thus,



question #1 in the Central region of the country had the highest level of support when compared to the other questions. A similar pattern appears in the other regions that favored the "No" overall. One important implication is that, although many attributed the rejection of the constitutional reforms to high degrees of ethnic prejudice, the question that addressed issues of indigenous rights obtained higher support than other questions in the very regions predominantly inhabited by *Ladinos*. Noting this fact does not exclude the possibility that ethnic prejudice may have been an intervening factor in the election,<sup>18</sup> but this analysis suggests that such prejudice may have been less determinant than otherwise supposed.

It is also clear that the population of the Highlands and the North of Guatemala overwhelmingly supported the reforms on all of the questions, but in particular on the first question that directly addressed the issue of indigenous rights. The results reflect a degree of political awareness among the population of these regions that had not been evident in any of the previous elections of Guatemala's democratic era. The results suggest the potential that exists to mobilize voters in those areas when they believe that elections (or democracy in general) will directly impact their lives.

FIGURE 8



<sup>18</sup> See Demetrio Cojti's article in this publication.

Some newspaper articles and publications<sup>19</sup> point to the difference between urban and rural areas as one of the main explanations for the triumph of the “No”. Thus, it is noted that in most of the municipalities that are not departmental seats (*cabeceras departamentales*), the “Yes” vote prevailed. Similarly, it has been noted that without the vote of the Central region (i.e., Guatemala City and its surroundings), the “Yes” vote would have won in questions #1 and #4. Overall, these publications coincide with the statistical analysis developed in this article: ethnicity, unsatisfied needs, and rurality had an important influence in the outcome of the Consulta.

### **The aftermath: public opinion on the consulta**

An ecological analysis of the electoral results<sup>20</sup> can provide valuable insight into the behavior Guatemalan voters during the Consulta Popular. Nevertheless, what actually went on in the minds of the citizens who went to the polls (or who did not cast their vote) or the reasons why they voted for one or another option is still uncertain. It is here that public opinion surveys carried out after the referendum can help us further understand the results, through an empirical measurement of individual-level data.<sup>21</sup> At the time of this writing, a comprehensive dataset that contains public opinion data on the Consulta is not available.<sup>22</sup>

Nonetheless, there are some surveys that superficially dealt with the issue of voters’ perceptions. Borge & Asociados, a Costa Rican firm which carries out public opinion surveys across Central America, conducted a series of surveys related to the November 7, 1999, elections, some of which included questions regarding the Consulta Popular and the peace process. Table 6 contains a summary of some of the findings from those polls.

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<sup>19</sup> See Asociación de Investigación y Estudios Sociales (ASIES), “La Consulta Popular y el Futuro de la Democracia en Guatemala,” *Revista Momento* (Guatemala, July 1999).

<sup>20</sup> See endnote 4.

<sup>21</sup> Such an analysis would permit an empirical assessment of the relationship between the vote (abstention, yes, or no in the case of the Consulta) and other variables, such as citizen beliefs about the legitimacy of the political parties, religion, sex, age, wealth, etc.

<sup>22</sup> ASIES, together with the University of Pittsburgh and Development Associates carried out the fourth national-wide survey on democratic culture in Guatemala in September 1999. This questionnaire included questions related to the Consulta Popular and the peace process in general. However, the dataset is not yet available at the time of writing this article.

**TABLE 6**

QUESTION	RESULTS
<b>Why did the NO win at the Consulta?</b> (survey of May, 1999) <ul style="list-style-type: none"> <li>• Lack of information.....</li> <li>• The population does not want a change.....</li> <li>• People's decision.....</li> <li>• Lack of credibility.....</li> <li>• Laws were to favor the government.....</li> <li>• Abstentionism.....</li> <li>• People don't want more representatives in Congress.....</li> <li>• Discrimination.....</li> <li>• To eliminate paying more taxes.....</li> <li>• Does not know/does not answer.....</li> </ul>	30.3% 9.2% 7.5% 7.1% 4.5% 2.6% 1.7% 0.6% 0.6% 35.9%
<b>Do you know what the elections of May 16 were all about?</b> (survey of May, 1999) <ul style="list-style-type: none"> <li>• To reform the Constitution.....</li> <li>• To increase the number of representatives in Congress.....</li> <li>• To increase taxes.....</li> <li>• To elect representatives to Congress .....</li> <li>• To elect president and mayors.....</li> <li>• To benefit the government/representatives.....</li> <li>• To support the NO.....</li> <li>• To improve the country.....</li> <li>• Does not know/does not answer.....</li> </ul>	76.2% 3.7% 2.4% 1.2% 1.1% 0.1% 0.2% 0.2% 15.0%
<b>Do you think the next government should continue with the peace process?</b> (survey of May, 1999) <ul style="list-style-type: none"> <li>• Yes.....</li> <li>• No.....</li> <li>• Does not know/does not answer.....</li> </ul>	83.9% 6.4% 9.7%
<b>What personal benefit has peace brought to you?</b> (survey of July, 1999) <ul style="list-style-type: none"> <li>• None.....</li> <li>• Peace.....</li> <li>• Less problems overall.....</li> <li>• Employment.....</li> <li>• Equality.....</li> <li>• Education.....</li> <li>• Highways.....</li> </ul>	71.7% 7.0% 2.2% 0.7% 0.4% 0.2% 0.2%

Table 6 shows that a third of those Guatemalans interviewed consider the lack of information as one of the main reasons for the defeat of the "Yes." Less than 10% of Guatemalans believe that a resistance to change is behind the results. More than 13% of those interviewed believe that the problem lies with political institutions or politicians (i.e. those who believe that the "No" won because it benefited the government). It must be noted that over 35% did not know how to answer.

With respect to the second question, over three-quarters of Guatemalans interviewed correctly answered that the referendum had the objective of reforming the Constitution. This figure is surprisingly high. However, there were also misunderstandings of the purpose of the Consulta: 6.1 % of the respondents believed that the purpose of the referendum was to increase the number of representatives in Congress or to increase taxes.

Finally, the survey results convey some sense about general attitudes regarding the continuation of the peace process after the Consulta. Over 83% of the respondents said that the new government (which takes office in January of 2000) should continue with the peace process. This is an important finding in terms of the legitimization of the peace process in the minds and hearts of Guatemalans. Still, 10% of the respondents were unable to answer this question and 6% thought that the new government should not continue with the peace process. Table 6 also makes clear that over 70% of Guatemalans have not perceived any direct benefits as a result of the new era of peace in the country. This is worrisome given that the Peace Accords were signed over two years ago.

There are no definitive answers as to what happened with respect to the Consulta Popular on May 16, 1999. The complexity of this election and the lack of sufficient information make it difficult to derive accurate conclusions. Nonetheless, some important facts do emerge.

The analysis in this article shows that polarization among national sectors and geographical regions and a lack of a consensus-building capacity as a society are still factors which may hinder a deeper democratization of Guatemala. Clearly, the construction of more participatory democracy and the long-term maintenance of a stable peace still constitute challenges that all sectors of society must address.

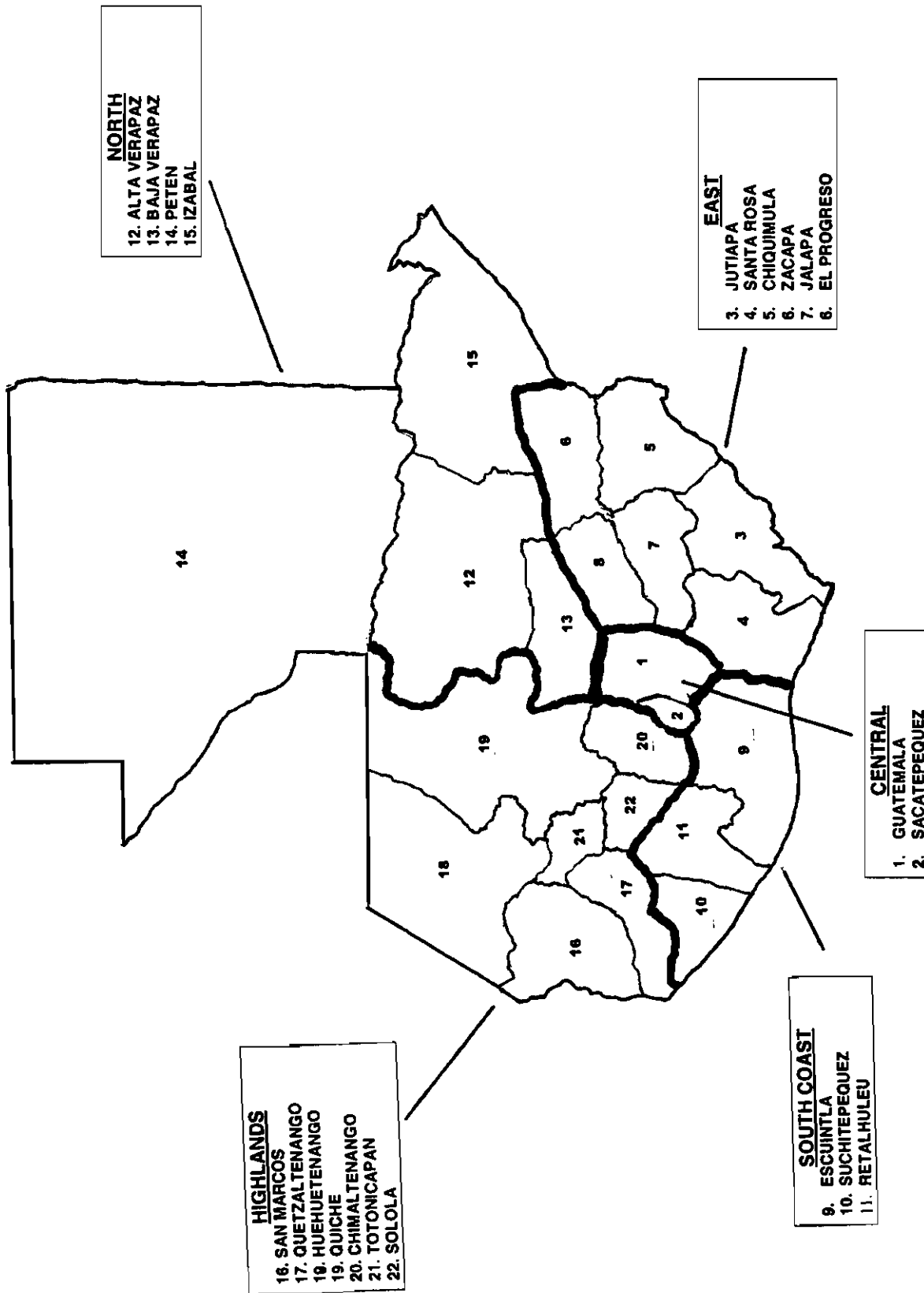
The overall defeat of the "Yes" in the Consulta Popular may discourage many. But when, as in this article, a more detailed analysis of the results is undertaken, more hopeful signs for the future come into view:

- The indigenous population can be mobilized to participate in elections when they become aware of the importance of elections;
- In terms of overall numbers of registered voters, it is not a given that Guatemalans residing in the capital city will decide the outcome of future elections. The potential exists, especially in the Highlands, to balance the results from the capital;

- Guatemalans, in spite of sparse and confusing information, were able to differentiate between the four questions the Consulta, favoring Question #1 above others;
- Most important for Guatemala's future, the defeat of the "Yes" does not mean a rejection of the peace process, which, according to most Guatemalans, should continue being implemented.

