



Peace Agreements and the Constitution in a Fragile Democracy

The case of Guatemala

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Case Study

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About this publication

This publication is part of the project *Towards Sustainable Peace: The Nexus of Peacemaking and Constitution Building*, implemented by the Berghof Foundation, in collaboration with the United Nations Mediation Support Unit – Department of Political and Peacebuilding Affairs. It was generously supported by the German Federal Foreign Office.

The project explored how peacemaking – particularly mediated peace negotiations – interfaces with constitution building in practice, a so far understudied area. It identified the challenges and opportunities at this ‘nexus’, the lessons learned, and policy options and their implications on sustaining peace.

To this end, a number of thematic and field studies were commissioned, desk studies were conducted, and expert roundtables, interviews and peer exchange were organised involving scholars and practitioners from the fields of mediation and constitution building. The following publications capture the insights from the project on crucial processual and substantive issues at the nexus, which are expected to be valuable for practitioners.

Key output

- ≡ Key considerations for practitioners working at the nexus of constitutions and peace processes

Case studies

- ≡ Burundi [French and English]
- ≡ Guatemala [Spanish and English]
- ≡ Republic of (North) Macedonia

Thematic studies

- ≡ From armed intra-state conflict to a functioning constitutional order: reconciling principles of third-party support – a reflection
- ≡ Constitution making in contexts of conflict: paying attention to process
- ≡ Critical substantive issues at the nexus of peacemaking and constitution building
- ≡ The imperative of constitutionalizing peace agreements

The publications are available online at www.berghof-foundation.org/pmcb.

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Acronyms and abbreviations

ASÍES	Asociación de Investigación y Estudios Sociales (Research and Social Studies Association)
AVANCSO	Asociación para el Avance de las Ciencias Sociales en Guatemala (Association for the Advancement of Social Sciences in Guatemala)
CACIF	Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations)
CANG	Colegio de Abogados y Notarios de Guatemala (Association of Lawyers and Notaries of Guatemala)
CC	Corte de Constitucionalidad (Constitutional Court)
CEDECON	Centro para la Defensa de la Constitución (Centre for the Defence of the Constitution)
CEH	Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification)
CGC	Controlaría General de Cuentas (General Comptroller of Accounts)
CIACS	Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (Illegal Clandestine Security Apparatuses)
CICIG	Comisión Internacional Contra la Impunidad en Guatemala (International Commission against Impunity in Guatemala)
CIEN	Centro de Investigaciones Económicas Nacionales (National Economic Research Centre)
CISV	Comisión Internacional de Seguimiento y Verificación (International Commission of Monitoring and Verification)
CNAP	Consejo Nacional para el Cumplimiento de los Acuerdos de Paz (National Council for the Implementation of the Peace Agreements)
CNR	Comisión Nacional de Reconciliación (National Reconciliation Commission)
CODECA	Comité de Desarrollo Campesino (Peasant Development Committee)
CODISRA	Comisión Presidencial Contra el Racismo y la Discriminación (Presidential Commission against Racism and Discrimination)
CONTIERRA	Comisión Presidencial para la Resolución de Conflictos de Tierra (Presidential Commission for the Resolution of Land Conflicts)
COPREDEH	Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (Presidential Coordinating Commission of Executive Policy on Human Rights Matters)
CRIES	Coordinadora Regional de Investigaciones Económicas y Sociales, Nicaragua (Regional Coordinator of Economic and Social Research, Nicaragua)
CSA	Civil Society Assembly
CSJ	Corte Suprema de Justicia (Supreme Court of Justice)
CSUCA	Consejo Superior Universitario Centroamericano (Central American Higher University Council)
DANIDA	Danish International Development Agency
ENAH	Escuela Nacional de Antropología e Historia, de México (National School of Anthropology and History, Mexico)

FLACSO	Facultad Latinoamericana de Ciencias Sociales (Latin American School of Social Sciences)
FUNDESA	Fundación para el Desarrollo de Guatemala (Foundation for the Development of Guatemala)
IACHR	Inter-American Court of Human Rights
ICEFI	Instituto Centroamericano de Estudios Fiscales (Central American Institute for Fiscal Studies)
ILO	International Labour Organization
IPNUSAC	Instituto de Problemas Nacionales de la USAC (National Affairs Institute of USAC)
LAPOP	Latin American Public Opinion Project
LGBTQ	Lesbian, Gay, Bisexual, Transgender and Queer Population
MINUGUA	Misión de Verificación de las Naciones Unidas en Guatemala (United Nations Verification Mission in Guatemala)
MP	Ministerio Público (Public Ministry)
NCA	National Constituent Assembly
OAS	Organization of American States
OEA	Programa Propaz de la Organización de Estados Americanos
OEA-PROPAZ	Propaz Programme of the Organization of American States
OHCHR	Office of the High Commissioner for Human Rights
NGO	Non-governmental organisation
PDH	Procuraduría de los Derechos Humanos (Human Rights Ombudsman)
SAA	Secretaría de Asuntos Agrarios (Secretary of Agrarian Affairs)
SEPAZ	Secretaría de la Paz (Secretary of Peace)
SfAA	Society for Applied Anthropology
SND	Sistema Nacional de Diálogo. Posteriormente, Comisionado Presidencial para el Diálogo (CPD) (National Dialogue System. Later, Presidential Delegate for Dialogue (CPD))
TSE	Tribunal Supremo Electoral (Supreme Electoral Tribunal)
UFM	Universidad Francisco Marroquín (Francisco Marroquín University)
UN	United Nations
UNDP	United Nations Development Programme
URL	Universidad Rafael Landívar, de Guatemala (Rafael Landívar University, Guatemala)
URNG	Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Unity)
USAC	Universidad de San Carlos de Guatemala (San Carlos University, Guatemala)
USN	University of South-Eastern Norway
UVG	Universidad del Valle de Guatemala (Del Valle University, Guatemala)

Executive Summary

Although many institutions and experts have highlighted the importance of analysing the influence of the constitution building in peace processes (UNDP 2014: 15; Samuels 2006: 13), little has been published on this subject in Guatemala. One exception is the research by Brett and Delgado that starts with the analysis of the relationship between democracy and constitution building (2005: 2).

The case of Guatemala deserves a special analysis, given the time elapsed between the return to democracy and the elaboration of the current Constitution, and the negotiation, signing and implementation of the peace processes: The current Constitution entered into force in 1985 and the Peace Agreement was signed 11 years later, in December 1996. Another particular characteristic of the Guatemalan case is the knowledge gap between experts on both processes: The experts in peace processes do not necessarily know about constitutional matters in depth and vice versa. Finally, the country is currently at a critical political juncture: for 10 years it has benefited from the work of a unique United Nations (UN) body, the Comisión Internacional Contra la Impunidad en Guatemala (CICIG - International Commission against Impunity in Guatemala), which has achieved historical outcomes at the judicial level in high impact cases against politicians and businesspeople. Now, the current administration seems determined to expel it from the country and discredit the fight against corruption, taking Guatemala to the edge of a constitutional crisis unseen since the early nineties.

a. History of the conflict in Guatemala

Guatemala is a country marked by its history of colonisation, authoritarian governments, civil war, poverty and structural racism. As a former Spanish colony, Guatemala has long been ruled by an economic elite descending from the original conquerors, bolstered later by other groups of European origin, usually affiliated to the agricultural economy for export. This agrarian economy has been characterised by monoculture, first of natural dyes, cotton, coffee and bananas, and more recently sugar cane and African palm. This system has systematically excluded the indigenous groups who make up more than 40% of the country's population. Structural racism is evident in any mapping of the distribution of land, poverty and access to utilities and infrastructure: indigenous regions are always subject to worse conditions than the rest of the country.

After the counter-revolution of 1954 overthrew a progressive and democratically elected government, the country succumbed to a spiral of political violence culminating in the genocide between 1978 and 1983. On one side of the conflict there were conservative right-wing regimes, imposed and maintained by the Army and its allies in the private sector, and on the other side, insurgent leftist groups. Other collective groups, such as students' associations, unions and any other conglomerate or individual considered as anti-regime were automatically declared as 'communist'. They were persecuted politically and, in many cases, murdered by State forces.

The Truth Commission, sponsored by the UN, established that at least 200,000 people died in the internal armed conflict in Guatemala. Other events such as kidnappings, rapes, forced displacement and child abduction marked the country for the medium- and long-term future. The Commission established that 95% of these atrocities were attributable to the Army and paramilitary forces and the majority of massacres occurred in indigenous and rural areas of the country.

b. The peace process

In 1983, a coup d'état was staged by a faction of the national Army wanting to see Guatemala return to democracy. In 1984, a National Constituent Assembly (NCA) was convened. In 1985, the current Constitution entered into force and in 1986, the first president of the new democratic era, Marco Vinicio Cerezo Arévalo, took office. At the Esquipulas summits of the mid to late 1980s, Central American presidents agreed to pursue peace in the region. Between 1987 and 1996, a long and difficult negotiation process took place in Guatemala, first through preparatory meetings promoted by friendly countries, including Spain and Norway, then through systematic talks between the Unidad Revolucionaria Nacional Guatemalteca (URNG - Guatemalan National Revolutionary Unity), the Government and the Army. Active participation by civilian organisations through the Civil Society Assembly (CSA) was also noteworthy.

In 1996, the Final Agreement on a Firm and Lasting Peace was signed, which included all the agreements signed in earlier years and covered diverse topics such as human rights, agrarian and economic reforms, the role of the Army in a democratic society, political reforms and, of course, disarmament, demobilisation and reintegration. In 1999, a controversial referendum was held relating to constitutional reforms proposed during the peace negotiations. Unfortunately, some politicians insisted that other reforms not related to peace be included and conservative groups took advantage of the opportunity to discredit the peace agreements by conducting a massive campaign against these reforms. The approval of reforms related to the recognition and rights of indigenous peoples was especially controversial; the results were extremely close and although they received more favourable votes in predominantly indigenous areas, the reforms were rejected.

In 2017, a broad coalition of international actors led by the CICIG proposed a series of constitutional reforms related to the judiciary system. These included recognition of the rights of the ancestral indigenous population. Conservative groups once again objected strongly and conducted another massive campaign against the reforms through traditional and digital mass media. In the end, the proposed reforms were shelved.

c. The Constitution in the peace process

In the case of Guatemala, the Constitution was an instrument for transitioning from dictatorship to democracy, and the Peace Agreements for transitioning from war to peace. Even though the existence of the first process was crucial for the second to take place, the two instruments (the Constitution and the Peace Agreements) had different objectives and were not complementary. Tensions have resurfaced between the two at different times, with notable crises occurring in 1999 and 2017.

Several critical periods in this complex and tense relationship have been observed in recent years. Acceptance of the current Constitution by the insurgents was a condition imposed by the Government for starting negotiations. Despite this initial restriction, specific topics were identified during the negotiations which required constitutional reform, and the Government pledged to present such reforms to the Congress. The 1999 referendum was a wake-up call for all parties involved, as it showed the true intentions of conservative political groups that instigated an effective boycott of the reforms. In 2017, the most recent expression of the same phenomenon occurred when the organised private sector, the right-wing think tanks, retired members of the military and lawyers combined to form a bloc that boycotted the process.

Negotiations never included mechanisms that allowed to manage these economic powers once the guerrilla movement had yielded its military capabilities. Mediators and the international community probably felt confident of the robust structural changes proposed in the agreements. The complexity of implementing popular consultations or referenda was not considered in Guatemala; which is understandable in view of its weak and incipient democratic culture. The need to establish guarantees for the constitutional reforms was skipped, which in hindsight could be seen as a prior condition to any deep structural change in the country.

Given the current political situation in the country and with the last three administrations under the scrutiny of the CICIG for corruption scandals, analysts consider that the current Constitution, even though imperfect, is a preferable option to submitting any reform for consultation; they fear that the final outcome of a reform process may be worse. Other experts believe that the Constitution's lifespan is over and that there are urgent topics that must be included in a new Magna Carta, related to the rights of indigenous people, women and young people. A third group is advocating for small and gradual changes when more favourable political conditions are in place.

d. Methodology and results

The case presented here is based on bibliographic research, in-depth interviews with nine experts on constitutional topics and peace processes, and on the conclusions of two workshops: one with young political analysts and the other with civil society leaders.

