

# **The Guatemalan Peace Process: The Accords and Their Accomplishments**

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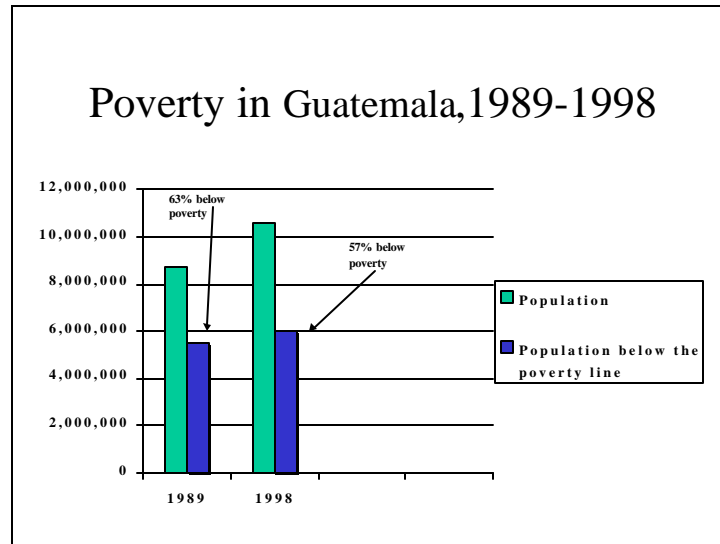
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Guatemala, one of the poorest countries in Latin America, suffered an internal armed conflict for 36 years. A long and difficult peace negotiation process ended in 1996 with the signing of the most comprehensive and ambitious peace accords in the history of peace agreements. Five years later, the accomplishments of the accords are limited. This article examines the social context in which the accords were negotiated and implemented. It also explores some of its accomplishments and shortcomings, and suggests the first lessons learned.

### **A heavy legacy**

Guatemala is the largest Central American country, and is about the size of the state of Tennessee. Its population in 2000 was about 11 million people. Two thirds of the population lives in the rural areas. (*Guatemala: el Rostro Rural del Desarrollo Humano*, 1999). In 1997, 44% identified themselves as “Indian”. Among women 18% wore indigenous dress. In the whole country, 23 different languages are spoken, but 76 percent of Guatemalans consider themselves to be Spanish-speaking people. (*La cultura democrática de los guatemaltecos. Tercer estudio*, 1998). Guatemala is one of the most beautiful countries in Latin America. But it is also one of the poorest.

**Figure 1**  
**Poverty in Guatemala, 1989-1998**



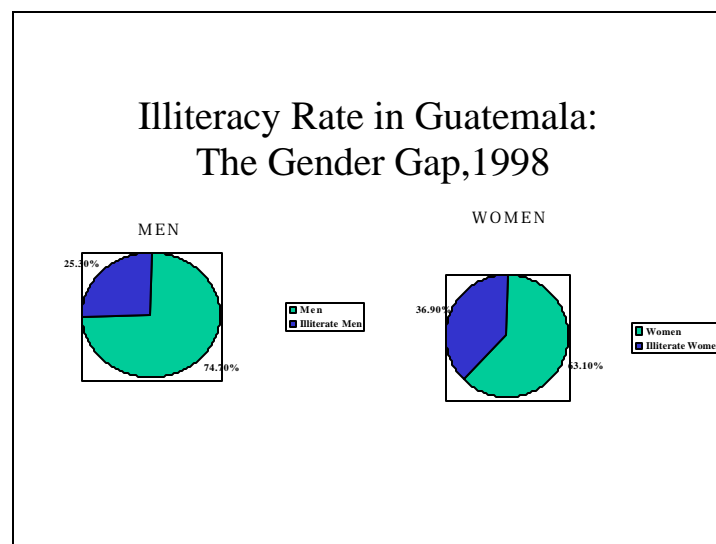
**Sources:** *Guatemala: los Contrastes del Desarrollo Humano, 1998.*  
*Guatemala: el Rostro Rural del Desarrollo Humano, 1999.*  
*Guatemala: la Fuerza Incluyente del Desarrollo Humano. Informe de Desarrollo Humano 2000.*