As much as the results of the Consulta were a setback that slowed down the peace process, as much as they were a hindrance to some of the reforms included in the Peace Accords, and as much as there have been negative connotations of the results, there are also positive lessons to be learned. The peace process has acquired a life of its own and has on the way -- through the period of the negotiations and during the stages of implementation -- transformed Guatemala in ways that may be imperceptible in the short-run.

# REGIONS OF GUATEMALA



## **The Impact of the Popular Referendum on Compliance with the Indigenous Accord and on Democratization in Guatemala**

**Demetrio Cojtí Cuxil**

With the defeat of the constitutional reforms in the popular referendum (*Consulta Popular*) on May 16, 1999, Guatemala lost an opportunity to advance toward greater democratization and cultural pluralism. The indigenous population—sectors traditionally marginalized and discriminated against—will not be recognized in the Constitution. They will thus remain invisible and discredited, just as they have been since the founding of the Guatemalan republic.

### **The Mayas and the Popular Referendum**

In the public sector, indigenous legislators—who have never acted in a united fashion—formed a common front in pursuit of an affirmative vote in the popular referendum. Following the ruling of the Constitutional Court that required Congress to present the reforms packaged together in various questions, indigenous leaders considered that, given the degree of racism that exists against the indigenous, it would be important to avoid placing the different references to indigenous issues into one question, since that would have guaranteed their repudiation or rejection. It was necessary, rather, to dilute these references by hiding them among other articles of a similar nature.

Indigenous legislators and those from other parties, above all those in the New Guatemala Democratic Front (*Frente Democrático Nueva Guatemala, FDNG*), put forward the idea that the pro-indigenous articles should be integrated into the group of questions related to “Nation and Social Rights,” an idea that was accepted by the other legislators. In this category were to be the following reforms related to indigenous themes: the recognition of the Guatemalan nation as one, unified, multiethnic, multicultural, and multilingual (Article 1); the right of the Mayan, Garífuna and Xinca peoples to their distinct forms of spirituality (Article 66); the need to consult indigenous peoples on all administrative measures and laws that directly affect them (Article 70); the regional officialization of all indigenous languages (Article 143); and the recognition and jurisdiction of their traditional authorities and forms of rendering justice (Article 203).

In contrast to the legislators, indigenous sectors of civil society did not have a united position on the constitutional reforms. For a variety of reasons, a small group of indigenous voices with scant links to any indigenous organizations were against the reforms. To some individuals with an anti-colonialist perspective, the reforms were a mere pittance, that is, they constituted minimal concessions which should be rejected out of dignity, since they were a humiliation to indigenous peoples. Others, who came from a neoliberal perspective and echoed the conservative ladino discourse, felt that ladinos should not be discriminated against by granting privileges to the indigenous population. The recognition of specific rights for indigenous people in light of their cultural particularities was seen as a violation of the principle of “equality before the law.” To this reduced circle of modernized and urban indigenous leaders, one should add a group

comprised of indigenous people from evangelical backgrounds, who were encouraged to vote against the reforms because of the threat of returning to old indigenous idols.

Another small group held an ambiguous posture and behavior since they had as many reasons to reject as to accept the reforms. In effect, due to the inclusion of reforms not directly related to the Peace Accords, there were some articles that signified progress for indigenous peoples and for society as a whole; but at the same time there were others that signified setbacks, such as Article 255 that threatened municipal autonomy by subordinating the municipality to the Development Councils, which have been and are controlled by the central government. For this reason, the Xel-Jú Civic Committee, which has governed the municipality of Quetzaltenango, advocated voting against the reforms. The municipality is designated by the Peace Accords as the unit in which indigenous peoples can achieve in a majoritarian manner their aspirations for self-governance.

The bulk of the indigenous movement supported the constitutional reforms, conscious of the fact that the reforms did not satisfy their deepest aspirations, but also that, in the context of a reformist strategy, the amendments nevertheless constituted progressive links that would lead toward the achievement of their collective rights. These citizens were organically affiliated with the Coordination of Organizations of the Mayan People of Guatemala (COPMAGUA) and to other cultural and leftist indigenous organizations. They considered that, taken as a whole, the constitutional reforms favored not so much indigenous peoples as it did the country, above all in key issues of general interest such as the role of the army in a democratic society, the increase in resources for the judiciary, etc. COPMAGUA, given its mandate, was one of the social actors that openly called upon citizens to vote in favor of the constitutional reforms.

Nevertheless, the majority of the indigenous population, which is predominantly rural, suffers from a kind of electoral "illiteracy" and was uninformed about the content of the reforms, and therefore did not comprehend their transcendent nature. Thus their tendency was not to vote at all, either out of ignorance or in revenge for the obscurity and illiteracy to which they have been submitted. The principal cause of abstentionism throughout the country, however, was perhaps less a rejection of the constitutional recognition of the indigenous population, than a rejection of the political class for its inadequate management of the reform process.

Another sector, more informed or inclined to vote intuitively, did vote to ratify the reforms, and explain why the "Yes" vote won in indigenous electoral districts. Among these voters were sectors directly mobilized or affected by the violence, such as communities of returned refugees and those who had settled in former conflict zones in recent years. They considered that it was their responsibility to vote in favor of compliance with the Peace Accords.

Nevertheless, circumstances were not always favorable for these communities. For example, for some communities in the Ixcán (Franja Transversal del Norte), the cost of getting to the polls represented two days' salary, in addition to the loss of the one or



two days it took to travel back and forth. That explains why very few men from that area voted. There are also cases of communities in which, out of 200 potential voters, only 50 could vote, despite the availability of funds collected locally. Other communities selected their representatives and paid for their transportation to the polls, ignoring that the vote was individual and not collective representation. Given these conditions, there was disillusionment with the results and with the space offered by the Guatemalan democratic system.

Among the "No" voters, principally in urban areas, there was a certain percentage motivated by racist arguments, spread by way of confusing rumors and exploiting the latent racism and the collective imagination of a large sector of *criollos* and *ladinos* against the indigenous population (for example, that there would be ethnic war supported by indigenous, possible indigenous revenge against mestizos, certainty about the violence inherent to the indigenous, rejection of indigenous political leaders, etc.) The media spread ideas that were predominantly against the recognition of the indigenous population, but packaged the argument in a way seen as more acceptable in underdeveloped democracies: that approval of the reforms would mean the breakdown of Guatemalan national unity, the recognition of privileges for the indigenous and thus discrimination against *ladinos*, the institutionalization of ethnic confrontation, etc.

### **Implications of the Popular Referendum for the Peace Process and the Country**

The negative result of the popular referendum was felt immediately by the indigenous population, above all in urban areas. Racism and discrimination were legitimated and strengthened, heightening the negative treatment and discrediting of the indigenous. Various indigenous have noted that the lack of attention in public and private services has increased considerably.

Certainly among the "non-indigenous," there were those who felt ashamed by the results, and above all by the racist motives that stimulated a segment of the "No" vote. There are also sectors that recognized that they were manipulated and confused by negative propaganda, and have affirmed that it was never their intention or interest to maintain exclusion of and discrimination against the indigenous. These are the sectors that provide hope and that constitute a basis for the construction of a multiethnic Guatemala.

Another effect is that the indigenous issue as an item on the national agenda has been relegated to a secondary position, either postponed or simply forgotten. Those who in public or private sympathized with the positive recognition of the indigenous population, lessened their support out of fear of reprisals from *ladinos* or *ladino* entities that supported the "No" vote. These included groups generally associated with or financed by the wealthy classes, or persons associated with evangelical fundamentalism. Moreover, some social sectors (either very reactionary or out of convenience) took advantage of and are taking advantage of the negative results of the referendum in order to discredit all of the Peace Accords, thus trying to evade changes that might affect them.

Among these one can mention some teachers' unions that are opposed to the nascent educational reform.

In the Mayan movement, the effects were felt in various areas. First, indigenous development organizations and institutions learned that they should not only focus their efforts on the solution of local and regional problems, but should also consider national issues. Many local problems find their solution at the national, and not simply local level. By not considering this dynamic, the majority of indigenous institutions did not mobilize the indigenous sectors that they deal with in favor of the referendum. Others, like many progressives, took it for granted that the referendum would pass.

Another lesson concerned the need to integrate efforts and form a united front, since those who oppose the idea of specific rights of the indigenous peoples were and are much more powerful than previously thought. Everyone was surprised by the vitality and intensity of the racism against the indigenous population, above all in urban areas. It is necessary, then, to develop broad alliances between indigenous and non-indigenous, pluralist social actors.

In the Mayan movement in general, there was the realization that acceptance of indigenous peoples by the majority of non-indigenous peoples was not an easy task. Organizations pledged to redouble and combine efforts and above all, to utilize to the maximum extent possible national and international legislation that had already been approved and ratified by Guatemala: the International Labor Organization's Convention 169 on Indigenous and Tribal Peoples, the Convention on the Elimination of all Forms of Discrimination, as well as several constitutional articles and ordinary legislation. The entirety of these legal instruments should be used to continue enlarging political "space" and engaging in advocacy. One indication that indigenous groups have redoubled their efforts in the wake of the referendum is the degree of enthusiasm that exists for keeping indigenous rights on the national agenda. Workshops and events in which strategic plans are presented have proliferated, as have proposals for Mayan development. There still is, however, a certain lack of focus and duplication of efforts, which weaken the advocacy efforts of indigenous entities.

Finally, there is a segment of the Mayan movement that believes that the Peace Accords are flawed by design with respect to the recognition of indigenous peoples by ladino society. Just as the recent referendum on East Timor in Indonesia demonstrates, one should never ask a dominant or hegemonic power if it wants to give rights to its colonized peoples. The response will always be negative. The question should only be directed to members of the dominated peoples, that is, to those most affected. Thus, the results of the popular referendum in Guatemala should not come as a surprise.

The implications of the Consulta for the Peace Accords were to weaken or suspend several processes currently underway. For example, there has been no follow-up on the proposals of the Commission on the Officialization of Indigenous Languages; given the failure of the constitutional reforms, the state cannot proceed with implementation of its recommendations. Other commissions affected include the one on

Educational Reform; now there are legal and not only pedagogical reasons inhibiting the teaching and use of indigenous languages. In other joint or specific commissions where issues of government compliance were still pending, governmental representatives are using the results of the referendum to take a hard line and refuse to make concessions to the indigenous representatives, not even conceptual concessions that had already been accepted by other governmental delegations.

Within the government, the popular referendum has had different effects. For those associated with the Peace Secretariat (*Secretaría de la Paz*, SEPAZ) and the Foreign Ministry, the defeat of the referendum was taken as a setback. The task of these ministries was precisely to push for compliance with the Peace Accords. In contrast, for the governing PAN party (*Partido de Avanzada Nacional*), the negative outcome was a relief, since the party was never fully supportive of all of the Peace Accords. In practice, the PAN looked more favorably on the cease-fire and the reincorporation of the armed rebels, than it did on providing solutions for the causes of the conflict, with all the transformations that implied. As a result, the PAN hardly did anything to mobilize support for the constitutional reforms. One should also note the questionable decision by the Supreme Electoral Tribunal to prohibit all branches of the government from waging a campaign in favor of ratifying the reforms. How could they not carry out such a campaign, if ratification of the reforms was a governmental commitment? And as a party, the PAN merely undertook some symbolic and superficial actions, but did not make a sustained and visible effort in favor the reforms. The same was true of almost all the political parties.

