

# Who Governs?

Guatemala Five Years After  
the Peace Accords

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# Who Governs? Guatemala Five Years After the Peace Accords

## INTRODUCTION

The Accord for a Firm and Lasting Peace signed on December 29, 1996 by the Government of Guatemala and the *Unidad Revolucionaria Nacional Guatemalteca* (URNG) concluded thirty six years of armed conflict, and a seven year peace negotiation process that spanned three governments.

The armed conflict decimated Guatemalan society. The 1979 population of Guatemala was 6.8 million. The Commission for Historical Clarification (CEH), a product of the peace accords, *documented* 42,275 deaths. Almost three-quarters were arbitrary executions and forced disappearances. Indigenous populations constitute about half of total population (estimates vary) but they suffered 83% of the deaths. The CEH estimated that total deaths were 200,000, which is almost four times the number of U.S. combat deaths in Vietnam. Violence forcibly displaced 1 to 1.5 million people, including some 50,000 who became refugees in Mexico. Thousands of grassroots leaders were killed.<sup>1</sup>

When serious peace negotiations began around 1990 the intensity of the war had declined and the URNG was militarily weak with little demonstrable national base of support. Human rights conditions had improved from the horrific levels of the early 1980s. A troubled transition to civilian rule had been underway since 1984, following thirty years of direct military rule. Despite the power imbalance between the negotiating parties, with the help of international mediators and groups from

civil society the negotiations produced an agreement of ambitious scope. Implementation of the accords became the centerpiece of Guatemalan politics and international support.<sup>2</sup>

Five years later, the accords have lost much of their political force. Some have blamed this on an overly ambitious document (over 300 provisions) that created a highly fragmented implementation process. But the central problem is neither the architecture of the accords nor their rhetoric. By the 1990s the war was confined to remote areas, so few Guatemalans were affected. Many civil society activists viewed the accords as an agreement between the governing party (Partido de Avanzada Nacional, or PAN), the URNG and the United Nations, and expressed fears that implementation would strengthen the signatories while marginalizing more representative voices.<sup>3</sup> There was little sense of ownership of the accords by organized civil society. Despite initial enthusiasm for many of the reforms in the accords, failure to produce measurable change in the lives of ordinary citizens has further weakened already tepid public support. A recent poll found that 53% of Guatemalans thought the accords had brought no benefits whatsoever.<sup>4</sup>

The administration of President Álvaro Arzú (1995–1999) was the fourth civilian government since the return to civilian rule in 1985. This followed thirty years of military rule, which began in the wake of the 1954 CIA-organized coup that overthrew the elected government of

Jacobo Arbenz. While Arzú supported the peace negotiations and made efforts to implement some key accords, he was reluctant to yield executive power to the wide array of implementing commissions or to push through constitutional reforms and fiscal reforms. As the 1999 elections approached, Arzú's party, PAN, faced the Frente Republicano Guatemalteco (FRG), no friend of the accords. Eroding popular support for the accords and mounting opposition by sectors that felt threatened by key reforms combined to diminish the administration's implementation efforts.

An indicator of diminishing governmental support was the lukewarm endorsement the PAN gave to constitutional changes called for in the accords. During the peace process in neighboring El Salvador, important constitutional changes agreed upon during negotiations were adopted by the legislature within 24 hours of submission by the executive branch, and prior to a final, comprehensive peace accord. In Guatemala, by contrast, the PAN-dominated congress spent more than two years after the signing of a comprehensive agreement debating constitutional reforms agreed to in the accords. The congress finally submitted a confusing and complex package, containing some 54 different amendments divided into four broad categories, to a national referendum. Many of the proposed amendments were not even directly related to the peace accords. These were defeated in a May 1999 referendum marked by a well-financed and highly effective campaign against the amendments, and by extremely low voter turnout.<sup>5</sup>

The Arzú administration also resisted making a series of fiscal and tax reforms called for by the accords to provide increased revenue for social spending. And even though Arzú had begun his term by asserting control over the military through the calculated use of promotions, as his term in office progressed the executive became increasingly reluctant to confront key elements of the military/intelligence establishment. Despite political pressure and financial support from international actors, the gov-

ernment's support for the judicial and police reforms mandated in the accords was also weak and ineffectual.

Civil society organizations (CSOs) had been active in shaping the accords and were slated to be major players in the implementation process, principally through their membership on specific commissions. Yet, despite their formal role in the process and considerable, albeit sometimes tardy, international financial support, CSOs encountered a daunting array of problems. These included organizational weakness, fragmentation, and difficulties in meeting the multiple requirements that came with donations. Even when CSOs developed consensus proposals they were unable to bring grassroots pressure to bear on the government to ensure their adoption. The executive branch and the Congress often seemed to ignore their proposals, and it was hard to fight back with more than arguments.

The FRG and its founder, former military dictator General Efraín Ríos Montt, had been, at best, very reluctant supporters of some aspects of the peace agreements. Ríos Montt's highly contingent offer of support for the constitutional amendments was in exchange for an additional amendment that would sweep away constitutional provisions that prevented him from running for the presidency. When the FRG won the elections with a robust congressional majority and the presidency, it did not augur well for continued implementation of the accords.

International actors have played a significant role. The international community pledged more than \$3.2 billion in aid, of which about 68% was in the form of grants. The various agencies of the UN, and the UN's oversight organization MINUGUA, have doggedly pushed for implementation, but they have a mandate limited in scope and time, and also lack any political base in Guatemalan society. Inevitably, other events on the international stage compete for attention and funds, and MINUGUA has experienced dramatic cuts in budget and personnel over the last two years. As implementation has stalled, international donors seem unsure how to re-invigorate

the reform process and are re-assessing their future role and support. A meeting of donors scheduled for February, 2002 (after several earlier postponements), may give some indication of future support.

Any attempt to assess the problems of democratization in Guatemala and the prospects for further implementation of the peace accords must begin, however, by recognizing the magnitude and the complexity of the challenge. It is not easy for any nation to reform an entire legal culture, build a new police force, or develop a multilingual school system. It is particularly hard for Guatemala because powerful interests have such high stakes in maintaining the centuries-old status quo of high economic inequality, discrimination against the indigenous, impunity, and a weak, under-financed state.

Guatemala has a long history of low rates of tax collection, low social spending, and high inequality relative to other nations in Latin America. Economic differences between regions and ethnic groups are extreme. Rural areas where concentrations of indigenous people live have by far the worst conditions of poverty, education, health, and land shortages. Institutions of public security and the judicial system are weakest in those areas, and government spending is proportionally low in rural areas. These same areas have the lowest participation in elections, in part because it is difficult to register and vote.

In a recent report the Inter-American Development Bank (IDB) examined national data from around the world in an attempt to relate the quality of government (obviously a difficult thing to measure) with other political features. It found an association between low quality of government (low capacity to comply with laws and contracts, high corruption, low efficiency in provision of public services, and distorting regulations), low political participation, and high ethnic diversity. The report suggests that low political participation creates openings for high corruption. High corruption contributes to low public confidence in govern-

ment, which in turn undermines support for new taxes to pay for increased social spending. The report argues that low spending on security, education, and health will tend to reduce participation, particularly when the main victim of the low social spending is a large, ethnic population that has suffered from long-standing discrimination. These characteristics sound a lot like Guatemala.<sup>6</sup>

The present problem is not that the peace accords have been rudely shoved off the stage by powerful actors focused on other agendas. The problem has more to do with the general weakness of the various political actors. All public players seem weaker in recent years, and there has been only marginal progress in building stronger democratic institutions. Civil society organizations, and among them Mayan organizations, are weaker than they were in 1996. So are political parties. Even the FRG is weaker since the 1999 election. Important institutions such as those that maintain security and process criminal and legal disputes, the Congress, business groups, and even the once all-powerful military are increasingly fragmented, although not all have lost power to the same extent.

The PAN suffered a stinging defeat in 1999, and its bench has since badly divided. Leftist groups, including the URNG, have been marked by division and show few signs of expanding their electoral base. The FRG has internal divisions and has been embarrassed by scandal. Polls show large declines in popularity of both President Alfonso Portillo and Ríos Montt, who is 75 years old and the party's kingpin. The Congress displays many institutional weaknesses. The military has been able to protect its core interests, but its institutional political influence has declined. The military budget declined (in real terms) during the Arzú administration, although it increased significantly in 2001. There have been indictments and even convictions (in the Gerardi case) of military officers accused of major human rights abuses, albeit not very many. Those elements within the armed forces who want a more mod-

ern, corruption-free institution are trapped by loyalty to the institution and the brotherhood of silence. Elements in the military have been able to maintain, despite the mandate of the accords, the powerful, secretive *Estado Mayor Presidencial* (EMP), a center of military intelligence and covert actions operating out of the Presidential palace. If the military continues to be a major political player, it is not clear what institutional aims it is pursuing.

This does not mean that there is a power vacuum that threatens an imminent return to authoritarian government. There were credible rumors of a military coup in early 2000, and such an outcome cannot yet be ruled out in Guatemala, but it is a far less likely scenario that it might have been ten years ago. Opinion polls indicate Guatemala has a comparatively large segment of the population that is sympathetic to the idea of a strong authority figure in government.<sup>7</sup> But there is no obvious organized group or individual poised to take over.

Rather, the “all parties weakened” scenario is one of political drift and fragmentation. In the

current political environment it is difficult to legislate and even more difficult to implement policy. Instead, the current environment makes it easier to veto, easier to slow down initiatives, and easier to evade existing policies.

Guatemala is at a perilous moment. A powerful legacy of social and political exclusion and repression has inhibited and limited the extent and depth of democratic reforms, although reforms (and the changing world environment in which Guatemala finds itself) have been sufficient to weaken the power of the two main traditional pillars of political decision-making—the private sector and the military. The resulting political drift and fragmentation provides openings for greater influence by criminal elements and other illegitimate actors, which in turn erodes and inhibits democratic institutional reform. As donor interest wanes and Guatemala fails to make the changes needed to become an accepted player in an increasingly “globalized” world, the likelihood is growing that Guatemala’s future may be more like its past—and that is a gloomy prospect indeed.

## GUATEMALA’S HYDRA-HEADED GOVERNMENT

**T**he inauguration of Alfonso Portillo as Guatemala’s new President on January 14, 2000 began on a high note. In a powerful acceptance speech, Portillo set forth his basic goals: to consolidate democracy and the rule of law, accepting the obligation of the state to fully implement the peace accords; to decentralize government by delegating powers and resources to local governments; to generate sustainable economic growth based on clear rules that would increase private investment, free trade, competition and respect for labor rights and eliminate privileges that foster concentration of wealth, monopoly and inefficiency; to reduce social, ethnic and gender inequality; and to eradicate impunity and corruption.

To give flesh to these bold promises, he announced that he was abolishing the *Estado Mayor Presidencial* and appointed a former guerrilla, Ricardo Marroquín Rosada, to head the new civilian body that would replace the EMP. He named prominent civil society and indigenous activists to important positions, and—most dramatically—bypassed the military chain-of-command to name a Colonel as the new defense minister, which required all higher-ranking officers to submit their resignations.

A closer look at the full range of Portillo’s initial cabinet appointments, however, revealed a much more complex political balance than these highly visible moves suggested. In addition to Vice-President Francisco Reyes López, hard-core FRG activists or supporters were



named as ministers of Foreign Affairs, Economy, Health, Energy and Mines, and to the posts of General Secretary and Executive Secretary of the Presidency. Former Christian Democrat activists, most of them personal friends of Portillo, were named as ministers of Agriculture, Finance, Labor, and Education, and as Private Secretary and Secretary of Planning in the Presidency. Prominent human rights activists were named as Minister of Culture and Sports, and Secretary of Strategic Analysis. Ex-guerrillas were named to head the Secretariat of Administrative and Security Affairs (SAAS, established to replace the EMP) and the Secretariat of Peace (SEPAZ, responsible for implementing the peace accords). Analysts disagreed as to whether the ministers of Communication and Interior (*Gobernación*) were closer to the FRG or to Portillo.

The political diversity of the cabinet reflected the somewhat odd makeup of the winning political ticket in 1999. The FRG was founded by retired General Efraín Ríos Montt, who served as President of Guatemala from 1981 to 1983 after seizing power through a military coup against the previous military government. Ríos Montt, in turn, was overthrown by a military coup in 1983. During his presidency some of the most massive killings of the civil war took place. Ríos Montt was prevented from running for President after the return to civilian rule by a provision of the 1984 constitution that barred candidates who had seized power by means of force.

During the early 1990s, the FRG tried several times to challenge this provision of the constitution and to repeal it. When FRG efforts to name Ríos Montt as the party's presidential candidate in 1995 were rejected after exhausting all legal avenues, the party surprised everyone by offering its nomination to Alfonso Portillo. Portillo was a former leftist who spent much of the nineteen-eighties in Mexico, and when he returned to Guatemala after the restoration of civilian rule he had joined the Christian Democrats. An effective campaigner with strong populist rhetoric, Portillo seemed a strange ideological partner for

Ríos Montt and the hard-core FRG activists. They did both share an antipathy to the traditional economic elite, and the FRG received little financial help from that sector. In 1995, FRG political support was particularly strong in rural areas (especially where there had been strong civil patrol units allied with the military during the counterinsurgency period of the 1980s), while the PAN drew its support mostly from urban dwellers. By 1999, the FRG also drew significant support from poor and middle-class voters in urban areas.

In addition to antipathy toward the organized private sector, Ríos Montt and the FRG were hostile to sectors within the military that had supported his overthrow in 1983. These tensions were reflected in the initial cabinet appointments, which marginalized the military and representatives of the organized private sector (as we describe later). The diverse ideological makeup of Portillo's initial cabinet posed the risk that distinct and conflicting agendas would make it difficult for the government to develop and implement policies in a unified and coherent manner.

The past two years have demonstrated how real was that risk. It quickly became clear that the FRG bench in Congress, headed by Ríos Montt, was not taking its lead from the executive branch. A number of key bills sent by Portillo to Congress, including ones dealing with salary raises and school curriculum were completely changed in the legislature. During the first eight months of Portillo's government, not a single bill related to peace accord implementation was approved (although some were pending). Leading FRG members of Congress were openly critical of several cabinet members. Right after the election, some Guatemalan analysts estimated that of the 63 FRG deputies, 47 were loyal to Ríos Montt and 16 to Portillo. Since then, however, Ríos Montt's control has seemed much more absolute.

Lack of clarity about who is running things was reinforced by Portillo's style of governing. He spent much time making sweeping promises with tough-guy talk at campaign-style ral-

lies and ceremonial occasions. What seemed to be more important presidential duties such as announcing policies, presiding over inter-agency policy-making bodies, or meeting with key foreign dignitaries, were often left in the hands of Vice President Reyes.

Continuing frequent personnel changes seemed to reflect ongoing political struggles within the administration and between the administration and congress. In early May 2000, Portillo announced that he was replacing armed forces chief of staff, Col. César Augusto Ruiz Morales, with Col. Eduardo Arévalo Lacs. Ruiz Morales was seen by some analysts as close to Ríos Montt because they belonged to the same church. Unlike Ruiz Morales, Arévalo had been part of the same training class at the military academy as defense minister Juan de Dios Estrada Velásquez, and the change was seen as strengthening Portillo's hand. A few days later, however, the defense minister announced changes in the leadership of military intelligence that seemed to reduce the influence of Portillo's top security aide and effective head of the EMP, Jacobo Salán Sánchez. The EMP, contrary to Portillo's promise, had not (and has not yet) been replaced.

After mounting criticism of the government's failure to bring the skyrocketing crime rate under control, in early July 2000 Portillo replaced the Minister of *Gobernación*. Portillo told foreign diplomats that he would name the aforementioned head of the SAAS, Ricardo Marroquín, to the post. Days later, however, he named FRG deputy Byron Barrientos to the position. The contrast could not have been more dramatic. Barrientos had been forced out of the military in 1989 after participating in a failed coup plot against the first civilian government. He immediately appointed other former coup-plotters to be in charge of immigration and as deputy director of police. He also replaced the police chief. That made three police chiefs in seven months!

The press portrayed the jockeying over policies and appointments as an ongoing struggle between Ríos Montt and Portillo, with the for-

mer winning most of the battles. The General (as Ríos Montt is often referred to in the press) has not emerged unscathed, however. In June of 2000, Congress approved a law establishing new taxes on alcoholic beverages. When the law was published, however, the tax rates were only half what had been approved. Critics charged that the FRG leadership had illegally altered the law under pressure from the powerful distillery industry, while Ríos Montt claimed that the law had been legally amended in a separate Congressional session. All records of this separate session mysteriously disappeared, but *Prensa Libre* obtained an audio tape of the session that demonstrated that no changes to the law were discussed. The resulting "Guategate" scandal led to criminal investigations of the congressional leadership and filled the press for the better part of the next year. In the end, prosecutors decided not to indict anyone. The scandal put the FRG on the defensive, however, and further weakened public confidence in Congress.

The ongoing internal struggles within the administration and with Congress have slowed or prevented the adoption of effective policies to carry out most of the promises Portillo made in his inaugural speech, and have fostered public disenchantment with the FRG and Portillo. A November 2000, poll found, for example, that support for political parties had plummeted, with the FRG favored by 22%, the PAN 9%, and all others 3%. The most popular party preference was "Ninguno" (none), favored by 48%. Only 16% thought that Congress was doing a good job, whereas 29% thought it was doing a bad job; only 19% thought Portillo was doing a good job and 32% said he was doing a bad job.<sup>8</sup>

Despite the frequent paralysis and continued infighting, the current government has responded to heavy pressure from the international community (especially the United States and international financial institutions) and approved new laws to protect intellectual property rights, to combat money laundering, and to criminalize tax evasion, along with a new labor code. It also approved new taxes to meet



some of the fiscal targets called for in the peace accords (and also to mitigate a severe cash crisis). And in the most notorious outstanding human rights case, the murder of Bishop Juan Gerardi, three military officers were convicted of carrying out the crime.

These achievements have done little to stem the public disenchantment. On the contrary, the tax reforms have fostered an unusual (and uncomfortable) alliance between labor unions and civil society groups opposed to increases in sales taxes, and the powerful private sector lobby (CACIF) opposed to the criminalization of tax evasion and new taxes that affect specific sectors of commerce. Human rights activists view the Gerardi case convictions as primarily due to extraordinary international pressure, and remain focused on continuing (and unsolved) incidents of mysterious attacks on human rights workers. They also are alarmed by the apparent continuing political influence of ex-military officers who were part of military intelligence organs that carried out wide-scale human rights abuses. Guatemalan media, the largest of which are owned by prominent members of the business elite, have carried out a relentless campaign to publicize allegations of corruption against the government and to denounce the fiscal reforms.

After two years of the FRG-Portillo government, the political panorama is one of continuing scandal, ongoing infighting within the cabinet and between the executive and legislature, and mounting mobilization by sectors marginalized or excluded from formal power. And in this context, there is rampant speculation over which groups or individuals really are making decisions.

#### THE GROWING INFLUENCE OF *FUERZAS OCULTAS*

Elsewhere in this report we describe allegations by Guatemalan human rights activists about the existence of a clandestine network that originates in military intelligence structures and operates throughout the justice system and public security forces to protect powerful individu-

als by preventing thorough criminal investigations and intimidating judges and witnesses. They see evidence of this network's handiwork in several prominent assassinations and attacks of human rights activists and offices. They often refer to this network as a *poder paralelo*, or parallel power. The Guatemalan press and some government officials, including president Portillo, have echoed these concerns and talked about *fuerzas ocultas*—hidden forces—that are manipulating events and fostering instability.

In addition, there have been a number of corruption scandals involving embezzlement of government funds and charges of favoritism in political appointments and in the awarding of government contracts, and a number of government officials have been indicted, fired or forced to resign from office. Most recently, in November 2001, a high-ranking official of the *Ministerio de Gobernación* was implicated in the embezzlement of 90 million Quetzals (Q90 million, more than \$11 million). This scandal helped force the resignation of Byron Barrientos as interior minister (*Ministro de Gobernación*) at the end of November.

In one sense, of course, these allegations don't represent anything new in Guatemalan politics. During the long internal conflict and long after the return to civilian rule, clandestine military intelligence structures carried out assassinations of individuals perceived to be threats to "national security" or "national stability", and hindered investigations by intimidating witnesses and judges. This continued well into the Arzú administration.<sup>9</sup> Previous administrations have also been plagued by corruption scandals and charges of political favoritism.

Perhaps the most significant difference about the corruption allegations against the current administration is that the most vociferous critics are representatives of the private sector and Guatemalan media closely allied with the private sector. During the Arzú administration the governing PAN party was closely identified with the private sector, and the major media did little to publicize, investigate or denounce

alleged corruption. The FRG government now in power has few ties to the organized private sector and has actively pushed a package of new taxes and fiscal reforms that are bitterly opposed by CACIF, the powerful lobbying arm of the private sector.

In addition to the private sector critics, a number of ex-military officials associated with the “institutionalist” faction within the armed forces, have exposed and denounced the alleged political influence of other ex-military officers connected to military intelligence that were part of a hard-line group that opposed the democratization process. Many of these critics have close personal and career ties to Otto Pérez Molina, a leader of the institutionalist faction who was forced into retirement by Portillo’s leadership changes in January 2000. While this gives rise to suspicions that the charges reflect an effort to settle old scores, it is notable that Pérez Molina’s son, daughter and wife were targets of armed attackers in separate (and unsolved) incidents in 2000 and 2001. The children and their families subsequently left the country.

Viewed from one perspective, then, the scope and public attention devoted to charges of corruption and favoritism by the current government simply reflects the fact that the two most powerful institutions in Guatemalan society—the private sector and the armed forces—have lost influence and their traditional access to state power. Conflicts that were formerly resolved through elite negotiations behind closed doors are now being fought in public and through social mobilization.

That does not mean, however, that there is no substance to the allegations. One of those alleged to have behind-the-scenes influence on government decisions is Francisco Alvarado MacDonald, a banker and close friend of president Portillo. During 2001, details about Alvarado MacDonald’s influence became public with the collapse of two of his banks and a lending company, *Banco Metropolitano* (Bancomet), *Banco Promotor* (Promobanco) and *Financiera Metropolitana* (Fimesa).<sup>10</sup>

Alvarado MacDonald is one of the richest men in Guatemala, and controls at least 100 companies ranging from banks to sugar producers to milk to the Mercedes Benz franchise. He was an important financial supporter and advisor to presidents Vinicio Cerezo and Jorge Serrano, and in 1996 supported the losing campaign of Alfonso Portillo. Alvarado MacDonald provided financial support and employment to Portillo after his defeat, and again was a major contributor to Portillo’s successful second campaign in 1999. After Portillo’s victory, Alvarado MacDonald was the guarantor for Portillo on a house the new President rented for \$5,000 per month, and loaned him a Mercedes Benz.<sup>11</sup>

His support did not go unrewarded. Portillo appointed his eldest son to a management position in the President’s office where he played a highly visible role arranging meetings and representing the executive branch. His younger son was put in charge of the *Secretaría de Asuntos Particulares* in the Presidency. Both remained actively involved in running Alvarado MacDonald’s banks, and were forced to resign their government positions when the banks failed. At least eight government agencies had deposits in the failed banks amounting to Q470 million (nearly \$60 million), of which at least Q176 million were in interest-free accounts. In addition, state agencies provided Q434 million in credit to the banks. When auditors discovered the extent of problem loans at the banks,<sup>12</sup> the Guatemalan central bank (Banguat) provided Q1.2 billion more to restore liquidity.

While details about Alvarado MacDonald’s influence became the subject of press scrutiny as a result of the bank failures, much less is known about the influence of Jacobo Salán Sánchez, a cashiered army colonel who headed Portillo’s personal security detail from 1996 until 2001, and ex-General Luis Francisco Ortega Menaldo, a former head of the EMP with extensive connections in military intelligence. Both are ex-army officers who were cashiered in 1996 because of their alleged involvement with a criminal gang engaged in widespread contraband (see below), and both had lengthy careers

in military intelligence and the EMP. After being forced out, Salán Sánchez became the head of a personal security detail for Portillo. When Portillo became President, he became the *de facto* head of the EMP. The U.S. pressed strongly for his removal because of allegations that he has ties to drug traffickers, and Portillo eventually gave him a less prominent position. It is unclear, however, whether his influence has diminished with his title.

Ortega Menaldo has not held any government position since Portillo was elected. During the Romeo Lucas government in the late nineteen-seventies and early eighties, he worked in military intelligence out of an office in the Public Finance agency (the agency that collected revenues). Ortega Menaldo became sub-director of military intelligence (D-2) in 1986, and director from 1987 to 1990. Salán Sánchez served under him as chief of the counterintelligence section of D-2. From 1991 to 1993, Ortega Menaldo was head of the EMP, and allegedly supported the attempted coup by president Serrano.

Much of the public speculation about Ortega Menaldo's influence with Portillo is based on his past connections to many top officials appointed by Portillo. For example, the newly appointed Minister of Defense, Álvaro Méndez Estrada, was third in command of the EMP when Ortega Menaldo was its chief. Former interior minister Byron Barrientos, Deputy Director of the PNC Elmer Aguilar Moreno, and former head of *Migración* Luis Mendizábal, were all cashiered from the army after participating in an attempted coup against the first civilian government of Vinicio Cerezo in 1989, and all are alleged to have ties to Salán Sánchez and Ortega Menaldo.

While there is plenty of circumstantial evidence of the influence Salán Sánchez and Ortega Menaldo have with the Portillo administration, what is more difficult to fathom are the origins and precise nature of their influence. Is it simply influence based on reciprocal favors, or is there a more sinister and organic relationship involved?

It is impossible to answer that question with any degree of certainty, but an ongoing criminal investigation that dates back to the early days of the Arzú administration has produced damning testimony about extensive and lengthy ties between organized crime elements, military officers who directed military intelligence organs in the nineteen-eighties and nineties, and the top political leaders of the current government—including president Portillo and Congress president Ríos Montt.

**The *Grupo Salvavidas*.** In September 1996, Guatemalan police announced that they had broken up a criminal gang that was allegedly stealing as much as 30 percent of the duties collected by the country's customs apparatus. They arrested the alleged head of the gang, a little-known customs official by the name of Alfredo Moreno Molina. In his house they discovered documents identifying the names of many government officials allegedly involved in the gang's operations. Among these were other customs officials and high-ranking police and military officers, including the Vice-Minister of Defense.