With one of the highest fertility rates in Latin America, one out of five children born in Guatemala is dead before his or her fourth birthday. The chronic malnutrition rate of those five years old or younger is 46%. According to official figures, 27.5% of the total population of school age does not attend school and one fourth of those between the ages of 15 and 24 is illiterate. Thirty percent of the households have no access to safe water and 45% do not have electricity. One out of five people has no access to health services. (*Guatemala: los Contrastes del Desarrollo Humano, 1998; Guatemala: el Rostro Rural del Desarrollo Humano, 1999; Guatemala: la Fuerza Incluyente del Desarrollo Humano. Informe de Desarrollo Humano 2000*). With Nicaragua, Honduras and Haiti, Guatemala is one of the poorest countries in Latin America. According to the

Inter American Development Bank, the Guatemalan Gross Domestic Product (GDP) per capita was \$1020 (US dollars) in 1999 (IDB 2000).

But Guatemala's plight is not only a matter of low GDP in relation to the total population. In addition, income distribution in Guatemala is one of the two worst in the region--Brazil being the other. Consequently, the internal differences in the population's enjoyment of wealth make the poverty and social distances even more acute. Additionally, discrimination against women in Guatemala makes social conditions for women even more agonizing.

**Figure 2**  
**Illiteracy Rate in Guatemala: The Gender Gap, 1998**



*Sources: Guatemala: los Contrastes del Desarrollo Humano, 1998.*  
*Guatemala: el Rostro Rural del Desarrollo Humano, 1999.*

An absent or extremely weak government has been a typical characteristic of Guatemala throughout its history. As a consequence, the boundaries of "public space" are

quite narrow. During their lives, people become involved with just a few institutions--their church or their children's school. Or, they participate only in their family relationships.

For all of these reasons, there is probably no better place than Guatemala for studying a culture in which there is little concept of seeing others as valued neighbors or even as fellow citizens. A significant number of Guatemalans share territory but nothing else. Even worse, some of them even make an effort to ignore each other. So, many people in Guatemala focus on personal situations rather than coming together with others to address common interests. With the exception of church affiliations and school parents committees, half of Guatemala's adult population did not hold membership in any type of association in 1997. Significantly, the higher the educational level, the lower the degree of participation in groups. (*La cultura democrática de los guatemaltecos. Tercer estudio*, 1998).

It is easy to see why institution building is a difficult task in Guatemala. In Guatemala, institutions are typically led by a leader with a strong personality and a few people--mostly relatives or close friends--who report to him or her. Personal conflicts are more likely in this atmosphere, making the institution-building process even more difficult. Political affiliation is a short-term, commitment based on personal interest rather than on political philosophy. Most of Guatemala's best-known politicians have developed their political careers through three or even four parties, rather than committing themselves to one party for the long-term.

Family is the only social nucleus that has any relevance at all. However, marriages are often characterized by violence and a low level of communication between

the partners. Battering of women and children is a significant social problem. (Wagner 2000).

Religious affiliations also exhibit this same narrow, self-oriented mind-set. For instance, being a member of a Protestant church creates some loyalty to the fellow members and builds some links of support. But in the small towns, the concept of “foreigners” even extends to Guatemalans who live outside the town. Distrustful attitudes and aggressive behavior often characterizes encounters with those beyond the boundaries of the local communities. In some cases, when “foreigners” were held responsible for a minor crime, they were ultimately lynched.

There is a causal relationship between Guatemala’s lamentable lack of healthy participation in institution building and the government’s historical weakness. For most of the twentieth century, the Guatemalan army was the only visible expression of government. Even today, the army is the most visible government institution, especially in the rural areas. Until recently, local base commanders were often asked to resolve conflicts between neighbors or relatives--and they did.

The historical experience of most Guatemalans has been centered on primary social groups. These experiences have been highly fragmented and unstable and overseen by a military state that provides sanctions but no support for collective social membership. Some of the native Protestant churches even encourage their members to close their minds to public problems. These problems are depicted as an evil domain. Consequently, instead of encouraging social change, these institutions forbid it.