Confronted with a state which either does not take a position or is a spectator, indigenous peoples appear to be left with two options: support public policies of assimilation and subordination, or look toward escision and separatism. In this context, the state now confronts more serious challenges: Will it continue governing in favor of ladinos and against the indigenous population? And will it always let the "political process" (the correlation of forces between peoples and social strata) determine the fate of the indigenous?

As a consequence of the negative results of the referendum, various public entities have closed off spaces to indigenous peoples. They have blocked or lost interest in providing sustained follow-up to the negotiations over compliance with the Peace Accords, in both the joint and specific commissions with responsibility for the Indigenous Accord. This could lead to the collapse of the joint commissions, either due to a lack of proposals or to a lack of political will for transforming proposals into concrete policies and programs. Another indication of the loss of stature that the Peace Accords have suffered on the national agenda is the behavior of the political parties participating in the electoral process of November 1999. During the better part of the electoral campaign, virtually all the parties are courting religious movements, specifically the evangelical sector, and have left in a secondary position the Peace Accords and indigenous rights.

But there are sectors that consider the Peace Accords to be the only national agenda, the result of a broad consensus among organized sectors of the country, and that that agenda should be revitalized and implemented. Among these groups are those in and around the Civil Society Assembly: churches, organized indigenous sectors, trade unions, academics, etc. There are also new sectors that have become involved in the democratization and modernization of the country. More and more one can see that *criollo* and *ladino* consciousness in terms of accepting the situation of multiethnicity in the country has advanced, something achieved precisely as a result of the bitter debate and negative results of the popular referendum.

These progressive and democratic social forces are predisposed to act against racism, and they have generated alliances and coalitions within civil society in favor of compliance with the Peace Accords. On October 12, the Accompaniment Commission organized the "Third National Peace Forum," in which national peace leaders and presidential candidates with the greatest electoral prospects participated. The result was cause for satisfaction: given the positions of civil society organizations, the presidential candidates committed themselves, with greater or lesser degrees of emphasis, to continue and deepen compliance with the Peace Accords. This perhaps demonstrates a national re-embrace of the Peace Accords, reflected in the candidates' promises and in their plans for the 2000-2004 period.

In conclusion, the Peace Accords and the indigenous issue are going through a crisis of public legitimacy, due both to the negative results of the popular referendum as well as to the electoral moment. But through the actions of civil society, there are strong possibilities that the Accords will be revived as the principal focus of the country's agenda. How much so will be seen in the year 2000, after the new government assumes office, and after the profile of the new state authorities and their relations with civil society have been defined.

# **The Organized Productive Sector and the Consulta Popular**

**Carroll Ríos de Rodríguez**

## **Introduction**

Why did the majority of voters vote down the 50 amendments to the Political Constitution of the Republic of Guatemala, proposed in the Consulta Popular? An analysis of the organized productive<sup>1</sup> sector's position may provide some answers. Between the time of the signing of the final Peace Accord (December 29, 1996) and the Consulta Popular (May 16, 1999),<sup>2</sup> the organized productive sector (OPS) shifted its position from one in favor of the proposed amendments to one of adamant opposition, a position made public only two days before the vote. OPS leaders gave three reasons for this change of position: 1) the secretive and irregular procedure followed by the Guatemalan Congress in passing the amendment proposal, 2) the way the Consulta Popular was designed, and 3) strong pressures exerted by the international community.

## **What is the Organized Productive Sector (OPS)?**

A significant part of the organized productive sector (OPS) is represented by the umbrella business guild, known as CACIF, the Spanish acronym for Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations.<sup>3</sup>

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<sup>1</sup> CACIF has opted for the term productive, rather than private sector, by which it refers to business people, entrepreneurs, investors and the like. The word "private" includes all activities that are not public or governmental in nature, and includes the work of professionals, teachers, artists, and other members of society who are not represented by CACIF.

<sup>2</sup> The Consulta Popular was not an overnight affair, but rather began with the peace process. The beginning of the peace process is usually set in 1994 with the signing of the Global Agreement on Human Rights, and the end, on December 29, 1996, with the Chronology for the Implementation, Fulfillment and Verification of the Peace Agreements, signed by the Guatemalan National Revolutionary Union (URNG) and the Guatemalan government. This article refers to one Peace Accord which includes the various individual agreements. Different sources mention 10, 11 or 12 separate agreements, depending on whether the July 1991 agreement, which addressed the democratic framework and the start of the negotiations, and the January 1994 agreement to restart the peace negotiations are counted as part of or distinct from the final Peace Accord. "El primer año en tiempos de paz," *Hacia la paz y el desarrollo* (Guatemala: CIEN-CIPE, Año 1, edición 1, 1998). There is debate as to how many constitutional amendments are called for in the Peace Accord, because these are sometimes vague. Most analysts say between ten and twelve.

Peace negotiations between the Guatemalan government and the URNG began in 1994 with the signing of the Global Agreement on Human Rights. Nine agreements and over two years later, the final Agreement on the Chronology for the Implementation, Fulfillment and Verification of the Peace Agreements was signed on December 29, 1996.

<sup>3</sup> Over 75 percent of all CACIF members are small entrepreneurs. Nearly two thirds work in agricultural activities, 6,000 are merchants, 2,000 are industrialists, 1,200 are exporters of non-traditional products, and the rest work in the construction, tourism and financial sectors. CACIF has a sister organization called the Entrepreneurial Chamber (CAEM), founded in 1981 with the help and funds of the U.S.

Therefore, this article focuses on CACIF's role during the Consulta Popular. Through its member associations, CACIF represents 80,000 businesses or individuals. Because members form an economically, occupationally and ethnically diverse organization,<sup>4</sup> their interests are sometimes in sharp conflict.<sup>5</sup> Therefore, CACIF is careful to operate on a consensus basis.<sup>6</sup>

Reaching consensus is usually a difficult task, much more so when the issue is as political as the Consulta Popular. The process is in the hands of a special committee, created in 1985 and made up of former CACIF presidents and other members with political experience, who analyze current political issues, carve out an opinion, and propose specific positions or actions to the board of directors. The position of CACIF on a public issue is then published in the media via an official communiqué.

### **How CACIF Viewed the Proposed Constitutional Amendments (1996-1999)**

#### **In Favor of the Peace Accords.**

Nothing is more conducive to economic growth than political stability and peace. Numerous business people, including leaders of CACIF's member associations, were victims of extortion, kidnapping, and murder during the civil war. Bridges, roads, power stations, factories, stores and farms were destroyed. The directors of CACIF therefore were very receptive to and actively participated in the peace process from 1994 to 1996. A CACIF communiqué supported and approved the Peace Accord as a minimum framework for democracy and peace.<sup>7</sup>

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Agency for International Development. CAEM did not play a significant role before or during the Consulta Popular.

<sup>4</sup> Interview with CACIF's executive director, Lic. Roberto Ardón, Guatemala, September 1, 1999. Confirmed by data collected by Rachel M. McCleary, *Imponiendo la Democracia: Las elites guatemaltecas y el fin del conflicto armado* (Guatemala: Artemis, Edinter, 1999).

<sup>5</sup> For example, there has been a historical tension between merchants, who prefer low import tariffs, and some industrialists, who prefer to have their products protected through government measures.

<sup>6</sup> Interview with Roberto Ardón, op. cit.; and McCleary, op. cit. Due to its nature, CACIF does not fit neatly into the traditional political science category of *class*: a group considered as a unit according to economic, occupational, ethnic or social status. Moreover, CACIF does not speak on behalf of the entire *private* or *productive* sector in Guatemala. There are no estimates as to how many productive Guatemalans are not members of CACIF, nor the reasons for their independence. Undoubtedly, a large percentage of non-members belong to the thriving informal economy in Guatemala, which accounts for nearly one third of the Gross Domestic Product (GDP).

<sup>7</sup> Interview with Roberto Ardón, op. cit. CACIF's stance contrasts with that of some academics and independent businessmen who viewed the Peace Accords as an illegitimate, secret pact with an armed and outlaw organization.

Several proposed versions of the dozen amendments to the Constitution called for by the Peace Accord were already circulating by late 1996, particularly those dealing with the multiethnic nature of the nation and the role of the military in a democracy.<sup>8</sup> At the time, CACIF viewed constitutional reform as a political necessity.

### Congressional Abuse of the Constitutional Amendment Process

The office of the president, exercising its legal power to introduce constitutional amendments, sent Congress a document containing twelve changes and a transitory article (See Table 1).<sup>9</sup> The intent was to abide by the government's commitment under the Peace Accord to propose a few constitutional amendments;<sup>10</sup> the implication was that these were the only ones necessary.

In the addition to the amendments submitted by the office of the president, civic groups and political parties asked Congress to consider ten additional amendment topics.<sup>11</sup> Congress's obligation was to "tend to the submitted affairs without delay."<sup>12</sup> Table 2 details the procedure that Congress should have followed (and did not) to approve constitutional amendments.

Significantly, the amendment proposals should have been discussed by the elected representatives themselves, on the floor and in open and transparent proceedings. The Constitution requires that ordinary bills be discussed in three separate sessions, precisely to prevent Congress from ramming laws through without public debate. Instead, and to the dismay of CACIF directors, Congress delegated the deliberation of the merits of the amendment proposals to an extra-parliamentary body labeled the *Instancia*

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<sup>8</sup> Interview with Lic. Hugo Maúl, President of the Center for the Defense of the Constitution (CEDECON), September 6, 1999, corroborated by CEDECON, "Opinión: Acuerdos de Paz suscritos por el Gobierno de la República de Guatemala y la Unidad Revolucionaria Nacional Guatemalteca," undated.

<sup>9</sup> There are several versions floating around. Also, see Article 277 in the Political Constitution of the Republic of Guatemala, decreed by the National Constituent Assembly on May 31, 1995 (Guatemala: Publicaciones del Ministerio de Gobernación, 1987). Amendments can likewise be proposed by ten or more members of Congress, the Constitutional Court, and by popular initiative, through a petition submitted to Congress signed by no less than 5,000 registered voters.

<sup>10</sup> Congress is the only entity that can enter into legally binding agreements, according to Article 157 of the Constitution. (The executive, the Supreme Court of Justice, the San Carlos University, and the Supreme Electoral Tribunal (TSE) can propose but not approve laws, Article 174) Even though Congress did not award the Peace Accord such stature, President Alvaro Arzú's administration made them the cornerstone of its government program by means of the Peace Secretariat (SEPAZ), a part of the Cabinet of Ministers.

<sup>11</sup> These include, among other issues, the election of governors, and a system to privatize national assets. "La Constitución de la paz," *Hacia la paz y el desarrollo*, op. cit.

<sup>12</sup> Articles 277-281 of the Constitution. The articles that cannot be changed by Congress include No. 278 and those included under Chapter 1, Title II of the Magna Carta, dealing with individual rights.



*Multipartidaria*, Multiparty Instance (MI); only some members of Congress attended its sessions. Comprised of members of the political parties represented in Congress, including the various party secretaries general and their advisors, the MI left its task unfinished due to irreconcilable differences of opinion.<sup>13</sup> The MI did not emit any official document containing its recommendations before it shut down in May of 1998. Both the initial congressional proceedings and the ensuing MI deliberations were shrouded in secrecy.