Many of those interviewed agreed that the following main topics should be included in any constitutional reform: checks and balances in the political system, public safety from a preventive paradigm, fiscal topics, and the rights of young people, women and other marginalised groups. Others believe that the problem runs deeper and that future reforms must address the roots of the Nation-State concept: will Guatemala turn into a neoliberal state with a minimal government structure that safeguards individual and private property rights? Or will it be a state that promotes citizens' development through social policies, and land redistribution through fiscal measures?

Of course, the recognition of the rights of indigenous people continues to be one of the most controversial topics, as was made evident in the failed popular consultation of 1999 and the reforms proposed in 2017. A system of ethnic exclusion is at the heart of the country's problems which has not yet been addressed. Reforms related to this topic should include more power and autonomy for indigenous territories; representation quotas, revision of the traditional forms in which justice is administered, and the use of indigenous costumes and languages, among others.

To date, the concept of the constitutional block has been important in enabling, in practice, the securing of some basic rights for indigenous peoples. However, the majority of experts believe that the current rights are still insufficient and agree that the main advantage of the current Constitution is the acceptance of the constitutional block, both on paper and in practice. This means that the laws and international agreements subscribed to by Guatemala, specifically those related to Human Rights, have acquired constitutional status in the country and are thus binding. Some institutions, such as the Corte de Constitucionalidad (CC- Constitutional Court) and the Procuraduría de los Derechos Humanos (PDH - Human Rights Ombudsman), make up part of this block and work in practice to correct some of the shortcomings of the current Constitution. One other expert spoke about strategic litigation as a way of putting the constitutional block into practice, especially in relation to international treaties, and as a tactic to ensure the respect of certain rights that would not otherwise be taken into account by current legislation. A final reflection that emerged from this case study has to do with the role of international cooperation. Even though it was instrumental during the peace negotiation period and in the implementation of certain social development projects (especially in relation to the empowerment of indigenous people), some experts deem it necessary that in future, increased emphasis be placed on profound and structural changes to the Guatemalan State. This approach is less focused on investing in social projects and more on the support of capacities within reformed institutions which will someday be able to assume leadership roles in the development of the country.

1 Introduction

The importance of understanding the relationship between peace and the Constitution has been widely discussed in academic literature and by cooperating agencies. Kirsti Samuels (2006: 13), for example, has warned how crucial the nexus is between the establishment of solid constitutions and more sustainable peace processes. Her main arguments are: 1) a good constitution can lay the foundation for a new society; 2) it can change the ways used to settle differences within a society from violent means to political means, and 3) it can support balancing forces in unequal societies – a disparity the author identifies as one of the main reasons for the original conflicts.

The United Nations Development Programme (UNDP), for example, deems support to constitution making and reform a corner-stone of its support for democratic governance, rule of law and peacebuilding (UNDP 2014: 3). It also establishes that the main interest of the United Nations (UN) System is to support constitution making processes based on the importance of giving constitutional value to internationally-recognised individual and collective rights.

In Guatemala, a country which suffered through a gruelling period of armed conflict between State forces and guerrilla groups for 36 years, the topic has not yet been explored deeply. One interesting review is the study by Brett and Delgado (2005: 2) on the relationship between democratisation and constitution building. It focuses on the time just after the signing of the Peace Agreements and the failed popular consultation of 1999, with its subsequent implications.

The present study refers to the *sui generis* nature of the Guatemalan situation, given the long period, which elapsed between the return to democracy and the development of a constitution and the signing of the Peace Agreements, against a background of internal armed conflict, negotiations, Peace Agreements and the

post-conflict scenario, all within the framework of a republican constitutional regime.

Talks and mediation took place on the basis of a Constitution written during wartime. This meant that protracted negotiations were required, notably on the scope of some of the peace pledges resulting from the agreement of partial reforms to the Constitution, without a fixed deadline subsequent to the signing of the agreement.

Another particular aspect of the Guatemalan case, given the temporal and conceptual separation between the constitutional and peacebuilding processes, is that experts in one area do not necessarily know much about the other topic. This study was a collective reflection on this reality; in many cases, participants were examining this reality for the first time.

Guatemala faces several challenges to achieve a more inclusive, democratic and prosperous society. First of all, of its Human Development Index is at 0.65, which places it 127th worldwide. Poverty, extreme poverty and child malnutrition indicators are even more alarming. These combine to make it a middle-income country, but one with terrible deficiencies in human development for the vast majority of its inhabitants.

Secondly, the country suffers from racism at the individual, collective and structural levels. The lowest development indicators correspond to the geographical areas with the highest percentage of indigenous population. The level of political participation by indigenous people remains minimal, all the more so with respect to female leaders. Even though in recent years there have been changes in local indigenous leadership (with their presence as city mayors, for example), they are still insufficient in number to count as proper political representation of a population representing over 40% of the total inhabitants of the country.

Also, there is widespread evidence of persistent racism among the elites, mass media and society in general.

Lastly, it is necessary to mention the weaknesses of the democratic system and democratic culture in general. On several occasions, the survey undertaken under the auspices of the Latin American Public Opinion Project (LAPOP) by Vanderbilt University, US, has shown the fragility of Guatemalan democratic culture, its high levels of intolerance, and its tendency to authoritarianism. Political scientists like Luis Mack (Mack 2006: 14) have analysed the fragility of the political parties and the electoral regime in general. In recent times, the Comisión Internacional Contra la Impunidad en Guatemala (CICIG - International Commission against Impunity in Guatemala) has found that political parties are co-opted by particular interests and mafias known as 'cuerpos ilegales y aparatos clandestinos de seguridad (CIACS - illegal armed groups and clandestine security organisations). All of the above takes place in a historical continuum of institutional fragility, polarisation and multi-causal and multidimensional unrest, currently shaped by neoliberal policies, which aggravate the imbalances and economic inequality among the Guatemalan population.

This study was completed within a context of great uncertainty for Guatemala. The institutional crisis unleashed by President Jimmy Morales, sparked by a series of actions geared to terminate the mandate of the CICIG, is the most intense since the self-attempted coup d'état by Jorge Serrano Elías, and it threatens to push back much of the progress achieved in the democratic era and by the peacebuilding processes. The strength of the current Constitution and its institutions and control mechanisms is facing a litmus test. A crisis of such proportions makes the analysis of constitutional topics all the more relevant.

The design of the study was qualitative, based on an interpretative research model which prioritises a deep understanding of the experience and the lives of research participants. The leading question of the study is this: how are the processes of peacebuilding and the constitution building in Guatemala related? To answer this question, a comprehensive bibliographic analysis was made, enabling a timeline to be drawn up of the most relevant facts about peace and constitutional topics. Additionally, authors who have addressed the topic in other parts of the world were also identified, as well as others who have written on various constitutional aspects or about the peace process in Guatemala.

The second part of the methodology consisted of interviewing key people involved in the negotiation and signing the Peace Agreements and in peacebuilding, and in the creation and amendment of the country's Constitution. The nine experts were chosen for their recognised participation in the peacebuilding processes and for their knowledge of the country's constitutional issues, as well as their diverse backgrounds and experiences.

Even though some of the interviewees contributed on both constitutional aspects and peace topics, they were asked to provide deeper input on their own specific areas of expertise. Interviews were guided by the ethical principles of social research established by the American Society for Applied Anthropology (SfAA).

This study presents first of all a brief summary of the country's recent history, with special emphasis on relevant moments in the conflict, peace and constitutional processes. Subsequently, the peacemaking and constitution building processes are analysed. Next, the nexus between the two processes is examined. Lastly, final reflections are included along with conclusions, lessons learned, unanswered questions and suggestions.

2 Brief history of the conflict and the Constitution

This chapter is based on two works considered seminal in Guatemalan historiography: *General History of Guatemala* (1997), coordinated by the historian Jorge Luján Muñoz; with the events of the country described in multidisciplinary terms and from the perspective of a variety of theoretical and ideological social science approaches. It draws in particular on facts and events from the second half of the 20th century. *Guatemala: Brief Contemporary History* (2006), also by Jorge Luján Muñoz, provides a summary of the country's history in the last two centuries. The interpretation of these sources was enriched by the conceptual understanding and contextual knowledge by the authors and experts interviewed.

a. Revolution and counter-revolution

Jorge Ubico Castañeda, a military officer considered as a paradigmatic example of the Latin American caudillos of the first half of the 20th century, ruled Guatemala from 1931 to 1944. From 1935 onwards, Ubico's intention to maintain a grasp on power became evident, as he repealed the constitutional reforms of 1927 that sought to widen the foundation of civil rights. In 1944, a series of social events and movements led to the overthrow of Ubico and his designated successor, Federico Ponce Vaides. That marked the beginning of a revolutionary period in Guatemala, with two democratically elected rulers: Juan José Arévalo and Jacobo Arbenz Guzmán.

Between 1944 and 1954, a series of reforms were established, which were aimed at opening the country to democracy, international relations and a more modern capitalist system. One of the first decisions in 1944 was to repeal the Constitution of 1879, apart from the aspects dealing with the functions of the executive power. In 1945, the National Constituent Assembly (NCA) was installed and a new Constitution was passed which focused on social guarantees (labour and unions, cultural, family and social security issues, among others). Special attention was paid to the rural cooperative movement and private property deemed conditional upon its social function. Autonomy was also guaranteed for universities and municipal authorities and the State retained the right to exploit hydrocarbons. Additionally, compulsory and secret voting was established for the literate and compulsory public voting for the illiterate. Women's citizenship was recognised, provided they were 'prepared' (that is, had undertaken formal studies).

From 1952 on, and under the second government of the Revolution, a series of reforms directly touched the interests of the most powerful economic sectors of the time, especially the transnational agricultural companies based on US capital. The Agrarian Reform Act focused on fighting the big landowners. It is important to bear in mind that this law did not apply to land under cultivation at that moment, which included the most important crops (coffee, bananas and cotton). Ownership of national farms could only be granted for 'lifelong use'.

The revolution was overthrown by a coalition of economic elites, supported by the most conservative sectors of the country such as the Catholic Church and with diplomatic, logistic and propaganda activities financed by the US government. The new ruler, Carlos Castillo Armas, using anti-communism as an excuse, established an openly repressive regime by dissolving unions, reversing all advances made by the agrarian reform and shutting down most of the existing political parties.

Castillo Armas called an NCA in 1954, that made many of these changes official, broke with the secular tradition of the preceding constitutions (an invocation of God was added that remains in the Constitution until today, and the rights of the Catholic Church were widened, especially those related to the ownership of real estate) and strongly limited the possibilities for political participation. The NCA established by Castillo Armas extended his rule to 1960, but he was murdered before the end of his term.

Following elections of questionable legitimacy, General Miguel Ydígoras Fuentes took office. This marked the beginning of a period of military governments that extended to 1985. As a result of discontent with the authoritarian tendencies of counter-revolutionary regimes, a military uprising took place on November 13, 1960 which gave rise to the first guerrilla movement in the country, the Rebel Armed Forces. From 1960 on, these groups were increasingly influenced by ideas coming from the socialist bloc, even though the different factions followed different ideologies.

b. Military regimes

The subsequent presidential periods (1963-1983) were those of Enrique Peralta Azurdía, Julio César Méndez Montenegro, Carlos Manuel Arana Osorio, Kjell Eugenio Laugerud García, Fernando Romeo Lucas García and Efraín Ríos Montt. All of them except Julio César Méndez Montenegro, the only non-military president of that period, came to power by fraudulent or illegitimate elections, usually called after a coup d'état. In those years, student and union movements were heavily repressed and there was political prosecution and selective murder of their leaders and of other sectors of the population.

Political repression got worse under the government of Arana Osorio and reached its peak in the regimes of Lucas García and Ríos Montt. The Comisión para el Esclarecimiento Histórico (CEH - Commission for Historical Clarification) established in 1999 that the majority of crimes perpetrated by the State, including massacres, rape of women, torture, forced displacements and child abduction, took place under the rule of these two military leaders. 200,000 people lost their lives in the internal armed conflict, with the most devastating consequences in the indigenous areas of the country.