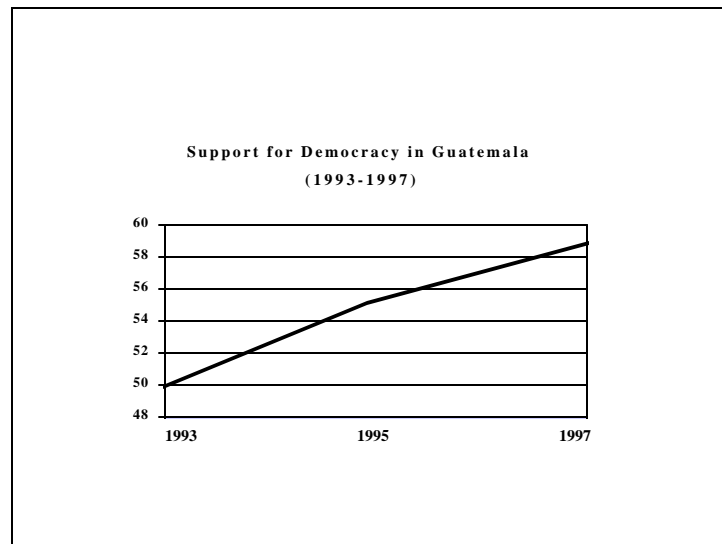
Unfortunately much of the Guatemalan media also promotes suspicions about involvement in the public sphere. The most influential newspapers give the impression

that every politician is corrupted and that government institutions do not work. The best interests of the public domain and those of the individual are frequently portrayed as opposing concerns.

The pre-1950 social and political landscape helps us to understand why Guatemala's evolution towards a modern and civilized social organization has been derailed so often. It is useful to remember that an important process of change took place in the country during the 1950s. This was ended by a CIA-financed invasion, an intervention that was regarded with indifference by most Guatemalans.

Research data on political attitudes in Guatemala reveals that 58% of the people interviewed showed a low level of support for the political and institutional system. As Figure 3 indicates, support for democracy in the country is growing. But that pro-democracy preference is found in barely more than half of the population.

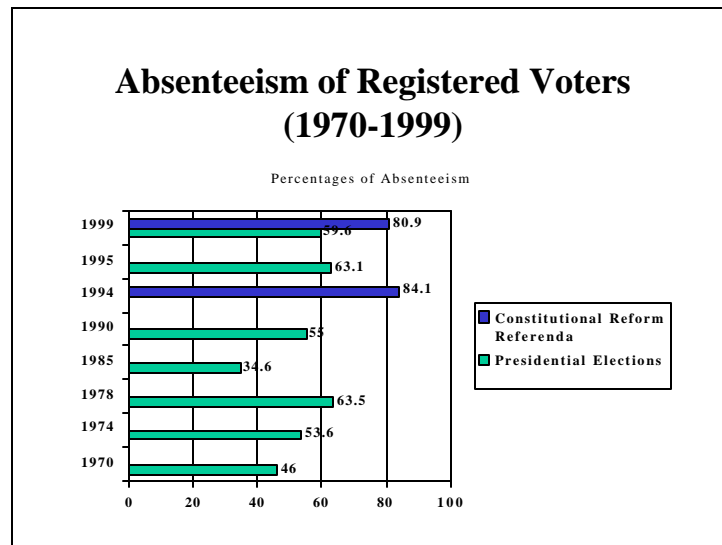
**Figure 3**  
**Popular Support for Democracy in Guatemala, 1993-1997**



*Source: La cultura democrática de los guatemaltecos. Tercer estudio, 1998.*

Little or no support for democracy in almost half the Guatemalan population is probably the result of the government’s poor record for delivering essential public services to the population. This persistent weakness of the government mainly arises from a very low tax base. In the media, taxes are typically portrayed as the politician’s way of stealing people’s money. Because the public sphere is seen as corrupt – an arena for cheating citizens -- enthusiasm for voting is almost non-existent. Lack of electoral participation has been fed by understandable apathy among citizens and an “I don’t care” attitude.