On the basis of the information obtained during Moreno's arrest, eighteen officials of the military, police, *Guardia de Hacienda* and Customs were fired. In addition to the vice-minister of defense (General César Augusto García González), the army officers who were removed included General Ortega Menaldo and Colonel Salán Sánchez, along with two other colonels, a lieutenant colonel, two majors and a navy captain.<sup>13</sup>

One of those swept up by the investigation was a little-known former customs official, Francisco Javier Ortiz Arriaga, who had acted as a key aide to Moreno and handled many payments to others involved in the network. He agreed to cooperate with the investigators, and over the next two years provided extensive details on how the ring was structured and on its operations. His testimony has not yet been made public, and it is not clear when, if ever, it will be formally presented. Five years after Moreno's arrest the case has still not come to

trial. In mid-2001, the court agreed that Moreno could be freed on bail by posting Q1 million. He was released from jail on December 11, 2001.

According to Ortiz, the *Grupo Salvavidas*, as the gang called itself, had an extensive network within the military and customs apparatus.<sup>14</sup> Among those alleged to be part of the military network by Ortiz was retired General Manuel Antonio Callejas y Callejas, who directed the army's section of intelligence (G-2) from 1980 to 1982 and served as chief of staff of the armed forces from 1987 to 1989. In 1990 and 1991, Callejas y Callejas was Director General of Customs. Ortega Menaldo worked for Callejas y Callejas when the latter headed military intelligence, which in the early nineteen-eighties worked out of offices on the eighth floor of the Ministry of Public Finances. According to Ortiz, in 1981 and 1982 Moreno headed the illegal operations in customs and reported to Ortega Menaldo at the ministry.<sup>15</sup> Ortiz says that he was told in 1981 that the gang also controlled illegal operations in the Treasury Police (*Guardia de Hacienda*), Public Ministry, Comptroller General's office (*Contraloría General de Cuentas*) and other state agencies.

While many of the names identified by Ortiz as alleged members of the military network have been included in press speculation about the Moreno case from the beginning,<sup>16</sup> his far more dramatic allegations involve the supposed involvement of prominent civilians. In particular, he claimed that both Portillo and Ríos Montt were members of the gang. According to Ortiz, Portillo was deeply involved with the gang. Every two weeks he allegedly received Q50,000 from the customs at Valle Nuevo and Q20,000 from the customs at Pedro de Alvarado. The Q50,000 was for the FRG and the remaining Q20,000 for Portillo. He also allegedly acted as a "control" over another participant in the criminal network.

#### **Character assassination or criminal conspiracy?**

The allegations made in Ortiz' deposition cannot be taken simply at face value. While there

is no question that Ortiz was high up in the Moreno operation, and that he provided very detailed information about specific payoffs, events and activities that can be independently verified, some of the most politically sensitive allegations are harder to confirm.

It is not at all uncommon for criminals seeking to make a deal with the prosecution to try to improve their bargaining position by implicating public figures or others they believe the prosecutors may be more interested in convicting than themselves. At the time the deposition was given (May 1999) a national election campaign was underway and polls suggested that Portillo and the FRG had a substantial lead. Ortiz may have believed that prosecutors appointed by a PAN government would reward him for damaging testimony against their opponents.

For this reason, we caution against any quick acceptance of Ortiz' allegations about the involvement of Portillo and Ríos Montt. We do know that at least one other witness in the Moreno case also implicated Portillo as being involved with the gang, but with much less detail and without asserting that he had a leadership role.<sup>17</sup> It is also a matter of public record that Portillo knew and was friendly with Moreno.<sup>18</sup>

There is even less supportive evidence linking Ríos Montt to the gang. Two civilians that Ortiz identified as part of the leadership of the gang have recently been involved with the scandals surrounding the current Congress: Mario Augusto Morales Mazarriegos and Ramón de Jesús Sáenz. In 2000, Morales presented a writ of *amparo* in defense of the FRG and the Third Vice-President of Congress in the case of the law on alcoholic beverages. Jesús Sáenz was appointed by the *Ministerio Público* to investigate alleged alterations to the law on alcoholic beverages, and in April of 2001 he asked the court not to bring charges against Ríos Montt in connection with the supposed alteration.

**A familiar pattern.** There is historical precedent for the merging of clandestine counterinsurgent structures that developed during the



internal conflict with organized criminal gangs. After the peace accords were signed in El Salvador in 1992, there was a dramatic increase in common and organized crime that overwhelmed Salvadoran law enforcement institutions. There were also a series of killings and acts of intimidation of witnesses and judges that could have been politically motivated and that were potentially destabilizing.

Part of the reason for the increase in crime in El Salvador was the dismantling of the old repressive apparatus, the fragility of nascent democratic institutions, a weak economy that could not provide jobs, and the abundant surplus of weapons and people who knew how to use them. What was harder to account for in purely non-political terms, however, was the political past of some victims and evidence that some perpetrators of crimes had been part of clandestine paramilitary structures during the internal conflict. The United Nations established a special unit to investigate a number of such cases, and that unit concluded that there had been a metamorphosis of some death squad networks into organized criminal activity.<sup>19</sup>

A similar phenomenon seems to be taking place in Guatemala, but it seems to have penetrated much more thoroughly and at much higher levels. The relative weakness of political parties in Guatemala and the failure to purge the old security apparatus would make it easier for organized criminal gangs rooted in clandestine counterinsurgency structures to maintain and extend their political influence in the post-conflict period. While the primary motivation of these groups may be personal gain, they have a vested interest in maintaining impunity and preventing the development of more effective law enforcement and judicial institutions, both to protect their members (some of whom were implicated in human rights violations during the conflict) and to ensure their continuing ability to operate freely.

What is most worrisome about this pattern is that it is difficult to develop effective strategies to expose and eradicate such organized and

extensive networks in a political context of weak public institutions and weak civic actors. There is a kind of vicious circle in which weak institutions create opportunities for the spread of corrupt networks, which in turn seek to further weaken institutional capacity to combat corruption.

#### THE WEAKENING OF TRADITIONAL POWER-BROKERS

After the 1954 CIA-sponsored overthrow of Jacobo Arbenz, state power and policies in Guatemala were largely dominated by two political actors—the armed forces and the organized private sector. For most of that period formal political power was exercised by military officers or their surrogates, but government economic policies, if not always designed by the private sector, were heavily influenced by its interest groups. When conflicts developed within or between the two institutions, these were resolved through elite negotiations behind closed doors.

The transition to civilian elected governments in 1985 changed the formal rules of the game, but did not immediately alter the *de facto* exercise of power by the military and private sector. During the peace negotiations, however, the strategic interests of the two institutions began to diverge in certain crucial respects and the final peace accords contained provisions which each of them found distasteful and threatening. While each of them has tried to prevent implementation of the provisions they find most troublesome, their efforts have sometimes worked at cross-purposes and the accords created opportunities for other actors (often backed by international pressure) to erode the historical political dominance of both.

Fifteen years after the formal transition from military to civilian rule in Guatemala, the political power of the Guatemalan military as an institution seems to be declining, even as it continues to resist the diminished role and resources projected for it by the peace accords. The political influence of the military began to decline during the Arzú administration. The

current government has exercised strong control over military appointments and promotions, even as it has restored much of the budgetary reductions made under Arzú.

While the political clout of the organized private sector has not declined as significantly as that of the military, with the triumph of the FRG in 1999 the private sector has found itself both excluded from formal power and unable to shape policies behind closed doors to the same extent as it did during the years of military rule. One consequence is that many of the conflicts that were formerly resolved through elite negotiations behind closed doors are now being fought in public, in the media and, recently, through social mobilization.

**The Military.** In an earlier HI report,<sup>20</sup> we described in detail how the transition from military dictatorship to elected civilian government was a carefully managed process from 1985 through 1995, with the armed forces playing a central role.<sup>21</sup> Arzú began to exercise greater independence and even some degree of control over the military. He initially refused to take up residence in the presidential palace in an obvious effort to lessen the influence of the EMP. Then Arzú quickly ordered sweeping changes in the military high command, officially justified as necessary to relieve the generational bottleneck. These changes, in January 1996, seemed to strengthen an “institutionalist” faction of the army, including new defense minister Julio Balconi Turcios and chief of the general staff Sergio Camargo Muralles.

By contrast, those consigned to limbo (“disponibilidad”) included seven more hard-line generals led by the outgoing chief of staff, Gen. Carlos Enrique Pineda Carranza.<sup>22</sup> The nomination of air force Gen. Marco Tulio Espinosa as new EMP head appeared, *at the time*, to signal a downgrading of that body, as air force officers traditionally have little influence over Guatemala’s ground-based army structure.

The section of the 1996 accords on strengthening of civilian power provided a blueprint for re-conversion of the military

from a counterinsurgency force to a democratic army. It confirmed the subordination of military to civilian authority, removed internal security from the Army’s mission, mandated a new police force under civilian direction, and required a one-third reduction in troop strength and demobilization of hundreds of thousands of civil defense patrollers (PACs) drafted into part time service by the military. The military budget was to be reduced by 33% (as a proportion of GDP) from 1995 levels by 2000. The accord also required the president to replace the EMP with two civilian intelligence agencies, one organized in the ministry of Gobernación to combat organized crime, the other, the SAE, to function directly under the presidency.

Balconi had been directly involved in the negotiations, and his appointment seemed to ensure that the accords would be implemented. Instead, the military became caught up in a series of intrigues that pitted the institutionalist faction against sectors allied with the EMP and military intelligence, as well as ex-military officers involved in organized crime. Arzú seemed more interested in asserting his personal control over the military than in ensuring the implementation of the accord, and in July 1997, he replaced Balconi and Camargo with Gen. Hector Barrios Celada as defense minister and EMP head Espinosa as chief of staff. Espinosa’s brother-in-law became the new head of the EMP. Espinosa was later promoted to defense minister. Military reconversion stalled.

Portillo initiated a new wave of turmoil in the armed forces with his declaration that he would abolish the EMP, and the appointment of Marroquín to head its replacement and of progressive Edgar Gutiérrez to head the SAE. When he named Col. Juan de Dios Estrada Velásquez as defense minister he forced the retirement of thirteen generals!

Throughout the first half of his presidency, Portillo continued to make abrupt changes in military leadership. As mentioned, he removed chief of staff Ruíz Morales in favor of Arévalo



Lacs, and also replaced most of the leadership of military intelligence. Arévalo Lacs later replaced Estrada Velásquez as defense minister (after a disastrous performance by the latter in an official visit to Washington), and Álvaro Leonel Méndez Estrada became the new chief of staff. At the end of November 2001, Arévalo Lacs resigned and was named as the new minister of Gobernación, while Méndez Estrada moved up to become defense minister.

One effect of all these changes was to turn the military inward and away from any focus on trying to manage larger institutional processes of democratic reform and consolidation. For most officers, survival in career terms became the chief preoccupation. At the same time, the military became a fertile playing field for external actors seeking to use the institution to advance their own interests. Since the new government took over, for example, Ríos Montt's son has twice been promoted over more senior officers—first, he was put in charge of the army's finances, and later promoted to command of a brigade. And the new defense minister, Álvaro Méndez Estrada (a protégée of Ortega Menaldo), has had an even more dramatic rise.

Méndez Estrada, as chief of staff, tried to counteract the sense of drift and defensiveness in the officer corps by proposing a new five-year plan for the "modernization and professionalization" of the armed forces that reaffirms the military's traditional role in internal security, in contradiction of the peace accords, and projects an active role for the military in national development and protection of the environment. While it is not clear how much support he enjoys within the military, during 2001 the role of the army in police functions and other activities not contemplated by the peace accords (e.g., transporting fertilizer to farmers) increased significantly.

What is clear is that the reductions in the military budget that occurred during the Arzú administration, as called for by the accord, have been reversed under the current government. From 0.99% of GDP in 1995, military spending steadily declined to reach 0.68% of GDP in

1999. Although the approved military budget for 2001 was Q837 million, through a variety of transfers actual military spending was closer to Q1.14 billion, amounting to about 0.8% of GDP. Projections of revenue shortfalls for 2002 led the FRG block in congress to pledge to reduce Portillo's proposed 2002 budget by 8%, but the FRG leadership said that education and defense budgets would be protected from cuts. Based on congressional committee actions, the approved military budget for 2002 will be about Q1.1 billion.

The current situation, then, is one in which the military continues to have very significant institutional resources, but no longer seems to be controlling or directing political decision-making by civilian government as it did from 1985 through 1995.

The declining institutional influence of the military as a political actor does not mean, however, that civilian political institutions have become much stronger. There is no clear or coherent agreement among civilian government officials about what role the armed forces should play. Instead, there is resort to employing the armed forces on an *ad hoc* basis to assist with critical tasks that civilian institutions are incapable of performing. And there is ongoing jockeying and competition among ex-military officers, politicians and even criminal elements (these are not mutually exclusive categories) to curry favor with, and exercise influence over, different factions within the armed forces.

While some civil society actors, focusing on the continuing political influence of clandestine networks with ties to military intelligence, deny that the institutional political power of the military has declined, others fear that the abrupt disruptions to the chain of command and institutional integrity of the armed forces pose significant dangers to the democratization process. For the past two years, Bernardo Arévalo de León of the *Facultad Latinoamericana de Ciencias Sociales* (FLACSO) has facilitated a process of dialogue between key civil society actors, ex-military officers, and government officials including active-duty military officers,

aimed at developing a consensus about the future role of the armed forces.<sup>23</sup> The process is ongoing, and has produced several framework documents of agreement.

**The private sector: from inside to outside.** The *Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras* (CACIF), founded in 1957, is the peak organization of Guatemalan business. Business elites have generally not participated in party politics; rather they have operated through CACIF, or at crucial times through ad hoc committees of the most powerful enterprises. If they have not always been able to get exactly the policies they want, they have been able to veto the ones they don't want, particularly increases in taxes. CACIF steadfastly opposed increases in tax rates and wholly or partially thwarted four major attempts since the mid-1980s to raise the national tax quotient. J. Fernando Valdez and Mayra Palencia have recounted this long history of tax resistance in a penetrating analysis. Comparing lobby groups in the U.S. to Guatemala, the authors find in Guatemala a highly concentrated interest group in fiscal policy that has amounted to an informal system of co-government.<sup>24</sup> It also staunchly opposed measures that might attack poverty through a direct redistribution of wealth, and has been powerful enough to keep land reform off the agenda. CACIF's effectiveness has held through military dictatorships and civilian governments.<sup>25</sup>

During the peace negotiations CACIF was invited to join the *Asamblea de la Sociedad Civil* (ASC) a coalition of civil society organizations that was making proposals to shape the accords, but it declined. In contrast to the ASC, CACIF has been a tight-knit, well-organized and extremely powerful organization with a capacity for rapid political maneuver. CACIF focused its attention during the peace negotiations on the socio-economic themes in the accords. The accord committed the government to: raise the health and education budget and tax revenue by 50% (relative to GDP) by the year 2000 with a globally progressive tax system and with

a municipal property tax; restore lands usurped from peasants or compensate them; promote rural development with a Q300 million annual fund; create a Lands Trust Fund for financing land purchasing; and promote legal changes to enforce labor laws.<sup>26</sup>

Despite agreeing to the socio-economic accord, CACIF spent most of the remainder of the Arzú administration resisting, by and large successfully, implementation of several of its key components. It was particularly opposed to the fiscal and tax reforms. Unlike his predecessor, interim president (following Serrano's coup attempt) Ramiro de León Carpio, in whose cabinet CACIF was not directly represented, Arzú had appointed several prominent younger private sector representatives to high positions. These included economist Richard Aitkenhead, ASIES head Raquel Zelata, and businessman Peter Lamport (who had headed a CACIF peace commission). As pressure from the international community to carry through with the agreements mounted, Lamport was transferred from his position as Ambassador to the United States to become Minister of the Economy, where he successfully re-negotiated target dates for implementation (see below).

The triumph of the FRG in the 1999 elections led to a dramatic change in CACIF's access to power. The FRG did not have strong ties to traditional private sector power-brokers, which had strongly backed the PAN in the elections, although it did have some business support from sectors not represented by CACIF. Ríos Montt also believed that CACIF had supported the constitutional provision that prevented him from running for President. During the campaign and after taking power, the FRG promised to eliminate the special privileges of the traditional economic elite.

CACIF's initial response was to revert to its traditional strategy of demanding that the government adopt policies designed by CACIF, but it found itself isolated when the international community (in particular, the International Financial Institutions or IFIs)

sided with the government. It grudgingly agreed to participate in UN-mediated negotiations with other social sectors that led, in the May 2000, to consensus on a Fiscal Pact. While the pact was hailed as a breakthrough by international donors (see section on social and economic exclusion), key signatories including CACIF dragged their feet on agreeing to detailed measures to implement the broad agreements.

When the government, under international pressure and threatened by a fiscal crisis, suddenly raised the value-added tax (VAT) and other taxes and threatened strong enforcement measures in mid-2001, CACIF denounced the new measures and tried to resurrect the strategy it had employed in 1998 to renegotiate target dates rather than negotiate reforms. Two top leaders of CACIF traveled to Washington to enlist the Bush administration's support and to convince the IFIs to be flexible. Much to their surprise, they found the U.S. solidly behind the measures and a unified position among the international donors insisting on implementation.

The failure of its traditional strategy of elite negotiations led the private sector toward a strategy of coalition and confrontation. CACIF shifted its longstanding, unilateral approach and began to build alliances with traditional adversaries who were also opposed to specific components of the fiscal reforms. Recognizing that the criminalization of tax evasion and the targeted taxes that most concerned big business

and wealthy individuals were of little concern to most Guatemalans, CACIF began a massive campaign focusing on the increase in the VAT, a sales tax increase that affected most citizens. CACIF, trade unions from the center and the left (*Unión General de Trabajadores*, or UGT; and *Central General del Trabajadores de Guatemala*, or CGTG), and students, (*Asociación de Estudiantes Universitarios*, or AEU) mounted a demonstration of some 20,000 protestors in early August, and a few days later CACIF led a national strike that effectively shut down almost all businesses.

In some respects it was quite a cynical move, since businesses were not directly affected by the VAT increase—they can pass along the increase to customers. Protestors called for a rollback of the VAT, transparency in government spending, an end to government corruption, and a national dialogue. They demanded that the government return to negotiations within the framework of the fiscal pact, where CACIF and its allies could prevent agreements with which they disagreed.

Despite the successful flexing of muscles by the unlikely alliance, the government refused to roll back the tax reforms. CACIF has continued to pursue a strategy of multi-sectoral alliances, and through the fall of 2001 joined with representatives from labor and other civil society organizations to demand a “national dialogue” with the government. It has continued to demand a freeze on further implementation of tax reforms as a pre-condition for such a dialogue (see Conclusion).

## CIVIC ACTORS

Decades of counterinsurgency war decimated organized civil society and weakened government institutions. The impact of this is still being felt as new civil society organizations (CSOs) struggle to push forward the main goals of the peace accords: an end to repression, strengthened democracy, and greater possibilities for socioeconomic development. There is widespread disenchantment in civil society with the slow progress in advancing these goals, but CSOs are having difficulty developing a clear strategy to move the process forward. Many activists doubt whether it is possible to recover the lost momentum in the peace process. Others question whether this is even worth attempting, as government and other powerful actors appear to have moved on to different agendas.

Although veteran civic actors remain in the national arena, there has been a proliferation of new civic actors with different expectations and different strategies. Strategies and tactics that once forced government decision-makers to compromise often no longer produce the desired results. In addition, hierarchical, top-down decision-making practices within CSOs that once were accepted as necessary in the context of counterinsurgency war, now generate resentment and foster fragmentation. The agenda-setting process for Guatemalan CSOs is further complicated by the diverse priorities and work-styles of international development agencies and other international donors whose financial support is critical for organizational survival.

**The war's impact on civil society.** The protagonists of the social movements of the 1970s were peasant organizations with majority indigenous membership, labor unions, government employees, university and secondary school students, Catholic grassroots activists and other "popular" actors. For the most part, selective repression and military counterinsurgency campaigns destroyed this movement in the late 1970s and early 1980s.

In the early years of the transition from military dictatorship to elected civilian governments, the main protagonists tended to be grassroots human rights organizations (mostly representing relatives of the disappeared) that had emerged during the nineteen-eighties, along with new labor and peasant organizations. Indigenous organizations emerged, as did the widespread use of the term *Maya* to denote the contemporary indigenous population. The first women's organizations also demanded their place in the public sphere. In contrast with the highly organized and mobilized grassroots movement of the late 1970s, civil society during the transitional period from 1985 to 1996 was fragmented into sectors, with each sector developing expertise and advocacy around specific issues. By emphasizing conflict resolution and negotiation rather than protest and mobilization, civil society made former "popular" organizations acceptable and non-threatening to the military, the oligarchy, and the government, which were each engaged in their own transitions. This process opened political space in the context of lingering terror.

Many of these organizations became social interlocutors in the early phases of the peace process and eventually came together in the Civil Society Assembly (*Asamblea de la Sociedad Civil*, or ASC), along with research institutes, journalists, religious representatives and political parties. The ASC was politically something of a hybrid, in that it brought together independent civil society organizations and others that were organically linked to the URNG. While this led to frequent disputes over the substance of proposals, the ASC played an important role in channeling civil society concerns and interests into the negotiating process.

**Demands placed on civil society by the peace accords.** Both in spirit and letter, the peace accords promote civil society participation in implementing the agreements. The accords called for establishment of over a dozen commis-



sions, each including civil society organizations, to make concrete proposals for implementation. These included commissions on strengthening the judiciary, fiscal reform, resettlement of groups uprooted in the war, education reform, women, and indigenous issues. There were eight separate commissions on indigenous issues, including: making indigenous languages official; sacred sites; education reform and cultural diversity; participation and legal reform; indigenous rights and access to land; women; constitutional reform; and customary law.

This has required CSOs to play unfamiliar roles in new scenarios for which they were technically and politically ill-prepared, and that required strategies for which there were no clear blueprints. They had to decide who would participate in the commissions, find resources to support their participation, develop specialized expertise on the range of issues covered by the accords, and much more. For example, although the Historical Clarification Commission did not directly include civil society groups, its work necessarily involved exhaustive efforts by human rights groups that had long recorded human rights abuses. Similar challenges were posed by the Electoral Reform Commission (which was composed of political party representatives and officials from the Supreme Electoral Tribunal, or TSE), and by the perceived need by some CSOs to advocate police and judicial reforms, as well as reform of the military in a democracy.

The scope and complexity of the demands placed on CSOs by the accords reinforced specialization and fragmentation. Mayan cultural issues and demands were separated from *campesino* and land issues, and those from women's issues. In responding to demands for specialized expertise, CSOs have had little time to devote to the "broader picture."

These tendencies have also been reinforced by the funding priorities of international donors, who recognized that CSOs needed new resources in order to meet the challenges posed by the accords. Donors like USAID, UNDP, IDB, the European Union (EU), and numerous

European development NGOs, supported programs for developing the technical capacity of CSOs, while shying away from the political aspects of civil society activism. But the multiplicity of international actors and their varying agendas mirrored and contributed to the organizational complexity and lack of cohesion among civil society actors. Moreover, despite the influx of aid, resources have been scarce, spurring competition among civil society groups and among individual leaders.

**Unrealistic expectations lead to mutual disenchantment.** Much of the initial enthusiasm surrounding the peace accords wore down during the first couple of years of misunderstandings, learning processes, and funding delays. This was accelerated by government decision-making processes that took advantage of the fragmentation and often left civil society actors out in the cold, ignoring their proposals or overriding them, perhaps after giving them a polite audience.

To take but one example, a representative spectrum of women's organizations was organized to design the *Foro Nacional de la Mujer*, called for in the accords. Rather than operate on the basis of proposals coming out of this process, however, the government unilaterally named Aracely Conde de Paiz, a politician with no ties to the women's movement, to direct the *Foro*. This dampened enthusiasm and created an adversarial relationship.

Through active organizing efforts, the *Sector de Mujeres* soon became the most representative and active civil society actor in the *Foro*, but its work was often hampered by a lack of funding. While the *Sector* was expected to speak for a constituency, the resources for travel, workshops and organizing throughout the country were not forthcoming. By the time these issues were ironed out, sufficient resources were available and lessons learned from early efforts were assimilated, many of the constituent groups were caught up in the 1999 election campaign and never fully returned to peace process work.

Many CSOs perceived a double agenda in the PAN government. They saw the PAN paying

lip service to the accords, but in practice saw the Arzú government promoting pro-business economic policies and downsizing government in ways that went against the spirit and the letter of the accords.

The disenchantment has deepened under the current government. The Portillo-FRG government never picked up on negotiations where the Arzú administration left off, and basically discontinued peace-process related dialogue. During the protests against proposed tax increases in mid-2001, the government ignored a UN call for a national dialogue, in part because it did not believe the CSOs could mobilize a constituency.

Congress has also been unwilling to engage in consultation and dialogue with civil society. When legislators finally produced an electoral reform bill in mid-2001, they did not consult relevant CSOs. CSO suggestions to the electoral reform commission were ignored by the FRG-dominated Congress, which had also alienated the Supreme Electoral Tribunal.

The disenchantment is not one-sided. Government actors saw civil society demanding a place at the table while often having little to

say when given a seat. Moreover, the proliferation and fragmentation of civil society organizations placed ever-expanding demands for resources on a government structure with exceedingly limited capacity. In the view of government actors, CSOs of dubious representative character and weak institutional capacity hardly seemed ideal counterparts.

They had a point. Many of the new CSOs have been successful at institution building and fundraising, but less so at developing long term strategies and concrete policy proposals. In response to donor pressure, many today are legally registered entities, with a formal hierarchical structure that has little or no accountability beyond reporting to donors.<sup>27</sup> Institutional directors—like political leaders—do not tend to move on voluntarily, nor do the mechanisms exist for change. Yet these organizations develop policy proposals and negotiate with government in the name of broad social sectors that, for the most part, have not been consulted or even informed.

Many CSOs were born with ties to the URNG and received much of their political analysis and decision-making from party cadre.

### WOMEN ON THE MOVE

Women's rights and issues have come a long way. Women's groups, mostly based in Guatemala City, have regional, continental and international links. These have born fruit in increasingly professional staff and activism.

Many groups trace their origins to the late 1980s, when first lady Raquel Blandón de Cerezo was an ardent advocate. She founded *Fundación Guatemala*, a group that promotes participation and education of women. Activists exiled in Costa Rica, Nicaragua, Mexico and the United States were exposed to women's issues, and they began, in the context of a new civilian government, to return to Guatemala and formed *Tierra Viva* and *Grupo Guatemalteco de Mujeres* (GGM), both core groups in the women's movement. Women in labor unions began to organize their own chapters.