These events were due to the increasingly strong presence of guerrilla groups in the predominantly indigenous regions and the logistical or ideological support provided by indigenous communities to guerrilla cells. In those years, the prevailing constitutional practice continued to follow the line of conservatism, anti-communism, widespread protection of the Catholic Church, restriction of political parties that did not explicitly support the regime's ideology, defence of private property and free enterprise, and little or no attention to civil rights. The Constitution of 1966, implemented under the only civilian government to rule the country, between 1950 and 1986 (led by Julio César Méndez Montenegro), established the existence of a constitutional court, a precursor of the current Constitutional Court.

c. Coup d'état against Ríos Montt and the return to democracy

In 1983, a military uprising overthrew Efraín Ríos Montt. Among the causes were his open challenge to the senior military commanders, the increasing influence of the neo-Pentecostal church, corruption scandals in public administration, and the evident intention of the ruler to hold power indefinitely. Oscar Humberto Mejía Víctores assumed power and one of his first actions was to cancel the special jurisdiction courts (used to 'legitimise' the execution of opponents to the Government), although he did not reduce the level of military action against the insurgency.

Also in 1983, the Contadora group was established, a multilateral group comprising Colombia, Mexico, Panama and Venezuela, that sought to promote the pacification of the Central American region. One year later, elections for an NCA were called, from which the current Constitution of 1985 would emerge. The NCA of 1984 was much more open in comparison to what the political system had allowed until then. In spite of that, it was composed of the formally-established political parties, most of which were of a right-wing, centre-right, and centrist political tendency. The only centre-left option allowed at that moment were the Christian Democrats. Left-wing parties and social movements that had resisted the dictatorships (intellectuals, university students, student movements, peasant movements, unions, etc.) did not have direct representation. The presence of an indigenous representative was highlighted (just one), and the majority of representatives were still men.

The new constitution was characterised by:

- ≡ Recognition of the primacy of international law over domestic law in the hierarchy of laws.
- ≡ Establishing the Constitutional Court and the position of the ombudsman (PDH) to oversee respect for Human Rights in the country.
- ≡ Guaranteeing private property as an inherent right of individuals.
- ≡ Establishing a system of flexible constitutional reform, with the requirement of final approval by means of popular consultation.
- ≡ Prioritising the protection of fundamental rights and liberties, and ending coup d'états and electoral frauds.

In 1986, the democratically-elected president Marco Vinicio Cerezo Arévalo, a civilian from the Christian Democratic Party, took office. In his inauguration speech, Cerezo established pacification as the top priority in his term. That year, the first meeting of Esquipulas also took place, in which Central American presidents affirmed the commitment to peace in their countries.

d. Pacification process and peace negotiations

The peace negotiation process in Guatemala started formally in 1987. That year, the Esquipulas II declaration was made by Central American rulers and the first formal meeting between the insurgency and the Guatemalan government took place in Madrid, Spain. The Comisión Internacional de Seguimiento y Verificación (CISV - International Commission for Monitoring and Verification) and the Comisión Nacional de Reconciliación (CNR - National Reconciliation Commission) were created. These were designed to support the peace processes.

Between 1988 and 1989, there were at least two obvious coup d'état attempts led by the most conservative factions of the Army in alliance with some sectors of society. Cerezo resolved both crises, even though many believe that he was weakened by such actions.

In 1990 the Oslo Agreement was signed, known as the 'Basic Agreement for the Search for Peace by Political Means'. The CNR, made up of delegates from the executive government, opposition political parties, the episcopal conference and notable citizens, participated in meetings with the Unidad Revolucionaria Nacional Guatemalteca (URNG - Guatemalan National Revolutionary Unity) in Norway and later sponsored the first formal meeting between civil society representatives and insurgents. That same year, a meeting took place at El Escorial and an important agreement was signed, in which the URNG recognised the current Constitution, which had been a pre-requisite by the Government to any negotiation, and withdrew its initial proposal to call an NCA. From that moment on, the peace and constitutional reform processes were connected in a complex manner.

Subsequently, the Ottawa declarations were made, after the unprecedented meetings held between the URNG and the Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (CACIF - Agricultural, Commercial, Industrial and Financial Associations Coordinating Committee), and other important declarations were made, including those of Quito, Metepec and Atlixco.

Between 1991 and 1992, there was increased activity in the peace process negotiations, with the following milestones, agreements and decisions being reached:

- ≡ Queretaro agreement
- ≡ Mexico agreement
- ≡ Proposal by the civil sector on its participation in the peace process.
- ≡ Agreement between the permanent commissions of representatives of Guatemalan refugees in Mexico, and the Guatemalan Government.
- ≡ The Nobel Peace Prize was awarded to Rigoberta Menchú Tum, a Guatemalan indigenous activist.

In 1993, a series of facts jeopardised the democratic process of peace negotiations. First of all, Monsignor Quezada Toruño, at that time bishop of the Zacapa Diocese and president of the CNR, declared the negotiations to be at an impasse due to the intransigency of both parties. Also in that year, there was an attempt to subvert the constitution, led by the president Serrano Elías himself, who tried to dissolve the Congress illegally and claim powers which were not part of his position as the head of the Executive. In a rapid and decisive action by the CC, with the support of several social sectors and eventually the Army, the so called 'Serranazo' was defeated. The Congress appointed Ramiro De León Carpio, who had been the Attorney for Human Rights up to that moment, as Interim President.

In reaction to that series of obstacles to the process, the following milestones were achieved between 1993 and 1995:

- ≡ Proposal for the rapid signing of a firm and lasting peace agreement
- ≡ Greater prominence of the UN in negotiations
- ≡ Declaration on Human rights
- ≡ Agreement on the establishment of the CEH
- ≡ Framework Agreement for a resumption of the negotiation process between the Government of Guatemala and the URNG
- ≡ Agreement on the negotiations calendar for a firm and lasting peace in Guatemala
- ≡ General agreement on Human Rights
- ≡ Plan to make the peace proposal viable
- ≡ National Peace Plan
- ≡ Joint declaration by the Government of Guatemala and the URNG
- ≡ Agreement for the resettlement of the communities uprooted by the armed conflict
- ≡ Agreement on the identity and rights of the indigenous peoples
- ≡ Creation of the CSA
- ≡ Declaration of Contadora: 4th Central American Political Parties' Conference
- ≡ Establishment of the Misión de Verificación de las Naciones Unidas en Guatemala (MINUGUA - UN Verification Mission in Guatemala).

Following the crisis triggered by the 'Serranazo', in 1993, President De León Carpio proposed to reform 37 points of the current Constitution, with the main objective of reducing the presidential period, eliminating presidential discretionary spending, purging the Corte Suprema de Justicia (CSJ - Supreme Court of Justice) and electing a new legislature.

The concrete reforms are detailed below. As can be seen, they have little or nothing to do with the peace process:

TEMAS	REFORMAS ESPECÍFICAS
Direct controls of President and Congress	<ul style="list-style-type: none"> ≡ Reduction of presidential and legislative periods to four years. ≡ Elimination of confidential expenditure (discretionary) by the President. ≡ Preliminary trials of deputies to be heard by the CSJ and not by the Congress itself. ≡ Obligation to publish details of the State budget and its implementation. ≡ Prohibition on the Central Bank extending loans to the Government.
Controls of other bodies	<ul style="list-style-type: none"> ≡ Creation of nomination commissions as a mechanism for electing judges to the CSJ, to all collegiate courts and appointing the Controlaría General de Cuentas (CGC - General Comptroller of Accounts). ≡ Creation of the post of Attorney General of the Public Ministry (or Chief Public Prosecutor) and the mechanisms for their appointment. ≡ The possibility of the CC magistrates being brought before justice. ≡ Termination of all current deputies' and magistrates' terms and functions.
Other	<ul style="list-style-type: none"> ≡ Express recognition to secret voting.

Source: Own elaboration.

With an 87% rate of abstention, the YES option won with over 370,000 votes versus 70,000 for the NO option. Current legislation required a simple majority for the reforms to be approved via referendum. These reforms can be understood in the context of the political crisis at that time, with the President and Vice President fleeing the country after an internal coup and a discredited Congress. The reforms were not remotely related to the peacebuilding process.

In 1996, and under the political direction of President Alvaro Arzú, negotiations between the Government and insurgency leaders accelerated, culminating in the signing of the remaining agreements making up the Agreements on a

Firm and Lasting Peace:

- ≡ Unilateral ceasefire declaration by the URNG
- ≡ Agreement on socio-economic issues and the agrarian situation
- ≡ Agreement on strengthening civilian power and on the function of the Army in a democratic society
- ≡ Agreement on a definitive ceasefire
- ≡ Agreement on constitutional reforms and electoral regime
- ≡ Agreement on the basis for the return of the URNG to legality
- ≡ Agreement on the implementation timeline, compliance and verification of the Peace Agreements

Finally, on December 29, 1996, the Agreement on a Firm and Lasting Peace was signed and it gave political life to the rest of the agreements.

e. The years after the signing of the peace agreements

During the following years, there was strong support by international cooperation bodies, including the continuation of the MINUGUA, the establishment of the Propaz Programme of the Organization of American States (OAS-Propaz), the accompaniment of political parties in the Congress and donor contributions to development, mainly from Europe and the US.

Throughout the nineties and well into the 21st century, there were many attempts to establish round-table discussions on vital topics for the implementation of the Peace Agreements, among them the rights of the indigenous peoples and integrated rural development.

Between 1996 and 1999 the parties in conflict, and to a large extent civil society, placed emphasis on the most practical processes such as the demobilisation of insurgents, the return of refugees and the creation of peace infrastructures: the Secretaría de la Paz (SEPAZ - Secretary for Peace), the Secretaría de Asuntos Agrarios (SAA - Secretary for Agrarian Affairs), and the Comisión Presidencial para la Resolución de Conflictos de Tierra (CONTIERRA - Presidential Commission for the Resolution of Land Conflicts), among others.

During his presidency, Álvaro Arzú focused on the implementation of an aggressive neoliberal agenda by privatising power, railways and phone communications, as well as liberalising mining regulations. The URNG, for its part, was worried about the transition from a guerrilla organisation to a political party. These issues, together with the fact that reforms had to go through the Congress of the Republic, explain why there was a delay of many years between the signing of peace and the holding of a referendum to amend certain aspects of the Constitution. Reforms proposed by the Peace Agreements were seen as a token of political negotiation by some sectors and they were not approved in the end.

Despite the triumph of the NO option posing a setback to the peacebuilding process, there were attempts to achieve some of the original objectives of the Agreements either via institutional means or ordinary laws. Regarding ordinary laws, the ones presented in the 2000-2014 legislature stand out, such as the law on languages and the law of sacred places. Both signified an important level of recognition for these elements of the indigenous culture. On the other hand, infrastructure was created to solve post-war problems such as access to land and the agrarian conflict, compensation to victims of conflict and racism. These institutions included the SEPAZ, the SAA, the CONTIERRA and the Comisión Presidencial Contra el Racismo y la Discriminación (CODISRA - Presidential Commission against Racism and Discrimination). The main problem with these institutions has been the volatility of their policies, the short term assignation of budgets and their low public visibility. The new constitutional structure and legislation compensated somewhat for the lack of constitutional change, but did not promote deep enough reforms to the State to secure full compliance with the Agreements.

Between 1999 and 2017, there was a short period of calm regarding constitutional matters, with the exception of the proposal by the neoliberal ProReforma group, associated with the Universidad Francisco Marroquín (UFM - Francisco Marroquín University).

Regarding the peace process, there were at least two attempts to re-assess the Agreements and resume work on their content. The first, during the presidential term of Oscar Berger, was led by Vice President Eduardo Stein. On the occasion of the 10th anniversary of the Agreements, representatives of many sectors were called to discuss their degree of advancement and impact. The second opportunity took place 10 years later, under the leadership of the Propaz Foundation, which, supported by an international donor, launched the idea of the re-signification of the Agreements.