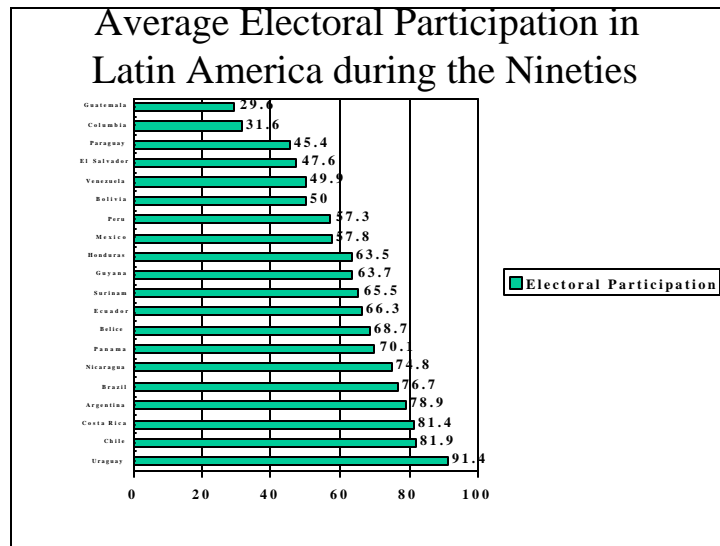
**Figure 4**  
**Absenteeism of registered voters (1970-1999)**



**Sources:** Tribunal Supremo Electoral, Hemeroteca Nacional

Guatemalan voter absenteeism levels are among the highest in Latin America, as Figure 5 shows.

**Figure 5**  
**Average Electoral Participation in Latin America during the Nineties**



*Source:* IDEA 1997.

A small class of owners constitutes the only group of real beneficiaries within Guatemala’s society and economy. This privileged group holds most of their financial assets out of the country. Most of these wealthy Guatemalans have a house or an apartment in Miami, just for occasional use, such as when they go shopping, celebrate a family member birthday or Thanksgiving Day. This wealthy minority has kept close control on the country for decades through publicly and privately financed force. What they wanted – and received – is a strong and aggressive army to protect their financial interests.

In the last fifteen years, Guatemala has held public elections for public officials -- mainly because of international pressure. But most citizens are still excluded from

participation in the political process by different means. The killings, the disappearances and torturing that discouraged political participation in the past have been replaced by media campaigns aimed at making citizens distrust the public domain in order to keep them away from the polls. On the other hand, wealthy landowners who should assume a larger share of the tax burden, frequently elude tax collection. As a result, most Guatemalans live in a social setting where poverty, ignorance and deprivation prevail.

Lack of protection is not a problem for the owning class. They pay for their own, private police forces. Even – if a family member is kidnapped--, the landowners can afford the ransom. A healthy, viable government would be much more expensive to this privileged segment of the population, not only because they would have to pay taxes, but also because they would lose some control they have maintained over the government.

In Guatemala, education has been discouraged historically. Other Latin American countries had seen that education is a powerful means of generating a homogeneous social base. That base of capable citizens is essential for effective government. The owners' class has consistently erected barricades along that road in Guatemala.

In Guatemala, taxation has been thwarted. Every effort to produce tax reform has been fought. Entrepreneurs have even gone on strike, closing down their businesses to protest the imposition of new tax programs. Between 1970 and 1996, the annual tax burden averaged only 7.8% of the GDP. (*Guatemala: los Contrastes del Desarrollo Humano*, 1998: 76). And so, fiscal shortfalls have fed an internal public debt even as the lenders -- the same owners who avoid taxes—continued to block the government's attempt to gain fiscal leadership

Voting is not mandatory in Guatemala. This observation may seem curious to an American reader. But in most Latin American countries, voting has been imposed on the citizens as a duty in order to promote popular participation, preclude any private pressure against elections and widen the democratic basis of the system. In Guatemala, the American system is used as an example in order to support what is called “a more advanced” definition of political rights. That is, there is no obligation to vote. The low return pattern shows that most of the voters are concentrated in the cities.