Mayan female leadership also emerged from the violence, as widows like Rosalina Tuyuc, or young survivors like Rigobertha Menchú, acquired political experience and went

on to national and international prominence. But the Mayan female human rights activists were often at odds with women's groups, as neither actively supported the other's issues.

The 1990s found more women in high-level government positions and elected to office than ever before. A daily San Carlos University radio program, *Voces de Mujeres* on the San Carlos University radio discusses health, politics, arts, and culture. *La Cuerda*, a monthly feminist publication, has been running for five years. It is inserted into the large circulation daily *el Periódico*. *Asociación Mujer Vamos Adelante*, has a project called "The role of rural women in the consolidation of democracy" (Norwegian and IDB funds), and another on violence against women (USAID support).

While none of the urban-based women's groups have a grassroots base, it is increasingly possible to speak of a constituency. Women's issues, groups, and projects have



The URNG, for its part, hitched its political wagon to the peace accords and so has been thoroughly absorbed by implementation-related activities. It has little to show for its efforts, and did not have the organizational resources to simultaneously build an effective political party and maintain strong working relations with most CSOs. As a result, CSOs have become increasingly independent — a positive development perhaps but one also contributing to the fragmentation. Key party cadre formerly dedicated to the movement have jumped into the political arena and are now mayors, congressmen or government officials,<sup>28</sup> or they simply left the party. This is particularly true at the local level, where activists became involved in community development issues about which the URNG has had little to say.

Today, many civil society organizations survive in name only, with a skeleton crew and seats at some negotiating tables, and continued funding from an international donor or URNG sponsorship. For example, the *Instancia de Unidad y Consenso Maya* (IUCM) and the *Unidad del Pueblo Maya de Guatemala* (UPMAG) are two umbrella groups for peasant

and indigenous organizations that were set up by URNG organizations to concentrate and strengthen their influence during the peace process. While both continue to exist on paper, and have seats on the directorate of the larger Mayan umbrella group COPMAGUA, in practice many member groups are not active, have broken ties with the URNG, and their leaders have gone on to other activities.

Fragmentation led to a pattern of short-lived alliances and little grassroots work. Indigenous issues are left to Mayan organizations, and women must move their agenda on their own. But both sectors feel strongly that their issues should be taken on by society as a whole. The problem, as many activists see it, is that the sum of sector demands does not necessarily add up to a more inclusive, egalitarian and democratic society. At the same time, in their view, fragmentation means that few, if any, of the sectoral demands are met.

**Where is civil society headed?** Despite these problems, civil society organizations remain important vehicles for advancing and deepening popular participation in Guatemala's fragile

become widespread, and umbrella groups like the *Sector de Mujeres* have educated, trained, and organized women throughout the country. Activists developed a loose, nationwide network of women's groups that in some cases was built up from the community level and had multiethnic representation.

Huehuetenango is a multiethnic, mountainous department in the western highlands. The *Foro de la Mujer* chapter there was painstakingly built throughout the department, in some instances along ethnic lines, and drawing on Mayan women who had acquired organizing experience in refugee camps in Mexico. The chapter organized workshops, networked, and members traveled regularly to Guatemala City for additional training, all activities formerly unheard of. While the chapter has been weakened by strains between indigenous and *ladino* women, the loss of energy in the national *Foro de la Mujer*, and decreases in funding, the experience has changed the lives of innumerable women, even in very remote communities.

Recently, young and often university-educated Mayan women formed Kaqla, a group that debates cultural and gender issues. Kaqla has provided a safe haven for intellectual, activist women in a male-dominated Mayan movement, which still emphasizes the role of women in the home and in the preservation of indigenous language and culture.

Women's groups have become increasingly adept at advocating, in unified fashion, a public policy agenda around issues of health, intra-family violence, education, and political participation. As a result of effective lobbying and alliances with women politicians across the political spectrum, there is now legislation providing services to women and protecting women in cases of domestic and other forms of gender-based violence. Another gain came when Portillo set up the governmental *Secretaría de la Mujer* to follow through on international commitments pertaining to women. While the *Secretaría* fell short of the demand for an independent, government-funded institute, its head, Lily Caravantes, has considerable experience and close ties to many women activists.

democratic institutions. For example, CSOs are playing a crucial role in strengthening participation in electoral processes and fostering an understanding of democratic culture, tasks that political parties are failing to address. In the 1999 electoral campaign, numerous non-party activists worked to promote women's registration, to get out the vote, and to organize debates to get candidates to commit to specific issues. *Sí vamos por la paz* (sponsored by a Canadian agency) *Kuchuj — Voz Ciudadana* (sponsored by USAID), the *Coordinación de ONG y Cooperativas*, CONGCOOP (sponsored by UNDP) and *Acción Ciudadana* (also USAID sponsored), developed overlapping and competing campaigns. Together they had far more money than the left-electoral coalition, Alianza Nueva Nación (ANN), had for its campaign.

The environmental movement appeared in the 1980s and now has a generation of seasoned, often highly trained, and visible activists. The emphasis has been on working to preserve forests and protected areas, and more recently on the controversial issues of economic development and the environment (such as oil drilling in protected areas).

Many development NGOs that were important actors with wartime displaced population and refugee resettlement projects have moved on to focus on rural development, local government, and citizen participation. The *Foro de ONGs* forged alliances with peasant groups negotiating land issues, and is charting a growing role in advocacy and technical support for local development projects. They are also pioneering efforts to integrate Mayan views.

These successful efforts have not, however, overcome the growing doubts among many civil society actors about the basic strategy of specialization and policy advocacy. Frustrated by government intransigence, some civic actors question the concept of civil society. Activists grapple with the implications of “leaving behind” *the people* and *popular movement organizations* in exchange for *civil society* and *civil society organizations*. Terms such as *social movements* are making a comeback. Increasingly, organizations face a tension between strategies that would emphasize organizing and mobilizing a grassroots constituency around issues—and what to have such grassroots supporters do—and negotiating agendas and proposals with elites from government and other civil society organizations.

In these conditions, activists increasingly speak of drawing the line between *popular* interests and demands, and those of the oligarchy, raising the specter of the more class-conscious and conflictive recent past. During a donor-organized colloquium on strengthening civil society, a participant stated that “...the elites are one of the main obstacles to democracy and development in the region. The elites in these countries are resistant to change. They have acted this way throughout history, and their conduct remains invariable.”<sup>29</sup>

The divergent forces and factors shaping the capacity of Guatemalan civil society to play a decisive role in pushing forward the democratic option for the country can be seen clearly in the experience of indigenous organizations over the last decade.

## UNCHARTED PATHS FOR THE MAYAN MOVEMENT<sup>30</sup>

The Mayan Movement appeared as *the* rising social movement in Guatemala in the 1990s. Its profile was significantly heightened by the peace accords. It developed a belligerent agenda based on the writings of Mayan intellectuals. It staged creative actions to call attention to the United Nations Decade for Indigenous Peoples (1994), and then skillfully advocated for congressional approval of the International Labour Organization (ILO) Convention 169 on indigenous rights.<sup>31</sup> High hopes for change, and widespread energy, were palpable and had an exemplary and multiplying effect.

Mayan organizations in the ASC fought vigorously for the Accord on Indigenous Rights and Identity (AIDPI), and grew in strength and stature during the negotiations. Forming COPMAGUA, the largest umbrella group of Mayan organizations, was considered a crucial step for Mayan unity. The peace accords recognized COPMAGUA as an official counterpart of the government in peace implementation. These developments made many feel that the time of the Maya had finally arrived. There was much self-sufficiency and even haughtiness. International donors inadvertently stimulated this by pouring funds into often badly conceived and technically unsound projects. Few non-Mayans had a voice on AIDPI issues, stretching the divide between indigenous and ladinos, rather than strengthening the movement through alliances.

Five years later, the AIDPI commissions survive as official entities of the peace accords, but they are severely diminished because Congress has shelved their proposals and the executive branch pays them little heed. The Commission on Participation's proposed reforms to the Municipal Code have the support of president Portillo, for example, but it appears unlikely that the FRG-dominated Congress will pass them, if and when they take up the issue.

Electoral reforms considered in mid-2001 did not even consider the Commission's proposals on such key issues as redrawing electoral districts along ethnic and linguistic lines, or allowing civic committees to become permanent, regional political forces.<sup>32</sup>

The AIDPI Commission on Education Reform does have a seat on the National Consultative Commission on Education and, in practice, its members serve as advisors and allies to Vice-Minister of Education and key Mayan intellectual, Demetrio Cojtí. Mayan educators currently manage the Ministry of Education's bilingual education program, but the Ministry's political and financial support remain uncertain. Non-indigenous teachers and the numerous teacher unions covertly or overtly oppose bilingual education because they regard it as a threat to their civil service status and wage scale. Some progress has been made in curricular reform, but political inertia and government infighting does not bode well for implementation.

The Land commission had success in getting the *Fondo de Tierras*, or Land Fund established. The Fund provides credit for land purchases and technical assistance to landless peasants. Commission delegates sit on the Fund's board. Nonetheless, Mayan and ladino peasant groups outside the Commission have played the more belligerent and central role in actually organizing and mobilizing landless peasants. The Land Fund's resources are significant, but woefully small in comparison to the size of the problem (see below).

CNOC, the national coordinating body of peasant organizations,<sup>33</sup> gets most of the credit for successfully negotiating the Land Fund. But the strongest member organization is no doubt CONIC,<sup>34</sup> because of its extensive work at the grassroots with needy peasants, regardless of ethnicity or political affiliation, and its ability to mount pressure, sometimes through land invasions. Over the last decade, CONIC has orga-

nized and provided legal support for peasants who were practically attached to a large owner's land in a servile relationship. Throughout the 1990s, owners and "their" peasants hammered out agreements whereby the owner/peasant servile relationship was severed. In Alta Verapaz, and to some extent in the Costa Cuca in Quetzaltenango Department and other parts of the Pacific coffee-growing region, peasants got land instead of cash severance pay, and plantation owners ceased to have the responsibility for providing basic services and use-rights to farmland. CONIC articulates the demand for land within the framework of Mayan rights and identity. Reports coming out of CONIC's latest national congress indicate that they are becoming increasingly radical on Maya cultural issues.

Despite these partial gains, the prevailing sense in the Mayan movement is one of frustration, not unlike what is happening among non-Mayan CSOs. Government inaction has meant that activists have little to show for the time devoted to developing policy proposals and negotiating. The May 1999 defeat of the constitutional reforms left many Mayan activists and voters with a sense of defeat, confirming their long-held belief that beyond the confines of their communities, Guatemala continues to be hostile or, at best, indifferent to ethnic and cultural demands. Furthermore, the lessons from this first indigenous attempt to change the constitution have neither been discussed nor assimilated, as activists moved right into the 1999 electoral campaign immediately following the referendum.

In 2001, Mayan organizations and leaders were practically absent from the national scene because they were often incapable of getting their issues on the agenda and because the Congress and administration have chosen to ignore them. International funding is drying up, and what remains comes with many more political and administrative conditions attached. Many leaders now work for international agencies or the government.

The highly visible Mayan movement of the peace process appears to be at a standstill, inca-

pable of protesting government inaction. Both Mayan organizations and frustrated donors have backed off from COPMAGUA, which has practically ceased to function and has virtually lost its counterpart status with the government. Dozens of activists formerly on its payroll are either unemployed or barely surviving in other organizations. None of the National Permanent Commissions (CNPs) set up in 1996 by a massive COPMAGUA general assembly (and mandated to negotiate and monitor implementation of the AIDPI) survive in practice.<sup>35</sup> Nor do COPMAGUA's regional offices, established in 1998 and 1999 to develop national coverage. None of the other large umbrella groups are operational, save perhaps COMG.<sup>36</sup>

**Why has the Mayan Movement stalled?** The weakened state of the Mayan Movement is frequently attributed to infighting, failure to develop the necessary technical and political skills, and absence of clearly prioritized goals and strategies. While these criticisms have merit, the same holds true for much of civil society and the government as well. The greater frustration around the shortcomings of the Mayan movement probably arises from romanticized views of the Maya, and unrealistic expectations.

In the context of very fast-paced political dynamics, the movement tended to go from one stage and issue to the next without consciously incorporating the previous work experience into new initiatives. This resulted in a lack of continuity. Backsliding has occurred in areas where some significant gains had been achieved. For example, there was a failure to monitor government compliance with Convention 169. This meant that legal spaces for furthering indigenous rights went unused. Instead, organizations that had previously worked on this plunged into working on the numerous Commissions called for in the AIDPI.

Perhaps the most significant problem is the lack of capacity to implement changes that the movement itself has recognized as necessary. Like many CSOs, COPMAGUA carried out numerous self-evaluations; it came up with an adequate picture of



### A HISTORY OF CONFLICT

The Spanish *conquistadores* encountered multiple ethnic groups each with their own territory, language, and rulers. There were often conflicts among them, a condition the *conquistadores* seized to their advantage. Linguistic differences and conflicts remain, and the non-indigenous continue to take advantage.

The community of Los Cimientos, in the area of the Ixil indigenous group (perhaps the group most damaged by the war), is a tragic illustration of conflict further aggravated by the military. In the late 19th Century, the government allotted land in the depths of *Ixil* territory to a Quiché indigenous group community from the locality of *Chiul*, who became known among the *Ixiles* as *Chiules*, outsiders who had settled in their midst. Cohabitation for the better part of a century was uneasy at best, but in 1981, the Guatemalan military attacked a community in the heart of guerrilla territory (Los Cimientos), destroying homes and crops and forcing the Quichés to flee. The army set up a military base and

installed 70 Ixil families around the perimeter, all of whom were members of the military's civil patrols.

The *Chiules* returned to Los Cimientos in the early 1990s, as part of the refugee resettlement process, and established makeshift homes on the outskirts of the community, with the support of international agencies. Despite the intervention of numerous governmental and non-governmental institutions, several studies and endless recommendations, no measures were taken to diffuse the potential conflict. In June 2001, *Ixil* former civil patrollers raided the *Chiul* community, raped at least two women, wounded several men and forced the entire population to flee.

Conflict also exists within ethnic groups, as in the case of Quiché communities fighting over forest rights in Argueta, Totonicapán. In northern Huehuetenango, there has been ongoing strain between urban (the main town) and rural (the outlying villages) *Chuj* people.

its own strengths and weaknesses and with well-grounded recommendations. Most were never implemented. There are many reasons for this failure, with political conflict foremost among them.

Political problems were present from the start. The COPMAGUA directorate was appointed by five so-called second-tier organizations, coordinating bodies that encompassed a significant number of existing Mayan organizations engaged in development, education, Mayan rights advocacy and local power work. Three of the five were heavily influenced by the different former guerrilla groups that made up the URNG confederation, the EGP, the FAR, and ORPA: *Instancia de Unidad y Consenso Maya* (IUCM) was an umbrella for EGP-influenced organizations; *Unidad del Pueblo Maya de Guatemala* (UPMAG) for groups inclined to FAR; while Tukum Umam represented groups that were, for the most part, sympathetic to ORPA. The other two directorate members were COMG, an umbrella for politically diverse Mayan cultural organizations, and ALMG, the semi-official government-funded Academy of Mayan Languages. The latter two placed greater emphasis on Mayan cultural rights and identity than on general political issues, and tended to ignore key issues such as the land.

The agreement that led to this composition of

the COPMAGUA directorate was hammered out secretly. After it was established, the URNG often used its three-to-two majority to make unilateral decisions that were more in line with URNG priorities than with the needs and hopes of Mayan activists. This contributed to considerable internal strife, backstabbing and discontent.

As internal differences within the URNG festered and went unresolved, problems were played out in COPMAGUA, as well as in other settings. During a meeting at Proyecto INCIDENCIA, a USAID civil society project, some 30 civil society leaders and project staff heard two Mayan men, one a URNG member and another a dissident, claim to hold the UPMAG seat on the COPMAGUA directorate. Similar fallings-out took place in IUCM, and they expelled their representative on the Constitutional Reform Commission. Conflict got considerably worse during the 1999 elections, when the Frente Democrático Nueva Guatemala (FDNG), the leftist coalition that ran in the 1995 elections, did not join the URNG-led coalition ANN.

COPMAGUA staffing decisions, from the onset, were often made on the basis of political affiliation rather than technical capacity. COPMAGUA was showered with 30 million Quetzals between 1995 and 1999, money that was not

always adequately monitored nor dispensed for technically and politically sound projects. The directorate managed the funds, while member organizations complained to donors about their lack of access to decision-making and funds.

The eight national permanent commissions (CNPs) formed by the umbrella group to monitor the accords had significant autonomy to develop their own work plans, projects and funding sources. Soon, however, the CNPs were at odds with each other, duplicating work and competing for resources. Today the CNPs have no funding and are not developing any projects. Nonetheless, many individual members of CNPs are active in the corresponding commission set up by the AIDPI.

### Where is the Mayan Movement headed?

Despite the problems, the Mayan cause and activism by Mayan people continue to grow. Ten years' experience and its frustrations have fostered a new generation of national and local leadership that is sophisticated, although still relatively young and inexperienced. This has tended to break the traditional barrier of participation confined to the local town. The movement has helped develop new understandings of Guatemala's ethnic diversity. Most important, it has made significant advances in forging a shared sense of Mayan identity for the twenty ethnic groups of Maya ancestry that inhabit Guatemala. It has articulated values and demands, and served as a voice for the formerly silent and ignored indigenous population. While the vision of change outlined in the AIDPI has not materialized, much has changed, often in directions not contemplated in the accords.

Mayan people are developing a broad array of forms of political participation. As traditional community social structures break down, Mayan activists, and some local governments, are attempting to re-design traditional functions. Local leaders are organizing the Mayan community for dialogue with local government and participation in municipal development projects. Mayan women increasingly participate beyond the confines of their homes in spaces opened up by the women's movement and the peace accords. New Mayan teachers, trained in bilin-

gual education in local private schools set up to circumvent government passivity, are providing leadership in numerous communities. Religious leadership and activism in rural areas is more indigenous, with foreign priests and missionaries increasingly a thing of the past. In some indigenous areas, local *ladino* elites and business owners who fled the violence have been replaced by Mayans, quite often using start-up capital from relatives who are working in the U.S.

Attempts to build Mayan political parties continue, as does the debate on whether to participate in mainstream *ladino* political ventures. Two-time Quetzaltenango Mayor Rigoberto Quemé is spearheading a project to build a pluricultural political party with Mayans and *ladinos* who share common values and outlooks. Alfredo Tay Coyoy,<sup>37</sup> member of a wealthy Quiché family in Quetzaltenango and the first Mayan to head a government ministry, is rumored to be forming a political party.

Mayans are also actively participating in government at local and national levels. Portillo appointed Otilia Lux de Cojti, formerly a member of the Historical Clarification Commission, long-

#### MAYAN LANGUAGE IN GUATEMALA AND APPROXIMATE NUMBER OF SPEAKERS.

Q'ECHI' (361,000), POQOMCHI' (50,000), POQOMAM (31,000)

(from the K'iche' branch) K'ICHE' (926,000), SIPAKAPENSE (3,000), SAKAPULTEKO (21,000), TZ'UTUJIL (80,000), KAQCHIKEL (405,000), USPANTEKO (2,000)

(from the Mam branch) MAM (686,000), TEK-TITEKO (2,500), AWAKATEKO (16,000), IXIL (71,000)

(from the Q'anjob'al branch) POPTI (32,000), AKATEKO (20,000), Q'ANJOB'AL (112,000), TOJOLABAL (58,000), CHUJ (29,000) (from the Chol branch) CH'ORTI' (52,000) (from the Yukateca branch) MOPAN (5,000), ITZA (3,000)

There are Chalchitecos in Uspantán who claim theirs is a separate language. There are small numbers of speakers of non-Mayan tongues: Garifuna and Xinca.



time educator, Virgilio Alvarado, from the prominent Mayan NGO, CDRO, and Mayan intellectual Demetrio Cojtí, to high level positions. Conservative Haroldo Quej, a Mayan-Kekchí is a protégé of Ríos Montt. He was mayor of San Pedro Carchá, then was elected to Congress, and later was appointed by Portillo to head the new Ministry of the Environment, before being sent back to Congress. As the controversial, U.S. educated, neoliberal Mayan political analyst Estuardo Zapeta asked in the daily *Siglo XXI*, “Who ever decreed that in order to be a true Mayan you must be a leftist?” Some Mayan activists were even recruited to work in the SAE, the civilian-operat-

ed government intelligence agency. At regional levels, Mayans are leaders in government bilingual education and health programs.

Many in these new areas of Mayan activism support the Mayan movement’s demands for recognition of their rights and identity. But the support has not yet translated into reconstructed, stronger Mayan organizations, or into votes or general mobilization. There is little articulation between cultural demands and pressing socio-economic issues. Despite the difficulties, Mayan activists believe it is only a matter of time before the Mayan movement generates the necessary new organizations, structures, and leadership.

## ELECTORAL BARRIERS TO CONSOLIDATING DEMOCRACY

Democracy and elections are not the same thing. While elections are a necessary ingredient, the notion of procedural democracy requires the right of citizens to participate in an equitable manner in leadership choice, in policy formation and implementation. It requires the rule of law and an institutional structure to support these processes. More ample conceptions of democracy, pertinent to Guatemala, take into account social inequality among class and ethnic groups, and poverty levels, conditions which can only undermine democracy by preventing the real practice of democracy regardless of the formal rule structure.

Elections contribute to the consolidation of democracy when important decisions are actually made through the electoral process, and with ample participation. Elections can help build political stability and a culture of support for democratic values. This does not happen when some social sectors are severely disadvantaged by the electoral process.

The recent evolution of electoral democracy in Guatemala began in 1984, thirty years after the CIA-sponsored overthrow of the elected government of Jacobo Arbenz. An elected Constituent

Assembly drafted a constitution, and general elections followed in 1985. But leftist groups were outlawed. Critics charged that the military ran the new government and virtually controlled the daily calendar of President Vinicio Cerezo. Human rights abuses continued unabated.<sup>38</sup>

Despite these inauspicious beginnings civilian elections continued, and have helped build the expectation that governments will change through the ballot box. Contesting parties have accepted results, with few exceptions. Although observers have not found evidence of serious election-tampering, large segments of the public (40%) believe elections in Guatemala are fraudulent.<sup>39</sup>

The stability of civilian elections cannot yet be taken for granted. There were two coup attempts during the Cerezo regime. His successor, President Jorge Serrano attempted a coup with some military support. This failed, after an outcry by CSOs, international pressure, and eventual opposition from military “institutionalists.” Former leading presidential candidate Jorge Carpio Nicolle was assassinated in 1993. As recently as early 2001, there were coup rumors of sufficient credibility to warrant a visit and statements by the Secretary General of the Organization of American States.

The Guatemalan Congress has been an obstacle to successful democratic consolidation. President Serrano's main justification for attempting a coup was rampant corruption in Congress, and the charges were valid. In the wake of the failed coup, many of the corrupt were pressured to resign. Even so, subsequent legislatures have been slowed by severe weaknesses: a weak research capacity, internal rules that contribute to lack of consistency, high turnover and inexperience, and little institutional memory. The Congress so confused the 1999 constitutional amendment process that it contributed to the referendum defeat. The "Guategate" scandal undermined the legitimacy of Congress. There has been a welter of splits in party benches and formation of new parties. A citizen who voted for the PAN congressional slate has seen its congressional bench halved by defections.<sup>40</sup>

Municipal governments have more power and budget than before, but there has been high turnover. And a few mayors have been violently thrown out following charges of corruption. However there have been municipal bright spots including increased elections of indigenous candidates, and more ample forms of participation. Citizens have higher regard for municipal government than any other government institution, though a recent poll showed some decline.<sup>41</sup>

These general weaknesses are part of a vicious circle that includes three significant electoral elements. Political parties have little permanence. Thus they are not able to "represent," and voters face new groups with short track records. Second, voter turnout, by comparative standards, has ranged from low to extremely low, though there was some improvement in 1999. Finally, the system disadvantages women, the indigenous, and rural dwellers, a pattern mirrored in the economic sphere.

### PARTIES

In many countries television campaigning and other factors have reduced the importance of political parties. But there is general agreement that electoral democracy works better with a stable system of parties. Elections are organized

around parties. Continuity provides voters with at least a symbolic meaning. A stable party system does not represent or channel demands from the public as well as ideal versions of democracy would wish, but they seem to do so better than unstable party systems.<sup>42</sup>

During the past 15 years Guatemala has had extreme party turnover, even by comparison with other countries that have irregular, fluid, or "inchoate," party structures (such as Bolivia, Brazil, and Ecuador).<sup>43</sup> It is common in countries that use proportional representation for small parties to disappear after an election or two. But in Guatemala *large* parties have just as quickly disappeared or declined to the point of irrelevance. In 1995, it almost seemed as though the country was beginning again with a whole new collection of parties. The PAN, 1995's big winner, declined sharply by the next election. And the FRG has suffered a sharp decline in popularity since the 1999 election.

**The Christian Democrats.** The *Democracia Cristiana Guatemalteca* (DCG) won big in 1985. It was seen by Guatemala's right wing as dangerously leftist, but its ideology was centrist or center-right. As happened in other parts of Central and South America, Christian Democrat parties were positioned as a centrist alternative to Marxist insurgents and right-wing military dictatorships (sometimes with U.S. support). The DCG had suffered from severe repression at the hands of Guatemala's right-wing death squads. Presidential candidate Vinicio Cerezo won 70% in the runoff, and the DCG won 51 of 100 congressional seats, more than double its closest opponent.

But it was crushed in 1990. It received only 40% of the number of presidential votes it had in 1985. It dropped to less than one quarter of the deputies. In 1995, the DCG had to ally with the *Unión del Centro Nacional* (UCN), but still finished a distant third. The DCG won three congressional seats and another two in coalition. By 1999 it was barely alive.

**The Unión del Centro Nacional.** The UCN was largely a personal vehicle for the political ambitions of its founder and leader, Jorge Carpio Nicolle. A

member of the Guatemalan elite, Carpio owned a number of businesses including a newspaper. The UCN in 1990 won the largest bench of deputies (41 of 116) in a legislature in which 5 parties had twelve or more seats. It won 127 municipalities and finished second in another 86. No other party, apart from the DCG, won more than two dozen municipalities. After a close first round of the presidential election, Carpio lost 2:1 to Jorge Serrano of the *Movimiento de Acción Solidaria* (MAS). After Carpio's assassination in 1993, the party declined dramatically.