At the beginning of 2015, on the eve of the 20th anniversary of the Peace Agreements, the Propaz Foundation saw the need to promote a process of collective reflection on the historical meaning of the Agreements and their current and future potential. This perspective was enhanced by the political crisis and the popular demonstrations taking place at the time, demanding answers to the crisis of the political system, democracy, and on the perverse traits of State and government actions. In this historical context and at a critical juncture, the process known as ‘20 years of Peace Agreements: Walking towards their re-signification’ started.

The investigations carried out by Congress in pursuit of the re-signification of the Peace Agreements concluded that in the 20 years that had elapsed since their signature, the implementation of significant reforms and the modernisation of State institutions had stopped. The Agreements lacked integrity and their fundamental purposes had been blurred; the functioning of the new structures, mechanisms and procedures created from them were minimised or weakened due to lack of political support and/or budget limitations.

Entities like the Propaz Foundation managed to outline some elements to resume the road to peace. There was also an attempt in 2017 to propose new constitutional reforms with the leadership of the CICIG and the support of the Ministerio Público (MP – Public Ministry) and the PDH, and, for a while, of the Jimmy Morales’ administration. Reforms emerged from the lessons learned from the Commission on the fight against impunity, which mainly affected the justice sector. They may be interpreted in accordance with the wording of the reforms originally proposed in the Peace Agreements and will be detailed further.

3 Building peace and building the Constitution

a. Peacebuilding in Guatemala

Even though peacebuilding in Guatemala starts from the negotiation stage of the internal armed conflict, in conceptual terms it is understood as the process of achieving peace after an internal conflict, or *post-conflict peacebuilding*. That is, the deactivation of the conflict and the consolidation of peace. To that extent, but not explicitly, peacebuilding includes the processes, actions and strategies required to make peace (*peacemaking*). We understand that *peacemaking* in Guatemala was exemplary once the Peace Agreements were signed and the disarmament, demobilisation and reintegration (DDR) processes occurred; fast and effective. On top of this, the return of refugees was remarkably efficient.

This is why in Guatemala the *peacebuilding* analysis becomes more relevant than that of *peacemaking*. Both processes might be analysed separately, given their characteristics, methodologies, specificities and temporalities, but they are part of one single articulated process of change and social transformation.

In procedural terms, peacebuilding is based on the agreements reached: Deactivating the internal armed conflict, promoting the reconstruction and strengthening of institutions and make peacebuilding a national project. As this optimal line of development was not completely followed, the conflict deepened. The State weakened and was co-opted by corrupt politicians, military and businesspeople.

Today, the country is living through a phase of post-conflict with traces of pre-conflict, and sailing very close to a constitutional rupture. Thus, both processes (peace and Constitution) must revert back to the beginning despite their partial success; there are multiple crises, rupture, polarisation, a need for new agreements, a new Constitution, a crisis of democracy and a crisis of historic viability of the model of constitutional order.

To highlight the importance of having a holistic vision of peace, we must reiterate that the peacebuilding process presupposes two articulated processes: On the one hand, peacebuilding in a post-conflict context is based on the negotiated Peace Agreements; processes, institutions, programmes, laws and scheduled reforms in each of the Agreements signed. In other words, this is about constructing the peace negotiated in the Agreements. On the other hand, the 'soul' of the Agreements goes beyond the procedural aspects of peace and emphasises the need for making peace into a process of social integration. This view is long term and requires changes and transformation in the political culture of people in general. Only in this way can a true culture of peace have the chance to emerge, in a context of consolidated and sustainable democratic relationships.

Making peace in the long term includes the search for reconciliation; reparation to victims, building historical memory and overcoming racism, discrimination against indigenous peoples, and economic, social and political marginalisation of wide sectors of society. Additionally, it is necessary to open up spaces for participation and dialogue to build consensus between the State and civil society.

i. Frameworks and sub-processes

the approach of the process of constitutional reforms were not powerful enough to maintain the balance in the post-conflict framework. Thus, the Peace Agreements did not have the necessary political and institutional support to deepen their effect. Today, the institutional system for peace is fragile and depends greatly on the political whims of the current government.

Additionally, the implementation of the peace agenda clashed with the prevalence of neoliberal principles underlying the design of public policies by all governments, from Álvaro Arzú to Jimmy Morales. This weakened even more their transformative potential. While the Agreements asked for more social policies, the neoliberal orientation of the governments prioritised privatisation and the promotion of foreign investment, especially on large scale extractive projects.

However, despite the partial and disjointed compliance, the Peace Agreements opened up a new period characterised by the achievement of political peace, insofar as the political-military conflict was definitively overcome. Because of this, in Guatemala, after the signing of the Peace Agreements, there have not been politically motivated killings, the URNG has turned into a political party, spaces have been opened up for dialogue and negotiation at different levels and greater political tolerance can be perceived.

The major problems occur in the advancement of social peace. The deterioration of living conditions for the vast majority of the population, especially in rural areas, popular anger among citizens with the political class, the implementation of massive extractive projects without prior consultation and with limited benefits for the indigenous communities, are all factors that have brought the country to a new situation of multidimensional unrest, within the current constitutional and democratic framework. The popular demonstrations of 2015, focused on the fight against corruption, showed a deterioration in the relationship between the State and civil society, which, at the time of this

writing, is again in crisis with the scandals involving Jimmy Morales' government.

A wide sector of the indigenous population does not feel represented by the institutions of the current State and proposes an NCA of multicultural character, focused on the re-foundation of the State (see analysis below).

Thus, the post-conflict period has become a hybrid in which new proposals and possibilities are put forward against the inertia stemming from the historical background and the traumas of the armed conflict. This scenario exacerbates political, social and intercultural contradictions and is not conducive to the establishment of a constructive relationship between democratisation, peace and the strengthening of the public sphere in the current constitutional framework.

The negotiation process lasted 10 years, over the course of four presidential terms (those of Vinicio Cerezo, Jorge Serrano, Ramiro De León and Álvaro Arzú). The context evolved from an incipient democratising Social-Christian reformist period, via a prevented coup d'état and a transition government to a conservative pro-business right-wing government that eventually signed the Peace Agreements. Internationally speaking, the contexts of the fall of the Berlin wall and the democratisation of Eastern Europe and Latin America should be considered, especially the processes supporting hemispheric stability in Latin America and the pacification of Central America.

Sub-processes can be separated based on the format of negotiations. They were:

- ≡ The indirect approximation period between the parties in 1990
- ≡ The beginning of direct negotiations between the parties and definition of a substantive agenda and operative aspects of negotiation between 1991 and 1994
- ≡ A change in the negotiation format. The dissolution of the CNR, participation of the UN and the creation of the CSA

- ≡ The involvement of the Catholic community of Sant'Egidio, key to trust building
- ≡ The final phase of negotiations in the first year of the Partido de Avanza Nacional's term in power, with the firm determination of President Arzú to conclude negotiations successfully.

It is important to take a closer look at three of these sub-processes, as they are the most critical: The key starting point of the negotiating process was the meeting of the URNG with all political parties with parliamentary participation, known as the El Escorial meeting, in Spain in 1990. This meeting was significant because it constituted the first bilateral meeting of the URNG with key actors in Guatemalan society, in this case, the political parties. The negotiation process was broadened by including new actors in an indirect approach towards direct negotiations between the Government and the URNG.

Another significant moment was the definition of the substantive agenda for negotiations in the Mexico Agreement; in other words, what and how was going to be negotiated. It was confirmed that the negotiations and the political agreements that will be reached would be made 'in compliance with the current constitutional framework and in accordance with the El Escorial agreements.' This agenda was embedded in the Procedural Agreement in the Search for Peace by Political Means, of 1991.

Finally, the new format of negotiation introduced by the government of Ramiro De León Carpio, required the resignation of the CNR and the inclusion of civil society as a third actor in the negotiations, with the task of making a proposal on constitutional reforms.

ii. National and international mediation during the peace process

In the negotiations and peacebuilding process in Guatemala, national and international mediation mechanisms were combined. The mediation developed as follows:

In 1987, the CISV was created which was in charge of verifying and monitoring the commitments assumed by the parties. Years later, in 1990, the Oslo Agreement gave the CNR the task of managing the viability and maintenance of such agreements. Monsignor Rodolfo Quezada Toruño was designated as a conciliator in his capacity as President of the CNR. Moreover, the UN was asked to observe activities in order to develop and act as guarantor of the agreements and commitments assumed by the parties.

The Agreement of Mexico (1991) ratified the will of the parties to conduct bilateral conversations under the conciliation of Rodolfo Quezada Toruño. In the Framework Agreement for the Resumption of the Peace Process (1994), the parties asked the UN to designate a representative of the Secretary General to assume the function of moderator of the negotiations (Francesc Vendrell). The Agreement created the CSA and closed the CNR in order to promote greater inclusion. It also created the 'Group of Friends of the Guatemalan Peace Process' organisation, comprising the governments of Colombia, Spain, the US, Mexico, Norway and Venezuela. Their function was to provide the representative of the UN Secretary General with administrative support and give greater stability and strength to the agreements in their capacity as witnesses of honour.

Subsequently, in the General Agreement on Human Rights, also of 1994, the parties agreed to ask the UN Secretary General to organise and install in situ a mission to oversee compliance with Human Rights and the commitments of the agreement (MINUGUA). This mission would have the power to make recommendations to the parties. From 1994 onwards, Jean Arnault was the UN Secretary General's appointed process moderator. After the signing, the Group of Friends and the international cooperation bodies supported the peacemaking

process with funding for the Government and several social organisations.

In conclusion, the main functions of the integrated mediation in the peace process were as follows:

- ≡ Verification and monitoring of agreements
- ≡ Management of compliance with agreements
- ≡ Designation of a national conciliator
- ≡ UN: Observer and guarantor of process
- ≡ UN: Moderator of negotiations
- ≡ Group of Friends: supporting the UN Secretary General's representative
- ≡ MINUGUA: Verification mission
- ≡ Complementary financial support to international political efforts.

iii. Actors

Peacemaking is not a specialised task of international cooperation, nor of specific national organisations. On the contrary, it is 'The Mission of a Whole Nation', as International IDEA astutely puts it in its book of the same name (International IDEA 1998: 11). Nevertheless, the times in which Guatemala has acted as a united country have been episodic and short lasting. Polarisation, intolerance and mistrust between different sectors prevail. In these conditions, vested interests tend to override the common good and the democratic rule of law.

The struggles, disagreements and rapprochements between the national actors tasked with building and making peace are the result of collaborative, neutral or conflictual relationships among social, political, economic and cultural entities and sectors. Peace and the development of the Constitution depend, therefore, on the correlation of forces established among key actors in the peace constitution building process.

The majority of those who have influenced the Guatemalan peace process are unaware of their mutual interdependency; rather, they see each other from the logic of exclusion. This is why their relationships are conflictive and polarised. This runs counter to a democratic approach and

a culture of peace, which value a background of interdependence generating a favourable climate for all sectorial interests in a common conduit to enable political, social and economic balance to be achieved in a given country, as well as globally.

An overview of the peacemakers allows us to highlight a first group of key actors composed of:

- ≡ **The State:** to be understood in all its complexity, including the executive, legislative and judiciary functions and all autonomous and supervising entities (including the CC, the PDH and the CGC).
- ≡ **The organised business community:** Even though there are subtle differences and disputes between the chambers that comprise it, in critical moments it always presents a unified posture, disciplined and firm, through the CACIF. Yet, since the state crisis of 2015, the business community is more fractured than before.
- ≡ **Civil society:** It is comprised of a wide range of actors, from basic social movements of peasant and indigenous origins to national NGOs with diverse interests, agendas and sources of financing. After the signing of the Peace Agreements and with the passing of time, young people, women, pro-LGBTQ and student movements have gained more visibility and relevance.
- ≡ **The international community:** In the widest sense and through diverse historical moments. Includes: the Contadora Group, the Group of Friends, UN bodies (among them MINUGUA, UNDP, the Office of the High Commissioner for Human Rights (OHCHR), UNHCR), the CICIG, the OAS-PROPAZ, and the governments of the US, Sweden, Norway, Denmark Germany, the United Kingdom, the Netherlands, Switzerland, Canada, Italy, Spain, Mexico, France and Japan.