Of course, some of the political characteristics already pointed out in Guatemala’s profile are to be found elsewhere in Latin America. In fact, most of the other Central American countries--as well as the Andean countries--show the same kind of problems. Maybe the difference is that every component of underdevelopment is seen at its worst in Guatemala. This grim social landscape helps explain why a “protracted social conflict” (Azar 1986) took place in Guatemala.

### **The Peace Process and Accords**

In the effort to end the 36-year-old Guatemalan internal conflict, eleven substantive accords were signed within a seven-year negotiation period (1989-1996). (Table 1). As a whole, the accords comprised an ambitious and elaborate program for a complete national over-haul, including social and economic reform, state and judicial reform, and recognition of indigenous rights, among other topics.

**Table 1**  
**Substantive UN- Mediated Peace Accords**

Comprehensive Agreement on Human Rights (March 1994)  
Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict (June 1994)  
Agreement for the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer (June 1994)  
Agreement on the Identity and Rights of Indigenous Peoples (March 1995)  
Agreement on Socio-economic Aspects and the Agrarian Situation (May 1996)  
Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society (September 1996)  
Agreement on a Definitive Ceasefire (December 1996)  
Agreement on Constitutional Reforms and the Electoral Regime (December 1996)  
Agreement on the Basis for the Legal Integration of the URNG (December 1996)  
Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (December 1996)  
Agreement on a Firm and Lasting Peace (December 1996)

The first noteworthy thing about this comprehensive body of accords is its conceptual starting point. These accords genuinely address the roots of the internal armed conflict. By signing the peace accords, the Guatemalan Government and guerrilla forces did not limit themselves to the usual agreement on peace matters-- the reintegration of combatants into civil life, prospects for political participation by all parties and accountability for human rights violations that occurred during the internal conflict. All these matters were included in the Mediated Peace Accords but at the very core of the peace accords was a 4-year plan for a kind of nation or state building program to be developed by the government. This program detailed a variety of projects and reforms aimed at building a new national foundation. It was hoped that that foundation would solve the problems that allegedly precipitated the internal conflict.

Interestingly, the accords' ambitious goal was noted and submitted to public debate in Guatemala. Former guerrilla commanders later reported that it was precisely this type of agreement that encouraged them to stop the fighting and sign a cease-fire

accord. On the other hand, some critics of the whole peace process have argued that it was through the accords that the guerrilla force established as a political agenda that which it was unable to gain through warfare.

The second important point is that the content of the accords themselves is difficult to explain --- given the history of the war and its aftermath. In Guatemala, the guerrillas were defeated in real terms by the early 1980s eighties and therefore were not able to exert military or political force on the government. In this respect, Guatemala's case differed sharply with El Salvador's, where guerrillas and security forces arrived at a stalemate. (Whitfield 1999)

In spite of the imbalance in post-war political clout, the government and the guerrillas sat down at the negotiation table. Though the two sides came with dissimilar goals, their negotiations produced a high degree of concurrence, providing important rewards to each side. The four guerrilla groups banded together in an alliance called the URNG. For political reasons, they needed to be seen as having made gains for the Guatemalan people. Signing the accords was the guerillas' route to a two-fold goal: saving face and bypassing military defeat. On the other hand, President Arzu's government (1996-2000) willingly traveled the same path with the rebels. In so doing, it could label itself as the "government that put an end to the 36 year-old conflict" The government was also anxious to lure to programs ready to donate huge amounts of money in international aid. These contributions would alleviate the balance of payments problems the government had to address.

Participation by Guatemalans in the negotiating process preceding the accords was very weak (Arnault 1999: 28). Some might argue that given the prevailing

conditions and political climate of Guatemalan society, a real participatory process would have been almost impossible. Nonetheless a more open process to inform the public could have been created, –and issues surrounding the inclusion in negotiations those who would later prevent the implementation of the accords (Kriesberg 1992: 215) could have been dealt with better.