**The *Movimiento de Acción Solidaria*.** The MAS was a new party in 1990 that targeted its appeal to the growing number of evangelical Christians. It, too, relied heavily on its candidate, Jorge Serrano. It won 8 deputies on the national list, and only ten other deputies from 7 of 23 districts. The UCN, by contrast, won at least one deputy in every Department. Following the attempted coup by Serrano the MAS disappeared.

**TABLE 1: CHRISTIAN DEMOCRAT PARTY**

	Deputy Vote	Seats won	President	President 2nd round	Municipal wins
1984***	16.4%	20 of 80	NA	NA	NA
1985	34.5%	51 of 100	38.6%	68.4%	182
1990	17%	27 of 116	25.7%	NA	81
1995	12.8%*	3 of 80**	12.8%*	NA	42**
1999	4%	2 of 113	NA	NA	9**

\* Ran in coalition in some constituencies. \*\* The DCG shared 2 more seats in 1995 and 13 more municipalities, and three more municipalities in 1999.

\*\*\* Constituent Assembly election.

**TABLE 2: UCN VOTE**

	Deputy Vote	Seats won	President	President 2nd round	Municipal wins
1984	13.7%	21 of 80	NA	NA	NA
1985	21.4%	22 of 100	20.2	31.6	68
1990	22%	41 of 116	25.7	31.9	127
1995	12.8%	2 of 80**	12.9	NA	27 **
1999	2%	0			1

\*\* See above for DCG.

**TABLE 3: MAS VOTE**

	Deputy Vote	Seats won	President	President 2nd round	Municipal wins
1990	14%	18 of 116	24%	68%	20

**The *Partido de Avanzada Nacional*.** The PAN was a new party in national elections in 1990, drawing much of its support in Guatemala City with heavy backing from "modernizing" leaders of the private sector. In 1990, the PAN won 15 seats and 18 municipalities, including Guatemala City. In 1995, Álvaro Arzú (a leading businessman) won after a close second-round runoff against the FRG's Alfonso Portillo. The

**TABLE 4: PAN VOTE**

	Deputy Vote	Seats won	President	President 2nd round	Municipal wins
1985					1
1990	15%	12 of 116	17.3%	NA	18
1995	34.3%	43 of 80	36.6%	51.2%	105
1999	27%	37 of 113	30.3%	31.7%	108

PAN won 43 of the 80 congressional seats and 105 municipalities, including Guatemala City again. However, 1999 spelled disaster. PAN's presidential candidate, Oscar Berger, mayor of Guatemala City, trailed by almost 400,000 votes in the first round and even lost by 30,000 votes in Guatemala City.

**The Frente Republicano Guatemalteco.** The founder and main leader of the party was ex-

ally by large margins, in every department. The FRG won a comfortable congressional majority and over half of the municipalities.

**The left.** Leftist parties were able to enter the electoral arena in 1995 for the first time in nearly half a century. The coalition *Frente Democrático Nuevo Guatemala* (FDNG) with minimal campaign funds won six seats. After the peace accords, the URNG guerrilla coalition morphed into a legal political party. Following fractious pre-election politics, it ran in the 1999 elections as part of the *Alianza Nueva Nación* (ANN) coalition, but not with the FDNG. ANN won the same proportion of seats as the FDNG in 1995. The FDNG won in five municipalities in 1999. Its 3% of the national

**TABLE 5: FRG VOTE**

	Deputy Vote	Seats won	President	President 2nd round	Municipal wins
1990	13%	12 of 116	NA	NA	18
1995	20%	19 of 80	22.1%	48.8%	47
1999	42%	63 of 113	47.7%	68.3%	151

General and former dictator, Efraín Ríos Montt. The FRG did about as well as the PAN in 1990, but unlike the PAN, the strength of the FRG was in rural areas, and the party made a concerted effort to recruit ex-members of civil patrols. It also had the support of many ex-military officers. Though he showed well in opinion polls Ríos Montt has been constitutionally prevented from running for president.

In 1995, Ríos Montt chose Alfonso Portillo, a former leftist who spent much of the 1980s in Mexico before returning and joining the Christian Democrats, as presidential candidate. The strange alliance proved quite shrewd, and Portillo narrowly lost the second round to Arzú. The party won 19 congressional seats and 47 municipalities. In 1999, Portillo won, usu-

ally by large margins, in every department.

list vote was not enough to win a seat. At the local level, Civic Committees were numerous (174 in 1999), but they have had only modest success. In 1999, civic committees won in 25 municipalities and finished second in 14 others.<sup>44</sup>

**Past as prologue?** Three major parties have disappeared. Their dire fate does not predict, however, that the PAN's sharp decline in 1999 will lead it down a similar path to oblivion. Cynical Guatemalan voters will not necessarily throw out the last party to win.

The PAN's decline was not as steep as that of the DCG in 1990, or as the UCN in 1995. The decline and fall of the DCG, the UCN, and the MAS were each marked by particular historic circumstances.

The DCG's 1990 defeat followed a Latin American trend in which parties that won following the return to limited civilian rule lost in the next round, because they failed to meet economic expectations generated by the turn toward electoral democracy. The MAS disappeared because of its dis-

**TABLE 6: THE LEFT VOTE: FDNG IN 1995 AND ANN (DIA-URNG) 1999**

	Deputy Vote	Seats won	President	President 2nd round	Municipal wins
1995	9.1%	6 of 80	7.7%	NA	0
1999	11%	9 of 113	12.4%	NA	13



graced leader. The most visible leader of the UCN was assassinated, even in violent Guatemala an unusual circumstance.

However, the decline of each of these parties can also be attributed to other factors that remain very much present. None made a significant dent in improving the economic fortunes of the vast majority of poor people. Neither did the PAN, nor has the FRG thus far. The decline of these early parties was precipitated, in part, by perceptions of rampant corruption. Polls still show that the Congress and political parties do not get much respect.<sup>45</sup> An April 2001 poll found 67% of respondents saying that the Portillo administration is the most corrupt since the transition to civilian elections, while 80% said that Ríos Montt is corrupt and dishonest.

Moreover, the existing parties show signs of fragmentation. The PAN bench divided after the 1999 election, when 16 of its 37 deputies broke away to begin the Unionists Party. Two deputies left the FRG, leaving it with 61. Then there were more splits. The PAN was left with 18 deputies and the Unionists 13. The left coalition ANN (with the URNG) lost its 1999 presidential candidate, Álvaro Colom, who formed a new party (the *Union Nacional de la Esperanza*—National Union of Hope—or UNE). The UNE reduced the ANN bench from 9 to 8, and attracted six other deputies from PAN and the Unionists. Two other members of the PAN declared themselves independent. And four other deputies remain with 3 small parties. These developments, no doubt bewildering to Guatemalan citizens, left a fragmented congress and serious questions about the lasting significance of casting a vote for a party and about the cohesiveness of the parties as future electoral vehicles.

Although the FRG is relatively more powerful, given the divisions in other parties, there are clear signs of weakness. Ríos Montt was, despite his acquittal in the Guategate scandal, considerably weakened by a year's worth of press stories about it. He is now 75. When he coyly demurred a year ago about running for another term as head of the Congress, party members argued that the party would fall apart without him. They could be right.

However, should the PAN and FRG decline further, it is not at all clear what or who might replace

them. The electoral system has made it relatively easy for a large party to capture a majority in the Congress. With only about one third of the vote, the DCG won 51 of 100 seats, and the PAN 43 of 80. The FRG, in 1999, got 42% of the vote and 56% of the seats.<sup>46</sup> In the early elections medium-sized parties also did well and, in the case of the PAN and the FRG, were able to become large parties. That was not true in 1995 and 1999. In 1985 the third and fourth place parties totaled almost one-quarter of the seats; in 1990 the 3rd, 4th, and 5th place parties won over one-third of the seats. However in 1995 and 1999 the 3rd and 4th place parties combined seats were only ten percent. So there is no apparent challenger. One possibility, given the "all parties weakened" scenario, could be a congress divided among several medium and small parties, with no majority party.

Serious doubts remain as to whether the URNG will advance to become a major electoral force. The long-standing tendency toward internal bickering included a bruising fight over selecting a vice-presidential candidate in 1999. The URNG managed to pass up the opportunity to run a highly respected, internationally known Mayan woman, Rosalina Tuyuc, perhaps in the belief that a woman Mayan candidate would hurt their chances of winning. Signs of internal fighting were evident late into 2001.

There are no clear signs yet of the formation of a unified Mayan party, or of a tendency for Mayans to vote as a block. However their numbers could make them an extremely powerful voting block. Given the current scene of two divided, conservative, ladino-dominated parties, a large block of Mayan votes could either decide the fate of the ladino parties, or potentially win an election, or a sizeable chunk of congressional seats. But there are many divisions, and Mayans are under represented on voter registration lists.

## VOTER TURNOUT

Large numbers of Guatemalans do not vote, or cast null ballots.

Turnout in the two constitutional referenda was 16% and 18% of registered voters. Some argued that a massive campaign in 1999 against



the amendments generated a big “no” vote. Seen from the perspective of the turnout problem, however, the campaign was ineffective, because the margin of defeat was only 75,000 votes. That’s about 1% of the voting age population (VAP) — hardly a massive vote mobilization.<sup>47</sup>

**Barriers to turnout.** In a comparison of voter turnout (as percent of VAP) in 20 Latin American countries, Guatemala was last (see Chart 1). Turnout did increase in the 1999 general election, owing to effective campaigns by the electoral authorities and civil society organizations. For this positive trend to continue, the government needs to make registering and voting easier.

It is difficult for large numbers of Guatemalans to register and vote, particularly the rural poor, those lacking information, those who are illiterate, women, and Mayans. Those lacking most in services from the government might, in

theory, wish to vote in a new government. But for those so lacking it is also hardest to be informed, hardest to register, and hardest to vote.

To register one needs a residency card and to get that one needs a birth certificate. Most rural births are not in medical institutions, so many rural people must travel to the municipal center to obtain one. The process for getting a birth certificate and then a residency card can be complicated and expensive for a rural poor person. With these two documents one then goes to the municipal center to be inscribed on the voter rolls. Finally, one must go back again, at some difficult to determine time, to pick up the voting card.

Voting takes place only at municipal centers. This involves considerable travel for hundreds of thousands of rural voters. Lehouc and Wall, in a study of voting turnout using municipal level data over three elections, discovered that the geograph-

#### MEASUREMENT OF TURNOUT.

Measuring turnout by percent of registered voters underestimates and distorts the nature of the problem. A principle cause of the distortion, argue Horacio Boneo and Edelberto Torres-Rivas in *¿Por qué no votan los guatemaltecos?*, lies in inaccuracies in the voter registration list.<sup>48</sup>

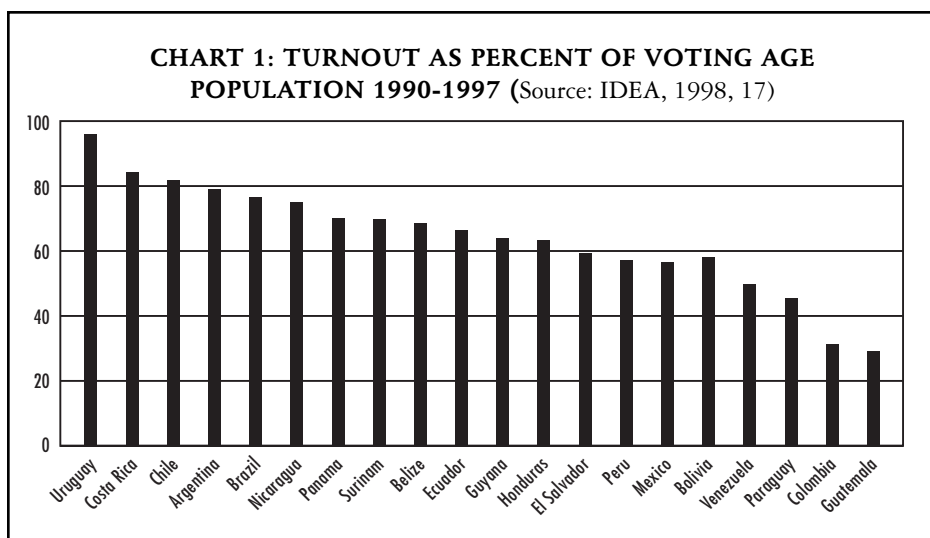
- There is no systematic method of removing the names of the dead - a distortion that would magnify each year. They estimate rolls contain 300,000 deceased citizens or 6%.
- The lists contain uncounted thousands who have migrated to the U.S. and cannot vote (given lack of absentee ballot measures even for Guatemalans inside Guatemala). The authors cite migration estimates of 450,000 people (including children) between 1985 and 1995, with perhaps another 120,000 in the next four years.
- If a voter moves to a new municipality the voter must either return to the old one to vote, or go through an arduous process of registering again. The authors estimate that another 8% to 11% of the list have moved and not re-registered. In addition a November election date means hundreds of thousands are away from “home” working the crop harvests.

- Registration is a two step process, and the list contains those who have inscribed themselves (step 1) but do not yet have the necessary voting card (step 2). In 1999 that amounted to 8.6% of those on the lists, some 382,000 people.

The authors conclude that the percent of those of voting age not **effectively** registered, (not on the list, lacking a card, or away from their municipality) was not 19% as estimated by the TSE but rather 36%. This means that the abstention of those effectively registered is relatively small at 18%.<sup>49</sup> Abstention measured by voting age population (VAP) is much higher.

The voter registration lists contain data on gender, age, and literacy, which can be used to help determine who among the registered voters tends to vote. Comparison with 1994 census data (not free from problems, but relatively good data at the departmental level) provides a basis for estimating which sectors of the population tend to not be registered and actual turnout.

To take an illustrative, though perhaps extreme, example, 1999 turnout of 18-19 year olds as measured by percent of those registered was 60.5%. However, turnout measured as a percent of VAP of that age group was 22.7%.



ic size of the municipality negatively correlated with turnout at statistically significant levels. The Boneo and Torres-Rivas study included two large, though not nationally representative, polls in which 77% to 81% of non-voters said they would vote if voting centers were brought to their community. In a 1999 national survey by Borge and Associates, 53% of respondents said it took over 20 minutes to go from home to voting places and 5% said it took 1 to 3 hours.<sup>50</sup> For example, in Santa Cruz del Quiché 2/3 of the population of 30,000 live in 62 population centers, 38 of which range from five to twenty miles from the municipal center. In Santa Eulalia 80% of 30,000 people live outside the municipal centers in 57 locations, some 20 of which are 25 to 40 miles distant.<sup>51</sup>

Registration difficulties result in lower voting for some groups. If those under 35 voted at the same rates as those between 35 and 55, turnout would rise ten points. Women abstain at a rate 50% higher than men. If women voted at the same rate turnout would rise 11 points. Once registered, the indigenous population votes at about the same rate as the non-indigenous population, and seemed to vote at a higher rate in the 1999 constitutional referendum. The surveys done in the Boneo and Torres-Rivas study suggest that registration is lower among the indigenous by ten points (53–44% in two surveys). There is variation, however, in turnout rates in different departments with large indigenous populations. Sololá, with a 94% indigenous population, had the high-

est voting rate in the country for the general elections of 1990, 1995, and 1999 (measured as percent of registered voters).<sup>52</sup>

According to one Boneo and Torres-Rivas survey, voter registration rates rose (though not evenly) according to education. The extreme cases according to Boneo and Torres-Rivas contrast non-

indigenous men with at least primary education with indigenous women who have not been to school. Of the former, 81% said they had voted. In the latter group 51% said they had voted.<sup>53</sup>

**The null and blank factor.** Guatemala has also had high rates of voters casting null and blank ballots. Null and blank votes might signify protest, lack of interest, or lack of education and confusion about the balloting process — issues that have conceptual overlap with the turnout problem. In virtually every election since 1984, except second round presidential elections, the combination of null and blank votes as a percent of total votes has been in double digits.

By contrast, in El Salvador (another post war country with low education, centralized voting,

**TABLE 7: NULL AND BLANK**

Election	N+B %
1984 Constituent Assembly	22
1985 President round 1	12
1985 President round 2	9
1990 Deputy (national list)	11
1990 President round 1	14
1991 President. round 2	5
1995 Deputy (national list)	14
1995 Deputy (district lists)	13
1995 President round 1	11
1999 Deputy (national list)	12
1999 President round 1	8
1999 President round 2	4

and high abstention rates) the proportion of blank, mismarked and spoiled ballots in the March 2000 deputy elections was 3.7%. During the Salvadoran war these rates were higher, perhaps because of guerrilla calls to boycott elections. In 1988 the rate was 14%, and dropped to 7.4% in the first post war 1994 deputy elections.

In Guatemala, the null and blank rate is much higher in rural departments. In national list congressional elections from 1990 to 1999, the 22 electoral districts outside of Guatemala City had a null and blank rate of 14% or more in most elections (35 of 66). During the 1999 deputy elections, 45% of Guatemala's 330 municipalities had null and blank rates of 14% or higher. Relatively better support for local government may explain why the null and blank vote rate in 1999 was at 8.5% in local elections.

If one imagined that there were a political party in Guatemala called the Null and Blank Party its "votes" in the 1999 deputy elections would have been sufficient to win 7 of the 13 seats that were not won by the PAN or the FRG.<sup>54</sup> "Null and Blank" would have been the third largest party in Congress.

**Turnout and political culture.** Not all of the turnout problem can be attributed to inconveniences of the system. In the Boneo and Torres-Rivas study, one survey asked why citizens had not registered, and 24% said they had no interest in voting or in politics. Confidence in government

institutions is relatively low. A 1999 study of political culture found little overall change in confidence since 1993, although some changes were noted with respect to particular institutions.<sup>55</sup>

The same study found a modest increase in a measure which combines support for the system and support for political tolerance between 1993 and 1999 (from 22% to 28%), suggesting slight growth of a political culture supportive of democracy. This was countered, however, by an increase since 1993 of those who wanted a "strong hand" (*mano dura*) government from 48% to 60%. Those who preferred "participation for all" fell from 40% to 29%.<sup>56</sup>

Recent comparative data are also not encouraging. In Latinobarometro studies of Latin American countries between 1996 and 1998, Guatemala finished toward the bottom (along with 5 other countries) in preference for democracy (about 55% compared to a regional average of 63%) and in a second place tie (with Mexico) in expressions of preference for authoritarian government (about 25%).<sup>57</sup>

It may be, however, that changes in the rules will increase participation. Congress has considered but not passed an electoral reform law. The draft legislation ignores many of the issues proposed by various civic groups, but does call for decentralization of the voting process. However, the electoral tribunal will not have the capacity or time to implement the law (if approved) without considerable additional resources.

## REFORMING THE JUSTICE SYSTEM\*

**M**ost Guatemalans have rightly tended to see the law as something that operates for the benefit of the powerful rather than as a resource to protect their fundamental rights. During the armed conflict the military controlled the judiciary. Often disputes

were resolved by extra-judicial mechanisms that resorted to extreme violence.<sup>58</sup> The CEH asserted that the judicial system failed to check the military's *de facto* exercise of power and systematic abuse of human rights by the state, and thereby actively facilitated the violence.<sup>59</sup> In

\* Rachel Sieder thanks Federico Andreu, Albane Prophette, Luis Ramírez, Jack Spence and Tracy Ulltveit-Moe for their helpful comments and aid with bibliographical materials.

addition, the military regime of Ríos Montt (1982–3) adopted a ‘quasi-legal’ form when summary justice was dispensed through the *tribunales de fuero especial*; military-run courts that failed to meet the most elementary guarantees of due process. Despite important attempts in the early 1990s to modernize the justice system, it continued to be under-funded, inefficient, and inaccessible — particularly to indigenous people, women, children, and the poor.<sup>60</sup> It was plagued by corruption, lack of independence, and was staffed by poorly trained, under-motivated functionaries who were subject to the influence of elite groups. However, the relative lack of rule of law also affects elite groups and the functioning of the economy by creating incentives for personal deal-making and bribes, rather than reliance on impersonal contracts enforced by an efficient judiciary.

By the mid 1990s, the justice system was being overwhelmed by a vertiginous rise in crime. While state violations of civil rights declined,<sup>61</sup> armed robbery, car-theft, kidnapping,<sup>62</sup> child abduction for illegal adoption, drug trafficking, homicides, rape, gang violence, and money laundering are now common. Official figures are notoriously unreliable, but one source estimated that the total number of reported crimes increased by 50% between 1996 and 1998.<sup>63</sup> Surveys taken in 17 Latin American countries revealed that Guatemala had, by far, the highest rate (55%) of those polled who declared that a member of their family had been a victim of crime sometime in the previous year.<sup>64</sup> The annual rate of violent death was estimated at 77 per 100,000 people in 1998, second only in the region to El Salvador (82 per 100,000), and compared to approximately 10 per 100,000 for the U.S.<sup>65</sup> The crime wave is linked to socio-economic inequality, the growth in drug trafficking, and the involvement of former members of the armed forces and military intelligence networks. Organized crime is one of the main reasons why judicial reforms have not yielded greater results.

The 1996 peace settlement aimed to transform an authoritarian, discriminatory, and high-

ly punitive legal tradition. It sought modernization of the judicial system, peaceful judicial resolution of conflicts, accountability of state officials and institutions, and respect for human rights and due process guarantees. The accords insisted on the official recognition of Guatemala’s multicultural and multiethnic nature. This meant free access to impartial and efficient justice; and the right to be judged in one’s own language and to use alternative, culturally appropriate conflict resolution mechanisms, or indigenous customary law. This required a reform of the 1985 constitution, specifically of Article 203, which gave the courts the exclusive right to exercise jurisdiction. Such changes would amount to fundamental transformation of Guatemalan legal culture.

The accords mandated doubling budget allocations to the justice sector by the year 2000 (compared to 1995 levels). Under the accords, in 1997 the multi-sector Commission for the Strengthening of Justice was set up, undertook a unique process of consultation with civic and professional groups, and made proposals to address these themes.<sup>66</sup>

### LEGAL REFORMS

Like many other Latin American countries in the 1990s, Guatemala reformed its Penal Procedures Code (Código Procesal Penal or CPP) to establish due process — particularly the presumption of innocence, habeas corpus, and the right to legal defense with an autonomous public defenders service. Judges had been responsible for investigations, reaching a verdict and guaranteeing civil rights — multiple functions that often resulted in conflicts of interest. The CPP assigned investigation and prosecution exclusively to the Public Ministry (*Ministerio Público*). Previously, trials had been secretive affairs dominated by documents where the accused was often not aware of the charges until the sentencing stage. The CPP introduced public, oral proceedings. It established the right to be heard in one’s own language. It allowed other civic actors to take part in criminal cases, such as relatives of vic-



tims or non-governmental organizations (NGOs), which became co-plaintiffs (*querelantes adhesivos*) in key human rights cases.

Additional new reforms include a law that regulates judicial training, a Council of Judicial Training, and a disciplinary body for judges to enforce a Code of Judicial Ethics. Still needed are reforms to university training and to the selection process of judges, public prosecutors, defenders, and lawyers, in order to deal with nepotism. These will take many years to achieve.<sup>67</sup>

Access to the justice system has improved, particularly for the indigenous, with considerable help from international donors such as the World Bank, the Organization of American States (OAS), the UNDP, USAID, the European Union (EU) and MINUGUA. Since 1996 there are 102 new courts with 35 posts for legal interpreters, and justices of the peace (*juzgados de paz*), which covered only two-thirds of the national territory, in all 330 municipalities. Between 1994 and 1999, the total number of judges and magistrates increased from 400 to 753.<sup>68</sup> In January 2001 Hugo Maúl, the President of the Supreme Court, announced a plan to build another 83 Offices of Justices of the Peace.<sup>69</sup>

Between 1995 and 1998, MINUGUA established pilot projects for multilingual justice administration in the six departments with large indigenous populations. The program trained ninety interpreters and held public workshops. Unfortunately, the UN suspended the program following internal conflicts over its direction.<sup>70</sup> USAID provided \$10 million to the Rafael Landívar University to train legal translators, and supported a program of “justice centers” to coordinate police, prosecutors, judges, public defenders, lawyers and local civil society groups and provide alternative dispute resolution (ADR) and interpreters in specific areas.<sup>71</sup>

The original ADR proposal recognized indigenous rights to customary law, as mandated in the peace accords. However, PAN deputies were suspicious, and they vetoed this clause in 1997.<sup>72</sup> Instead a new ‘community court’ (*juzgado de paz*

*comunitario* or *tribunal comunitario*) avoided recognition of existing indigenous dispute resolution institutions and practices by superimposing the new court in a handful of indigenous municipalities with little consultation.<sup>73</sup> Nonetheless, these pilot courts have had some success in providing access to more culturally appropriate, bilingual conflict resolution, and have in some places coordinated with traditional and municipal authorities.

### REMAINING WEAKNESSES

Expanded court coverage has been unable to fulfill hopes of enforcing the rule of law and responding to the crime wave, because more thorough institutional reform is needed and so is an effective effort to tackle impunity. The judicial culture continues to be marked by inefficiency, routine violation of due process, and gender, ethnic and class bias. CPP implementation is uneven. Many judges, public prosecutors and defenders lack training, despite significant international donations. Others are simply reluctant to innovate.

Meanwhile, the CPP has come under attack because of the crime wave, with proponents of hard-line measures denouncing its rights protections. The issue is complex. Defense lawyers do create excessive delays through use of the constitutional right of *amparo* — an appeal to the Constitutional Court that claims a judicial decision has violated the rights of the accused. The Constitutional Court hears all such appeals, whatever their merit, so recourse to *amparo* is often formalistic or inaccurate.

The use of *amparo* is often an effective delaying tactic. For example, in the cases against civil patrollers for the 1982 massacres at Agua Fría, El Quiché and Río Negro, Baja Verapaz, defense lawyers lodged *amparo* writs and succeeded in delaying the process for years. Convictions finally came in November 1998. They were subsequently acquitted, retried, and reconvicted in October 1999. The case remains caught up in a lengthy appeals process, and accusations against another 45 patrollers and military personnel implicated in the massacres have yet to be resolved.<sup>74</sup> In 2001, the

Constitutional Court received approximately five petitions of *amparo* a day.<sup>75</sup>

Access to bilingual justice remains low. Many judicial employees are deeply suspicious of adopting multicultural legal procedures. The new public defenders service remains acutely weak; its employees have been criticized for lack of motivation.<sup>76</sup> The 1999 rejection of the constitutional reforms in the referendum dealt a massive setback to efforts to multiculturalize justice. Many of the proposals can be advanced through ordinary legislation, but the effective recognition of indigenous customary law is impossible without constitutional amendment, particularly of Article 203, which gives exclusive jurisdiction to the judiciary. Undoubtedly the coordination of state laws and indigenous customary law is complex. However, the failure to incorporate into the Constitution this internationally recognized legal right was the loss of an historic opportunity to create a more accessible and legitimate judicial structure.<sup>77</sup> Given current levels of resistance to such a change and the weakness of the organized Mayan movement, progress on this issue in the medium term appears unlikely.