Most relevant actors at different times:

NEGOTIATION PHASE	IMMEDIATE POST CONFLICT	RECENT YEARS
<ul style="list-style-type: none"> ≡ CNR and CSA, as the civil society entities from which it was organized dialogue processes involving several sectors. They also allowed broad ownership of the Peace Agreements. In those years, there was agreement among civil society regarding the issues of peace and Human Rights¹. ≡ Government, specifically the Army of Guatemala, since direct presence of the military helped to build confidence with the insurgency ≡ URNG, the coalition of leftist insurgent forces, whose initial objective to establish a socialist system by force was replaced by structural reform of the conditions of poverty and exclusion in the country through the Peace Agreements. ≡ International support: Especially the Contadora Group, the signing presidents of Esquipulas, MINUGUA, and the Catholic Community of Sant' Egidio. These groups had different motivations, but shared the same sense of urgency about the pacification of the region and the search for reforms of the State in a democratic way. The signing presidents of Esquipulas turned the pacification into a central goal of their own governments and their political agenda in the middle term. 	<ul style="list-style-type: none"> ≡ Peace infrastructures, mainly SEPAPZ, SAA, Consejo Nacional para el Cumplimiento de los Acuerdos de Paz (CNAP - National Council for the Implementation of the Peace Agreements), Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (COPREDEH - Presidential Coordinating Commission of the Executive Policy on Human Rights), Sistema Nacional de Diálogo (SND - National Dialogue System, later known as Comisionado Presidencial para el Diálogo CPD - Presidential Commissioner for Dialogue), CONTIERRA, CODISRA, etc. ≡ Round-table discussions and other types of accompaniment financed by international cooperation with the aim of supporting compliance with the Agreements. Round-table discussions on indigenous peoples and rural development financed by OAS and UNDP were highlighted. ≡ Peasant movement, focused on access to land. ≡ There was a rupture within the peasant movement that triggered the emergence of indigenous groups with other types of demands (cultural and identity). ≡ OAS-Propaz, a pioneering project of the transnational organisation that pursued supporting conflict resolution competencies in civil society and the State 	<ul style="list-style-type: none"> ≡ The Government is becoming less relevant. Peace infrastructures have begun to weaken and, in some cases, like SEPAPZ, to dismantle. ≡ Women's and LGBTQ rights movements are some of the most active within civil society. ≡ Student movements, mainly through the University Students Association of San Carlos University, and the Landivarianos (the autonomous student movement of the URL). ≡ CICIG ≡ The indigenous and Peasant Movement, reconfigured under the banner of 'defence of territory' (opposition to large mining and hydro electrical projects). ≡ Donor countries explicitly involved through the agenda of the fight against corruption and impunity through the so called 'Group of 13', G-13 ≡ CACIF, though more relevant through its involvement with Fundación para el Desarrollo de Guatemala (FUNDESA), a right-wing think tank associated with the business sector, interested in making development proposals possible for the country from a conservative and pro-business perspective. Its reputation as a spoiler is consolidated.

1 The Civil Society Assembly was an important actor in the peace negotiation process. Although it brought together many sectors with very different agendas, it managed, at least for a few years, to maintain unity regarding civil society objectives. It had a consultative role, since its opinions and decisions were not binding in the negotiation process. Despite this, the most important ideas by the CSA were finally incorporated into the Peace Agreements as thematic axes, though the concrete proposals of the Agreements depended on the parties in the negotiations.

NEGOTIATION PHASE	IMMEDIATE POST CONFLICT	RECENT YEARS
<ul style="list-style-type: none"> ≡ CACIF appeared in critical moments, but in general it did not interfere directly with the negotiation process. ≡ Universidad de San Carlos de Guatemala (USAC - San Carlos University Guatemala); the only public university in the country ≡ Centro para la Defensa de la Constitución (CEDECON - Centre for the Defence of the Constitution), a group with a variable behaviour throughout the time, due to the composition of its different directive boards. In general, its tendency has been more conservative than reformist. ≡ Indigenous groups were not very visible in this phase; many of their demands were included in those of the peasant movement. 	<ul style="list-style-type: none"> ≡ Civil society became more organised, although it began to disperse due to increased specialisation by subject and to specific requirements made by donors. ≡ Governments of donor countries. In this and the following phases they prioritised their direct support to cover the structural weaknesses of the Guatemalan State, with wide agendas in all topics important for the development of the country, from malnutrition and food safety to the promotion of private investments in extractive projects. ≡ CACIF, taking a more belligerent role, instigated a boycott of the reforms of 1999. It appeared in those years as a spoiler. ≡ USAC and Universidad Rafael Landívar (URL – Rafael Landívar University) ≡ CEDECON ≡ Think tanks like Asociación de Investigación y Estudios Sociales (AsíEs - Research and Social Studies Association, centrist), Asociación para el Avance de las Ciencias Sociales en Guatemala (Avancso - the Association for the Advancement of Social Sciences in Guatemala, left-wing), Facultad Latinoamericana de Ciencias Sociales (FLASCO - Latin American School of Social Sciences, left-wing), and Centro de Investigaciones Económicas Nacionales (CIEN - National Economic Investigations Centre, right-wing); each defended their agendas from their own ideological positions. 	<ul style="list-style-type: none"> ≡ (USAC, specifically through the Instituto de Problemas Nacionales de la USAC (IPNUSAC - National Problems Institute of San Carlos University of Guatemala) ≡ URL, especially through its student movement called Landivarianos ≡ CEDECON, with a turn to conservatism ≡ Think tanks such as ASÍESFLASCO, CIEN and Instituto Centroamericano de Estudios Fiscales (ICEFI - Central American Institute for Fiscal Studies, left-centre) ≡ The CC, which at times has ruled randomly against the prosecution of war criminals and in other cases worked to underpin the rights of the indigenous people according to international conventions.

Source: authors.

It is important to spend some time analysing the role of the CSA. After an impasse in the negotiations, the creation of this organ of civil society was agreed upon by the parties as they considered that Guatemalan civil society needed to play an essential role in the peace process and the achievement of reconciliation. The most visible sectors of society were called to the table; they included women's groups, indigenous people, academic representatives and political parties. Each sector chose their own selection mechanism for their representatives. The roles attributed to these groups include: a) Discussing substantive issues in the general agenda of the Peace Agreements to reach consensual positions; b) Pass on the recommendations and guidelines resulting from their deliberations to the UN moderator and the parties to the conflict; c) their recommendations were not considered to be binding; d) Get to know the substantive issues in the agreements and endorse them to make them national commitments.

Monsignor Quezada Toruño, highly regarded as a legitimate figure, was appointed as President of the CSA. In the political negotiation phase, the CSA presented itself as a social sector body seeking to influence the negotiation process. As an organisation comprised of by many sub-entities, the CSA was highly diverse and it never represented a unitary or hierarchical bloc with just one position. It presented itself to the negotiating parties and public opinion as a fairly coherent entity that took consensual proposals based on the different positions, approaches, agendas and experiences to the negotiation table. This presupposes an 'internal negotiation' process among its constituent parts, not necessarily antagonistic but complementary to one another. It was a participatory group that included the contribution of indigenous peoples for the first time and in a sustained way.

Additionally, it is important to note that one key actor was absent from the peace process: the political parties. In the negotiating process their influence was marginal, and their sporadic appearances were not strong enough to affect the negotiations. In the post-conflict period they were not protagonists either, but acted as mere deputies to the Congress, where they held erratic and contradictory positions regarding the peace agenda and the constitutional reforms.

Relationships among key actors in the peace building/making processes were conflictual, mainly between businesspeople and the Government, and among different parts of civil society who held different ideas about the political and economic models to be implemented after the Peace Agreements.

Indeed, civil society would, on the basis of the Peace Agreements, pursue the introduction of a political model based on a 'functional and participatory democracy' and on an economic model that 'shall be built on social economic development oriented towards the common good, responding to the needs of the entire population' (Agreement on socio-economic issues and the agrarian situation).

As mentioned in the section on the country's history, with the Constitution of 1985, businesspeople and the Government (which at key times constituted the whole State) consolidated a republican political model, with a separation of powers, but without clear democratic and social substance. Once the Agreements were signed, an alliance of businesspeople, Government and Congress opted for an economic model based on the development of the market and foreign investment. The permanent tension among these actors has influenced and defined their actions around specific conflicting aspects.

In addition, different components of the international community favoured or at least preferred one or the other party. Thus, there have been several variants of international cooperation with civil society and international cooperation of a different kind with the Government, businesspeople and transnational companies. Both currents of cooperation discussed the need for defining the relationship between the State and civil society, but this has not happened.

As for economic development, cooperating countries and multilateral organisations assumed that subsequent to the peace agreements, this would occur within the framework of the model prevalent in western countries. For Rafael Grasa², it was about implementing a ‘Liberal Peace’, but in Guatemala a ‘Neo Liberal Peace’ was implemented; this explains its failures, limitations and weaknesses in the long term.

b. Constitution Building

i. Frameworks and sub-processes

In the case of constitution building, it is more difficult to identify frameworks and sub-processes, than in the case of Peacebuilding. This may be due to the academic elitism surrounding this issue. This is a topic on which only select lawyers are equipped to comment.

Even so, it is possible to discern the general framework in which the above-mentioned actors, aware of the fact that any proposal of reform would eventually be put to a plebiscite, take the discussion on the topic to the public sphere in a conspicuous way, using two main channels: traditional mass media and social rumour or speculation. This was the situation in 1999, when the historical fears of the Guatemalan elites about the empowerment of indigenous people were played upon and the idea was circulated that the national situation would totally change in favour of the latter. Huge media campaigns warned of the respective risks and benefits of implementing the reforms. In 2017, this was exacerbated due to the presence in Guatemala of netcenters, private groups that operated illegally to manipulate public opinion on social networks such as Facebook and Twitter.

The constitutional history of the country has been marked by the general public’s lack of knowledge of their Constitution. This might be due to the relative stability enjoyed by the Constitution of 1985, but is also due to the fact that, until then, the Constitution was less of a reflection of a political and social pact and more of an instrument to legitimise the existing power structure.

² Conversation held under the auspices of the congress on ‘Resignifying the Peace Agreements’; organised by Propaz Foundation, in 2017.

ii. Actors

Given the less hectic dynamic involved in constitution building, as it is a topic for specialists, the actors that have intervened at different moments are also less visible, although they hold firmer positions. Below is a summary of the most relevant actors according to their positions before the reforms:

IN FAVOUR OF THE REFORMS PROPOSED IN 1994 (NOT RELATED TO THE PEACE PROCESS)	IN FAVOUR OF REFORMS PROPOSED IN 1999 AND 2017	AGAINST REFORMS PROPOSED IN 1999 AND 2017	OTHER PROPOSALS
<ul style="list-style-type: none"> ☰ Ramiro De León Carpio's government ☰ Some political parties ☰ Society in general, in view of its disenchantment with the governments; especially with the previous legislatures (remember the 'Serranazo' incident). 	<ul style="list-style-type: none"> ☰ Indigenous and peasant groups ☰ International cooperation ☰ Civil society, even though its support was more fragmented in 1999 than in 2017. 	<ul style="list-style-type: none"> ☰ The majority of political parties, especially the conservative and right wing branches ☰ Lawyers as a profession in general ☰ Colegio de Abogados y Notarios de Guatemala (CANG - Association of Lawyers and Notaries of Guatemala) ☰ CEDECON ☰ CACIF 	<ul style="list-style-type: none"> ☰ The ProReforma proposal in 1999, mainly supported by the UFM

Source: authors

The interaction among these actors has been less visible in the national agenda than that of the actors in the peace process. CACIF also holds greater veto power in this area, which explains why the discussions around the reforms of 2017 were brief. Curiously, the ProReforma proposal, close to the interests of the CACIF, did not have much support either at the time.