It is difficult to reconstruct what happened during the ensuing months, except that Congress took a long recess. Congress reconvened in August. But instead of being presented with the twelve amendments introduced by the president and approved by Congress' Commission on Legislation in May, members of Congress were presented with a *quadrupled* sheet of 50 amendments. Representatives inexplicably approved the 50 amendments in a single session on October 16, 1998.<sup>14</sup> Moreover, the approved amendments failed to deal with some of the ten topics that had been submitted to Congress by civic organizations.<sup>15</sup>

By this time, CACIF leaders felt that the "handling of the constitutional amendment process was lost."<sup>16</sup> Not only did they deplore the shot-gun procedure followed by Congress, they felt that the explosion in the number of amendments and their ambiguous wording would lead to serious and insurmountable legal quagmires in the future.<sup>17</sup>

CACIF's first words of caution in 1998 were ignored. Then, however, the Consulta Popular was postponed following the state of emergency declared in November 1998 in the wake of Hurricane Mitch. CACIF, sensing a chance to open public debate, issued a communiqué calling for renewed and public consideration of the amendments; this call, too, was ignored.<sup>18</sup>

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<sup>13</sup> A standstill was reached when the governing political party, the National Advancement Party (PAN), left the discussion table. Interview, Lic. Hugo Maíl, op. cit.

<sup>14</sup> In the case of ordinary bills, Congress can skip the three required sessions in cases of emergency or urgency, according to article 176. There is no substantive explanation as to why this delicate issue should be decided with urgency, according to CEDECON. Moreover, why should Congress treat amendments as ordinary bills? If they had received a different treatment, then one session with 2/3 vote would have been in order.

<sup>15</sup> *Análisis del Centro para la Defensa de la Constitución en torno a las Reformas a la Constitución Aprobadas por el Congreso de la República* (Guatemala: CEDECON, February 1999.)

<sup>16</sup> Interview with Roberto Ardón, op. cit.

<sup>17</sup> Ronald Robles Bautista "Entrevista con Ricardo Villanueva, Presidente del CACIF," *elPeriódico*, Guatemala, May 6, 1999.

<sup>18</sup> Interview with Roberto Ardón, op. cit.



### Fifty Amendments Packaged in One Question or Four Questions?

CACIF also disputed the design of the Consulta Popular, considering it absurd. Incomprehensibly, Congress sought blanket approval for the 50 amendments with a single “Yes” or “No” answer. Public awareness of the proposed amendments was significantly raised by a private non-profit organization, the Center for the Defense of the Constitution (CEDECON),<sup>19</sup> which challenged the format on legal grounds before the Constitutional Court. The Court ruled the packaging of 50 amendments in one question unconstitutional.<sup>20</sup>

Congress then re-bundled the 50 amendments into four questions, trying to group them according to topic. These were made official on February 22, 1999. (See Table 3.) Business people and common citizens were nonetheless distressed by the new format. Each question still grouped together several complex changes that may or may not have been preferred by the voter if the changes had stood alone. For instance, Question 1 was a hodgepodge ranging from the multiethnic nature of the nation, to pensions for public servants, to compulsory military *versus* social service, among others. Or, in the case of Question 3, a Guatemalan may have welcomed changes to the armed forces but repudiated the already failed bureaucracy of the Council for Urban and Rural Development. Each of these issues had little in common. Objections to one or another change compelled some voters to reject an entire question, even though some of the amendments it contained might have been appealing.

CACIF considered four questions for 50 amendments still insufficient, little better than the original formulation. The organization’s May 14 communiqué lays out its position regarding the Consulta Popular. (See Attachment 1). As far as the design is concerned, CACIF contended that “to present 50 amendments in only four questions is to limit the citizen’s right to ratify those which he/she deems appropriate, thereby disregarding popular will.”<sup>21</sup>

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<sup>19</sup> CEDECON was founded in 1993 to defend the constitutional order against former President Serrano’s actions. Most of its members are lawyers, but some are teachers, economists, journalists, politicians, doctors, and other professionals.

<sup>20</sup> CEDECON’s move, of course, delayed the Consulta Popular, as did Hurricane Mitch and other factors, for several months.

<sup>21</sup> CACIF communiqué as published in *Siglo Veintiuno*, Guatemala, May 14, 1999. The Constitution’s Articles 30 and 35 guarantee freedom of expression, which was compromised by this format, according to CACIF.

## Foreign Pressure

As the Consulta Popular approached, CACIF leaders worried about foreign pressure for approval of the four amendment packages. Influential Guatemalans, including labor union leaders, politicians, and lawyers, privately admitted that the design of the Consulta Popular was badly flawed and would create serious legal problems in the future.<sup>22</sup> However, they promoted an across-the-board “Yes” vote to ensure continued foreign aid and the good reputation in the international community on which such aid depends.

CACIF held that the presentations, forums, publications and media campaigns funded by the United Nations Verification Mission in Guatemala (MINUGUA), the European Community, and other international entities were illegitimate.<sup>23</sup> CACIF’s communiqué noted that “the pressures exerted by international organizations constitute involvement in political affairs that concern Guatemalans alone, as well as an attempt to impede the freedom of choice on the part of citizens.”<sup>24</sup>

The international community was openly partial to a “Yes” vote. After the Consulta Popular results came in, the U.S. Department of State’s James Foley said Washington was disappointed by the “No” vote. The European Union stated it would have to reconsider its offer of \$30 million for the Guatemalan judiciary, which had been made fully counting on the victory of the “Yes” vote.<sup>25</sup>

## A Tardy but Adamant “No”

CACIF’s disenchantment with the constitutional amendment process was gradual. It was cautious not to reject the amendments publicly, convinced that any opposition would be quickly labeled racist in the highly politicized environment. Even during the first months of 1999, internal consensus in favor of a “No” position was lacking.

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<sup>22</sup> This argument was used by several people who met with CACIF leaders prior to the Consulta Popular.

<sup>23</sup> MINUGUA published documents and pamphlets and produced CD-ROMs and videos pointing out the virtues (and no defects) of the amendments. MINUGUA officials and the Guatemalan Human Rights Office (PDH) toured the country giving presentations promoting the amendments, according to people interviewed in 23 municipalities by the Asociación por el Poder Local (APOLO) in June and July, 1999. The European Union and the Coordinating Committee of Europeans spent at least Q.503,249.25 (half a million quetzales) on “Yes” ads in radio, TV and the press; some international organizations sponsored the Comisión de Acompañamiento’s and other “Yes” campaigns, although data are elusive. A study of the billing by the press and radio and TV stations between March and May reveals that 81% of all investments in the media were made by “Yes” supporters. Asociación por el Poder Local, “Estudio de Resultados en la Consulta Popular,” unpublished document, August 1999.

<sup>24</sup> CACIF communiqué, op. cit.

<sup>25</sup> “EU: Es paso atrás,” and “Europa hará análisis,” *Prensa Libre*, May 19, 1999.

The political costs of opposing the amendment packages were high.<sup>26</sup> CACIF did not want to court the enmity of the international and domestic promoters of the “Yes” position. The governing party and the other major political parties had come out in favor of a blanket “Yes”. By referring to the proposed amendments as the *Consulta de la Paz* (the Peace Referendum), the Arzú Administration equated the 50 amendments with the Peace Accord: a vote against the amendments was a vote against peace. This placed CACIF, whose members were in favor of the Peace Accord, in a difficult position. As late as May 6, 1999 (just ten days before the Consulta Popular), CACIF’s president stated that “we are not leaning toward either side because we consider that each person must form his/her own opinion.”<sup>27</sup>

For months, the CACIF committee in charge of political analysis discreetly canvassed members to find out their position. When consensus in favor of the “No” vote finally began to take shape, the committee drafted the May 14 communiqué, which was reviewed and approved by the Board of Directors.<sup>28</sup>

The communiqué was not published until several days before the vote for at least two reasons. First, because attaining consensus was difficult. Second, CACIF did not want to open a politically-charged debate about its intentions and, thereby, deflect attention from the amendment proposals themselves.<sup>29</sup>

The CACIF communiqué does not mention economic interests. The Constitution does not specifically favor or protect the organized productive sector, nor did the proposed amendments directly threaten the interests of its members. However, the general sense among CACIF leaders was that a defective law at the constitutional level would ultimately infringe on everyone’s rights, whether street vendor or industrialist.<sup>30</sup> They are aware that a highly detailed *Magna Carta* tends to raise questions of interpretation and to harbor contradictions, and that legal uncertainty retards economic progress.<sup>31</sup>

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<sup>26</sup> Interview with Roberto Ardón, op. cit.

<sup>27</sup> Ronald Robles Bautista “Entrevista con Ricardo Villanueva, Presidente del CACIF,” op. cit.

<sup>28</sup> Interview with Roberto Ardón, op. cit.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Harvard’s macroeconomist Robert Barro found a direct correlation between economic growth and the rule of law, solid property rights, and neutral and clear regulations of labor, financial and other markets, among other factors. In *Determinants of Economic Growth* (Cambridge, MA: The MIT Press, 1997).

## More Adamant Advocates

It is hard to qualify CACIF's actions as advocacy when contrasted with the forceful stance and high media profile of CEDECON, the Liga Pro Patria (Pro Homeland League), the Asociación de Amigos del País (Association of Friends of the Country) and other private organizations.<sup>32</sup> CACIF did not conduct an aggressive campaign. Once it had determined there was a consensus among members, it encouraged them to get out and vote "No."<sup>33</sup>

The three entities listed above probably influenced CACIF's switch to the "No" camp. CEDECON was influential both because of its image as a group of experienced and reputable jurists, and its successful battle in the Constitutional Court against Congress' single question format. CEDECON did not call for a "No" vote, but rather, analyzed the constitutional repercussions of each of the agreements within the Peace Accord and the amendments approved by Congress.<sup>34</sup> The group believed that Congress ignored basic legal procedure in drafting the amendments. It argued that 40 of the modified articles were not only "defective and deficient," but that the most of the changes called for by the Peace Accord could be achieved by modifying existing legislation.<sup>35</sup>

The Asociación de Amigos del País is a highly respected, 200-year-old institution which promotes democracy, education, individual liberty, and the rule of law. It is taken seriously when it speaks out on political issues.<sup>36</sup> Like CACIF, this organization came out against the amendments shortly before the vote, objecting to the sloppy wording of the congressional package and reiterating support for the peace process and for democracy.

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<sup>32</sup> These groups could, in a sense, be part of the private sector, although their membership is mostly professional, not entrepreneurial. The one most closely aligned with CACIF is the Asociación de Amigos del País. Other groups which advocated a "No" vote include the new political party ARDE; Asociación por el Poder Local; Ciudadanos por la Libertad y la Democracia; *el Periódico*; Cruzada Cívica por el NO; an independent law firm and other smaller organizations.

<sup>33</sup> This was done primarily by word of mouth and telephone calls around the week prior to the Consulta Popular.

<sup>34</sup> "Opinión: Acuerdos de Paz suscritos por el Gobierno de la República de Guatemala y la Unidad Revolucionaria Nacional Guatemalteca" and CEDECON, *Análisis del Centro para la Defensa de la Constitución*, op. cit.