The accords were so complex that only political or legal experts were able to access and comprehend their content. The average citizen only had a vague idea about what the accords meant. “The peace was signed,” answered most of the people interviewed for public opinion polls when asked to comment on the accords. This social outcome was not really too surprising. The accords were more of an intellectual product than a political compromise emerging from the armed conflict. In contrast with the situation in El Salvador where the peace accords acknowledged that the guerrilla contingent held real power in a portion of the country, in Guatemala, the scope and content of the accords did not correspond to the balance of social and political forces or the real strength of social actors in favor of social change.

Actors from the international community often said that an important obstacle to the peace process in Guatemala was the people’s difficulty in becoming “owners” of the accords. In fact, it was impossible to get that sort of “ownership”, not only because of the complex content of the accords, but also because the existing social and political balance had not been taken into account.

Although several works have examined the negotiations and the accords’ content, (McCleary 1997; Torres-Rivas 1998, Sieder 1998, Azpuru 1999, Holiday 1997, 2000), there still has been no thorough evaluation of what has been accomplished. The UN

Mission to Guatemala report provides an important but insufficient overview of the state of affairs in Guatemala. In fact, the accords arrived in a society with social and political rifts so deep that the chances for implementing the peace accords were severely compromised. We will look, in a more detailed way, at two of these characteristics affecting the peace process.

The first characteristic is Guatemala's historical legacy of "government for and by the few." Guatemala is a country where political involvement is mostly very weak. Poverty, illiteracy and 36 years of internal conflict have produced a nation where public opinion is molded by a few influential people while most of the citizenry remains passive. Once in a while, demonstrations of popular discontent around very specific and local problems take place.

A few people are in control of decisions affecting the entire society and national government. As a result, both politically and economically oriented interest groups occupy the public sphere and pretend they are promoting the welfare of the Guatemalan population. Most of the general population remains detached from government and distrustful of public matters. Low voter turnout has already been mentioned as a symptom of that distrust. Even the assassination of Monsignor Gerardi, Catholic bishop of Guatemala City in April 1998, did not result in a massive mobilization or political outcry.

Second, the mainstream is reluctant to accept social change in Guatemala. In a traditional and conservative society, people open to change feel insecure and are afraid of promoting reforms. Many people simply reject new ideas and proposals. Those who promote human rights issues are often under fire from the prevalent law-and-order

approach. Frequently, reform proposals are put aside because they seem to be coming from, or promoted by, “foreigners.”

The peace accords and the peace process must be understood in that social landscape. Peace has not become a national concern or a national project in Guatemala. Moreover, the peace process has apparently not brought a major shift in civic culture (Peceny and Stanley 2001). Of course, most Guatemalans are in favor of peace. That is, they are against warfare. But, according to several polls, the wide-spread desire for peace has not produced popular identification with peace process issues. Those who happen to know something about the peace accords consider them “government business”, not the business of ordinary citizens of Guatemala.

With regard to the relationship between the accords’ intended effects and their constituencies, it is possible to hypothesize that the contents of the accords “entail benefits for a diffuse constituency while relatively heavy costs” for a small but powerful sector and, consequently the latter eventually interfered or even prevented the accords’ implementation (Kriesberg 1992: 154). After the last accords were signed in December 1996, the peace process started moving at a very slow pace and ultimately became paralyzed. In May 1999, in a referendum where only one out of every five citizens voted, the constitutional reform project--the backbone of the peace accords--was defeated.

Most of the ambitious social proposals developed in the accords had failed because they were enacted in a vacuum by a government without a political will to implement any changes. A dramatically weak civil society, shortsighted leadership and a citizenry reluctant to participate in the political process explain the result. The political comeback of General Rios Montt gained electoral support in the national elections of

1999. Montt is allegedly responsible for numerous grave human rights violations during the internal conflict. In January 2000, President Portillo was sworn in and General Rios Montt was elected president of the Congress. Some of the reforms that had been stalled simply came to a complete stop. The old times of government by a privileged few seemed to be back.