**The Public Ministry.** The PM, or public prosecutor's office, is weak. In Guatemala City alone the PM receives 90,000 cases a year, according to a 1999 USAID study. Reception clerks, unguided by official criteria, dismissed over one third of these in the belief that they were without merit. About half of the remaining cases were dropped because the complainant failed to clearly identify the alleged guilty party. The remaining cases were divided between 35 prosecutor teams. Only about 1,100 of these resulted in court filings. A sample of cases showed that close to 100 per cent of the victims and witnesses eventually recanted their testimony or refused to cooperate with investigators, perhaps due to threats. Of the 90,000 criminal complaints filed, successful prosecution approached the rate of zero.<sup>78</sup>

During the Portillo administration the PM has conspicuously failed to initiate proceedings against government officials and agencies accused of corruption or illegal acts. In the notorious, aforementioned bank scandal,

months passed before the PM began to investigate charges of corruption and embezzlement against Portillo's close ally, Francisco Alvarado.<sup>79</sup>

The PM and the National Civilian Police (PNC) rarely coordinate their efforts. Although the Code clearly states that the PNC is subordinate to the PM in investigations, inefficiency and professional rivalries beset the relationship. The PNC are poorly trained in evidence collection and analysis, and often lack adequate technical facilities.

**Corruption and intimidation.** Judges, lawyers, and public prosecutors are vulnerable to intimidation, interference, and corruption. A recent study by the Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG) found that 25% of judges and 87% of public prosecutors acknowledged they had been pressured by their superiors or influential parties.<sup>80</sup> The Supreme Court and the highest echelons of the judicial apparatus control promotions and can thus bring pressure to bear. However, many judges who denounce Supreme Court interference have themselves been investigated on charges of corruption. For example, Judge Delmy Castañeda was dismissed following accusations that she had let drug traffickers off the hook.<sup>81</sup>

Low salaries and poor training foment corruption. Disciplinary procedures remain inadequate and officials charged with corruption rarely face criminal prosecution. A section of the PM created in April 2000 to deal with corruption, has filed charges in only 13 cases out of 2,200 complaints, and achieved convictions in a mere two cases. Constant harassment and threats mean that many officials are scared to testify, investigate, or judge impartially. A new office within the PM to protect justice sector workers (*Fiscalía de Amenazas*) had accumulated a case load of 55 within two months of its inauguration.<sup>82</sup>

In May 2001 the UN Special Rapporteur on the Independence of Judges and Lawyers condemned recent intimidation against judges and prosecutors, including assassinations, attacks and death threats. Between September 1996 and June

1999 the Myrna Mack Foundation documented 158 cases of threats, intimidation and attacks against judges, prosecutors, lawyers and others linked to the justice system.<sup>83</sup> At least thirteen judges were killed between March 2000 and March 2001. Organized criminals, police, army, and ex-civil patrollers carry out these attacks; investigations and prosecutions are rare. Despite the recommendation of the Commission for Strengthening Justice, state protection for judicial personnel or witnesses is wholly inadequate. Judges and magistrates are considered such high risks that they cannot obtain life insurance.<sup>84</sup>

**The prison system.**<sup>85</sup> The prison system is in crisis. A 1999 survey found that 67% of the prison population had not been sentenced.<sup>86</sup> Pre-trial detention often exceeds the maximum sentence that would have been served had a conviction been secured. Despite the creation of the public defense service most detainees still have little or no access to defense lawyers. The CPP provides for alternatives to incarceration, such as bail or house arrest, but these are under-utilized. The tendency toward tougher sentencing is exacerbating overcrowding and thus poor hygiene. Prisoners are subject to physical and sexual abuse and extortion. No attempt is made to rehabilitate them, so recidivism is high. The corruption of prison officials also means that breakouts are frequent — between June 1996 and June 2001 some 203 prisoners escaped.<sup>87</sup> When 78 highly dangerous prisoners escaped in June 2001, some commentators argued that the military should control the prisons. Ten of the 78 turned up dead, pointing to the use of extra-judicial execution.<sup>88</sup>

#### UNDERWRITING IMPUNITY—LOS PODERES PARALELOS

The Myrna Mack Foundation, the Catholic Church's Human Rights Office (*Oficina de Derechos Humanos del Arzobispado*, ODHA) and other human rights activists have repeatedly argued that a clandestine network operates throughout the justice system and the public security forces to protect powerful individuals by preventing thor-

ough criminal investigations and pressuring judges. Suborning justice happens, particularly — though not exclusively— in cases where military officers are implicated in human rights violations. This network, often referred to as “parallel powers” (*poderes paralelos*), originates in military intelligence structures and is supported by members of the PNC, the PM, and the courts. It carries out parallel investigations;<sup>89</sup> hides, alters or invents evidence; bribes police, prosecutors and judges; and finds ‘fall guys’ to take the rap. When necessary, witnesses and officials are threatened or murdered. These networks have entrenched interests in criminal gangs. High profile cases, such as the Gerardi trial (see box), have revealed methods such as using common criminals to gather information and to threaten and attack their targets.

The progress of high profile human rights cases through the courts indicates the continued success of the military in obstructing the judicial process:

- The trial of 25 soldiers charged with gunning down 11 unarmed civilians in the Xamán community of returned refugees in Chisec Alta Verapaz in October 1995 took over four years and was condemned by international observers as a travesty of justice. Hearings were repeatedly delayed, the military withheld vital information, and pressure was brought to bear on witnesses, including bribes and death threats. The judge maintained that the soldiers had been provoked into firing, and convicted them on the lesser charge of manslaughter. He sentenced them to between four and five years in prison, but then permitted them to commute their sentences at a rate of Q5 (US\$0.67) a day, enabling their freedom to be bought for around \$1000 each.
- In April 2000, the Guatemalan state accepted responsibility for the 1982 massacre of over 300 people at Dos Erres, Petén before the Inter-American Human Rights Commission and offered to pay compensation to the victims' families. Some of the families rejected such efforts and continued to pursue justice through the domestic courts, where progress has been painfully slow. Death threats have

been made against individuals and human rights organizations supporting the prosecution. In April 2001 the Constitutional Court annulled arrest warrants against 19 military officers accused of the killings on the basis that the court issuing the orders had failed to allow the officers to apply for amnesty under the terms of the 1996 National Reconciliation Law. On December 10, 2001, president Portillo awarded Q14.5 million to 176 relatives of those who were killed.

- Anthropologist Myrna Mack was murdered in 1990. Over ten years of tenacious efforts by her sister Helen Mack have failed to achieve justice. In 1993 a low-ranking member of the EMP, Noel Jesús de Beteta, was convicted for carrying out the murder. Yet efforts to prosecute three high-ranking military officers, Juan Valencia Osorio, Juan Guillermo Oliva Carrera and General Edgar Augusto Godoy Gaitán, for ordering and planning the killing have been hampered for years as the PM has

### THE GERARDI CASE

The notorious investigation into the murder of Catholic Bishop Juan Gerardi Conadera illustrates, according to MINUGUA and the ODHA, a pattern used by illegal security corps and clandestine structures to obstruct justice.<sup>91</sup> Gerardi was killed on 26 April 1998, two days after he had presented the Catholic diocese report *Guatemala: Nunca Más*, The Recovery of Historical Memory (REMHI), a detailed account of human rights abuses committed during the 36-year armed conflict. The report held that the army was responsible for over 90 per cent of gross violations. Despite unprecedented domestic and international pressure on the Arzú government to resolve the case, the following occurred:

- The crime scene was contaminated and crucial forensic evidence was destroyed or lost by the PM. EMP operatives entered the crime scene and photographed those present.
- Nine witnesses or potential witnesses were murdered. Others were forced into exile and repeated threats obliged judges and public prosecutors to resign from the case.
- The second public prosecutor mislaid crucial evidence and spent a year chasing rumors circulated by military intelligence that the killing was a crime of passion committed by Father Mario Orantes, the priest who shared a house with the Bishop.<sup>92</sup>
- In January 1999 public prosecutor Calvin Galindo took over the case and pursued the theory that the motive was political, a position maintained by the co-plaintiffs, the ODHA, who also received anonymous threats throughout. Galindo ordered DNA tests to be carried out in the U.S. on blood samples found at the scene, and subpoenaed the logbooks of

the EMP. Repeated death threats forced Galindo into exile in October 1999.

- In January 2000, the case appeared to take a new turn. President Portillo had pledged in his campaign to resolve the murder. Three weeks after he assumed office (ex) Colonel Byron Lima Oliva, his son Captain Byron Lima Estrada and military specialist Obdulio Villanueva Arévalo of the EMP were arrested. Their trial finally began in March 2001. The night before the trial hand grenades were thrown at the home of one of the judges; other judges and the prosecutor, Leopoldo Zeissig, received death threats. Those called to give testimony included former Ministers of Defense, Generals Héctor Barrios Celada and Marco Tulio Espinosa, and Portillo's Secretary for Strategic Analysis, Edgar Gutiérrez. In an unprecedented ruling, the judges found the three defendants guilty of the execution of the Bishop, and sentenced them to thirty years' imprisonment. Father Orantes was found guilty as an accessory and received a sentence of twenty years.

It was the first time that military officers were convicted for a politically motivated killing. Lima Oliva was head of military intelligence (G2) under the de facto government of General Lucas García (1978-82) and is the highest-ranking military officer to be convicted of human rights violations in a domestic court. At the time of writing the convictions were due to go to appeal. Charges were still being investigated against other military officers in the EMP, but no attempts have been made to investigate who ordered Gerardi's murder. It is unlikely that the outcome would have been the same without exceptional domestic and international pressure to resolve the case. A month after the verdict prosecutor Zeissig went into exile after receiving death threats.



contested the applicable jurisdiction and lost or mislaid crucial evidence.<sup>90</sup> Over two dozen judges have resigned or been removed from the case. Witnesses and prosecution advocates have been subject to constant harassment and death threats. Only private resources and the support of the international community have permitted the case to continue. In May 2001, after 20 months of deliberation, the Constitutional Court ruled that the three military officers should stand trial in a civilian court. However, in the same month it was ruled that the case should be sent back to a lower court on a technicality. A trial date was set for October 2001, but the defense brought three amparos and delayed the proceedings yet again. Activists hold out little hope of a swift resolution.

- In April 1999, an appeals court revoked the 30 year sentences of two former civil patrollers from San Pedro Jocopilas, El Quiché, convicted in 1997 of murdering opposition presidential candidate and journalist Jorge Carpio Nicolle in 1993. Repeated attempts by Carpio Nicolle's family to reopen charges against senior former government officials suspected of ordering or covering up the assassination have been mired in bureaucratic delays. Prosecutors have received death threats, and the military have been accused of withholding relevant evidence. In April 1999 the court of appeals revoked the sentences against the two civil patrollers for lack of evidence. In October 1999 Carpio Nicolle's widow presented the case to the Interamerican Commission, alleging justice was denied through the Guatemalan courts.

#### **Disenchantment and the privatization of justice.**

A 1997 survey found that 62% of the population had little confidence in the courts and 18% no confidence whatsoever. A 1998 survey found that 94% of the population thought that the justice system only favored the rich and powerful, while another survey by ASIES in 2000 concluded that only six per cent of the population felt their basic rights were fully protected by the legal system.<sup>93</sup>

Tough stances on crime are electorally popular, though there is no proof that they solve the problem. The Arzú government extended the death penalty to include kidnapping convictions. In May 2000 Congress rescinded the law allowing the President to grant pardons in capital cases, violating both the American Convention on Human Rights and the International Covenant on International and Civil Rights.<sup>94</sup> A month later, two convicted kidnappers were executed on national television — thereby providing an accessible demonstration of punitive justice for would-be lynchers (see below). Lawyers who have appealed against death sentences have received death threats.<sup>95</sup>

Only ten per cent of all homicide cases are sent to trial, and very few result in convictions.<sup>96</sup> Ineffective efforts to combat the crime wave have led to a proliferation of private security firms, gun ownership, vigilantes and extra-judicial executions—so-called 'social cleansing' and lynchings.

In June 2001 the Association of Private Security Firms reported that some 85 private security firms were legally registered, comprising some 45,000 agents; in 1999 MINUGUA estimated that some 200 private security firms were in operation.<sup>97</sup> Private security guards outnumber the police by 3 to 1.<sup>98</sup> These individuals often lack training or supervision, and have been involved in acts of violence. And some groups have been linked to organized crime. Their use reinforces inequalities. The rich can buy their own security and therefore have less incentive to pay taxes to improve the public security services.

All social classes have engaged in extra-judicial executions. One recent study found that homicide rates in Guatemala are much higher in the capital and coastal departments and lower in the mainly indigenous highlands.<sup>99</sup> Yet collective mob executions or "lynchings" of suspected criminals by indigenous communities have dominated the headlines.

Between 1996 and 2000, 337 lynchings and attempted lynchings occurred, leaving 187 people dead and 448 injured.<sup>100</sup> Not only sus-

pected criminals have been the targets – in March 2001 a local judge was killed by a mob in Alta Verapaz after he rendered an unpopular verdict.<sup>101</sup> Lynchings stem from the recent violent history. The war broke down community structures, contributed to lack of confidence in state institutions, and undermined any understanding of due process rights. Torture and summary execution were common, and the military forced whole communities to watch and even participate in atrocities. An entire generation of Mayan men had to participate in civil patrols and became schooled in violent resolution of conflicts. Many instigators of lynchings have been identified as former civil patrol leaders.<sup>102</sup>

#### FAILING TO RESCUE POLICE REFORM

In January 2000, the Washington Office on Latin America published a report entitled, *Rescuing Police Reform: A Challenge for the New Guatemalan Government*.<sup>103</sup> Aimed at the incoming administration of President Alfonso Portillo, the report reviewed progress made during the prior administration of President Alvaro Arzú toward implementing public security reforms called for by the 1996 peace accord on Strengthening of Civilian Power and the Role of the Military in a Democratic Society. While noting that significant progress had been made in expanding the number of police, improving public perceptions of the force, and somewhat improving police effectiveness in combating crime, the report concluded that:

...police reform in Guatemala remains a deeply flawed process that will require much greater attention and political will by the government and the international community. The Arzú government took shortcuts that may contribute to long term problems with discipline, corruption, brutality, and criminality within the force. The reform process has been marked by serious deficiencies in recruitment, selection, training, leadership, and internal discipline. In

short, rapid deployment has taken precedence over deeper measures needed to ensure the long-term professionalism, and efficacy of the PNC.<sup>104</sup>

Two years later, there has been little progress in remedying the deficiencies outlined in the WOLA report. Frequent changes of political and institutional leadership have inhibited the development of systematic planning: there have been three ministers of *Gobernación* (the ministry that controls the police) and four police chiefs since the new administration took office. The primary focus has remained on increasing the size of the police force, rather than on improving its quality. The original target was to increase the force to 20,000 police by the end of 1999. By April 2001, there were 18,314 agents and it is likely that the original target will have been reached by the end of 2001.<sup>105</sup> There remain significant deficiencies with recruitment and selection, education and training, leadership, internal and external controls, and criminal investigations.

**Recruitment and selection.** Recruitment of civilians for the PNC remains a serious problem, with little publicity given to course openings at the training academy. The principal form of publicity is an announcement in the official bulletin of the PNC. Of the more than 19,000 students who have passed through the academy, some 11,000 were recycled police from the prior force. Because of the low pool of candidates, standards have been lowered and there have been continuing problems of influence-peddling and favoritism in the selection process. These problems have continued with the selection of students for the most recent (10th) course.

One positive step taken during 2000 was the establishment of the *Unidad de Verificación de Antecedentes* (UVEA) to review and verify the credentials of applicants. The unit is funded by MINUGUA and the Institute for Criminal Investigation Training and Assistance Program (ICITAP), and during 2001 it suspended 979 applicants for the eighth course and 1028

applicants for the ninth course because of falsification of documents.

There has also been some progress toward broadening the multiethnic character of the police. While the percentage of indigenous police is only about 18% of the total, in 2001 the training academy began offering a module aimed at broadening understanding of indigenous customs. It also opened three pilot offices to reach out to indigenous communities in Cobán, Quetzaltenango and the Petén.

**Education and training.** The WOLA report noted that the requirement of the peace accord that cadets be given six months basic training had been interpreted by the Arzú administration to apply only to new recruits. Recycled police from the old force were given only a three-month course, and some specialized units received even less training. There were also problems with the quality of instruction, with most of the emphasis on theoretical training and very little operational practice. There has been no real improvement in these areas, and in its April 2001, report on the police, MINUGUA again expressed serious reservations about the quality of training.

**Leadership.** The frequent changes at the ministry and at the head of the police have been accompanied by similarly frequent changes at lower levels. The Guatemalan Congress has still not approved a career law (*ley de carrera*) to regulate processes of promotion and advancement, and this has created an aura of uncertainty and fear of arbitrariness among officials and agents. During the tenure of Lécsan Mérida as police chief there were numerous allegations of high-level police officials requiring kickbacks or bribes in exchange for appointments to command positions, which in turn encouraged corruption on the part of the officials appointed to recover the funds they had to pay out.

Morale of police officers has also been hurt by poor equipment, unpleasant schedules and abuse by superiors. MINUGUA reported some improvement in the work schedules, but the other problems continue to inhibit better morale.

**Internal discipline and external controls.** The internal disciplinary system of the PNC was designed by advisors from the Spanish Civil Guard, and is modeled on the system used by the Spaniards. It assumes a highly militarized police force, and is notable for permitting abuse of police personnel by superiors while failing to provide adequate channels for handling citizen complaints. The system is also quite confusing, in that it provides three different procedures for different types of misconduct.

The procedure for handling minor violations gives superior officers the power to initiate, investigate and resolve accusations. The procedure also permits preventative detention of accused officers and denies them the right to counsel for lesser offenses. One result is that few officers appeal their sentences, since they have already served all or most of the period of detention imposed.

The *Instituto de Estudios Comparados en Ciencias Penales de Guatemala* studied the internal disciplinary system, and found that few police understand the regulations, and that the procedures stipulated by the regulations are often not followed at the local level.<sup>106</sup> They found that supervisors tend to view regulations solely as a tool for maintaining strict discipline. While the PNC would not provide current statistics to the *Instituto*, an examination of data from the adoption of the regulations in 1997 through 1999 found that not a single complaint initiated by a member of the public resulted in punishment, and no punishment imposed was for abuse of a citizen. Most cases that did result in punishment were initiated by superiors and were for violations of discipline or for not going through proper channels. Alternative dispute resolution mechanisms provided for in the regulations were not used.

On the positive side, the *Instituto's* researchers interviewed samples of the general public in wealthy and working class areas of Guatemala City and in rural Huehuetenango, and found that those interviewed in all areas believed that treatment of the public by the police had improved since the PNC was formed. None of

those interviewed had any knowledge of what are the internal disciplinary procedures.

With respect to external oversight of the police, the peace accords called for the creation of an Advisory Council on Security that would include representatives of civil society. Five years after the signing of the accords, the council has still not been established.

**Criminal investigations.** The Criminal Investigation Service (*Servicio de Investigación Criminal*, SIC) has been plagued by insufficient personnel, inadequate training and poor procedures. At the beginning of 2000, the SIC had about 500 investigators, which was approximately one-third of the number needed for effective national coverage. By April of 2001 that number had increased to 742, and it was deployed in 14 departments. In its April report, MINUGUA found that serious weaknesses in planning and investigation continued, and that inadequate crime scene procedures and poor documentation procedures by SIC investigators continue to inhibit effective investigation and prosecution.<sup>107</sup> ICITAP has been providing a training course for SIC recruits, but has had continuing difficulty in ensuring adequate evaluation and screening of entrants in the course because of poor cooperation from the ministry of *Gobernación*. In late 2001, ICITAP instructors were temporarily withdrawn from Guatemala after they received death threats.<sup>108</sup>

As mentioned above, there also continue to be serious failures of institutional cooperation between the PNC and the Public Ministry. Investigators from the Public Ministry are often slow to arrive at crime scenes and when they do arrive they order SIC investigators to leave the scene.

**Remilitarization.** The short-term response of the government to weaknesses in the PNC has been to steadily increase reliance on the armed forces to perform police functions, in violation of the peace accords. In June 2000, the Guatemalan congress approved a law authorizing the executive branch to call upon the army to assist the police, and Portillo has done so with increasing frequency. In early 2001, the minister of *Gobernación*, Byron Barrientos, announced a “saturation plan” aimed at reassuring the populace by dramatically increasing the visible presence of police and soldiers patrolling the streets of Guatemala City. After a major jailbreak later in the year, tens of thousands of soldiers were ordered to carry out policing functions.

During the Arzú administration, there was also army assistance to the police. These were technically called “joint patrols”, in which army units served under the command of police officers. At first these were frequently made up of one relatively low-ranking police officer and an army squad under the command of a lieutenant, but by the end of Arzú’s term the more common pattern was to have one police officer and one army officer on joint patrol. Under the current government, there is little pretense that the police are in command.

Human rights activists are properly worried about this “re-militarization” of police functions, and tend to see it as part of a larger trend of re-militarization of government. On the other hand, interviews with army officers suggest that the armed forces do not like being assigned to policing functions. And everyone admits that the scale of crime is still beyond the capacity of the PNC to effectively control. Popular sentiments seem to support the use of the army to assist the police, at least thus far.



## ECONOMIC AND SOCIAL EXCLUSION

Social and economic exclusion were major causes of the internal armed conflict in Guatemala. The consequences of that exclusion continue to inhibit processes of democratization and modernization in the country, and undermine efforts to carry out the provisions of the peace accords. There is a vicious cycle in which the consequences of exclusion inhibit the development of the kind of strong institutions needed, both in government and civil society, in order to carry out reforms capable of reducing the severity and scope of exclusion.

One measure of the severity of social exclusion and inequality in Guatemala is that, despite the common practice of international financial institutions to pressure countries to cut the size of government and slash spending, these same institutions have been urging Guatemala to increase social spending and tax revenues. Indeed, Guatemala has been successfully resisting World Bank suggestions to increase tax revenues for decades, as indicated by a 1978 World Bank report.<sup>109</sup> During peace accords negotiations, the World Bank, the Interamerican Development Bank (IDB) and the IMF were influential in getting agreement on provisions for 50% increases in health and education spending, and equivalent increases in tax revenues to pay for the myriad of reforms set out in the accords. The target date for achieving these increases was 2000.

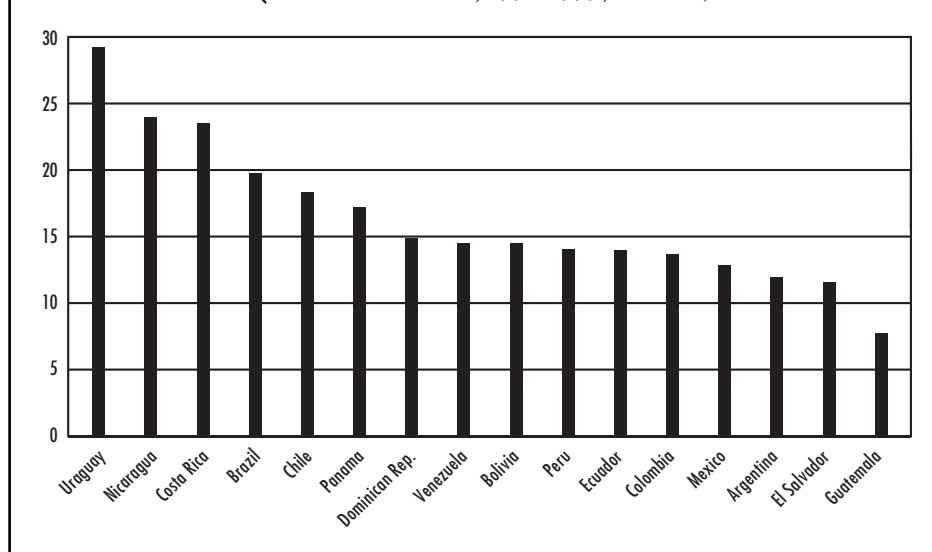
Guatemala did meet the annual spending goals for

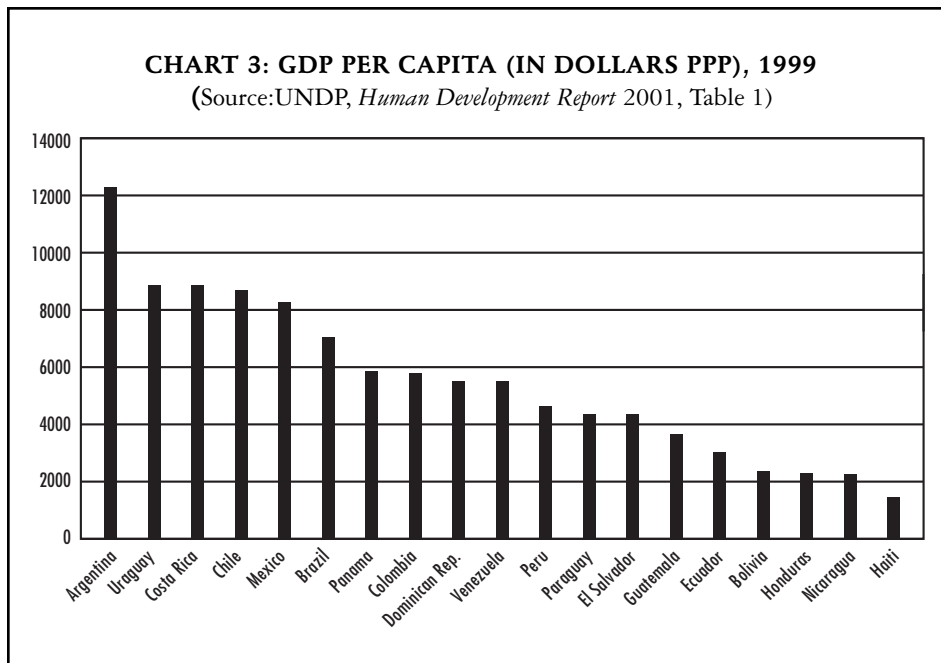
the most part. However, until mid-2001, both the Arzú and Portillo administrations showed little willingness to increase taxes. In mid-2001, congress approved a package of tax-reforms that included raising the value added tax (VAT) rate from 10% to 12%, amidst large-scale protests and a looming fiscal crisis. Working class groups protested because of the regressive nature of the VAT, while the private sector objected to sector-specific taxes and reforms that penalized tax-evasion. All the opponents argued that tax increases would only fuel rampant government corruption. Some opponents on the right claimed that proposed tougher collection methods amounted to “fascism.”<sup>110</sup>

The protests underscored the difficulty of carrying out fiscal reforms in Guatemala, and the extent to which the state is viewed as part of the problem rather than part of the solution. Without fiscal reforms, however, it is difficult to see how Guatemala can begin to reduce the vast disparities that foster political polarization and inhibit democratization.