<sup>35</sup> Vinicio Pacheco, "Cuestionan inconsistencias en reformas constitucionales," *Siglo Veintiuno*, March 9, 1999.

<sup>36</sup> Interview with Roberto Ardón, op. cit.

The civic association Liga Pro Patria is a bullish younger player, perceived as a watchdog for personal liberty.<sup>37</sup> It made a splash a week before the Consulta Popular by contesting the constitutionality of several of the amendments before the Constitutional Court. The Court ruled one amendment unconstitutional and eliminated it.<sup>38</sup>

## Conclusion

While the work of these private organizations probably influenced CACIF leaders, editorialists, and other people who affect the public debate, it is impossible to establish whether CACIF had an impact on the results of the Consulta Popular. Indeed, CACIF was a latecomer to the public debate. It is more likely that CACIF was swayed by the aggressive stance of those contesting the legal aspects of the process and the amendments, and the resulting extensive media coverage. As CACIF's leaders sensed a groundswell among its members in opposition to the amendments, it finally had the courage to take a public posture. Three former CACIF presidents could not agree as to the main reason for the "No" victory; they did not point to the organization's role as a decisive factor.<sup>39</sup> Field studies conducted after the Consulta Popular revealed that the "No" vote was largely a product of three factors. First, the complexity and number of the amendments was confusing. People felt they could not condone change they did not understand; it was not so much ignorance or lack of information as an inability to calculate the amendments' possible effect on ordinary lives.<sup>40</sup> Second, Guatemalans are generally suspect of anything coming out of Congress.<sup>41</sup> A final factor was a rejection of international involvement.

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<sup>37</sup> Ibid.

<sup>38</sup> Article 171 (n) would have allowed State intervention of all means of communications, in violation of the substantive part of the Constitution. Had the amendments been approved, this particular article would not have been. "Acción de inconstitucionalidad contra consulta," *El Gráfico*, May 7, 1999; "CC dictamina a favor de la Liga pro Patria," *elPeriodico*, May 11, 1999.

<sup>39</sup> Informal consultation with Carlos Vielman, Edgar Heinemann and Alvaro Castillo, former CACIF presidents, Guatemala, August 28, 1999. When asked to single out the most important factor, one said confusion due to the complex nature of the amendments, another successful campaigns by various organizations, and another repudiation of politicians.

<sup>40</sup> Except for some remote towns, Guatemalans did have information regarding the proposed changes but lacked interpretation skills. Less than 15% of the interviewees mentioned confusion between a general election and the Consulta Popular, or absolute ignorance of the process. Interestingly, the "No" vote won in municipalities with lower illiteracy rates. Asociación por el Poder Local, "Estudio de Resultados en la Consulta Popular," unpublished document, August 1999.

<sup>41</sup> This is best illustrated by the fact that the two questions containing amendments dealing with Congress and the executive branch consistently got more "No" votes than the other two questions. This is in contrast to the 1994 Consulta Popular in which citizens voted in favor of the constitutional amendments because the amendment package at that time was generally seen as a purge of Congress. (Absenteeism was high in both the 1994 and the 1999 consultas.)

Some of the international organizations' activism on this issue may have actually turned voters against amendments, because foreigners were seen as meddling.<sup>42</sup>

In the future, CACIF would most likely oppose the election of deputies to a national Constituent Assembly to draft a new Constitution. Given the political process and pressures involved, members of an Assembly would tend to be as unqualified as members of Congress have proven themselves to be in drafting a general, abstract *Magna Carta*. Ideally, a constitution containing only general and abstract norms is the underpinning of the durable rule of law, freedom, economic progress, and peace. While the 1985 Constitution is not perfect, CACIF leaders believe it is highly unlikely that a talented group of citizens could be elected to draft a better one. In addition, political analysts agree that the new Congress, in place as of January of 2000, will be more politically fragmented than the Congress that approved the 50 amendments.<sup>43</sup> It is unlikely that the new Congress will ask voters to cast their ballots in yet another Consulta Popular in the year 2000. However, because of CACIF's public position in favor of the Peace Accord, it would likely accept future legal changes in existing ordinary legislation that aim to fulfill the accord's commitments.<sup>44</sup>

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<sup>42</sup> For instance, the president of Congress, Leonel López warned "we must worry more about what Guatemalans think than about what will be said abroad;" presidential candidate Francisco Bianchi, who openly campaigned for the "No," said "Guatemala is a sovereign country, so one has to respect its sovereignty." The most radical phrasing was in a Liga Pro Patria communiqué: "Vote 'NO', avoid the guerrillas' and foreigners' plot to destroy Guatemala." The idea was repeated so frequently that the Comisión de Acompañamiento de los Acuerdos de Paz printed a disclaimer: "this amendment does not reflect, nor has it been imposed by, foreign interests." In Totonicapán, Totonicapán, teachers publicly backed the "No" vote, despite having been targeted by MINUGUA, the Guatemalan PDH, and other national organizations to serve as multipliers of the "Yes" position. Asociación por el Poder Local, "Estudio de Resultados en la Consulta Popular," op. cit.

<sup>43</sup> The ruling National Advancement Party (PAN) had a simple majority from 1996-1999 and could regularly pass its proposed bills. When a 2/3 vote was required, PAN would lobby other members of Congress to vote along with its position.

<sup>44</sup> Although hard to predict -- because it depends significantly on the precise wording of reforms to ordinary laws proposed in the future -- CACIF would probably accept the modernization of the armed forces and the judiciary, a judicial career, the abolition of the draft and the restructuring of military tribunals, public debate of proposed bills, greater emphasis on the multilingual, pluri-cultural and multiethnic nature of the country (as long as it does not lead to reverse discrimination), and others.

**Table 1: Amendments Proposed by Office of the President**

Amendment Proposal	Constitutional Article Amended	Subject Matter
1	66	State recognizes and respects, as well as protects, ethnic groups.
2	142	Affirms state sovereignty over ground, underground, water and natural resources.
3	143	Recognizes indigenous languages, in addition to Spanish.
4	157	Sets new method for deciding number of members of Congress elected per political district.
5	183	President tasks: cannot exonerate taxpayers from fines and fees.
6	202 (bis)	Creates the National Civilian Police as the only police force.
7	203	Adds dispositions regarding Judicial Branch tasks.
8	209	Describes content of a new Judicial Career Law, to be created.
9	210	Sets new rules for public service in the Judicial Branch.
10	219	Restructures Military Tribunals.
11	244	Disallows Armed Forces from overseeing internal security.
12	246	Impedes President from awarding special pensions to members of the Armed Forces.
Transitory article	28	Stipulates Congress will create a Commission for the Formalization of Indigenous Languages.

**Table 2: Comparison between the Procedure Followed by Congress and the Required Procedure**

Procedure Followed	Required Procedure
Office of the President sends Amendment Proposal to the Congress of the Republic's Commission of Legislation. (May 22, 1997)	Office of the President sends Amendment Proposal to the Congress of the Republic's Commission of Legislation. (May 22, 1997)
Ten or more Congress members, the Constitutional Court and 5,000 registered voters could also petition Congress to analyze its Amendment Proposals. Some civic groups presented 10 additional amendment topics for discussion.	Ten or more Congress members, the Constitutional Court and 5,000 registered voters could also petition Congress to analyze its Amendment Proposals.
	<p>Congress must analyze any and all such amendment proposals without delay.</p> <p>A National Constituent Assembly (ANC) must be formed to amend Article 278 or any of the articles contained in Chapter 1, Title II of the <u>Constitution</u>. (Called the substantive part of the <u>Constitution</u>.) Congress must call for a ANC with two thirds of the vote, list the amendments to be revised, and notify the Supreme Electoral Tribunal so it can set a date for elections 120 days following its convocation.</p> <p>Articles 140, 141, 165 (g), 186 and 187 cannot be amended, nor can the republican form of Government be changed.</p>
<p>The Multiparty Instance (MI) is created in October 1997 to deliberate the Amendment Proposals. It is formed by members of the political parties that hold seats in Congress, their secretaries general, and their advisors.</p> <p>The MI proceedings were not public.</p>	<p>Congress can create extraordinary commissions to discuss legal matters, but it is unorthodox to form a commission, not with elected congressional representatives, but rather with non-elected officers of the political parties and their advisors.</p> <p>Congressional discussions on the floor tend to be open to the public.</p>
Commission of Legislation approves and sends the Office of the President's Amendment Proposal to the floor. (May 7, 1998)	Commission of Legislation gives approval and sends the Office of the President's Amendment Proposal to the floor. (May 7, 1998)
The MI was disbanded in May, 1998, after the Commission of Legislation's approval of the Office of the President's Amendment Proposal. No official document explains which amendments were discussed and/or approved during its proceedings.	
<p>Congress adjourns for a long recess in mid 1998.</p> <p>50 Amendments are presented on the floor in August 1998.</p> <p>On October 16, 1998, Congress approves 50 amendments in one session with 2/3 of the votes in favor, arguing it is a matter of national urgency.</p>	<p>Only Congress can pass laws. There are two alternate ways to proceed from here:</p> <ul style="list-style-type: none"> <li>-Ordinary Bills are discussed on 3 separate sessions in Congress and are voted on during the 3<sup>rd</sup> session only if the matter has been sufficiently discussed. The three sessions can be omitted if the matter is of national urgency.</li> <li>-A Constitutional amendment proposal can be</li> </ul>



which means they treated the amendment proposals as an Ordinary Bill.	approved in one session.* In both cases, and in the case of an emergency, a favorable vote from 2/3 of Congress is required.
Hurricane Mitch struck on November 1, 1999. The President decreed a state of emergency that suspended civic rights and therefore the Supreme Electoral Tribunal could not call for the Consulta Popular.	The Supreme Electoral Tribunal cannot call for elections of any kind when civic rights are suspended.
Congress wrote one question for 50 Amendments and sent it to the Supreme Electoral Tribunal so that it could call for a Consulta Popular.	Congress notifies the Supreme Electoral Tribunal and sends the preferred question format so that it can call for a Consulta Popular to establish whether citizens want the amendments or not.
On February 8, 1999 the Constitutional Court declared the one question format was unconstitutional.  Congress approved four questions on February 22, 1999 and sent them to the Supreme Electoral Tribunal.	Citizens can appeal the process at any time.
The Supreme Electoral Tribunal called for the Consulta Popular to be held on May 16, 1999. (83 days notice from Feb. 22, but 211 days from Oct. 16, 1998.)	The Supreme Electoral Tribunal calls for the Consulta Popular with 120 days notice.
On May 10, the Constitutional Court ruled the amendment to Article 171(n) was unconstitutional and eliminated it, but did not stop the Consulta Popular.	
Consulta Popular was held May 16, 1999.  Supreme Electoral Tribunal prints official results on May 21, 1999: the majority of the 18.55% of registered voters who cast their ballots favored "No" in all 4 questions.	Had the Consulta Popular ratified the 50 amendments, these would have become effective 60 days after the Supreme Electoral Tribunal announced the results.

\* Before the 1994 Consulta Popular, President Ramiro De León Carpio asked former members of the National Constituent Assembly which was the best way to proceed. They issued a statement saying that constitutional amendments that do not modify the substantive part of the Constitution should be approved in one session with two thirds of the vote.

Sources: *The Political Constitution of the Republic*; Supreme Electoral Tribunal communiqués; interviews with Licenciado Hugo Maúl, President of CEDECON, Guatemala, September 6, 1999; Licenciado Ricardo Castillo, Guatemala, September 30, 1999; Licenciada María Isabel Bonilla, CIEN, Guatemala, September 30, 1999.