CEDECON, a civil association dedicated to the defence of constitutional principles, has had a variable role, depending on the composition of its board, but it generally maintains a conservative viewpoint. The professional body of lawyers, CANG, has at different times been reluctant to consider changes to the Constitution.

4 The nexus of peacebuilding and constitution building

Before highlighting the characteristics of both processes it is important to underline their particular strategic approach. The Peace Agreements demonstrate the transition from war to peace, while the Constitution of 1985 demonstrate the transition from a dictatorship to a democracy. These are two complementary logics that correspond to different historical realities.

From an analytical perspective, like the one pursued by this study, both processes are deeply rooted within the dynamic of the national politics. Nevertheless, this deep-rootedness is not and was not always evident, neither to the participants in the process, nor to the specialists.

The constitution of 1985 generated the conditions for the emergence of the Peace Agreements by legislating in favour of political non-exclusion. The Peace Agreements in turn, created the conditions for constitutional reforms which would increase the inclusion of minorities and the modernisation of the State. From that moment on, both processes became indivisible and strongly influenced each other, despite the fact, as we have pointed out, that there was no real awareness of the links between the two processes.

We may conclude that the constitutional topic was present in all phases of the negotiations and in the post-conflict peacebuilding process. The approaches to the constitutional question were varied: from the initial proposal by the URNG of an original NCA, to the NCA as established under the current Constitution, derived from reforms by the Congress of the Republic.

a. Critical moments and processes

Below is a timeline with the most relevant periods for constitutional and peacebuilding issues, starting in 1944:

MILESTONES AND RELEVANT PERIODS REGARDING PEACE-RELATED TOPICS	YEAR	MILESTONES AND RELEVANT PERIODS REGARDING CONSTITUTION-RELATED TOPICS
Broad social and institutional reform agenda.	1944–1954	Constitution of 1945 acknowledges individual rights for the first time.
Military regimes which led at the time of emergence of guerrilla in the sixties to an anti-insurgent State. This is characterised by repression of political enemies, restriction of freedoms and the emergence of a closed, militarily controlled political and institutional system.	1954–1983	Tailor-made constitutions to suit the military governments in power. In 1966, the Constitutional Court is created.
First Esquipulas Summit (1986). Regional heads of government commit to the peace process.	1983–1986	Coup d'état against Ríos Montt in 1983. NCA of 1984, Constitution of 1985, Vinicio Cerezo's democratically elected presidency.
Peace process advances decisively with many meetings, declarations and agreements signed between the parties. The CSA gets involved in the process.	1987–1994	Constitutional rupture by President Jorge Serrano Elías. Constitutional reforms of 1994 not related to peace process contents, motivated by popular disillusion with the political class.
Encounters are accelerated and many Agreements are signed before the signing of the Firm and Lasting Peace Agreement, on 29 December, 1996.	1994–1996	Days before the signing of the final Peace Agreement, the constitutional changes to be submitted to popular consultation are concretised.
Many assume the triumph of the NO option to be a popular rejection of the Peace Agreements.	1999	Popular consultation. The NO option wins. There was a process in which other actors with particular interests widened the scope of reforms. Conservative actors implement racism and disinformation mechanisms in opposition to the reforms. Reforms on indigenous topics win in regions with more prevalent indigenous populations.
-----	2009	Proposal of constitutional reform by the neoliberal group ProReforma. Proposal gains no supporters.
The 'Re-signifying the agreements' project is launched by the Propaz Foundation.	2017	Proposals for constitutional reforms focused on the justice sector and backed by the international community are boycotted by conservative sectors of the country.

Source: authors.

The people interviewed gave a great variety of responses to the question about the most critical moments in the relationship between peace and the constitution. Some identified the Constitution of the revolutionary period (1944-1954) as the first – wasted – opportunity to establish a real mechanism for power sharing in the country. From that moment on, coups d'état, military regimes and tailor-made constitutions designed to perpetuate power for the incumbent regime were a common denominator in politics.

Several interviewees pointed to the coup d'état against Ríos Montt in 1983 as a key turning point that would enable a new constitution to be implemented. Many see the Constitution of 1985 as the best possible product of its time. The political parties of the time participated in the NCA, but this excluded a large part of the political spectrum right from the start, as only right-wing political parties and some centrist movements, like Christian Democrats, were accepted. Additionally, the composition of this assembly reflected racism and the historical exclusion of indigenous peoples, as there was only one representative of Mayan origin.

It is not surprising that at that time the insurgents did not recognise this Constitution as valid until peace negotiations were well-advanced. A key point showing the importance of the link between the Constitution and the peace process was the recognition by the URNG of the legitimacy of the Constitution of 1985, based on the fact that such recognition of legitimacy in turn gave legitimacy to the peace negotiation process.

It made no sense to start negotiations between two parties if neither recognised the other. Thus at the meeting at El Escorial, in 1990, fundamental decisions were made: a) direct negotiations would be held between the Government/Army and the URNG; b) negotiations would be geared towards the achievement of political agreements, and c) such political agreements would lead to some constitutional reforms. It was never the intention of either of the parties to create a new peacetime Constitution, but to make partial reforms on precise topics indicated in each of the specific

agreements. This is considered as a strategic error by the insurgency and the civil society groups involved in the implementation of the Agreements, since there was a common understanding that Alvaro Arzú, the presiding signatory of the Agreements, had no intention whatsoever to support the constitutional reforms.

Between the Agreement of El Escorial in 1990 and the popular consultation on the reforms in 1999, there was a key moment for the constitutional processes: as a consequence of the self-attempted coup d'état attempt by Jorge Serrano Elías in 1993, a year later a series of reforms seeking to placate the public opinion around the political scandals of that time were submitted for consultation and approved by the majority of voters.

The Mexico Agreement of 26 April, 1991, is key to understanding the relationship between peace and the Constitution. In this Agreement a basic agenda for the rest of the negotiations was defined and one of the key issues was that of constitutional reforms and electoral regime.

The 'Agreement on Procedures to Seek Peace by Political Means' of 1991, is the one that most directly addressed the link between peace and the Constitution. In it, the need for making changes to the Constitution via the Congress of the Republic, to be endorsed by popular consultation in the shape of a plebiscite, was proposed. This Agreement made Congress emerge as a new indirect actor in the peace process and constitution building. Civil society was included as the third actor in the negotiations when its format was changed under the rule of president Ramiro De León Carpio, with a mandate to make recommendations about the constitutional reforms.

Before the signing of the Peace Agreements, an event occurred that almost derailed the negotiations: the kidnapping of a Guatemalan high-society lady by a guerrilla group. The mutual trust generated between the parties was at risk. Some of the interviewees thought that this was largely responsible for the fact that despite the signing of the Agreements, much of the political

will on the part of the Government for their implementation was lost, as it was subject to a lot of pressure from the private sector not to advance with the process. This could have had specific consequences on the link between the peace and the constitutional reform processes, as the event was frequently cited by the camp favouring the NO option in 1999, described below:

After the signing of the Agreements, the reforms were postponed until 1999 when, amid a confusing political environment, an important critical moment was reached. In a plebiscite organised by the Tribunal Supremo Electoral (TSE - Supreme Electoral Tribunal) the NO option won.

The elements of constitutional reform contained in the original Agreements were as follows:

REFORMS PROPOSED ON THE BASIS OF THE AGREEMENT ON THE IDENTITY AND RIGHTS OF THE INDIGENOUS PEOPLES	REFORMS PROPOSED ON THE BASIS OF THE AGREEMENT ON THE STRENGTHENING OF CIVIL POWER AND THE ROLE OF THE ARMY IN A DEMOCRATIC SOCIETY	REFORMS PROPOSED ON THE BASIS OF THE AGREEMENT ON CONSTITUTIONAL REFORMS AND ELECTORAL REGIME
<ol style="list-style-type: none"> 1. Constitutionally recognise the existence of the three indigenous peoples: Mayan, Garífuna and Xinka. 2. Promote the identity of indigenous peoples. 3. List the languages of the country. 4. Formalise indigenous languages. 5. Recognise and guarantee the protection of Mayan, Garífuna and Xinka spirituality. 6. Characterise the nation as multi-ethnic, multicultural and multilingual. 	<ol style="list-style-type: none"> 1. No re-election of deputies to the Congress of the Republic for more than two consecutive terms. <ol style="list-style-type: none"> i. Maintain a fixed number of deputies (at 1999 levels). ii. Guaranteed access to justice: <ol style="list-style-type: none"> a. Access to judicial system in mother tongue b. Free legal representation for those who cannot afford it c. Impartiality and independence of judges d. Prompt and reasonable solution of social conflicts e. Opening up to alternative mechanisms for conflict resolution iii. Creation of a career judiciary. iv. Define constitutionally the functions of the Civilian National Police. 5. Restrict the role of the Army to the defence of territory and sovereignty. Create checks on the exercise of any extraordinary function. <ol style="list-style-type: none"> vi. Limit military jurisdiction in criminal matters. vii. Open the position of Ministry of Defence to a civilian. viii. Eliminate the presidential authority to grant extraordinary pensions to members of the Army. 	<ol style="list-style-type: none"> 1. Creation of an Electoral Reform Commission with the following minimum agenda: <ol style="list-style-type: none"> a. Documentation (creation of a single identity card, allowing serving Army members to vote, registration of deaths and address changes) b. Voter registration c. Voting (ease of access to voting centres; enabling seasonal migrants to vote). d. Transparency and publicness (supervision of the conducting of general assemblies, equal and free access to communications media, transparency in campaign financing). e. Information campaign (conducting of informational campaigns on electoral rights; processing of voter registration; mechanisms to exercise right to vote; mechanisms of political affiliation; use of indigenous languages). f. Institutional strengthening (enhancement and automation of citizens' registration).

Source: the authors, based on data from the TSE, 1999.

These 16 topics suggested in the Peace Agreements and specifically included in the Agreement on Constitutional Reforms and Electoral Regime, were fully included in the reforms and drafted in accordance with the original spirit of the Agreements, but they were subsequently distorted by the addition of other reforms that had nothing to do with the peace agenda, reaching a total of 50! This made the consultative plebiscite a complex one. It consisted of four questions related to the executive, legislative and judiciary branches, and to indigenous peoples. The final results were as follows:

ANSWER	QUESTION 1: NATION AND SOCIAL RIGHTS	QUESTION 2: LEGISLATIVE BRANCH	QUESTION 3: EXECUTIVE BRANCH	QUESTION 4: JUDICIAL BRANCH
YES	328.061	284.403	294.823	317.782
NO	366.417	402.593	392.250	373.003

Source: own table from data from the TSE, 1999.

With these results, the opportunity to discuss what necessary changes should be made to the Constitution to consolidate the peace process was gone for a long time. The conservative political forces interpreted the victory of NO as a total rejection of the Agreements and this gave them more strength to pull them apart, divide and minimise their transformational scope.

The triumph of NO needs to be carefully analysed in various aspects: First of all, the results varied enormously depending on the region of the country. In the indigenous highlands, for instance, the YES option was a clear winner.

NO won in predominantly mestizo or ladino areas, mainly in the metropolitan area and the eastern part of the country. Many experts acknowledge the intense campaign, both real and based on lies, promoted by the CACIF, the Liga Pro Patria and other conservative groups to boycott the possibility of change. Another determining element was starting with 16 originally proposed reforms, there

were 50 in the end. This generated distrust and, in some cases, open rejection by voters. It is also important to note that 81.45% of eligible voters abstained from voting in the plebiscite.

With hindsight, many of the interviewed experts consider that the consultation was made too late, that it should have been conducted in 1997, taking advantage of the social enthusiasm about the signing of the Agreements. Others believe that submitting such changes to a plebiscite was a huge mistake, as people who did not suffer directly from the conflict were allowed to vote on a topic that was not relevant to them and of which they had little knowledge.

After the rejection of the reforms of 1999, the Pro-Reforma movement returned with initiatives from the UFM and other neoliberal groups which reached the stage of presenting their proposals to Congress in 2009. They proposed the creation of a bicameral legislative system, the creation of life positions in the judiciary, the possibility of mandate revocation

every two years, and the establishment of minimum age requirements for the majority of important positions in the Guatemalan State. Although the movement received coverage in the media, it did not generate enough momentum to be viable.