**CHART 2: TAX REVENUES AS PERCENT OF GDP, 1996**

(Source: World Bank, 1998/1999, Table 14)





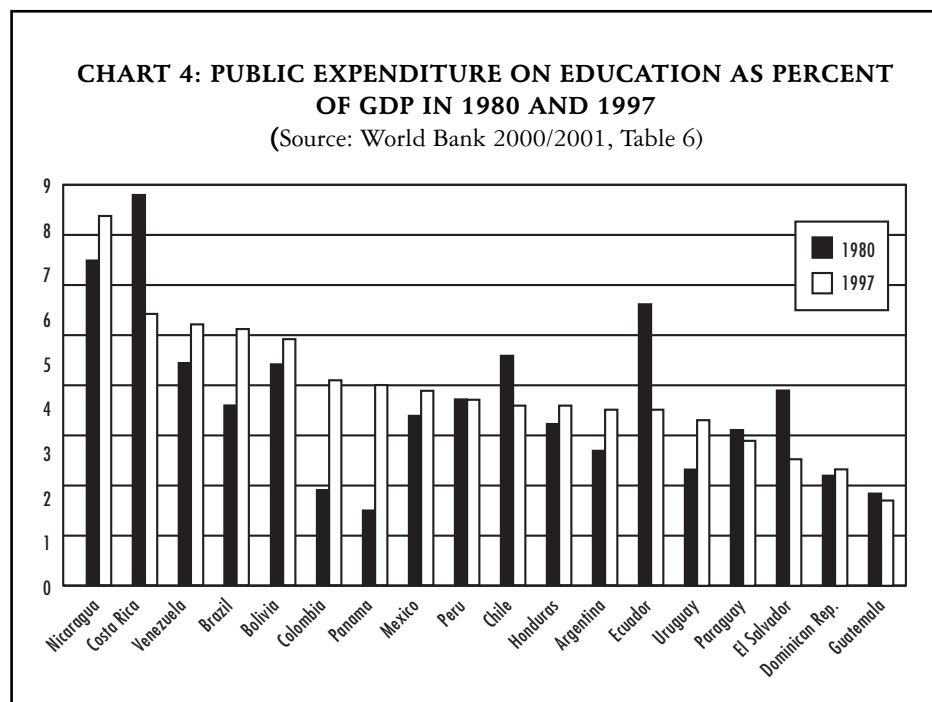
Domestic Products (GDP) per capita.<sup>111</sup>

In comparison with other countries in the hemisphere, Guatemala has spent little on education and health, and it suffers the consequences.<sup>112</sup> Public expenditures on education in Guatemala were about 1.7% of GDP in 1997, the same as in 1980 and about the lowest in the region.

In fact, the fiscal reform goals of the peace accords are quite modest when one looks at comparisons with other Latin American countries. And those most disadvantaged by the current fiscal structure in Guatemala tend to be rural dwellers, the indigenous, and women—precisely the groups disadvantaged by the electoral system.

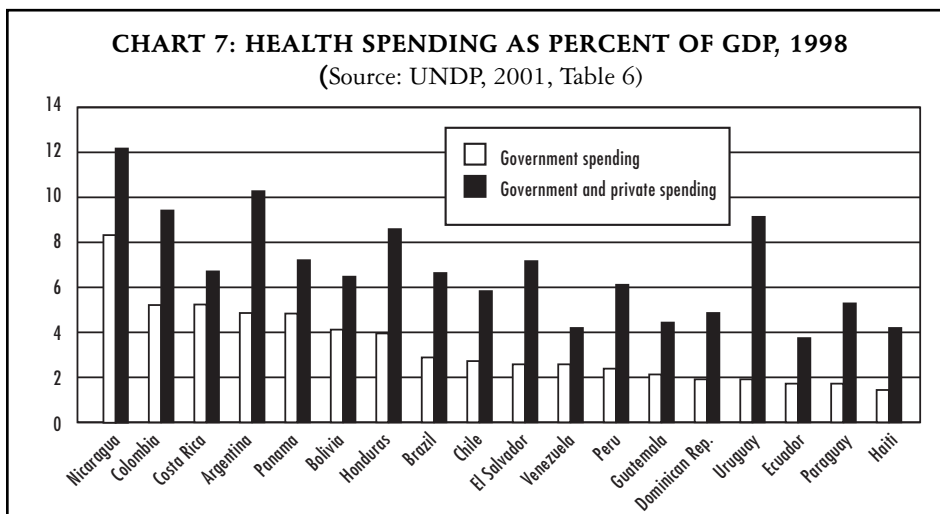
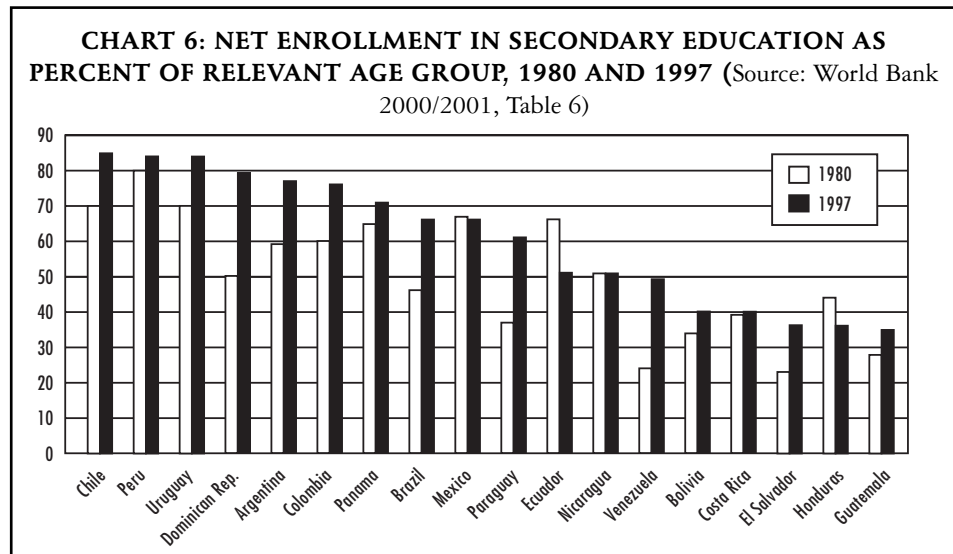
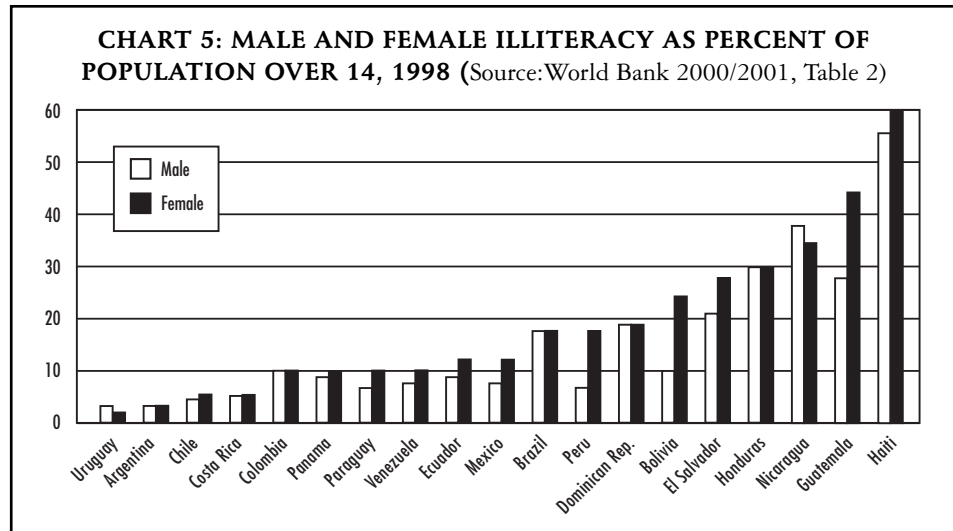
Four countries with educational spending rates at least twice those of Guatemala had smaller GDP per capita figures. Guatemala has the second highest rate of illiteracy, (31.9%), and the largest disparity between women and men. Its illiteracy rates are at least twice as high as fourteen countries (see Chart 5).<sup>113</sup>

**Guatemala and Latin America.** Among 16 Latin American countries, Guatemala's 1996 tax coefficient was by far the lowest, at 7.7% of GDP (see Chart 2). Chile, the star model in neoliberal circles, had a tax coefficient of 18.3%. Guatemala's tax coefficient was lower than at least three countries (Nicaragua, Bolivia, Ecuador) that had lower Gross



In 1980, Guatemala had the second smallest percentage of high school aged children in secondary school, and by 1997 it had worsened to become the smallest, with Honduras and El Salvador doing about as badly.

In public health spending, Guatemala is bunched with five countries in the bottom tier and significantly above only Haiti. If one combines public and private expenditures on health, Guatemala ranks only slightly ahead of Haiti (4.4% to 4.2%), and ahead of Ecuador (3.7%). Measuring spending on health per capita shows

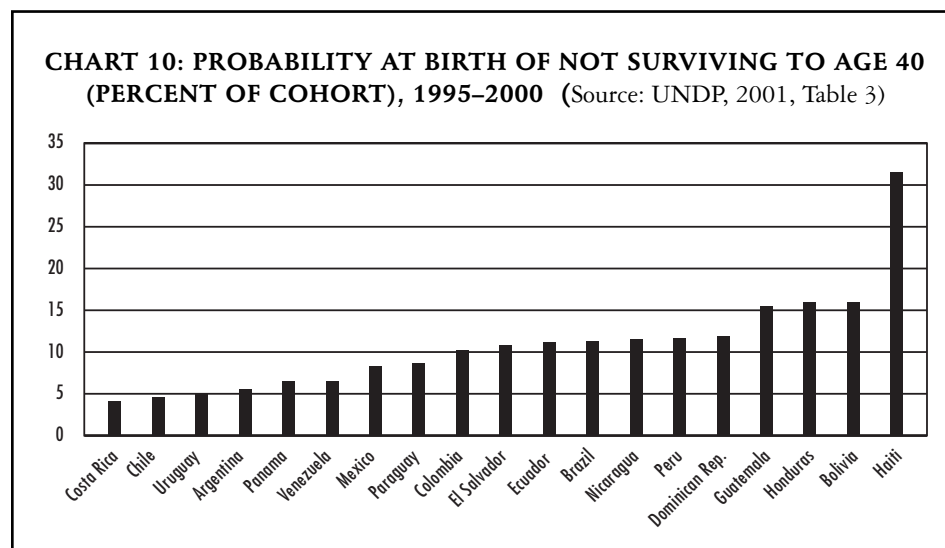
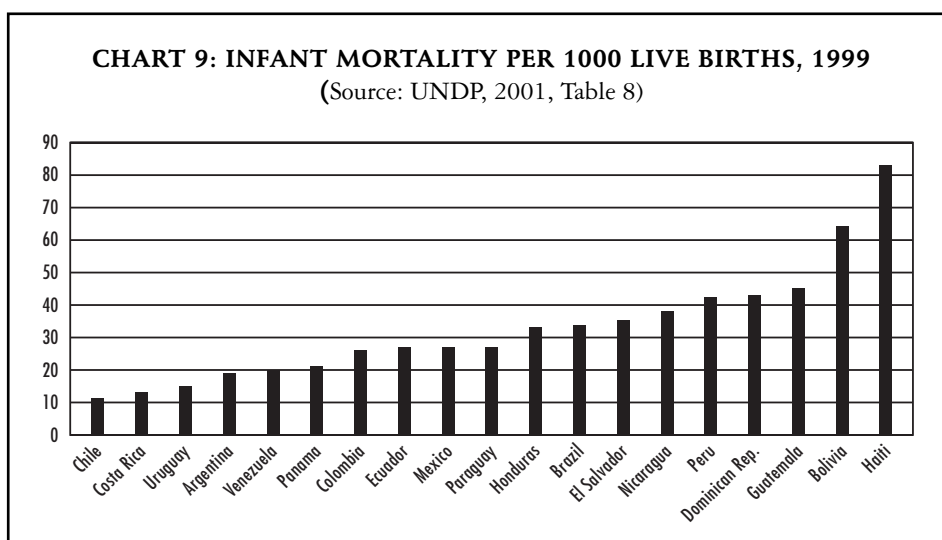
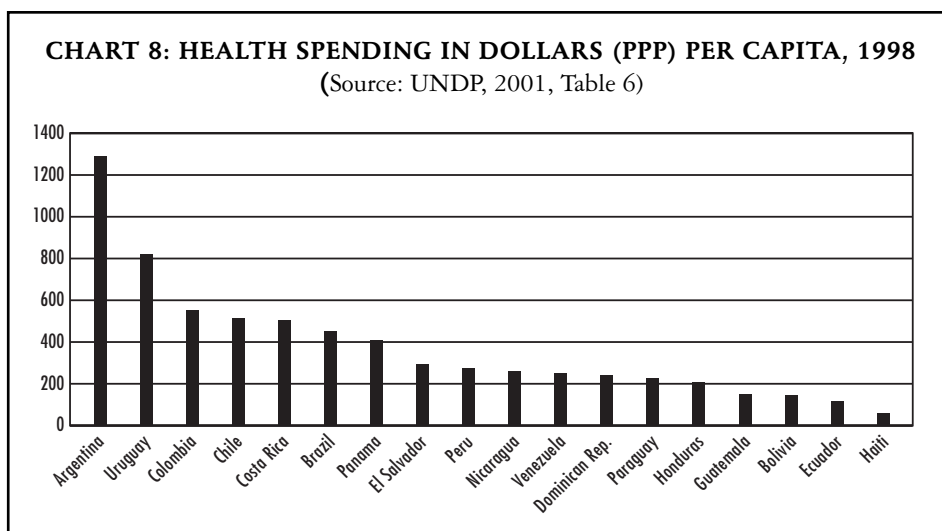


Guatemala, at \$155 per capita (PPP) to be markedly ahead of only Haiti, and well below its poorer cousins Honduras (\$210) and Nicaragua (\$266) (see Chart 8).

The social consequences of low spending on health are evident. While Guatemala's infant

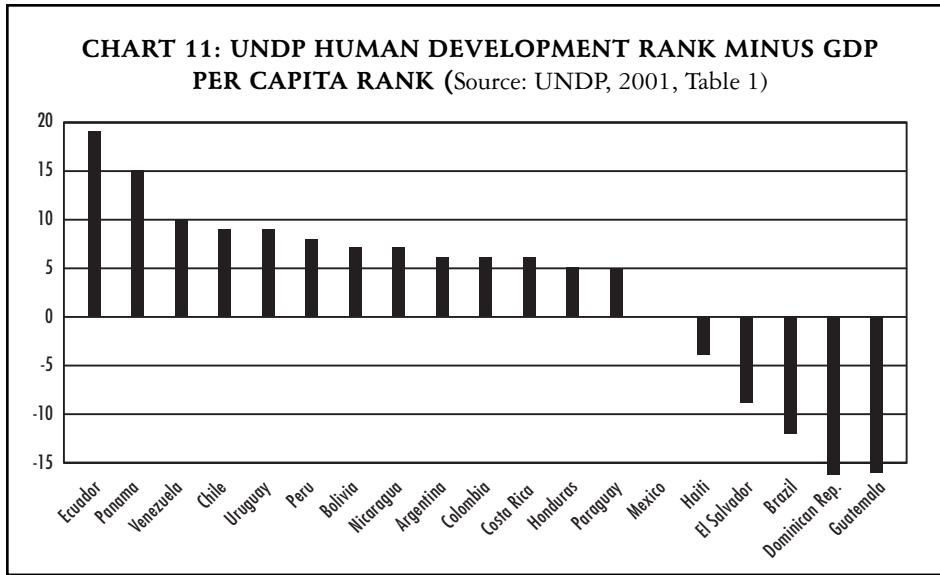
mortality rates improved dramatically in the last third of the century, from 115 per 1000 in 1970 to 45 per 1000 in 1999, its record in 1999 was not as good as most, including Honduras and Nicaragua. The probability in Guatemala of dying before age 40 was recently 15.6%, much better than Haiti, but only slightly better than Honduras (16%) and Bolivia (18.4%), whose GDP per capita is some \$1300 less than that of Guatemala.

The UNDP calculates a national Human Development Index (HDI) that combines measures of education, life expectancy, and standard of living.



In the 2001 edition, Guatemala was ranked 108th, bunched with other small Latin American countries. In an effort to relate the HDI rank to the size and power of a nation's economy, the UNDP subtracts HDI country ranking from the per capita GDP country ranking. A negative ranking





poverty (40%) was nearly six times the urban rate (7%).

The poverty rate among indigenous peoples (74%) was almost double that of non-indigenous (41%). Fifteen percent of non-indigenous live in extreme poverty compared to 39% of indigenous.<sup>114</sup>

As shown in Table 8, far more indigenous live with only

means that human development lags behind the size of the economy. Among all Latin American countries, Guatemala and the Dominican Republic had the two worst rankings (-16).

**Poverty and inequality.** Guatemala's poverty rate declined from 1989 (63%) to 1998 (57%), but in 1998 there were half a million more people below the poverty line (though on average they were not quite so far below the line as was the case in 1989). The rate of extreme poverty also declined, but the absolute numbers remained the same — 2.8 million people.

The rural poverty rate was nearly 3 times the urban rate (77% to 29%), and 4 times that of Guatemala City. The rural rate of extreme

a dirt floor, even in rural areas. Fewer have electricity, piped water or sewage connections, telephone, or TV. As indicated by the last two rows, the differences are only partially explained by the greater percentages of indigenous that live in rural areas.

In education, there have been notable gains in reducing, though far from eliminating, the gap between groups. The literacy rate was 63.1% in 1989 and 68.7% in 1998. However, as in the case of poverty, that gain would leave about the same absolute number of illiterates as in 1989.<sup>115</sup>

The 1989 literacy rate for indigenous women of 28.1% was below abysmal, and indicates, with one statistic, a profound legacy of five centuries of ethnic and gender discrimination.

**TABLE 8: HOUSING AND COMMUNICATIONS CONDITIONS. PERCENT BY HOUSEHOLD HEADS, 1998**

	Only a dirt floor 1998	No electric 1989	No electric 1998	No piped water 1989	No piped water 1998	No sewage 1998	No phone 1998	No TV 1998
Indigenous	60.4	74.6	49.1	45.4	44.8	81.2	95.3	63.5
Non indigenous	26.7	36.6	25.2	30.9	29.6	56.3	76.6	28.2
Urban	18.2	13.2	8.8	12.8	10.4	26.7	67.1	15.3
Rural	60.0	72.8	56.6	50.4	56.4	98.6	99.0	66.0
Indigenous. Rural	72.6	84.9	62.4	52.3	56.3	99.3	99.6	77.2
Non Ind. Rural	43.7	62.5	49.2	48.7	56.0	97.6	98.3	51.6

Source: *La fuerza incluyente*, Tables 3.22, 3.25, 3.26, 3.28, 5.8

**TABLE 9 LITERACY ETHNIC AND GEOGRAPHIC**

	1989	1998
Indigenous	40.9	57.5
Non Indigenous	76.0	78.6
Urban	81.5	84.5
Rural	52.2	57.4
Ind Rural	36.5	50.9
Non Ind. Rural	65.6	66.2

Source: *La fuerza incluyente*, Table 5.4

**TABLE 10: LITERACY**

	1989	1998
Men	71.2	74.7
Women	55.5	63.1
Rural Men	61.8	66.0
Rural Women	42.8	49.1
Indigenous Men	53.2	67.3
Indigenous Women	28.1	48.5
Non Indigenous Men	81.3	81.1
Non Indigenous Women	71.0	76.2

Source *La fuerza incluyente*, Table 5.4

Even with a 20-point gain, indigenous women in 1998 were still thirty points behind the non-indigenous. Two departments with indigenous populations approaching 95% (Sololá and Tontonicapán) had lower rates of illiteracy by 15 points than the three worst departments in the country.<sup>116</sup>

Many children have to work. The situation seems to have worsened in the last half-decade, when the percent of children working went from 28.6% in 1994 to 36.7% in 1999.<sup>117</sup> Rural school dropout rates are over twice as high as urban rates. Females attend school at lower rates than males. In two rural departments with high indigenous populations (Quiché and Alta Verapaz), only 40% of students are female.<sup>118</sup>

According to the Pan American Health Organization (PAHO), about 80% of the nation's doctors practice in Guatemala City. Over three-quarters of private hospitals and private clinics are in the metropolitan area. They serve primarily the small proportion of

the population that has health insurance.<sup>119</sup> In rural areas the health infrastructure cannot provide quality, or in some cases any, services. More than one-third of the rural population must walk an average of 7.2 miles to find a health center. Once at the center, the chances are high that equipment will not be functional and extremely high that there will be no doctor or professional nurse.<sup>120</sup>

Between 700,000 and one million Guatemalans are forced to migrate for harvest work from November to April. PAHO found health problems in 80% of migrant families. There is little or no health or educational infrastructure for migrant workers.<sup>121</sup>

As these numbers demonstrate, the scope of the challenge facing Guatemalan authorities is enormous. The United Nations estimates that in order to reduce poverty and extreme poverty in Guatemala by ten percentage points (and making no change in inequality), the country would need economic growth sufficient to increase income per capita by 24%. Actual GNP growth per capita for 1998/1999 was half of one percent (.5%).<sup>122</sup>

Although inequality fell somewhat between 1989 and 1999, Guatemala has one of the highest levels of inequality in the world, in a dubious race for first place with South Africa and Brazil. The UN estimates that if inequality were reduced to the level of Costa Rica (without any change in the relative size of the economies), the poverty rate would drop by thirteen percentage points.<sup>123</sup>

These findings suggest that focusing on economic growth, alone, is unlikely to have significant impacts on reducing poverty in Guatemala. While economic growth is important, policies aimed at reducing the extreme levels of inequality must be an essential component of any strategy to reduce poverty. That logic is at the root of the social and economic provisions of the peace accords, and shaped the very modest spending targets agreed to in those accords.

**Social spending.** Between 1995 and 1999, the Guatemalan government more than met the

**TABLE 11: 1999 SPENDING AND TARGETS AS PERCENT OF GDP**

	1995 spending	1999 spending	1999 target
Health & social assistance	.88	1.40	1.19
Education	1.66	2.43	2.32
Public Security	.34	.73	.48
Judicial	.18	.30	.25
Public Ministry	.11	.15	.15
National Defense	.99	.68	.66

Source: *La fuerza incluyente*, 234.

spending goals set out in the peace accords. The largest annual increases in overall spending and social spending were in 1999, an election year, and they were financed in part from proceeds from privatization — not a stable source of financing. They were also financed by declines, in real terms, in military spending.

However, the increases are based upon very low starting points—a reflection of Guatemala's history. For example, in education the increase was 48%, from Q157 to Q233 per capita. If one were to want to practice one's new reading ability by purchasing the newspaper every day, the Q76 increase would last about 6 weeks.

Spending of government agencies was supposed to be redirected toward poorer regions of the country, but the record has been mixed. The percentage of social spending going to metropolitan Guatemala City was reduced from 56% to 44%, while that going to regions with the lowest Human Development Index increased from 24% to 32%. However, in per capita terms the metropolitan area (with 23% of the population) was still getting far more than the three poorest regions (with 47% of the population).

There has also been a general decentralization of funds toward the municipal level, but it is not clear that municipalities are giving poverty reduction a high priority. Financing to municipal governments went from Q464million in 1995 to Q1.3 billion in 1999. Monies assigned to 8 social funds increased as a proportion of GDP from 4% in 1996 to just over

12% in 1999, and this might have made implementation of programs more efficient.<sup>124</sup>

While lack of political will and bad faith seem part of the reason for continuing imbalances in social spending and high levels of poverty and inequality, institutional weaknesses are also a significant factor. In 1997, the World Bank warned that the size of government plans for spending and investing in health was probably bigger than the capacity of the health ministry to absorb. In 1996, for example, the health ministry under-spent its budget by 44%. In education, under-execution was 21%.<sup>125</sup> Changing the organizational culture and administrative capacity of government institutions is very difficult, and normally takes a long time.

#### LAND AND POVERTY

Lack of access to land is the foundation of rural poverty. From the colonial era on the indigenous lost lands that the Spanish conquerors had "granted" them to more powerful land grabbers, a process that accelerated, despite organized opposition by the indigenous, during the late 19th century coffee boom. And colonial forms of labor coercion were replaced by other forms, such as vagrancy laws and forced indebtedness.<sup>126</sup>

Guatemala's earlier elected governments from 1945–1954 ruptured the historical pattern. President Juan Jose Arévalo regulated agrarian rents and sponsored labor legislation that brought more freedom for union organizing. President Jacobo Arbenz legislated an agrarian reform that permitted expropriation of large lands that were not being utilized, with compensation based on previous property tax values. Some 600,000 hectares (1 hectare = 2.47 acres) were expropriated, including over 300,000 hectares from foreign estates, mainly the U.S. based United Fruit Company. The government also made available 280,000 hectares from large coffee estates it had expropriated during World War II from German expatriate owners.

An estimated 100,000 families benefited, about one sixth of the population. After the CIA-sponsored overthrow of Arbenz, the agrarian reform was reversed, and portions of the former German estates were privatized in large parcels to individual owners.<sup>127</sup>

This history provides a baseline for evaluating what has been done since. Landholding patterns today are similar to the time just before Arbenz. Current government programs are comparatively small.