**Table 3: The 4 Question Format of the Consulta Popular**

Question	1	2	3	4
Ballot Title	"Nation and Social Rights"	"Legislative Branch"	"Executive Branch"	"Judicial Branch and the Administration of Justice"
Ballot Color	White	Light blue	Green	Pink
No. of Amendments Included	10	10	11	19
% of the amendments which change wording but not substance	0%	70%	36%	69%
Main amendments	<ul style="list-style-type: none"> <li>-Multiethnic, multilingual and pluricultural Nation.</li> <li>-Access to sacred sites by Maya descendants.</li> <li>-Consult indigenous peoples when laws affect them.</li> <li>-Free health services.</li> <li>-Total indemnization to government employees.</li> <li>-Compulsory military or social service.</li> <li>-State recognizes 25 languages.</li> <li>-Congress forms Language Officialization Committee.</li> </ul>	<ul style="list-style-type: none"> <li>-Judge can authorize the intervention of "the communications conducted by any means of transmission."</li> <li>-Must consult citizens regarding bills before their approval.</li> <li>-1 Congress member per 100,000 citizens, 2 representatives minimum per district.*</li> </ul>	<ul style="list-style-type: none"> <li>-Regulates presidential and vice-presidential security</li> <li>-President cannot exonerate taxpayers.</li> <li>-Creates Community Councils for Rural and Urban Development.</li> <li>-Army no longer charged with internal security.</li> <li>-Minister of Defense can be civilian.</li> <li>-Cabinet approval for military action, and 24 hour notification to Congress</li> <li>-Military could have had a chance to vote</li> <li>-Details for National Civilian Police</li> </ul>	<ul style="list-style-type: none"> <li>-Voluntary common law for Indigenous peoples.</li> <li>-More specific Judicial Career.</li> <li>-Longer term requirements to serve as judge, in the Supreme Court, etc.</li> <li>-Creates Council of the Judicial Career.</li> <li>-Increased budget to 6% of total government income.</li> <li>-Military tribunals become part of Judicial Branch.</li> <li>-Congress can remove Attorney General.</li> </ul>

\* Increases the number of representatives from 80 to over 110. However, this will happen anyway because of another law.

**Attachment 1: May 14, 1999 CACIF Communiqué**

**El Sector Productivo Organizado  
-CACIF-**

Con motivo de la Consulta Popular sobre las Reformas Constitucionales, que se llevará a cabo el 16 de mayo en toda la República,

**Comparte con todos los guatemaltecos las siguientes consideraciones:**

- El sector empresarial ha apoyado y continuará apoyando el proceso de paz en Guatemala como instrumento fundamental para la construcción de nuestro sistema democrático y el marco de legalidad en el país. Las Reformas Constitucionales son consecuencia de un compromiso político derivado de los acuerdos de paz.
- Durante el proceso de discusión de dichas reformas, los Diputados comprometieron gravemente este esfuerzo al desvirtuar la naturaleza de las reformas contenidas en los acuerdos y al haber aprobado una serie de reformas innecesarias.
- Presentar 50 reformas en sólo 4 preguntas es restringir a los ciudadanos su derecho a ratificar aquellas que considere convenientes, por lo que no se respeta con ello la voluntad popular.
- Afirmamos que las presiones ejercidas por organismos internacionales, constituyen una injerencia en asuntos políticos que sólo corresponden a los guatemaltecos, así como un intento por impedir una libre escogencia por parte de los ciudadanos.

**Por lo tanto:**

Con el consenso y el apoyo de nuestros afiliados, nos pronunciamos a favor del “NO”, y exhortamos a los ciudadanos a que acudan a votar, ejerzan libremente su derecho a decir que “NO” y a respetar la decisión que al final sea la expresión de la mayoría de los guatemaltecos.

**“Unidos generamos el desarrollo de nuestra Nación.”  
Guatemala de la Asunción, 14 de mayo de 1999.**



**The Organized Productive Sector  
-CACIF-**

On the occasion of the Consulta Popular regarding the Constitutional Amendments, which will take place on May 16 in the entire Republic,

**shares with all Guatemalans the following considerations:**

- The entrepreneurial sector has supported and will continue to support the peace process in Guatemala as a fundamental instrument for the construction of our democratic system and the legal framework in our country. The Constitutional Amendments are a consequence of a political commitment derived from the Peace Accord.
- During the discussion process of these reforms, the Members of Congress gravely compromised this effort by devaluing the nature of the amendments contained in the Accord and by having approved a series of unnecessary amendments.
- To present 50 amendments in only 4 questions is to limit the citizens' right to ratify those that they deem convenient, in disregard of popular will.
- We affirm that the pressures exerted by international organisms constitute an involvement in the political affairs that concern Guatemalans alone, as well as an attempt to impede the freedom of choice on the part of citizens.

**Therefore:**

With the consent and the support of our affiliates, we declare ourselves in favor of the "NO", and we exhort all citizens to go out and vote, to freely exercise their right to say "NO" and to respect the final decision of the majority of Guatemalans.

"United we generate the development of our nation."  
Guatemala City, May 14, 1999



**Demilitarization and Democracy:  
Implications of the Popular Referendum for the Agreement on the Strengthening of  
Civilian Power and the Role of the Army in a Democracy**

**Bernardo Arévalo de León**

The failure the popular referendum buries, in the short-run, any possibility of implementing the constitutional reforms called for in the Peace Accords. With the distance provided by the passage of several months, it should be possible to carry out a more objective evaluation of the impact of the defeat of the Consulta on the political landscape of the country. What, concretely, was the effect on what has come to be called the “peace agenda,” a series of specific themes deriving from the Peace Accords that are considered key achievements in the democratization of the country?

Needless to say, the redefinition of the scope and functions of the armed forces occupies a prominent place on the peace agenda. One of the most prominent features of the counterinsurgency state established in Guatemala in the 1960s was the excessive expansion<sup>1</sup> of the military within the structure of the state and of society. Gradually, the military became the most important—although never the only—political actor within the authoritarian power structure, with a public role well beyond the military sphere. The process of reversing this institutional expansion of the army within the state and society is also known as the process of demilitarization or, more technically, as military reconfiguration.<sup>2</sup> Demilitarization is one of the key aspects of the process of democratizing Guatemalan political and social structures. As such, it received special attention in the peace negotiations, and resulted in a specific accord that envisioned constitutional reforms that would clearly and effectively limit the role of the armed forces in a democracy.<sup>3</sup>

The issue of demilitarization in Guatemala arose simultaneously with the process of democratization of the political system, itself an initiative of the armed forces. In essence, the decision to initiate a democratic opening (*apertura*) aimed at transferring to elected civilian officials those governmental functions previously carried out by the army was the result of an internal discussion within the military regarding the crisis of the

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<sup>1</sup> The Spanish original uses the word *desborde*, literally, an overflowing. (Ed.)

<sup>2</sup> The Spanish original uses the phrase *reconversión militar*, also used in the original Spanish title. This text uses demilitarization and military reconfiguration as rough equivalents in English. (Ed.)

<sup>3</sup> For a discussion of the nature of the authoritarian regime that was established in Guatemala beginning in 1960, and the process of transition to democracy, see Edelberto Torres-Rivas and Gabriel Aguilera, *Del Autoritarismo a la Paz* (Guatemala: FLACSO, 1998); Héctor Rosada Granados, *Soldados en el poder: proyecto militar en Guatemala 1944-1990* (Guatemala: Thela-Thesis, 1998); Jennifer Schirmer, *Las intimidaciones del proyecto político de los militares en Guatemala* (Guatemala: FLACSO, 1999); and Bernardo Arévalo de León, *Sobre Arenas Movedizas: sociedad, estado y ejército en Guatemala 1997* (Guatemala: FLACSO, 1998).

counterinsurgency state and its resolution. The decision also originated with a group of military officers who seized power in 1982 from another group of officers, in order to carry out the political reforms deemed necessary.

Weak civilian authority, both within the political class and civil society, counted among the most perverse effects of the counterinsurgency model -- the arbitrary and systematic application of state violence and of the corruption of the political system. The decision to promote a democratic opening included the idea of "demilitarizing the government without demilitarizing power," i.e., withdrawing the military to less visible positions without renouncing political control of the state. In effect, the "military opening" that took place with the holding of general elections in 1985 and the turnover of power in 1986 sought more the re-legitimization of the state than the substantive transformation of power relations within society *via* the application of new democratic rules. The goal was to permit greater efficiency and effectiveness in what continued to be the military's fundamental strategic orientation: the counterinsurgency struggle. The scope of this democracy was thus limited not only by the military's instrumental and capricious view of it, but also by the narrow purposes for which it was born.

The limitations of the opening were overcome, however, by the unleashing of political and social dynamics of both an exogenous and endogenous nature. National and foreign actors pushed the country toward an effective process of political transition from authoritarianism to democracy. The beginning of peace negotiations in 1991 was a concrete manifestation of the displacement of power within the state apparatus as a result of the transition. The process of reconfiguration already transcended the control of those who had initiated it. At the same time, the substantive nature of the negotiations transformed them into one of the central engines of demilitarization: the military's role was reflected in the process of negotiations, as well as in each one of the themes discussed.

It is true both that once the dike of the transition was opened up, the armed forces could not contain the flood, and that the political weight of the military within the state allowed it to "administer" the transition's advance. The army's influence in government permitted it room for maneuver that was then used to develop strategies for adapting to the transformations already perceived as inevitable: the demobilization of the civil defense patrols, changes in military privilege and jurisdiction, etc. This maneuvering room limited the impact of institutional transformations, but at the same time generated an internal process of adaptation in which officers participating in the peace negotiations played a determining role in developing institutional positions compatible with the political objectives of civilian authorities. In addition to the extra-institutional pressures for demilitarization, there were thus new intra-institutional motivations. Internal and external perspectives on the transition differed with respect to interests, orientation, and scope, but coincided over the general direction of the process itself.

The Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society (AFPC) is the result of this process of institutional displacement.



It crystallizes a complex dynamic of transformation initiated ten years earlier, and sets forth basic and clear directives regarding demilitarization. The implementation of the AFPC thus constitutes a basic parameter for measuring the advance of the process of reconfiguration of the military apparatus; but the accord in no way is the only axis of this transformation. By 1996, the political transition was complete, viewed in terms of the transfer of political control of the state from the armed forces to civilians. The civilian decision to open up a direct line of communication with the insurgents, parallel to the negotiating table, was a clear shift away from the earlier positions favored by the armed forces. Such a move underscored the existence of new conditions for the civilian exercise of power, at the same time that civilians discovered the will to assert their authority *vis-à-vis* the army. The end of the insurgency represented by the signing of the Peace Accords removed any remaining excuse that might justify a political role for the army.

In the period immediately following the signing of the Peace Accords, conditions were propitious -- as never before in the history of the country -- for advancing in the redefinition of relationships between society, the state, and the armed forces. First, the PAN government had a broad base of legitimacy, with direct links to the private sector, as well as clear political control of the Congress. Additionally, unequivocal international support for the transformational agenda of the Peace Accords resulted in financial and political support. Finally, the text of the accords laid the basis, albeit general and incomplete, for continuing the demilitarization process; the necessity to do so was not lost on the military leadership.