At least two of the interviewees mentioned the genocide trial against Rios Montt as another critical point in the relationship between the peace and constitutional processes. The General, accused of genocide, was formally prosecuted and sentenced in an historical trial. At the last minute, the Constitutional Court voided the whole process and ordered it to start over again. This is, according to experts, an example of how the Court could halt basic processes for peace at their discretion, as they could do with trials of perpetrators.

Lastly, thanks to the political crisis of 2015 that resulted in the resignation and trial of President Otto Pérez Molina, a new initiative of reforms proposed by the CICIG and other key actors emerged. These reforms sought to remedy some of the obstacles which the current Constitution placed on investigations and an effective criminal law to tackle corruption cases.

Reforms included changes in the concept of the right to a preliminary trial; the immediate suspension from their functions of deputies prosecuted for crimes; the establishment of competitive merit examinations for legal professionals; clearer requirements of suitability for judges and magistrates; regulation of the judicial and civil service career within the legal system; a definition of the requirements and election process of CC and CSJ magistrates, and the creation of the National Judiciary Council, among others. Provisions for the recognition of indigenous justice were added temporarily. Once again, conservative sectors of the country opposed such reforms to the point that the indigenous authorities withdrew the most controversial reforms on legal pluralism; but all their reforms were ignored by the current legislation.

b. Actors and spoilers

Almost without exception, the interviewees mentioned the veto power of the CACIF over the constitutional reform and peace processes. They consider that their lobbying capability that comes from private party financing puts this group in a privileged position to promote its own agenda. Some speculate that this is due to the fear of the country's economic elites of any kind of constitutional transformation of the private property and tax systems, and interethnic relationships. Thus, the CACIF appears as the main opponent of the reform proposals in 1999 and 2017, and also as the key actor in the annulment of the sentence in the genocide trial. In the most recent constitutional crisis, it acquired relevance once again by not condemning vigorously the openly unconstitutional actions of president Jimmy Morales in his conflict with the CICIG, in which the CACIF supports the Government.

The second actor with veto power is more complex to identify, as it is neither formal nor visible. We are referring to the groups of former military personnel that comprise some of the mafia organisations which built parallel power structures in the country. Although the Army is an institution that has managed to stay relatively separate from the conflict between Morales and the CICIG, parallel power groups, usually led by former military personnel, do hold veto power and have supported the political sabotage at different times. Their closeness with some traditional and non-traditional capital groups, as well as with other conservative actors in the country (including churches) allows them to indirectly sway public opinion and boycott certain processes.

Another important actor which also plays the role of spoiler is the lawyers' professional association. While they sometimes share a common position with the CANG, and at times act as opinion leaders, most lawyers have an ultra-conservative view of Guatemalan law, especially on constitutional issues. They were also the most open critics of the possibility of legal pluralism, and among the most significant spoilers when the legal validity of some of the peace processes, including the Agreements themselves, was being called into question.

The political parties, despite their institutional weakness in recent years, can also be considered as important actors in the relationship between the peace processes and constitutional reform. It is through the party structure, no matter how weak it might seem at times, that reform proposals succeed or fail in Congress. It is important to note that the deputies themselves made the reforms of 1999 unviable by adding a series of changes that broadened them so that they had little to do with the Peace Agreements in the end.

The ancestral indigenous authorities play a role as actors in favour of the constitutional reforms, as they enjoy ever increasing power and clearly express the need for these reforms to include legal pluralism and autonomy for the indigenous regions. Even more radical is the Comité de Desarrollo Campesino (CODECA - Peasant Development Committee), a grassroots movement with wide support that is currently the main proponent of a multinational NCA aimed at re-establishing the State of Guatemala from an indigenous perspective.

c. The Constitution and its possible reforms

i. Quality of the current Constitution and the advisability of reforming it

The majority of interviewees agreed that the current Constitution was the one which had gone further in recognising Human Rights than any other version. This is also the Constitution that made the peace process viable by opening up participation to more sectors and ideologies.

Notwithstanding the foregoing, throughout the investigation two distinct positions became evident: those who consider that the reforms have been postponed for too long, especially those relating to the justice and security sector and the rights of indigenous peoples, versus those who consider that subjecting the Constitution to any changes whatsoever is a very high risk strategy due to the paucity of current political leadership.

The main arguments of the former rest on the inclusion of marginalised groups beyond indigenous people. They consider that the Constitution does not contemplate the needs of children, young people and women, and that it should be reformed urgently because many people do not feel included. Moreover, they are worried about the backwardness resulting from obsolete legislation in security, defence and justice matters, especially the famous Public Order Act dating back to 1965 or the Military Code of 1878.

The latter consider the ongoing deterioration of the political party system in the country, which has even presented itself in groups and activities described as the ‘pact of the corrupt’³, would make it risky to attempt any kind of changes to the Constitution at this time, no matter how important they are for the process of the consolidation of peace.

3 A nickname given to a group of deputies, executive civil servants, judges and lawyers of doubtful reputation, retired military, and other actors close to the parallel power groups and corruption structures seeking to thwart the work of CICIG and the recent advances of the MP in the processing of high impact cases.

A third position, not so popular among the experts but worth mentioning, is the one proposing a series of gradual reforms to the Constitution, progressing slowly and waiting for a better political moment than the current one. This posture calls for the resumption of the specific reforms proposed in each of the Peace Agreements.

It is evident that we must take into consideration norms included in the current Constitution which have not been followed. The Constitution orders the creation of a number of laws which have still not been prioritised in previous legislations. These include the Indigenous Communities Act, the Water Act, and other new public order acts (like the right to peaceful protest). Some consider that demanding the fulfilment of this ordinary legislation mandated by the Constitution could be the necessary palliative alternative to proposing constitutional reforms.

Another important factor to analyse is the whole apparatus of institutions controlling executive power, created along with the Constitution of 1985, including the PDH, the CGC and the MP. On several occasions, these have served as brakes and counterweights to the abuses which occurred during wartime.

Lastly, one of the interviewees mentioned the importance of considering consultation in a wider format, less restrictive than a plebiscite. Binding consultations conducted by vote, with the implicit costs and logistics, cannot be implemented continuously or serve as a thermometer to decision makers on what people want. Other less rigid models of free consultation for the purpose of discerning popular opinion on certain topics could be conducted continuously to inform decisions about public policies and current legislation. It is possible that these consultations are necessary and useful as a prior step before considering future constitutional changes.

ii. The constitutional block

Experts, especially lawyers, have pointed out the importance of considering the Constitution beyond the words comprising its text. For this, they have used the term ‘constitutional block’, referring to various annexed elements that along with the Constitution itself make up the spirit of the current Constitution. These elements are, first of all, laws and international treaties, especially on Human Rights issues.

The current Constitution deems these laws on equal rank as its own provisions. It also implies the existence and possible application of hemisphere-wide case law. For instance, decisions made by the Inter-American Court of Human Rights (IACHR) in a case in Peru, could eventually establish the basis for a decision in a similar case in Guatemala. It is in these subjects of international legislation where a greater opening of the current Constitution to topics such as the rights of indigenous peoples or Human rights is visible (several decisions by the IACHR have encouraged the State to make reparations to victims of the conflict).

Another fundamental element of the constitutional block is the Constitutional Court, which has vast powers of interpretation of the Constitution and has set precedents at critical moments for the country, both negative (like the admittance of the candidacy of Ríos Montt years ago, despite the explicit constitutional ban), and positive (the CC halted the expulsion of the CICIG commissioner in 2017). The CC has thus become a regulator of the decisions of the other powers of the State.

One of the interviewees pointed out that many of the benefits of the Constitution itself and the so called constitutional block are easily reversible advances. For example, the country could withdraw from an international treaty. Or it could legislate to limit the power of the PDH (as has taken place at the time of writing this study). A regressive and conservative counter-offensive can be observed that could infringe precisely upon the humanistic elements of the current Constitution, and may even propose a new Constitution based on these regressive characteristics.

iii. Fundamental aspects of a possible constitutional reform

One of the experts highlighted that key parts of the Constitution are the dogmatic articles that are non-amendable, in which the right to private property is enshrined and the issue of taxation non-negotiable. Another remarked on the polarisation between those who prefer a minimum State presence, limited to guaranteeing security and other essential services, and those who propose the need for and the importance of a State with institutional strength, capable of bringing together the efforts of all social actors and reconciling individual and sectorial interests with the common good.

Another point for discussion has to do with the balance of powers established in the current Constitution. According to experts, there is a strong dominance of the legislative power that is not quite compatible with the current party system and is prone to co-opting the other powers and the autonomous institutions elected through nominating commissions⁴.

The next fundamental point has to do with peace infrastructures. These include bodies like the SEPAZ, but also accompanying and monitoring commissions in existence with the Agreements. Peace infrastructures have always been in a very vulnerable legal condition and some constitutional amendments should be considered to strengthen them. In this same vein, some of those interviewed deem it necessary to transition from the Peace Agreements' own agenda to a wider one of reforming the State. Such reforms, to be sustainable throughout time, should be codified at a constitutional level.

Reducing violence should be the subject of constitutional changes aimed at implementing preventive policies for young people. One of the experts mentioned that the counter-insurgency violence of the eighties was very different from the organised criminal and juvenile delinquency of today. The trend towards short-term 'heavy hand' responses could be avoided if the Constitution were to define clearly the preventive element in the fight against violence.

The underlying problem with any amendment, according to many of those consulted, is how the role of the State itself is defined in the Constitution. Currently, a radically liberal model is followed: a small State that does not interfere in the markets. A better idea might be a State seeking the solution to social problems.

4 Nominating commissions are mechanisms to elect officials at autonomous and/or control entities, such as MP, CGC, CC and PDH.

d. Inclusion, special actors and other reflections

i. Ownership of the processes

We consider ownership to be fundamental in peace processes and constitutional reforms. After analysing the complex history of the nexus between both processes, it is clear that the moments of greater societal involvement are the ones producing better results. The creation and actions of the CSA during the peace negotiations are clear examples of this. It is useful to highlight that in the failed reforms of 1999, those related to the recognition and the rights of the indigenous peoples were better received in regions with a predominance of this population. In contrast, fragmentation of civil society after 2015 could help explain the scarce popular support for the proposals of reforms in 2017.

ii. Indigenous peoples and constitutional reform

Although this has been mentioned in previous points, the inclusion of indigenous people in the national project and, therefore, in the country's Constitution, is fundamental to secure sustainable peace. In addition to the points mentioned immediately above, one of the analysts believes that inclusion is becoming especially strategic today because a certain sympathy among indigenous people is showing itself; logically speaking this sympathy is directed towards countries that have supported them and not towards the State that has ignored them over many generations.

The topic of the constitutional block, mentioned here before, has been fundamental in the recognition of a series of rights of people derived from international legislation, in contrast to the lack of national judicial recognition. The case of Convention 169 of the International Labour Organization, also known as ILO-convention 169, is paradigmatic, since through many decisions made by the CC it has been possible to recognise the right to previous and informed consultation, a topic that was not contemplated in any national legislation.

The topic of legal pluralism, specifically the recognition of indigenous law, was recurrent in the interviews. This subject is particularly touchy with the indigenous leaders and experts who see no insurmountable obstacles to implementing such reforms. Reluctance stems from the structural racism and unfounded fears of the economic elites. Attention is drawn to the fact that the majority of interviewees reduced the issues related to indigenous people to legal pluralism. In reality, the recognition of indigenous people could be wider in the Constitution, starting by elevating their languages to the constitutional rank of national languages (this is currently merely an ordinary law) and leading to much more complex topics like the new regionalisation of the country based on ethnic and linguistic criteria and the autonomy processes coming along with this new regional organisation.