**Stagnation.** A pre-agrarian reform 1950 land census found that 72% of the farm land in Guatemala was controlled by 2% of the farming units, while 88% of the farming units controlled only 14% of the land.<sup>128</sup> A 1979 census showed that a mere 2.5% of farms controlled 65% of agricultural land, while 88% of farms accounted for only 16%. The 1979 study found that over 400,000 owners averaged only 1.63 hectares of lands. Another 164,000 rural families had no access to land. The practice of communities to hold communal lands for farming had shrunk from 12.3% of farmed land in 1950 to 1.1% in 1979. A 1982 AID study found that 31% of farms possessed less than 0.7 hectare.<sup>129</sup> The Gini index for landholding inequality in Guatemala was the highest in Latin America.<sup>130</sup> Land shortages fed the plantation's need for cheap labor, with the resultant mass migrations during the harvest seasons.<sup>131</sup>

There has not been a comprehensive land survey since 1979. Several smaller studies indicate significant shifts, but also suggest that acute inequality and land poverty are worse than in 1979. Eduardo Baumeister has summarized the findings.<sup>132</sup> The proportion of rural families involved in agriculture but with no direct access to land (either as owners or renters) increased between 1979 and 1998 from 22% to 33%. The proportion of families that owned land declined from 61% to 49%, and those that rent land increased from 8% to 17%. (Baumeister found significant variations between regions.) Case studies indicated that the size of lands owned or rented by small farmers went down.<sup>133</sup>

Baumeister also found a large increase in the amount of land being put to agricultural use since 1979, about 1.1 million hectares. A bit of this increase (from 36,000 hectares to 69,000 hectares) was in small farms growing non-traditional crops for export, perhaps 140,000 producers averaging 1/2 hectare, who might well make more income than those growing basic grains. The big increase was frontier forestlands (872,000 Hectares), mostly in the Petén. But these are mostly cattle grazing farms, and they employ few people.<sup>134</sup> Nonetheless, this increase provided some help to the expanding rural population at the cost of widespread environmental destruction.

Another economic and social "safety valve" has been increased migration of Guatemalans to the U.S. The aforementioned estimate was 570,000. The World Bank estimated that in 1998, Guatemalans in the U.S. sent home \$456 million, equivalent to about 13% of Guatemala's export earnings or \$42 per capita. These significant amounts are not in the same league as neighboring El Salvador, a world leader in remittances. In 1998 Salvadorans remitted \$1.338 billion or \$228 per capita.<sup>135</sup>

However, these safety valves and migration to the cities have not come close to solving the problem of rural poverty. The rural population increased almost as fast as the urban population (1.86 million rural increase compared to 1.936 million urban increase), and stood at 58% of the population. The rate of urbanization is relatively low in Guatemala.<sup>136</sup>

It is hard to make the case that the large plantations used to grow traditional export crops or cattle for export have amounted to a savior of the national economy. Growth in agricultural production was very high between 1965 and 1980, averaging 5.1%.<sup>137</sup> In the 1980s, largely because of the conflict, agricultural growth was stagnant. It made a slight recovery to 2.7% annual growth in the first half of the 1990s, but this was less than the population growth rate. Much of the increase was due to small and medium-sized family farm non-traditional exports.<sup>138</sup>



**Land programs and the accords.** Insecurity of land tenure is substantial, especially for the indigenous. There are layers of conflicting property claims. Some returning refugees found others on their former lands. In the 1960s and 1970s, military regimes carved up areas of the Petén and the Northern Transverse Strip among high-ranking officers. The property registers are a mess. Perhaps 40% of property holdings are unregistered. The problem has been particularly severe in the Petén, where new occupants eviscerated private and government property rights.<sup>139</sup>

The peace accords call for speedy procedures to resolve land conflicts. Significant international support has come to support a cadastral survey. And the government formed an agency, CONTIERRA, to mediate the many land disputes. Both efforts, in their initial stages, engendered considerable controversy. Some argue the land survey will protect the rights of small holders, but leaders of peasant organizations fear that the survey will lock in past usurpations. CONTIERRA was faulted for low organizational resources and a greater ability to hear disputes than to resolve them.<sup>140</sup>

The accords also called for the use of state lands and idle land to alleviate land poverty, but this provision will be difficult to implement. It is not clear that the Guatemalan government possesses much land suited for agriculture. Experts believe that the systematic expansion of export crops in recent years means that large plantations, apart from cattle ranches, contain little idle land. However, even if all the idle land held by large landlords were carved up into parcels, these would not suffice to provide a solid economic base for the increased numbers of landless and near-landless rural population.

A series of land purchase programs have made small dents in the overall problem. Before the peace accord, a government land bank purchased large estates and resold them, with financing, at market prices to organized groups of those suffering from land poverty. But by 1992 only 18 farms totaling 16,000 hectares had been purchased. These went to

families in micro parcels averaging .65 hectares.<sup>141</sup>

A similar program for returning war refugees acquired, between 1992 and 1999, 34 farms totaling 57,840 hectares for 4,665 families. (Some 43,000 refugees returned from Mexico in organized groups.) Many of the farms lacked basic infrastructure and could not be rapidly put into production.<sup>142</sup> Virtually nothing has been done for the estimated 1 to 1.5 million who fled war zones for other regions of Guatemala.

The Land Fund described in the Civic Actors section has been more significant. In addition to purchase of private lands and sale and financing of these and government lands to organized groups of the land poor, the Land Fund is to take back illegally acquired lands in the Petén and Transversal strip. In its first 26 months of operation, up to March 31, 2000, the Land Fund had financed the acquisition of 13,408 hectares for 2476 families (or 5.41 hectares per family).

However, the Land Fund had received requests from 531 groups representing 35,457 families. At the then average rate of just under 100 families per month it would take nearly three decades to meet these requests, and estimates suggest the demand from organized groups is between 55,000 and 60,000 families. And there are many more landless people not in organized groups.<sup>143</sup>

#### THE DIFFICULTY IN RAISING REVENUES

While there has been a fair amount of success in meeting social spending targets (which were relatively modest), the government has been much less successful in adopting measures to raise revenues. The problem is both lack of political will on the part of political actors, and stubborn resistance from those most affected by any increases.

The revenue target in the peace accords was to raise tax revenues from about 8% of GDP to 12% of GDP by 2000. The accords did not spell out, however, the specific strategies and actions the government would take to achieve the tar-

get. The Arzú administration tried to focus on increasing the efficiency of tax collection, a long-standing problem and less controversial than raising taxes.<sup>144</sup> However, in the international community there was general consensus that more efficient collection would not solve the problem. A World Bank study found that, “Between 1995 and 1998 the tax ratio increased by about 1% of GDP — barely one fourth of the Peace Accords target — and this increase was partly due to a temporary asset tax.”<sup>145</sup> In 1998, the government did create the Superintendent of Taxes (SAT), to try to improve collections.

The challenges facing any effort by the government to increase taxes were on display in 1997, when the Arzú administration tried to increase taxes on rural properties. The proposed change would have abandoned the absurd practice of allowing property owners to self-assess the value of their properties, and imposed a modest, progressive tax. There was an explosion of protest, with the FRG leading the opposition and organizing demonstrations in some rural areas. Arzú hastily withdrew the proposal, and shifted his tactics to delaying the deadline until after his administration left office.

In October 1998, the signatories to the accords agreed to extend the 12% deadline to 2002 as part of a larger negotiation on an array of tax-related issues regarding expenditures, administration, enforcement and internal debt. A year and a half later these negotiations, which included a variety of groups from civil society, resulted in the Fiscal Pact of May 2000. The pact set forth sixty agreements about tax increases, reduction of tax exemptions and individual privileges, improved administration and collection, and spending and budget transparency.

The achievement of the Fiscal Pact, in many ways, mirrored the processes in the final stages of the negotiation of the peace accords. Participation was extended to an array of CSOs. There was considerable international support (amid some skepticism) and informal mediation was constant.

The process resulted in a complex, multifaceted agreement. This example of the ability of

Guatemalans and persistent international actors to convoke representative groups, to initiate dialogue and negotiate themes, goals, and concrete agreements over a sustained period was a real accomplishment in the democratization process.

Political factors were also crucial, however. The preparatory commission working to advance a fiscal pact did not present its proposals until after the 1999 elections, and most of the serious negotiating took place after the new government came to power.

A skilled analysis of the details of the process was published a year later in a handsomely designed and photographed book, *la Guatemala Posible: la senda del pacto fiscal*, which celebrated the process. The book was financed by MINUGUA, which had played a key role in facilitating the process, so in a sense the book was both an analysis and a culmination of the process.<sup>146</sup> However, as the peace accords have demonstrated, implementation of an agreement is hardly guaranteed.

A year after the Fiscal Pact, MINUGUA also published (in a quite modestly designed booklet) an *Informe de Verificación: El Pacto Fiscal un año después*. Its central finding was that very little had changed. Of 60 agreements, two had been completed, another 7 were well along, and 22 had had at least some action (including 6 that involved the annual budget process). No progress had been made on 29 others. The study found that of 802 cases brought to court to enforce compliance with tax laws, only 3 had resulted in sentences (58 others had resulted in orders to seize an automobile) and the sentences had been commuted. The recommendations of the document exceed the normal legalistic, objective, and calm prose of the UN. The *Informe* has sentences in bold-faced print “exhorting” the parties about the “indispensable,” or “transcendental importance.”<sup>147</sup> The document reflects MINUGUA’s frustration after over five years of tax process with few results.

Failure to implement the pact put the government in an increasingly serious fiscal crunch. International financial institutions and bi-lateral donors made it clear that new assistance would

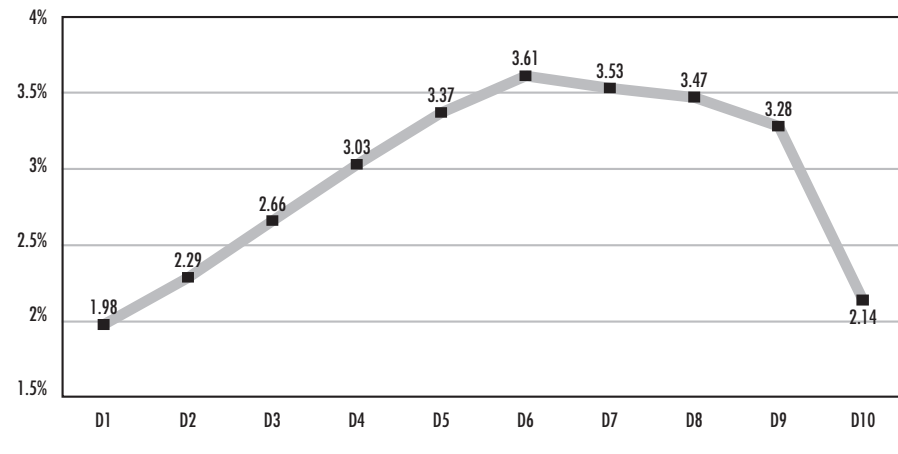
not be forthcoming until fiscal reforms were implemented, and the government was literally running out of money. Added to this fiscal imbalance was what the World Bank referred to as Guatemala's "battered banking system." In 2001 this included two failed banks (with considerable corruption analyzed above).

The government bailed out the banks. Finally, growth rates were declining. From 1997–1998, GDP growth averaged 4.5%, but in 1999 it was 3.6%. At the end of 2000, GDP growth for 2000 was estimated to be 3.3%. And by mid-2001, (that is before September 11th) the projection for 2001 was 3.0%.<sup>148</sup>

This combination of factors forced Portillo's hand. He proposed and Congress approved an increase in the VAT from 10% to 12%, along with other measures to stiffen penalties for evasion, to tax phone calls, imported used cars, and some financial transactions. The reaction of CACIF to these measures was described earlier in the chapter on traditional power-brokers.<sup>149</sup> Leftist opposition to the VAT increase was rooted in the (mostly correct) argument that it is a regressive tax, although the actual impact is a bit complicated. Chart 12 indicates that the VAT is progressive for the first six deciles, and then is regressive particularly for the richest group.<sup>150</sup>

The problem faced by Portillo, or any Guatemalan government seeking to quickly generate additional revenues, is that the VAT

**CHART 12: VALUE ADDED TAX AS PERCENT OF INCOME BY HOUSEHOLD INCOME DECILES, 1998** (Source: Gamboa and Trentavizi, 2001, 28)



has become the main revenue earner, by far. From 1995 through 1999, taxes increased from 7.96% to 9.85% of GDP. During that time the VAT increased from 2.86% of GDP to 4.62%, and represented 93% of the total increase. All other taxes, save those on oil, decreased relative to GDP.<sup>151</sup>

Although the government has not given in to opposition demands to roll back the tax reforms, the reforms are unlikely to relieve the severe economic crisis anytime soon. Post September 11th GDP growth estimates for 2001 were 2.2%. Even before September 11th, exports were off over the previous year by about 6%. Coffee production was predicted to be 15% less than 2000. Tourism, a source of foreign exchange exceeding even that of coffee, had faced a decline in receipts of 15%, and after September 11th hotels reported 40% cancellations. These developments led the government to decrease proposed spending for 2002 to the levels of 2001.<sup>152</sup>

Thus, the vicious cycle seems still to be working.

## CONCLUSION

Guatemala is at a difficult crossroads. The process of democratization has weakened the monopoly on political power formerly exercised by the armed forces and the traditional economic elite, but more representative and democratic alternatives have not become notably stronger. Political parties are weak, civil society actors are weak, and government institutions lack both capacity and the political will necessary to deepen the process of democratic reform without increased social support and political pressure.

The result is growing popular frustration, increased political fragmentation, and renewed polarization. The peace accords, which offered a negotiated national agenda for consolidating democracy and modernizing the state, have failed to develop the broad social base of support needed to ensure their implementation. Instead, sectoral and particularistic agendas compete for momentary advantage and transient gain.

In this context of weakness and fragmentation, there are growing calls for a new “national dialogue” to forge a broader consensus on what Guatemalan society should look like and on how to get there. The notion of such a dialogue seems appealing as a way out of the current morass, but a careful look at the debate over dialogue reveals a number of very fundamental obstacles that will be difficult to overcome.

Calls for a new national dialogue began to be heard in the mid-2001, as conflict over the fiscal reforms began to reach a peak. In July, a group of prominent individuals that included academics, human rights activists, business leaders, think-tank leaders and other intellectuals and civil society activists reflecting diverse political tendencies formed the *Grupo Barómetro*, and called upon the government to enter into a dialogue about economic policy, strengthening the leadership and democratic character of government institutions, and rooting out corruption. The members of *Barómetro*

participated as individuals, and not as representatives of their organizations.

At about the same time, Monsignor Rodolfo Quezada Toruño, recently appointed Archbishop of Guatemala, began a process of consultation with some fifty civil society leaders to explore ideas about the desirability and possibility of some kind of national dialogue.

Both of these first efforts to open a debate about the need for a national dialogue reflected a recognition that three conditions were necessary in order for such a dialogue to have a chance of success:

- there must be agreement on the agenda for a dialogue, and the agenda must be neither so narrow that it won't have broad support nor so wide that it will be impossible to reach agreements;
- there must be agreement about who participates in the dialogue, and the participation must be broad enough to give agreements legitimacy while small enough to actually permit dialogue and resolution of disagreements;
- there must be agreement about who will mediate the dialogue, and the mediator must have both the trust of those involved and the skills to help resolve disputes.

In the public debate during July and August there appeared to be substantial agreement that Monsignor Quezada Toruño should be the mediator. Major newspapers with close ties to big business heralded his consultative process (while significantly misrepresenting it) and publicized favorable comments by prominent citizens. Both Portillo and leaders of *Barómetro* privately indicated support for him to play the role of mediator, as well.

The support was both personal and institutional. The Church was severely weakened by the war. Catholicism is no longer hegemonic, with some 40% of the population estimated to have joined other Christian denominations. The Church is also less centralized than before, with two archbishops, a decision-making Bishops' Conference, and increasingly independent dio-



ceses. Nonetheless, it remains a strong institutional force and can be an important player in helping to bridge differences between sectors and build popular support for any agreements. Monsignor Quezada is, at 69 years, an experienced administrator and mediator capable of navigating the troubled national and ecclesiastical waters. In the early stages of the peace negotiations he was a key mediator.

It was less clear how much agreement existed over the other conditions. The idea behind *Barómetro* was that a fairly representative group of individuals would be more manageable and have an easier time forging agreements than would a structure based on formal organizational or sectoral representation. Portillo agreed to meet with representatives of the group, but they asked that Ríos Montt and Vice-President Reyes also participate to ensure that any agreement reflected the entire government and not just part of the executive branch. Portillo agreed.

When the meeting took place, Ríos Montt did not appear and Reyes proceeded to lecture them about how they were unrepresentative and the government didn't need to have a dialogue with a group of individuals.<sup>153</sup> It became clear that the *Barómetro* strategy for resolving the participation question would not work.

In response to Reyes' criticisms, a new group was formed to press demands for national dialogue. The *Foro* Guatemala, unlike *Barómetro*, has a representative character. Members formally represented their organizations, although the *Foro* encompassed basically the same sectors and groups reflected in the membership of *Barómetro*. CACIF is a member, and the moderators of the *Foro* are the rectors of the universities. Portillo agreed in November to establish a formal dialogue with the *Foro*, and named Edgar Gutiérrez to organize it and head the government team. In December, Gutiérrez announced that the dialogue would begin the second week in January and would address three themes: economic reactivation and combating poverty; transparency and the fight against corruption; and strengthening democracy.

Although there has been significant progress toward initiating a formal process of national dialogue, it is far from clear that the essential conditions have really been met. For one thing, in November Ríos Montt announced that any agreements reached through such a dialogue would not be binding on the legislature. CACIF and the *Foro* have continued to demand a rollback of the fiscal reforms as a pre-condition for participating in any dialogue, and the government has not agreed to do so. And it is still not at all clear that the *Foro* will be able to speak with one voice. The evidence to date suggests that it is more likely that there will be many different, and divergent, voices. The announced themes for the dialogue are very broad, and the test will come in trying to agree on a much more detailed and specific agenda.

The hope offered by a new national dialogue is that it will, like the peace negotiations and the fiscal pact negotiations, help forge a multi-sectoral consensus on specific policies to deepen democratization and reduce social exclusion. The risk of a new national dialogue is that, as with the peace accords and the fiscal pact, there will not be the political will or capacity to implement any agreements that emerge. There is also the likely prospect that some participants will use the very existence of a dialogue as an argument for freezing in place any steps to implement provisions of the peace accords or fiscal pact until new agreements are reached. Remember that the fiscal pact negotiation process lasted more than a year and a half!

Thus, a new process of national dialogue may be able to break the growing paralysis of Guatemala's political system, but it may also reinforce that paralysis. Which occurs will depend heavily on the good will of those participating, yet over the past several years good will has been in scarce supply.

In the absence of good will, it appears that Guatemala may be heading into a period of increased social conflict and social mobilization by new multi-sectoral "fronts" that work outside of the electoral framework. There is a growing sense in some parts of civil society, as

described in the chapter on civic actors, that narrowly focused policy advocacy will not be successful in advancing sectoral interests. At the same time, there is a growing recognition of the political weakness of most civic actors and of the need to make alliances with other actors to develop sufficient clout to win demands. And there is a growing belief among a quite divergent range of non-governmental actors (including the private sector) that the current government is either unwilling or unable to negotiate or implement policy agreements.

It may well be too late to avoid a scenario of increased social conflict, and it is important to understand clearly the key factors pushing the country in that direction. First, the political system has failed to provide effective institutional mechanisms for citizens to participate in shaping policies. The party system is unstable and fickle. Citizens don't know what they are getting with their vote and the party system does not provide effective channels for balancing divergent or conflicting interests. The intricate web of competing political and personal interests represented in the current government has produced policy paralysis rather than negotiated compromise.

Second, successive governments have simply failed to deliver the goods in terms of jobs and effective steps to reduce poverty and inequality. This is due to a combination of bad luck (changes in the world and regional economy that impact negatively on Guatemala), bad faith (in particular, the refusal of the traditional economic elite to honor the commitments it made in the peace accords), bad capacity (weak institutions incapable of designing policies and delivering services), and bad history (the severity of social and economic exclusion in Guatemala was so great that significant increases in social spending have relatively minor short-term impact).

A third, more intangible, factor is the cultural legacy of Guatemala's history of exclusion and repression. There is no tradition of resolving conflicts through negotiation followed by implementation of agreements. There is little identification with any national interests that

transcend sectoral or personal interests. There is little trust in the good will or good faith of others, and getting even often takes precedence over getting ahead.

There is no "quick fix" to these problems. There are, however, some strategic priorities that ought to guide long-term efforts to address them. Multi-sectoral dialogue and negotiation should be encouraged, and agreements reached through such processes must be promptly implemented. Leadership development and institutional capacity-building are critical needs for all sectors, but fostering democratic values (and practices) and tolerance for diversity must be essential components of technical assistance programs aimed at meeting these needs. The institutional reform process begun under the peace accords must continue and accelerate, and greater attention must be devoted to insulating those reforms from partisan political (or personal) influence. Strengthening government institutions and strengthening civil society should not be posed as competing strategies, both are essential. Separation of powers is less a concern for strengthening Guatemalan democracy than is developing more effective checks and balances between powers, and redressing the imbalance requires society-wide strategies, not just governmentally-focused ones. The ongoing impunity of the "*fuerzas ocultas*" and the "*poderes paralelos*" undermines all of these priorities.

Finally, it is important to avoid focusing so much on the problems of the moment that one loses a sense of historical process. Viewed from one perspective, the institutional weaknesses and political fragmentation that characterize Guatemalan politics today are a predictable legacy of almost fifty years of exclusion and repression. From another perspective, these same characteristics reflect a partial leveling of the extreme imbalance of power that was dominant during the periods of military dictatorship. The challenge is to take advantage of more equal powers by reaching consensus of sufficient strength to guarantee rapid implementation.

## ENDNOTES

- 1 For population, World Bank, *World Development Report 1980*, Table 1. *Guatemala: Memory of Silence: Report of the Historical Clarification Commission and Recommendations* (hereinafter CEH), 1999.
- 2 For a full description of the peace accords and the challenges of implementation, see, Jack Spence, David R. Dye, Paula Worby, Carmen Rosa de Leon-Escribano, George Vickers and Mike Lanchin, *Promise and Reality: Implementation of the Guatemalan Peace Accords*, Hemisphere Initiatives, Cambridge, MA, August 1998.
- 3 For a fuller discussion of civil society reactions see, *Promise and Reality...*, op. cit.
- 4 *Vox Latina*, Friedrich Ebert Foundation, April 2001.
- 5 Conservative opposition groups delayed with court injunctions, so the voting date was set only a few weeks before the vote. Educating voters was thus a formidable task. Voters in the predominantly indigenous western highlands approved the indigenous reforms. See Cynthia Arnson (ed.), *The Popular Referendum (Consulta Popular) and the Future of the Peace Process in Guatemala*, Working Paper No.241, Woodrow Wilson Center Latin American Program, Washington DC 1999; Susanne Jonas, *Of Centaurs and Doves: Guatemala's Peace Process*, Westview Press, Boulder and London 2000, chapter 8; Victor Ferrigno, 'La nación a debate: constitución y derechos indígenas' in *Jueces para la Democracia, Libro blanco sobre la Independencia del Poder Judicial y la Eficacia de la Administración de Justicia en Centroamérica*, San José Costa Rica 2000, 261-302.
- 6 Banco Interamericano de Desarrollo, *Desarrollo: Más Allá de la Economía: Progreso económico y social en América Latina: Informe 2000 (bereinafter BID 2000)*, 2000, 205-212.
- 7 BID 2000, 185-186 illustrating Latinobarómetro polls that showed showed that Guatemala, among 17 Latin American countries, had the third highest preference (about 27%) for autocracy and a relatively low preference for democracy. For analysis of the different meanings attached to "firm hand" preferences and the increasing number of them in Guatemala see Development Associate, Inc., University of Pittsburgh and Asociación de Investigación y Estudios Sociales (ASIES), *La Cultura Democrática de los Guatemaltecos*, (4th Study, 1999), (hereinafter ASIES 2000) Guatemala, 2000, 114-120.
- 8 *Prensa Libre*, 13 November 2000. The poll was conducted by CID-Gallup.
- 9 See, for example, the discussion of the "Mincho" case in *Promise and Reality...*, op. cit., 59-62.
- 10 The newspaper *Siglo Veintiuno*, in particular, published a lengthy series of investigative articles in July 2001, that detailed the complex financial network of Alvarado MacDonald and examined ties between state agencies and entities that were part of that network.
- 11 See, "Ingeniero de infortunios y presidentes," *Siglo Veintiuno*, 2 July 2001. Also, "Las Chamuscas del poder," *Siglo Veintiuno*, 6 July 2001.
- 12 Of Q488 millions in loans by Promobanco, for example, auditors concluded that Q448 million would be "difficult to recover." Of Q509 millions in loans by Bancomet, auditors concluded that Q376 million was "not recuperable," Q64 million was "doubtful," and only Q69 million "perhaps is recuperable." *Siglo Veintiuno*, 10 July 2001. The same article reported that of Q580 million in loans by Fimesa, 99.3% were to businesses associated with Alvarado MacDonald.
- 13 *Prensa Libre*, 16 September 1996.
- 14 The information presented here about Ortiz' testimony is taken from a deposition he gave to prosecutors in May 1999. HI has a copy of the deposition. Some of the information has also appeared in Guatemalan media. See, for example, "Otorgan libertad a Alfredo Moreno," in *Prensa Libre*, 12 December 2001.
- 15 Deposition of a former customs officer, 26 May 1999. HI has a copy of the deposition.
- 16 Other key members of the military network, according to Ortiz, were General Roberto Eduardo Letona Hora (also a former chief of staff of the armed forces), Colonel José Luis Fernández Ligorria (another former chief of staff of the armed forces), Colonel Giovanni Valerio Cárdenas, Colonel Hugo Francisco Morán Carranza, Colonel Rolando Augusto Diaz Barrios, Colonel Mario Roberto García Catalán (implicated in the killing of Michael Devine), Major Luis Alvarado Bâtres, and Captain Romeo Guevara Reyes. The latter four, along with Ortega Menaldo, were fired for their involvement with Moreno.
- 17 Ortiz deposition, op. cit.
- 18 See, for example, the photograph of Portillo and Moreno together at a soccer match in *La Pedrera* stadium two days after Portillo's electoral defeat in 1996, published in *El Periodico*, 15 November 2001. Moreno and Portillo also visited Disney World together.
- 19 For a fuller discussion of the background of the cases in El Salvador and the work of the UN unit, see Jack Spence and George Vickers, *A Negotiated Revolution? A Two Year Progress Report on the Salvadoran Peace Accords*, Hemisphere Initiatives, 1994. Also see, Jack Spence, George Vickers and David Dye, *The Salvadoran Peace Accords and Democratization: A Three Year Progress Report and Recommendations*, Hemisphere Initiatives, 1995.
- 20 *Promise And Reality*, op. cit.
- 21 For a detailed analysis of the military's role in government and then in shaping the transition to democracy, see Jennifer Schirmer, *The Guatemalan Military Project: A Violence Called Democracy*, University of Pennsylvania Press, 1998.
- 22 *Crónica*, "Purga en el ejército," 6 February 1996. The purge aimed at eliminating resistance to the negotiations of the civil power accord, as Balconi confirmed, referring to the changes as "a restructuring that has much to do with what is discussed at the negotiating table..." See interview with Balconi, "El ejército está en sintonía con Álvaro Arzú," *Crónica*, 26 January 1996.
- 23 He has also written an excellent analysis of the Guatemalan military since the transition to civilian rule. See, Bernardo Arévalo de León, *Transición Democrática y Reconversión Militar en Guatemala: limitaciones y retos de un proceso inconcluso*, FLACSO, 2001.
- 24 J Fernando Valdez and Mayra Palencia Prado, *Los Dominios del Poder: La Encrucijada Tributaria*, FLACSO, 1998.
- 25 For a different view that analyzes positively the role of business elites in the transition to democracy, see Rachel M. McCleary, *Dictating Democracy: Guatemala and the End of Violent Revolution*, University Press of Florida, 1999. Her account of the *Serranazo* is compelling.
- 26 For a description of CACIF's role and positions during the peace negotiations, see *Promise And Reality*, op. cit., 46-56.
- 27 Non-profit, civil associations are required to have a board of partners or directors, as well as an executive director. Only a

few organizations actually have a working board, so executive directors run the organizations with little, if any oversight.