To the extent that the redefinition of the role of the army constitutes a strategic objective for the construction of a true democracy subject to the rule of law, governmental authorities needed to capitalize on the mechanism provided by the Accord on Civilian Power to establish a clear political strategy aimed at deepening the process of demilitarization. Parts of such a strategy include: the development of an institutional capacity on the part of state entities for exercising genuine control over the military; the establishment of a process for involving different political and social sectors in the effort; and the devising of a human resources policy aimed at the indispensable professionalization of civilian capacity.

The facts, however, suggest the absence of such a strategy. There are accumulated delays, half-measures, and an overriding emphasis on adhering to the letter rather than the spirit of the AFPC, as well as governmental decisions on a host of specific issues -- the crisis of public security, the Gerardi case, the Historical Clarification Commission Report and its recommendations, the changing of military command, etc. — that demonstrate a brake on the transformation impulse. The process of reconfiguration of the military and the strengthening of civilian power that seemed to gain strength with the signing of the Peace Accords thus has lost momentum. This situation can only be explained by the absence of a framework that might give coherence and direction to an executive branch that otherwise showed clear signs of having the capacity for exercising authority over the army. The situation stems not from the weakness of civilian authorities, but rather, from their indecision and refusal to take charge.

This lack of civilian definition helps to explain the low level of military resistance to the reconversion process. The army's skillful management of the process of military reconfiguration during a long political negotiation allowed the armed forces to reduce the institutional costs of signing a peace agreement. They did not see a need to campaign for the containment of the transformational impetus of the civilian authorities. The institution itself had already adapted to the new political context by accepting the need for change. In addition, there was no pressure from the civilian authorities to deepen the changes beyond that which the military itself was willing to cede.<sup>4</sup>

The popular referendum on constitutional reforms took place in a context in which, by the beginning of 1999, the process of demilitarization showed signs of being weak and off-track. What, then, was the meaning of the proposed constitutional reforms?

Two central reforms were taken from the AFPC. One concerned the elimination of the internal security function of the army, the regulation of the use of the army for internal security in exceptional situations, and the designation of responsibility for "public order and internal security" to the newly formed National Civilian Police. Second was the elimination of the provision that only a military officer could become minister of defense, something that opened the door for the appointment of a civilian.

The first reform -- the limitation of the military's role to external security, with the corresponding designation of responsibility for internal security and public order to the new National Civilian Police -- is strategically important for the development of democratic institutionality in the country. The confluence of Guatemala's *criollo* militaristic authoritarianism and the doctrinary framework of the Cold War was reflected in the Constitution's assignment of internal security functions to the military; in this view, the "internal enemy" was the proper target of state military action. The assignment of internal security functions to the army gave rise, in practice, not only to massive human rights violations sadly typical of Latin American authoritarian regimes and that in Guatemala reached convulsive levels, but also served as a pretext for the military's expansion within the political institutionality of a weak state. In Guatemala, coercive power was viewed as the only recourse for maintaining governability, despite the fact that it was the state's own authoritarian configuration and political incapacity that gave rise to the crisis of legitimacy.<sup>5</sup> The reform proposed in the AFPC not only sought to rid the country of an authoritarian security model out of sync with the new political reality; the

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<sup>4</sup> For a discussion of the conceptual framework regarding the redefinition of the relations between society, state and armed forces, see Alfred Stepan, *Rethinking Military Politics* (Princeton, NJ: Princeton University Press, 1988); Paul W. Zagorsky, *Democracy vs. National Security: Civil Military Relations in Latin America* (Boulder, Colo.: Lynne Rienner, 1992); and Rut Diamint, ed., *Control civil y fuerzas armadas en las nuevas democracias latinoamericanas* (Buenos Aires: Grupo Editor Latinoamericano, 1999).

<sup>5</sup> For an analysis of the problem of security in weak states, see Brian Job, ed., *The Insecurity Dilemma*, Boulder, Colo.: Lynne Rienner, 1992.)

reform also sought to eliminate the risk of future military incursions into politics based on the military's capricious interpretation of its guardian role.

The designation of a civilian as defense minister sought to affirm the principle of subordination of the military to civilian authority, thereby eliminating the presence of a supposedly apolitical and neutral army within a body that is eminently political, i.e., the executive cabinet. A civilian minister would implement government policies regarding military aspects of national defense, just as civilians exercise authority over any other state entity.

Considered independently of the current political situation and the historical dynamics that mark relations between society, state, and armed forces in Guatemala, these reforms would appear to suffice in generating new institutional patterns compatible with democracy. In reality, however, their reach was more limited. In the first place, the regulations concerning the armed forces' involvement in internal security in exceptional situations limited, but did not preclude, the use of the army for purposes of internal governance. In a country in which the gap between the "legal" and the "real" continues to be abysmal, and in the context of a society still permeated by authoritarian values favoring coercive solutions, the constitutional reforms did not preclude nor guarantee that the armed forces would not get newly involved in politics, whether by their own initiative or by civilian invitation.

Provisions relating to the designation of a civilian as defense minister were even more limited. First, even though the AFPC established that a civilian should be minister, the negotiations carried out in Congress diluted this provision to a *potential* that would depend on the president's political will and ability, commodities that have been relatively scarce in recent political experience. Even assuming a civilian did hold this post raises several questions. With whom would he carry out his roles as leader and transmitter of government policy *vis à vis* the military institution? What civilian experts in the arenas of security and defense would accompany him in the design and implementation of a conceptual and operative framework for the military? How would he complement his political authority *vis à vis* the army with the corresponding technical authority? The chronic scarcity of trained and capable civilians in matters of security and defense suggests that any civilian serving as defense minister in the next government would be an impotent prisoner in a golden cage, or a figurehead for a military establishment that continued being the real power within the ministry.

There is no question that the proposed reforms were both needed and positive. However, their real meaning and scope depends on their inclusion as part of an integrated strategy, broken down into concrete actions at the different legal, political, and administrative levels of the country, that would coordinate the diverse efforts within a common conceptual and operative framework. The absence of such a framework, which would have diluted the political impact of the reforms should they have been approved, also puts in perspective the importance of the rejection of the reforms: this was neither the loss of a key battle nor the collapse of a grand strategy.

The triumphalism of certain military sectors, who have interpreted the rejection of the constitutional reforms as a vindication of their historical role and as a manifestation of the “backing of the people,” constitutes nothing more than an effort to squeeze maximum advantage from a situation that they well know responds to other motivations. The military reforms suffered the same fate as the rest of the substantive reforms: they fell victim, in the first place, to an unresponsive electorate indifferent to top-down political processes and whose vote expressed a rejection more of the procedure than of the substance of the referendum, and second, to the exploitation of dormant, racist fears.<sup>6</sup>

The reasons behind the rejection of the reforms help explain another of the paradoxes of the post-referendum setting: despite the rejection of the constitutional reforms, and the relative success of sectors that mobilized the “No” vote, the peace agenda remains in force. Public opinion polls carried out after the referendum made clear that the “No” vote could not be interpreted as a rejection of the Peace Accords or of the agenda of transformation that derives from them. Almost all the presidential candidates have made explicit mention of the Peace Accords as an integral part of their plans for the future. The theme of demilitarization continues to be on the table: the principal candidates have felt it necessary to clarify their position—whether by conviction or out of self-interest—regarding the institutional transformation of the army and the continuation of the changes underway.

In fact, the effort to redefine the military’s role within the state does not end with the rejection of the constitutional reforms. The constitutional mandate governing the armed forces’ responsibility for internal security can be qualified by other legislative actions. The modification of laws that regulate the military, public order, and the National Civilian Police allow for a restriction of the meaning of “internal security” -- a term not synonymous with public security -- in accordance with the rule of law in a democracy. Such modification could also contribute to the design of an operative structure that clearly defined the different responsibilities of the various state security bodies. It is worth recalling that the absence of a constitutional mandate has not impeded the current

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<sup>6</sup> Even though it is evident that a skillful and frantic journalistic *blitzkrieg* by sectors opposed to the reforms was able to stir up the undeniable racism that permeates many sectors of our society, it is not possible to establish the degree to which this was a central element motivating those who voted “No.” Indigenous sectors in the Western Highlands voted against the reforms related to the ethnic issue, and *ladino* sectors from the East voted in favor of the reforms. If one were to speculate as to the motivations behind the “Yes” and “No” vote with respect to the military issue, we could devise rhetorical figures and say that, for the former, the specter of counterinsurgency violence was determinant, while in the latter it was the specter of criminal violence. Those who would have supported the reforms would have done so in an effort to prevent the military expansionism and political violence characteristic of the past. Those who rejected the reforms would have been seeking—through a common confusion of internal with public security—defense mechanisms against the wave of criminal violence that civilian authorities had not been able to contain. However, a close analysis of the results shows that the response to Question 3 (which included the military reforms) was similar to responses to other questions in the Consulta throughout the country, both those areas affected by state violence as well as those affected by criminal violence. That is, there are no evident regional differences in the motivations for voting on this question.

functioning of the National Civilian Police, nor of the National Police in the past. Furthermore, it is worth noting that the definition of internal security in current legislation does not include aspects related to public or citizen security, despite a common mistake equating the two concepts.<sup>7</sup>

Other issues related to demilitarization and the strengthening of civilian power can be dealt with in a similar fashion. Many of the proposed reforms were not even necessary from a practical point of view. For example, the requirement that presidential security be in the hands of civilian personnel responds more to a political than legal necessity. The functioning of Presidential General Staff (*Estado Mayor Presidencial*) as a military body responsible for presidential security does not derive from any constitutional mandate. Hence, its dissolution would not require a constitutional reform. The decision of President Arzú to postpone its dissolution was due to other considerations.

A more clearly defined strategy on demilitarization would make it possible to identify juridical and political mechanisms for advancing along alternative routes, without violating the Constitution. The problem, however, is that there is no clear conceptual framework or strategy. Without these elements, essential to make a policy coherent, purposeful, and effective, individual proposals only appear erratic, and their effect either positive, banal or outright dangerous.

Designing a conceptual framework and strategy for demilitarization and the strengthening of civilian power is of paramount importance, far more essential than reintroducing constitutional reforms. Absent such a strategy, any eventual reform of the constitution will do no more than widen the abysmal gap between what exists on paper and what exists in practice.

The rejection of the constitutional reforms dealing with military issues confirms that the process of demilitarization has stagnated, something obvious long before the Consulta. The model of relations between society, state, and armed forces that is currently being constructed reflects more the military's relative autonomy from, rather than subordination to, civilian power. This state of affairs has more to do with the conceptual and operative abandonment of the issue by civilian authorities than it does with effective and conscious resistance by the armed forces. It will be incumbent upon the country's next government to rescue the process of adapting military functions to the security requirements of a democratic state that adheres to the rule of law. The government will also have to demonstrate that it has the conceptual clarity, political will, and skills to undertake such a task.

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<sup>7</sup> The Public Order Law gives the armed forces responsibilities in cases of public disaster or armed subversion, but does not include a police function. In fact, just as external security encompasses both military and non-military roles (political, economic, etc.), so does internal security. Not all areas of external defense correspond to the army: other state bodies, such as the Foreign Ministry or the Ministry of Economy, also have responsibility in this area. Similarly, the different areas of internal security should be defined, and the proper institutional responsibility established.