Not until the topic of indigenous law is addressed, will it be possible to say that the historic exclusion of these peoples is being addressed, and that a positive peace for all inhabitants of the country has been achieved. However, this topic has been an excuse for spoilers to block constitutional reform proposals at least twice. Hence, the importance of solving this conflict from the intercultural dialogue perspective.

iii. The role of international cooperation and mediation

The experts interviewed gave different answers to the question of what international cooperation might do in the future to support peace in Guatemala. On one hand, they consider that international cooperation was fundamental for the consolidation of the negotiations and the signing of the Agreements, as well as the development in specific areas and the empowerment of the indigenous peoples and other marginalised groups. But they also consider that their intervention could contribute to the fragmentation of civil society occasioned by NGOs depending on donor agencies, the elaboration of specific thematic agendas and the lack of effort to strengthen State institutions.

Another important topic is sustainability. Many of the initiatives implemented have a life span of 3 to 5 years, after which there is no financial muscle to conduct continuous monitoring of the impact of interventions. It is not expected, of course, that continuous sustainability of initiatives depends on international cooperation, but it is desirable that strategies are outlined from the very beginning of projects so that they may be continued by the State. This necessarily involves seeking funding; thus it is of strategic importance that the cooperation agenda includes tax reforms in the country.

One more aggressive proposal came from one of the interviewees, who considers that other countries need to accept the co-opting of the State by powerful factions, which in turn implies recognising and fighting against the role of former military officers who control parallel power structures. This bid for power is important beyond Guatemala's own interests; they are issues related to the fight against transnational crime, a subject which is of high priority for various countries.

Another audacious proposal came from an expert who suggests that given the existing boost by the constitutional block to put the peace agenda to work, international cooperation should support the strategic litigation needed. This might be understood as the process of filing lawsuits under international legislation on critical issues such as the rights of indigenous peoples, forcing the CC to decide in cases of violation of human rights by action or omission.

A final comment made in one of the final interviews sheds some light on the role of international cooperation in the future, especially in relation to the peace agenda and constitutional changes: It is very important to understand that the peace process in Guatemala was for a long time limited to a ceasefire between the parties and that it was even exploited by some sectors of the Army as a counter insurgency strategy. Real peace can only be achieved through a profound transformation of the State structures, which is still pending.

iv. What could have been done better?

Although the answer to this question can be merely speculative, it is derived from the comments of the interviewees. First, it is very likely that international cooperation has favoured the accompaniment of the peacebuilding process over constitutional issues. While there was financial support for the 1999 consultation and technical support for the 2017 one, the emphasis could have been greater in the processes.

Secondly, civil society, guided by an ever-changing situation, did not account for the strategic importance of constitutional processes to achieve profound transformations in the country. The excessively rigid scheme of popular consultation managed by the TSE can be an obstacle to enriching and conclusive dialogues. A process of constant consultation on what needs to be amended in a Constitution can prepare the population to build a constitutional culture, and pave the way for the reforms needed.

v. Further reflections

Many of the interviewees contend that the presidential election of 2019 is key, because the continuity or not of the democratic system is at stake. The possibility of real change in politics terrifies the alliance of traditional powers and parallel structures, which are promoting a conservative and old-fashioned agenda. In this sense, it is important that civil society finds ways to level traditional powers by confronting them through effective ways.

The election of 2019, like many previous ones, including the failed popular consultation of 1999, is an auspicious moment to incorporate the discussion on constitutional changes needed to redirect the peacebuilding process. As mentioned before, this goal necessarily implies profound structural changes, which include all sectors of the country, especially indigenous peoples.

The CSA, an important actor throughout the whole negotiation process, trained society in the concept of gaining visibility and political influence. It also enabled a non-fragmented discussion on the most strategic issues for State reform. A similar mechanism should be considered to meet future challenges.

Beyond creating a mechanism such as the CSA, all respondents agreed that both the NCA and the peace negotiation process were moments of authentic dialogue, based on the mutual trust that had been built between the parties. We must advance towards such mechanisms, to set in motion the deep reforms of the State to make a more just and peaceful country for all.

5 Final comments

a. Conclusions

First, it is necessary to understand the convergence between the processes of Peacebuilding and the constitution building. Initially, progress was made on the path to democratisation, with a slow and prolonged evolution, which resulted in a new and auspicious Constitution to – among other things – negotiate peace.

Then, as a result of continuous wear-and-tear on both sides and strong international pressure, the negotiations were finalised. International cooperation, civil society and other actors had to develop an ‘on the hoof’ plan, enabling both processes to be guided in the same direction, with all the complexity that this implied, without always being able to achieve complementarity. Discussions about the constitutional amendments needed to build peace arose at critical moments, but were not permanently present as an issue on the national agenda.

A second important conclusion is that the Guatemalan peace process was based on the recognition of a Constitution that had several years of existence. The parties reached consensus on the fact that some specific amendments to each agreement would be submitted for consultation after the Peace Agreement was signed. This allowed, on the one hand, negotiations to progress more smoothly, but on the other hand, it postponed important discussions on the type of State aimed for in the future. Important issues in the proposed reforms were addressed through institutions and ordinary legislation, in fragmented and insufficient ways.

The third major conclusion is that the essential amendments were postponed and subject to manipulation by a less than ideal Congress (that is, by a system of political parties).

The popular consultation of 1999 showed the risk of leaving transcendental discussions such as constitutional amendments in the hands of unscrupulous politicians. The deputies increased the number of reforms significantly, including many that had nothing to do with the Peace Agreements, thus confusing public opinion and giving weight to the arguments of opponents to the Agreements.

Fourthly, it is concluded that structural racism was a clear obstacle to the approval of the 1999 reforms, which prevented the discussions of the 2017 reforms from moving forward. The idea of legal pluralism, present in the original reform proposals, was and is still used in a rigged way to generate concern among the most conservative sectors of the population, fuelling the structural racism. This has serious implications, since the mestizo population has baseless fears about the recognition of the rights of the indigenous population. It has been wrongly interpreted that the recognition of the other implies the loss of one's own rights.

The issue of indigenous rights appeared consistently during the investigation, which shows the fundamental nature of the need for inter-ethnic and intercultural understanding.

The fifth conclusion that can be drawn is that there is still much to do, even within the current constitutional framework: There are laws that have not yet been enacted, which are part of the Constitution and are strategic issues for the country, especially in relation to peacebuilding. The current Constitution also opened the door to the idea of the constitutional block, which allows the enforcement of rights from international legislation, even where those rights are not directly recognised by the national legislation.

Just as the Constitution must be a living document that reflects the ideal of the society at the moment, it is necessary that the Peace Agreements be constantly redefined, precisely because the degree of compliance with the original commitments is very low. In this regard, it is worth mentioning the effort made by the Propaz Foundation, which has promoted intersectoral dialogue to achieve such redefinition.

A sixth conclusion refers to the role of international cooperation in these processes. The sustainability of interventions must be central to the approach of other countries. It is also necessary to move the emphasis from economic development, towards institutional strengthening of the State and the formation of real political parties. Otherwise, national agendas will always be susceptible to boycotts or to being co-opted by traditional powers, or even worse, by parallel powers. The capacity building approach promoted by the CICIG during the first 10 years of implementation of the Agreements could be a good example of how to achieve this strengthening of the State. Support for continuous and institutionalised processes of national dialogue could be fundamental.

Finally, it is necessary to reaffirm the positive steps already taken. Both during the NCA and during the peace negotiations, most notably through the CSA, high levels of dialogue and participation were achieved; they allowed for societal ownership Constitution and the Peace Agreements. Given the accelerated generational change in a young country like Guatemala, the mechanisms of dialogue and confidence-building in the new generations must be resumed, to empower them and to open up serious discussions about whether or not to reform the Constitution and resignify the Peace Agreements.

b. Lessons learned

For future interventions in other parts of the world, it is useful for negotiators and mediators to consider the following lessons learned from the Guatemalan case:

The order of the factors does alter the product:

In Guatemala, the fact that the democratic Constitution was drafted and implemented before the Peace Agreements implied a long-lasting tension between opposing positions: those who believed that immediate pacification was a priority and that we had to work with the current Constitution, and those who insisted that the deep reforms needed for the country could only be achieved through a constitutional amendment. The minimum reforms agreed never had implementation guarantees, much less an explicit schedule.

Timing is everything: The amendments to the current Constitution considered fundamental for the peace process must be discussed and converted into concrete proposals, with specific schedules and guarantees for their implementation. They should also be legally or politically protected from the influence of actors with veto or boycott power. On the other hand, potential reforms should be part of the momentum created by the peace process, and should not be postponed unnecessarily.

Spoilers and sensitive or controversial issues:

There will always be spoilers and actors with the power of veto or at least boycott in peacebuilding and constitutional processes. When these actors are also representatives of the country's economic elite, measures to balance their power should be implemented. For example, constitutional amendments deemed as necessary should be shielded from veto power.

Sensitive or controversial issues, such as inter-ethnic relations, should be continually discussed in depth. Possible channels for these discussions range from education for peace and tolerance in both primary and secondary education, to specific dialogue processes fostered by the international community, all aimed at creating a debate that can go beyond the prevailing trends of public opinion.

The constitutional block: Modern constitutions that are open to international legislation and treaties allow a window of action for the protection of basic Human Rights and of the most vulnerable groups of people. Strategic litigation and the use of control institutions such as the constitutional courts or the figure of the ombudsman could be useful to interpret the current Constitution from a modern, progressive and cosmopolitan perspective.

Recover and restore dialogue: Reaching a consensus on the Constitution in 1984 and on the Peace Agreements in 1996 was not an easy task. The final products, however imperfect, were the result of a continuous, systematic and open dialogue. The dialogic nature of these processes must be continuously studied and implemented during times of peace and ‘democratic normality’. Dialogue should be at the centre of any consideration for the resignifying of the Peace Agreements or the discussion of a new Constitution.

c. Open questions, pending issues and future research

In the case of Guatemala, and indeed the whole of Central America, the relationship between constitutions and peace has only been explored minimally. This opens the possibility for a new interdisciplinary line of research in which lawyers and peacebuilders can work together. This first approach could be complemented with specific research on topics such as the inclusion of indigenous peoples, collective and environmental rights, representation of minorities, access to justice systems, etc.

Research should be conducted with a future focus, imagining how new generations can *resignify* the Peace Agreements, and how great political pacts can promote peaceful coexistence; whether they are included in the Constitution or not.

It is also worth collecting historical memory: At present, many people who were part of the NCA of 84–85 are still alive. Some of them could be interviewed to recover all the richness of their experiences. Although the NCA process has been studied extensively, it would be interesting to talk with these historical figures to know and learn from their vision of peacebuilding.

Finally, it is important to consider in future research how the mechanisms of dialogue within the NCA, the CSA, and other spaces related to peacemaking and constitution making, since more helpful lessons for the design of future processes can be extracted from them.

Perhaps the current political crisis is due to a temporary constitutional crisis; a sign of the final deterioration of the 1985 Constitution, which no longer contains the features and characteristics demanded by Guatemalan society today. To that extent, it hinders the development of the changes needed to build a new society. This line must be explored in greater depth.

d. Recommendations

- ≡ It is recommended that Guatemalan civil society make use of previous successful experiences, such as the CSA during the peace negotiations. Creating broad forums for the discussion of national reality, beyond specific thematic and sectorial agendas, enables a comprehensive discussion of what is required to achieve a more peaceful and inclusive society.
- ≡ Civil society cannot replace the political party system. The development of political parties with broad participation should be encouraged, guided by ideological and programmatic agendas, that will not be simple electoral vehicles available to the highest bidder.
- ≡ It is recommended that international cooperation organisations review the sustainability of their interventions. Specifically in relation to peacebuilding and constitution building, they should support the development of new studies that contribute to these issues. In general, experts point to the need for cooperation to strengthen State institutions and political parties, in addition to continuing the development cooperation that has already been directly implemented.
- ≡ It is recommended that the institutions focused on peace in Guatemala resume the issue of constitutional amendments as a priority issue. This study can be a starting point to promote large intersectoral dialogues on the need to implement such reforms, rather than binding referendum consultations.
- ≡ International mediators and negotiators, who will intervene in new conflicts, are recommended to consider the lessons learned from the Guatemalan case.

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