28 Pablo Ceto, an Ixil Maya and one of two Mayas on the URNG directorate, was elected to Congress as part of the ANN. He played a key role in setting up COPMAGUA and directed much of the behind-the-scenes decision-making. He was absorbed by his role in Congress, leaving behind both FUNDAMAYA, the organization he founded after the Peace Accords, and his close involvement in COPMAGUA. Edgar Palma Lau, a member of ORPA and the URNG directorate, became the head of the governmental CONTIERRA, a conflict resolution office for land disputes.

29 Manfredo Marroquín, director of Acción Ciudadana a USAID funded organization that monitors Congress and works on issues of transparency and citizen participation. AC is considered one of the more modern CSOs, headed by a younger generation that did not participate in the war. The World Lutheran Federation hosted the colloquium, and will publish the dialogue as part of a debate series on civil society in Central America.

30 The term "Mayan Movement" is used in the sense that Mayan activists themselves apply it in Guatemala.

31 For overviews see, *Las Organizaciones Mayas a finales de 1996*, Guatemala, FLACSO mimeo, 1996, and Víctor Gálvez Borrel and Alberto Esquit Choy, *The Mayan Movement and Mayan Organizations*, Danish Association for International Cooperation, MS Central America, 1997. For an analysis of Mayan movement intellectuals see Kay B. Warren, *Indigenous Movements and Their Critics: Pan-Maya Activism in Guatemala*, Princeton University Press, 1998. See also Richard Wilson, *Maya Resurgence in Guatemala: Q'eqchi' Experiences*, University of Oklahoma Press, 1995.

32 Civic Committees can run candidates for municipal government only, and cease to exist legally after the election. Only national-level political parties can run candidates for Congress. The Mayan movement and many other civil society actors argue that Civic Committees with a broader mandate could improve the quality of regional and ethnic political participation and representation.

33 CNOC, the *Coordinadora Nacional de Organizaciones Campesinas*, also is headed by cadre from organizations influenced by each one of the URNG members.

34 CONIC, *Consejo Nacional de Organizaciones Indígenas y Campesinas*, originated in a split-off from the *Comite de Unidad Campesina*, CUC, in the early 90s, precisely over the issue of political autonomy and the priority accorded to Mayan cultural demands.

35 These National Permanent Commissions are not the same as the Commissions set up by the peace accords. COPMAGUA established 8 CNPs (3 more than the commissions in the AIDPI) to channel indigenous participation in implementation. The CNPs themes: Education, Land, Participation, Spirituality and Sacred Sites, Official Recognition of Mayan Languages, Indigenous Women, Customary Law, and Constitutional Reform.

36 COMG, the Council of Mayan Organizations of Guatemala, founded 1990, grouped development and cultural-ist organizations.

37 Alfredo Tay Coyoy was Minister of Education during the Ramiro de León Carpio administration, 1993-1995.

38 On the CIA overthrow see Richard Immerman, *The CIA in Guatemala: The Foreign Policy of Intervention*, University of Texas Press, 1982; Stephen Schlesinger and Stephen Kinzer, *Bitter Fruit: The Untold Story of the American Coup in Guatemala*,

Doubleday 1982 (republished by Harvard University Press in 1999); Piero Gleijeses, *Shattered Hope: The Guatemalan Revolution and the United States, 1944-1954*, Princeton University Press, 1991. On the late 1980s transition see Susanne Jonas, *The Battle for Guatemala: Rebels, Death Squads, and U.S. Power*, Westview Press 1991; Robert Trudeau, *Guatemalan Politics: The Popular Struggle for Democracy*, Lynne Rienner, 1993; Jim Handy, *Gift of the Devil*, South End Press, 1984; Inforpress, *Guatemala 1986: The Year of Promises*, Guatemala City, January 1987.

39 See 1997 poll data in René Poitevin and Rodolfo Cerdas, "En Busca de un Camino: Gobernabilidad Democrática y Reforma del Estado," in IDEA, *Democracia en Guatemala: La Misión de un Pueblo Entero*, (hereinafter IDEA 1998) Stockholm, 1998, 61-63. (Forty per cent said elections are fraudulent compared to 30% who said they were clean.)

40 Ibid., 64-71.

41 ASIES 2000, op. cit., 31-54.

42 The fundamental source is Scott Mainwaring and Timothy R. Scully, eds., *Building Democratic Institutions: Party Systems in Latin America*, Stanford University Press, 1995. Its case studies do not include transitions in the context of war and post-war.

43 Ibid., 8-21.

44 In 1995 civic committees won in 22 municipalities and finished second in 32. Small political parties (those not specifically named in the text) won in 38 municipalities that year and in 17 in 1999. Data from TSE and Sistema de Naciones Unidas en Guatemala, *Guatemala: la fuerza incluyente del desarrollo humano*, 2000 (hereinafter *la fuerza incluyente*) 184.

45 ASIES 2000, op. cit., 32.

46 Fifteen of the 23 districts have three or fewer seats. Small parties will not win much there. In larger departments the method of apportioning the seats among the parties, while roughly proportional, tends to favor the largest party and to weed out the smallest. Compare Guatemala's method with that of El Salvador to see the difference.

47 On the 4 packages of reforms, the margins of defeat ranged from 39,000 votes (53%-47% on Question 1 regarding definitions of the nation and indigenous peoples) to 107,000 (58% to 42% on Question 2, regarding the Congress. In Arnson, op. cit., see the voter analysis by Dinorah Azpuru.

48 The book, published in February 2001 by the TSE, UNDP, and the Institute for Democracy and Electoral Assistance, is obligatory reading.

49 Ibid., 58.

50 Fabrice Lehoucq and David L. Wall, *Institutional or Sociological? Explaining Voter Turnout Rates in New Democracies*, April 24, 2001, unpublished. (Contact David Wall at [dwall@stcloudstate.edu](mailto:dwall@stcloudstate.edu)); Boneo and Torres-Rivas, op. cit., 136-139.

51 Fundación Centroamericana de Desarrollo (FUNCEDE), editor, of four studies: *Diagnostico y plan de desarrollo del municipio de Santa Cruz del Quiché* and *San Gaspar Ixchil* and *Jacaltenango* and *Santa Eulalia*, 1995. In Jacaltenango the study estimated that 40% left during the harvest.

52 Boneo and Torres-Rivas, op. cit., 181 and IDEA, 1998, op. cit., 33, 61-73.

53 Ibid., 92-97.

54 The hypothetical "Null and Blank Party" would have reduced the ANN (DIA-URNG) bench from 9 to 5, and eliminated the Christian Democrats' two seats, and one of the two seats won by very small parties.



- 55 ASIES 2000, op. cit., 18,32, 40-47.
- 56 ASIES 2000, 25-40, 116; Mitchell A. Seligson and Joel M. Jutkowitz, *Guatemalan Values and the Prospects for Democratic Development*, Development Associates, Inc., March 1994, 58. However in 1993 those who combined the opposite — lack of support for the system and lack of political tolerance — were in notably higher percentages than other Central American countries and 7 times that of Costa Rica.
- 57 BID 2000, op. cit., 186-187.
- 58 For a thorough analysis of the counterinsurgency state's legal apparatus see Alberto Binder et al., *Informe sobre la participación del sistema judicial en la violación de los derechos fundamentales durante el enfrentamiento armado*, draft prepared for the CEH, on file with author.
- 59 CEH Report, op. cit.
- 60 Reforms had been promoted by domestic elements and international donors such as USAID, BID, the World Bank, and UNDP. See Hugh Byrne, 'Trials and Tribulations of Justice Reform in Guatemala', paper presented at the Latin American Studies Association conference, March 2000, 7-9 and WOLA, *La reforma judicial en Guatemala, 1997-1998: Una guía básica sobre los problemas, procesos y actores*, Guatemala, May 1998, 28-38.
- 61 In April 1998 the UN Human Rights Commission excluded Guatemala from the list of countries singled out for systematic violations of human rights.
- 62 One UNDP study found that the 1997 kidnapping rate approximated that of Colombia; about 17 per 100,000 inhabitants; PNUD Proyecto Regional de Justicia, *Acceso a la justicia en Centroamérica: seguridad jurídica e inversión*, 2nd edition, San José Costa Rica 2001, 45.
- 63 Charles T. Call, *Sustainable Development in Central America: The Challenges of Violence, Injustice and Insecurity*, Central America 2020 Working Paper No.8, Hamburg 2000, 9.
- 64 BID 2000, 14-15. Only Panama and Uruguay had fewer than 30% say their families had been victims. Neighboring El Salvador was second at 46%. Other studies with more restricted questions have found lower frequencies. A 1997 survey by Cultura Democrática found a frequency of 22.5%. A 1999 Borge and Associates poll found frequencies of 42% in urban areas and 27% in rural areas. For further analysis see ASIES 2000, 86-89. Latin America had in the 1990s, by far, the highest homicide rate in comparison with six other regions.
- 65 Call, op. cit., 9.
- 66 Comisión de Fortalecimiento de la Justicia, *Una nueva justicia para la paz: Informe Final*, Guatemala 1998.
- 67 On the weaknesses of public prosecutors see Luis Pásara, Manuel Garrido, Antonio Maldonado and Karin Wagner, *Funcionamiento del Sistema de Justicia en Guatemala: un análisis de comportamientos institucionales*, MINUGUA, Guatemala 2000.
- 68 PNUD, *Guatemala: Informe del Desarrollo Humano 2000*, 109.
- 69 *Prensa Libre*, 5 January 2001.
- 70 MINUGUA, *Ninth Report on Human Rights of the UN Verification Mission in Guatemala, 1 April 1998 to 31 December 1998*, 10 March 1999, 3.
- 71 AID has a broader initiative to train Mayan leaders. For a detailed discussion from an AID perspective see Steven E. Hendrix, 'Guatemalan "Justice Centers": The Centerpiece for Advancing Transparency, Efficiency, Due Process, and Access to Justice', *American University International Law Review*, 2000, v.15, no.4, 813-868.
- 72 The original proposal insisted that the "alternative mechanism" of indigenous dispute resolution should not violate constitutional or international human rights guarantees, and proposed that all customary rulings should be validated by an state judge. See Luis Ramirez, Justo Solorzano and Mario Caxaj, *Informe: Tribunales Comunitarios*, draft document, INECIP, 1999.
- 73 In 1998 five pilot community courts were established in five departments, with three 'justices of the peace' (*juces de paz*) — two people from the community and the local justice of the peace. Procedures had to be in accord with the CPP. In practice, however, they dealt with all kinds of cases, including family conflicts, which were not within their legal remit. See Luis Ramirez, Justo Solorzano and Mario Caxaj, *Informe: Tribunales Comunitarios*, draft document, INECIP, 1999; Jorge Murga Armas, *Análisis del funcionamiento de los Juzgados de Paz Comunitarios. Reformas al Código Procesal Penal*, draft document, PNUD, Guatemala 1999.
- 74 *Central America Report*, 4 February 2000.
- 75 *Prensa Libre*, 26 August 2001.
- 76 In 2000 there were only 91 public defenders permanently employed, plus a pool of 78 defense lawyers in the capital and 25 in eight regional departments. MINUGUA, *Suplemento al décimo informe sobre derechos humanos de la Misión de Verificación de las Naciones Unidas en Guatemala: Funcionamiento del sistema de justicia*, January 2000, 10. See Luis Pásara, et. al., op. cit., and Aylín Ordóñez, *Investigación sobre acceso a la justicia en la República de Guatemala* in IDB-IIDH, *Acceso a la justicia y equidad: Estudio en siete países de América Latina*, Instituto Interamericano de Derechos Humanos, San José Costa Rica 2000.
- 77 The International Labour Organization's Convention 169, approved by the Guatemalan Congress in 1995, recognizes the right of indigenous peoples to their customary law.
- 78 Hendrix, 'Guatemala "Justice Centers," op. cit., 837.
- 79 The PM took action only after considerable public pressure. The PM's shortcomings have been repeatedly pointed out by MINUGUA and the Human Rights Ombudsman (*Procurador de Derechos Humanos*, PDH), the latter observing that 'the progress of criminal cases is slower and more delayed every day, bogged down in a web of corruption.' MINUGUA, *Suplemento al décimo informe...*, op. cit; Report of the Procurador de los Derechos Humanos (PDH) cited in ASIES, *Informe combinado sobre la situación de los derechos humanos en Guatemala durante 1999*, at <http://www.asies.org.gt/informe-combinado.htm>
- 80 *Central America Report*, 17 August 2001.
- 81 *Central America Report*, 17 August 2001; *Prensa Libre* 22 August 2001.
- 82 *Central America Report*, 17 August 2001.
- 83 Fundación Myrna Mack, *Hechos que afectan la independencia judicial y administración de justicia en Guatemala: amenazas, intimidaciones y atentados contra jueces, fiscales y abogados*, FMM, August 1999, Guatemala.
- 84 *Ibid.* Insurance companies establish clauses, which rule out payment in the case of death by firearms.
- 85 Despite the intentions of penal reformers in the early 1990s, no new Penitentiary Code has been approved to date.
- 86 PNUD Proyecto Regional de Justicia, *Acceso a la justicia en Centroamérica: población privada de libertad*, San José Costa Rica, 2000, 87.
- 87 *El Periódico*, 19 June 2001.
- 88 *Central America Report*, 31 August 2001.
- 89 The existence of investigative structures parallel to the official judicial process came to light during the Arzú adminis-

tration when families of kidnap victims, frustrated with the inability of the police and criminal justice system to secure their release, turned to military intelligence, revealing a network run out of the Presidency that co-ordinated operations between the Public Ministry and the Estado Mayor Presidencial (EMP). See declarations of Hugo Ordoñez Porta in the Ordoñez Porta kidnapping and murder, *Prensa Libre*, 13 August 2000.

90 Commenting on the Mack case, the Lawyers Committee for Human Rights notes that 'it took four years to obtain an order directing the courts to investigate the defendants' possible involvement; fifteen additional months to initiate that prosecution; two years to determine which procedural code should be applied; and more than a year to resolve two identical but separate amnesty petitions...that, against all logic, the defendants were permitted to interpose.' Lawyers Committee for Human Rights, *Advocacy Alert. Update/Guatemala*, October 1999. [www.lchr.org/121/mack1099.htm](http://www.lchr.org/121/mack1099.htm)

91 *Prensa Libre*, 'Laberinto de la impunidad,' 13 August 2000.

92 The prosecutor, Otto Ardón, went on to take up a post in the Ministry of Defense. *Prensa Libre*, 13 August 2000.

93 ASIES, *La cultura democrática de los guatemaltecos*, Guatemala 1997. A 1997 UNDP study found that 50% of the population had no confidence in the judiciary and 60% no confidence in the police, levels found elsewhere in Central America. See PNUD Proyecto Regional de Justicia, *Acceso a la justicia en Centroamérica: seguridad jurídica e inversión*, 2nd edition, San José Costa Rica 2001, 44. The 1998 data cited are in Luis Pásara, 'La justicia en Guatemala', *Diálogo*, FLACSO, No.3 (2) 1998, p.4; ASIES, 'La cultura democrática de los guatemaltecos' cited in ; PNUD, *Guatemala: Informe del Desarrollo Humano 2000*, 112.

94 Human Rights Watch, *World Report 2001: Guatemala*, 4.

95 Amnesty International, *Guatemala Annual Report 2001*, 4.

96 Report of the UN Special Rapporteur on the Independence of Judges and Lawyers Param Kumaraswamy, March 2000, cited in Human Rights Watch, *World Report 2001: Guatemala* at [www.hrw.org/wr2k1/americas/guatemala.html](http://www.hrw.org/wr2k1/americas/guatemala.html).

97 *Prensa Libre*, 17 June 2001; MINUGUA, *Noveno Informe de Derechos Humanos de la Misión de las Naciones Unidas para Guatemala*, Guatemala 1999.

98 In June 2001 the PNC had 18,314 operatives; *Sexto Informe del Secretario General de las Naciones Unidas sobre la Verificación de los Acuerdos de Paz de Guatemala*, Guatemala June 2001. At [www.minugua.guate.net](http://www.minugua.guate.net).

99 This study includes a useful cross-regional statistical comparison of homicides. See Carlos Mendoza, 'Collective violence: an answer to the absence of justice and security in Guatemala', draft paper, Stanford University, April 2001.

100 MINUGUA, 'Los linchamientos: un flagelo contra la dignidad humana,' December 2000. At [www.minugua.guate.net](http://www.minugua.guate.net).

101 *Prensa Libre*, 1 April 2001.

102 For a detailed consideration see Marta Gutiérrez and Paul Kobrak, *Los linchamientos: pos conflicto y violencia colectiva en Huehuetenango*, Guatemala, Centro de Estudios y Desarrollo de la Frontera Occidental de Guatemala (CEDFOG), Huehuetenango, 2001.

103 Hugh Byrne, William Stanley and Rachel Garst, *Rescuing Police Reform: A Challenge for the New Guatemalan Government*, Washington Office on Latin America, January, 2000.

104 *Ibid.*, 2.

105 The 18,314 figure is reported by MINUGUA in, *La Policía Nacional Civil: un nuevo modelo policial en construcción*,

MINUGUA, April, 2001. In June, 2001, the *Comisión de Acompañamiento* recommended a prioritization of expenditures by the executive branch for 2001 that included funds necessary to meet the 20,000 target.

106 *Mecanismos de control sobre la Policía Nacional Civil*, Instituto de Estudios Comparados en Ciencias Penales de Guatemala, 2001.

107 MINUGUA. *La Policía Nacional Civil...*, op. cit.

108 According to a U.S. Embassy official in November 2001.

109 World Bank, *Guatemala: Economic and Social Position and Prospects*, August 1978, 48-57, Table 4.2; World Bank, *Guatemala: Building Peace with Rapid and Equitable Growth*, (hereinafter WB 1996) April 26, 1996, 6-16.

110 *Siglo XXI*, 5 June 2001, 12.

111 The World Bank, *World Development Report 2000/2001* (hereinafter *WB 2000/2001*) had no tax data for Guatemala so the data are from *World Development Report 1998/1999*, Table 14. GDP/capita data are from the UNDP *Human Development Report 2001*, (hereinafter UNDP 2001) Table 1.

112 Latin America ranks below Southeast Asia, and Eastern Europe in literacy, average years of education, and secondary education matriculation, and below the Middle East on the latter measure. BID 2000, 10-12.

113 UNDP 2001, Table 3.

114 *La fuerza incluyente* op. cit., 42-45. The UN estimated it would take for each year nearly 13 billion Quetzals to extinguish poverty in 1998 or about 4% of GNP (PPP).

115 Population increased from 8.7 million to 10.6 million. Not taking age cohorts into account a rough calculation yields 3.2 million illiterates in 1989 and 3.3 million in 1998.

116 IDEA, 1998, op. cit., 27-33. See Harry Anthony Patrinos, 'Differences in Education and Earnings across Ethnic Groups in Guatemala', *The Quarterly Review of Economics and Finance*, v. 37, no. 4, 1997, 809-821. For example in 1989 Ladino male workers averaged 6+ years of schooling; the Quiché had 2.9 years, and Kekchí averaged 3.7 years. Kekchí had the highest indigenous earnings (only 73% of Ladinos). However, Quiché males earned more than "other" indigenous groups, though their education averaged .6 years less.

117 *La fuerza incluyente*, op. cit., data from Table 5.16.

118 *Ibid.*, 136-138.

119 PAHO, *Health of the Americas 1998*, Washington, D.C., 302.

120 *La fuerza incluyente*, op. cit., 180-182.

121 PAHO, op. cit., 296; *La fuerza incluyente*, op. cit., 165-166.

122 *La fuerza incluyente*, op. cit., 48-49; *World Bank 2000/2001*, op. cit., Table 1.

123 *La fuerza incluyente*, op. cit., 49-50. The income of the richest 10% in 1989 was 20-23 times that of the poor, and 16 to 17 times higher in 1999.

124 *La fuerza incluyente*, op. cit., 194-200; World Bank, *Guatemala: Expenditure Reform in a Post-Conflict Country*, (hereinafter *WB Expenditure Reform*) Report No. 19617-GU, February 4, 2000, 4-6, 29-44.

125 World Bank, *Guatemala: Investing for Peace: A Public Investment Review*, Report No. 16392-GU, July 15, 1997, 8, 18-21.

126 See essays in J. C. Cambranes ed., *500 años de lucha por la tierra*, Guatemala, Flacso, 1992; J.C. Cambranes, *Coffee and Peasants: The Origins of the Modern Plantation Economy in*

- Guatemala, 1853-1897*, Plumstock Mesoamerican Studies, South Woodstock, Vermont; David McCreery, *Rural Guatemala, 1760-1940*, Stanford University Press, 1994.
- 127 Jim Handy, *Revolution in the Countryside*, University of North Carolina Press, 1994, 92-95. See also data from José Aylwin, "El acceso de los indígenas a la tierra en los ordenamientos jurídicos de América Latina: el caso de Guatemala," MINUGUA, 2001.
- 128 Handy, *Revolution...*, op. cit., 82-83.
- 129 Aylwin, op. cit., 56-58. Data on the landless and communal lands data are from Eduardo Baumeister, "Formas de Acceso a la Tierra y al Agua en Guatemala," *Cuadernos de Desarrollo Humano*, Sistema de Naciones Unidas en Guatemala, 2001, 19, 9. The AID study is cited in MINUGUA, *La Problemática de la tierra en Guatemala*, 1995, 6.
- 130 World Bank, *Guatemala: An Assessment of Poverty*, April 17, 1995, 11.
- 131 Aylwin, op. cit., 57.
- 132 Baumeister, op. cit.
- 133 Ibid., 7-14. In a mixed ecological region of Cuchumatanes, Huehuetenango 32% of farms were .7 Hectares in 1979 and 38.7% were in 1994. In Tontonicapán the number of farms less than .7 hectares increased from 20,701 to 36,000.
- 134 Ibid., 5-7.
- 135 *La fuerza incluyente*, op. cit., 170-171; *World Bank Development Indicators 2000* (CD-Rom) 1998 figures. For a caveat on remittance data, see Jack Spence, Mike Lanchin, and Geoff Thale, *From Elections to Earthquakes: Reform and Participation in Post-War El Salvador*, April 2001.
- 136 In Central America, only El Salvador had urban growth rates lower than Guatemala, and El Salvador has had much larger emigration. World Bank, *World Development Report 1997*, Table 9.
- 137 WB, 1996, op. cit., 28-29.
- 138 WB, 1996, op. cit., 28.
- 139 Charles Clark, "The Delegitimation and Evolution of Land Tenure in Tropical Petén, Guatemala," paper presented at the LASA convention, Chicago, April 1998.
- 140 Rosalinda Hernández Alarcón, *La Tierra en los Acuerdos de Paz: Resumen de la Respuesta Gubernamental*, and *¿A quién servirá el catastro? Las dificultades para convertir el censo territorial en un recurso para atender la añej demanda de tierra en Guatemala*, both Inforpress Centroamericana, 1998; MINUGUA, *Informe de Verificación: La situación de los compromisos relativos a la tierra en los Acuerdos de Paz*, May 2000, 13-23; and CONGCOOP, *El catastro: Instrumento para el desarrollo nacional*, febrero 2001.
- 141 Aylwin, op. cit., 58.
- 142 Aylwin, op. cit., 68.
- 143 MINUGUA, "...compromisos relativos a la tierra," op. cit., 10-12.
- 144 In decorous language a 1996 World Bank report referred to "discontinuous support for...tax administration reform" and a "tax code [that] discourages tax payer compliance." WB 1996, op. cit., 14-16.
- 145 WB, *Expenditure Reform*, op. cit., 9.
- 146 Nuria Gamboa and Barbara Trentavizi, *la Guatemala Posible: la senda del pacto fiscal*, Asociación Centroamericana Hombres de Maíz, Guatemala City, April 2001. MINUGUA sources informed HI that Juan Pablo Corlazzoli, MINUGUA's Deputy Chief of Mission invested immense amounts of time over a year in the negotiations. Regarding international skepticism, Gamboa and Trentavizi quote economist Alex Segovia, in August 2000, who characterized the international financial organizational attitude as follows: "we have been in Guatemala 25 years and they never comply, so why should be believe that now you would comply.," 32-33.
- 147 See pages 19-22, 27-35.
- 148 WB 4 February 2000, 9-15, Annex B; Latin American Monitor, *Central America*, August 2001.
- 149 MINUGUA, *El Pacto Fiscal un año después*, May 2001, 32, 36.
- 150 Gamboa and Trentavizi, op. cit., cite José I. Larios, "Como se distribuye la carga tributaria por clase de ingreso en Guatemala," en Comisión Preparatoria del Pacto Fiscal, ed., *La Política Fiscal en Guatemala*, 2000. MINUGUA's *El Pacto Fiscal*, op. cit., also cites Larios' work for the overall tax burden, which is mildly progressive roughly through the 9th decile, and then declines sharply, so that its tax burden is about equal to the 7th decile. At 13% it is a very light burden.
- 151 *La fuerza incluyente*, op. cit., 192-193.
- 152 Latin American Monitor, *Central America*, November 2001, 3-4.
- 153 Interview with a participant in the meeting, 14 November 2001.



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