## **Peace and Democracy: An Unpredictable Future**

**Edelberto Torres-Rivas**

Political life in Guatemala is full of paradoxes, but there are two that stand out in this current process, which has now lasted fifteen years. One is that democratic development was an initiative of the military, beginning in 1982 when the counterinsurgency model of power entered into crisis. Democratic development emerged from the unraveling of the alliance among the military, business, church, and U.S. interests. The armed forces ceased to be important as a political player, although they continued to play a decisive role in maintaining political stability, and were, of course, prominent in the armed conflict. The second paradox is that in Guatemala, the process of democratization came before the achievement of peace. This is just the opposite of what occurred in other societies, such as those in Asia and Africa, where peace was the initial condition for the development of the democratic process.

These circumstances are important because they affect in many ways the double process of the transition to democracy and the consolidation of peace. Ideally, each would reinforce the other, each guarantee the other, becoming so intertwined as to produce a single historic outcome: the building of a new society.

### **Electoral Democracy**

In reality, however, things have not gone so well. Some might consider democratic development to be complete with the staging of elections. There is no question that the three presidential elections, five municipal and parliamentary elections, and two referenda that were held between March 1984 and May 1999 have been open, free, and competitive. They satisfy, without a doubt, the requirements for a procedural definition of liberal democracy. Initially, elections opened up the opportunity to rearrange political and ideological interests in a way that was not possible during the counterinsurgency period. Over time, however, elections have become increasingly empty of programmatic substance, and we see alarming growth in the number of people abstaining from voting; Guatemala's rate of abstention is the highest in Latin America.

We run the risk of stalling out on the road to democracy at that point where we are able to hold honest and clean elections. The electoralist fallacy can, of course, satisfy some political interests. Rightist groups that in the past objected to such exercises now accept this minimal democratic condition because of the legitimacy conveyed by this basic form of citizen participation and because of the certainty of victory for their parties. What might happen if the URNG secured an electoral victory, improbable though that is today? There is nothing visible on the immediate horizon that threatens this postwar social order short of serious social conflict.

It is clear that some things need to change in order for democracy to continue moving forward gradually toward consolidation. For one thing, the "productivity" of a

democratic system depends on the security provided to the population. In Guatemala this fundamental security is being threatened by the intolerable wave of criminal activity the country is currently experiencing. It is less pronounced in indigenous areas, but alarming in the capital city. There is also legal and juridical insecurity that above all affects the tens of thousands of peasants who hold precarious land titles, as well as the discrimination inherent in a judicial system which uses the Spanish language to judge and condemn Mayan suspects even when they do not understand the language.

A frequent topic of discussion is the need to build an intercultural democracy. It is regarded as an immediate objective by those who have accepted the multiethnic nature of Guatemalan society. However, while the explicit acknowledgement of Guatemala's multiethnic nature is necessary and justified, it can only be reached in the long term. The effective inclusion of the indigenous population is not a simple matter of constitutional recognition or the good faith of Mayaphile intellectuals or their non-governmental organizations. It will require, among other things, a visible improvement in subsistence standards, since the deepest poverty is found among the indigenous people. We also need a more clearly-formed notion of indigenous identity. Both these things are concrete necessities for exercising citizenship. Above all, though, there must be an intense educational effort among Mayas, *mestizos*,<sup>1</sup> and whites, aimed at weakening the vigorous roots of Guatemalan racism. All this being said, we are left with a serious predicament: without the effective participation of the Mayan population in *national* politics, democracy in Guatemala will always be weak and unstable.

### **The Peace Agenda**

The negotiations which brought an end to the conflict in Guatemala were long and complex, making compliance with the dozen agreements a difficult thing. There has been little effort to assess compliance because of the difficulty of establishing parameters for measuring success. There is certainty regarding the more practical aspects such as the cease-fire, the demobilization of the insurgents and their incorporation into civilian life, and the return and resettlement of groups of refugees. It should be noted, however, that there are significant weaknesses in the handling of refugees who returned from Mexico in a less organized manner, as well as of the displaced population which hid itself in remote areas of the mountains (groups known as *Comunidades de Población en Resistencia*, Communities of Population in Resistance). The latter group was the hardest hit due to its virtual abandonment.

There have been delays in other areas where the lack of compliance directly affects the process of democratic consolidation. The governing party did not take full advantage of the initial historical moment to advance, for example, in the fight against impunity. It is common knowledge that there are civilian/military groups active in organized crime. They are powerful and apparently untouchable, but society would have welcomed their being identified, tried, and punished. Without a doubt, public support for

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<sup>1</sup> People of mixed indigenous and European heritage, also referred to in Guatemala as *ladinos*.



the building of peace would have grown; above all, public confidence in the potential of democracy would have been strengthened.

Another area of implementation concerns the armed forces. One area where apparent compliance is deceptive is the 33% reduction in personnel, which was achieved simply by failing to recruit new soldiers.<sup>2</sup> No officers were dismissed, and the six military zones that were dismantled were of little importance. The Ambulatory Military Police (*Policia Militar Ambulante*) was dissolved, but the Presidential General Staff (*Estado Mayor Presidencial*) not only still exists, but has become more involved than ever in matters of internal security. In general, the military remains strong and ubiquitous, especially in the interior of the country, supported by the inertia of authoritarian culture. There are regions of the country in which former members of the Civil Defense Patrols (*Patrullas de Autodefensa Civil*), formally and gradually demobilized in 1996, still wield significant power at the local level. The few criminal lawsuits brought against military personnel have not progressed, except when the accused are low-ranking, usually indigenous soldiers.

Another area of compliance concerns that of the institutional reforms called for in the Accords. Delays in reforming the judicial system are the most serious, undoubtedly because the judiciary was the branch of government most compromised by the various military dictatorships. Corruption and incompetence make the job of bringing criminals to justice a difficult one to begin with; but the situation has been rendered unmanageable by the increase in criminal activity, itself indirectly stimulated by the climate of peace. Significant financial resources and technical initiatives have been offered and/or are underway to strengthen the Public Prosecutor's office, criminal investigations, and the role of judges at different levels, as well as to improve the prison system. An important accomplishment in this regard has been the creation of the demilitarized National Civilian Police. Of the 20,000 active duty positions projected for the end of the year 2000, 50% have been filled, covering eleven of the country's departments. The election of a new Supreme Court (in October 1999) and a new Constitutional Court are also significant steps forward in cleaning up the judiciary.

One of the most difficult parts of the peace agenda is in the socioeconomic area, and compliance must only been looked at from a medium-term perspective. A 6% minimum rate of economic growth has not been possible because it depends so heavily on external variables. The tax structure has not been reformed, and taxes are far from constituting 12% of GDP, the level originally required by the Peace Accords to have been achieved by the year 2000.<sup>3</sup> Both past and present attempts at reform have been frustrated, reflecting the deeply entrenched culture of tax evasion. Public spending on education and health is approaching the designated levels, and some efforts at devolving responsibilities for services to a local level (albeit not decentralization) have successfully moved forward. Municipal authority has been financially strengthened, and local

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<sup>2</sup> Forced recruitment was ended in 1994; the number of soldiers declined when those whose tour of duty was over left the service and were not replaced. (Ed.)

<sup>3</sup> The Comisión de Acompañamiento rescheduled the 12% target from the year 2000 to 2002. (Ed.)

participation is growing, especially on the part of indigenous groups. This is where participatory democracy has the greatest opportunity to develop.

### **Constitutional reforms and the referendum**

The debate surrounding the referendum eloquently underlined something that was clear even on December 29, 1996, the day the final accord was signed -- that popular support for the peace process is weak. There are many reasons for this, but one is that by the final phase of the armed conflict, there was very little fighting, and such fighting as did exist took place in remote areas of the country. In addition, the signing of the Peace Accord was presented publicly as a victory for the government. This did nothing to help convert it to an issue of national significance. Further, some conservatives saw the accord simply as an arrangement between a group of guerrilla "delinquents" and the government, without due consultation of society. As such, it had no binding, legal effect. In fact, only the government and the URNG, along with some social organizations, committed themselves to the implementation of the accords, which have lacked broad-based political support.

The defeat of the referendum is a serious blow to the peace process. New strategies must be designed to support and ensure compliance. Other factors characteristic of Guatemalan history contributed to the deplorable victory of the "No." These include a fundamental fear of change and of anything that might alter the status quo, particularly if that change meant the recognition of indigenous rights. This fear brought to the surface in urban *mestizo* areas hypocritical and perverse expressions of deeply-rooted Guatemalan racism. But there was also a great deal of ignorance and confusion concerning the depth of the reforms, which were poorly written. Political apathy reached an all-time high: only 18.5% of registered voters participated.

The Peace Accords have not gone away, and the 1999 electoral campaign gave the parties and candidates an opportunity to express their support. Notwithstanding the defeat of the constitutional reforms, the Peace Accords still contain important objectives worth pursuing. All candidates, for example, have endorsed the idea that there must be military reform, illustrating the possibility of moving forward even without changing the Constitution. As in all things political, what counts is the will to move ahead. The presence of the international community, an ongoing point of sensitivity, is an important guarantee of external support for the consolidation of democracy and reconciliation. The "No" vote was a stumbling block; but the Peace Accords set off a dynamic that is unstoppable, and there are other options -- ordinary laws, executive decrees, etc. -- for continuing implementation.

One such model is a high-level group created by the Accompaniment Commission (*Comisión de Acompañamiento*) to discuss policy options related to tax reform, an issue which has faced problems of noncompliance and rescheduling.<sup>4</sup> This

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<sup>4</sup> In March 1999, various groups including the private sector came together in pursuit of a Fiscal Pact (*Pacto Fiscal*), to discuss tax reform and other matters regarding the role of the state in fiscal matters. (Ed.)

group's mandate covers all fiscal matters: spending, debt, public property, administration of revenues, budget balancing, etc. So far it has carried out successful consultations with businessmen, universities, labor unions, cooperatives, and political parties. It will formulate recommendations for a new governmental fiscal policy as well as for a methodology for future negotiations.

### **A certain future?**

In a new democracy, the transition period can end when the rules for the electoral game have been recognized and accepted by the political players. But real consolidation takes longer, as it depends on the degree of legitimacy and effectiveness attained by democratic institutions, as well as the broadening of citizen participation. The elections of November 7, 1999, will be decisive because they are the first elections of the post-war period. Abstention is expected to go down by 50%. Guerrilla groups reorganized into a political party will be participating for the first time. A democracy needs a political left, although polls indicate that in this case it is relatively weak: the greatest weakness is not electoral, but rather programmatic and related to national leadership.

The challenges facing the next government that takes office on January 15, 2000, are numerous and complex. Peace and democracy can only be consolidated if all important social and political forces in the country can agree on the goals worth pursuing. Different sectors of society are beginning to talk about the desirability of calling a national Constituent Assembly to propose a truly modern constitution in line with the challenges of the times. A basic national agenda for the country, something which crosses the partisan lines between the FRG, PAN, and ANN, would have to include electoral and political party reforms, full recognition of the identity and rights of the indigenous peoples, tax reforms that emerge from a Fiscal Pact, the completion of judicial reform and the consolidation of the rule of law, the reconfiguration of the military under civilian authority, and the design of social and rural development policies that promote equitable human development. These issues alone would justify the convening of a constituent assembly. Everything will, of course, depend on the outcome of the approaching elections.



## Biographies of the Contributors

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