### **The International Community's Role**

In Guatemala, international community participation has been quite important. But when the Guatemalan peace process began, foreign aid had been redefined by a new concept proposed by Boutros Boutros-Ghali, the UN Secretary General. That development took place in January 1992, two years before the first substantive Guatemala accord was signed. At the time, Boutros Boutros-Ghali defined the idea of “post conflict peace building” as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict”. (Boutros-Ghali 1992: 11)

During the Guatemalan peace negotiation process, this idea eventually evolved into a more challenging goal “to uproot the causes of war” by constructing a new set of institutions and to be responsible for establishing and maintaining a new social order. This orientation was based on a theoretical approach to protracted social conflicts (i.e. Azar and Farah 1981: 329). It explains the ambitious scope of Guatemala's peace accords and was the basis of an important and well-funded international community commitment to cooperate with the “nation building” effort developed in this case. (Bosnia, Kosovo and East Timor would later follow the same approach).

The program was adopted through the peace accords with what the UN called an “integrated approach to human security.” (de Soto and del Castillo 1994: 71) It seemed to open a way out of underdevelopment. International cooperation reacted enthusiastically to this proposal which meant a country’s complete overhaul. The countries involved in the peace process—the so-called “friend countries”—committed \$1.8 billion to the peace projects. (Holiday 2000: 83). That was an amount equivalent to two-thirds of government expenses for 1999.

The traditional style of peace agreements--a cease-fire, a set of new rules for political activity and an amnesty for political crimes--produces a difficult but feasible path to follow. Compliance is a matter of political will. Verification of compliance is a fact-checking task—which is better accomplished if internationally monitored. This was the case for compliance to peace agreements in El Salvador.

An alternative approach was adopted in Guatemala. It called for a complete alteration in the way that the nation was structured. In this process, the international community played a two-fold role. First, it helped to draft peace accords which went beyond the parties’ own vision. Second, the international community elaborated on and funded a variety of institution building projects which were designed to carry out the proposed reforms. Based on a widely shared perspective of the role to be performed by the international community actors (Ball and Halevy 1996; Hampson 1996: 10). Most of these proposals were theoretically sound but unfeasible in political terms. This point was underscored when constitutional reform, urged by the Guatemalan peace accords, was defeated in the May 1999 referendum.

However, the question never answered by international aid officials was: “What can be done in Guatemala in a reasonably short period of time, given the prevailing social and political conditions?” A reasonably short period of time meant the few years during which the nation’s internal conflict or natural tragedy had the potential of attracting international concern. As a matter of fact, five years after the signing of the last accords, international concern for Guatemala had ended.

To answer the question accurately would have required making a crucial distinction between what a country needs to recover from an internal conflict and those needs generally required by any underdeveloped country. In the area of “institution building projects”, the international community had clouded the differences between the needs of an underdeveloped nation and those of a post-war nation like Guatemala. The peace accords’ goals became not only ambitious but also open-ended. The impact of these peace projects was mostly diluted because the projects had no specific goals and were unable to show tangible results.

More importantly, given the social actor’s weakness and/or unwillingness to work for real political and social change, international aid institutions increasingly appeared to have the primary responsibility for the accords. By the same token, international agencies were tempted to substitute themselves for the Guatemalan actors in the process. Most of the international agencies intervened in this way to “attain” the proposed project goals. In the final analysis, however, although the formal goals seem to be reached, no important transformation was feasible because the national actors were not actively involved in the process.

A look at judicial reform in Guatemala further illustrates the thesis and offers another perspective of the Guatemalan peace process and the involvement of the international aid agencies.

### **Justice reform vs. lynching**

Historically, the Guatemalan justice system -- like those of Honduras, El Salvador and Nicaragua -- has suffered from some important deficiencies and weaknesses. Most prominent among these problems was a political system for appointing judges that was based on political payoffs rather than judicial expertise or merit. It was legally--and in some cases, constitutionally--established that the national judiciary system was disbanded every four or five years to make room for candidates selected by a new government.

Two important realities flowed from this judicial system. The first was the lack of judicial independence. All judges had to honor the personal debts contracted when they received the favor of being appointed. The second result was that professional mediocrity and incompetence permeated the judicial system. No respectable lawyer was willing to accept being appointed under these rules. Consequently, the lack of judicial independence and the persistence of professional mediocrity made it impossible to conduct one of the most important tasks of the judiciary: to enforce the legal framework in which the government was to govern.

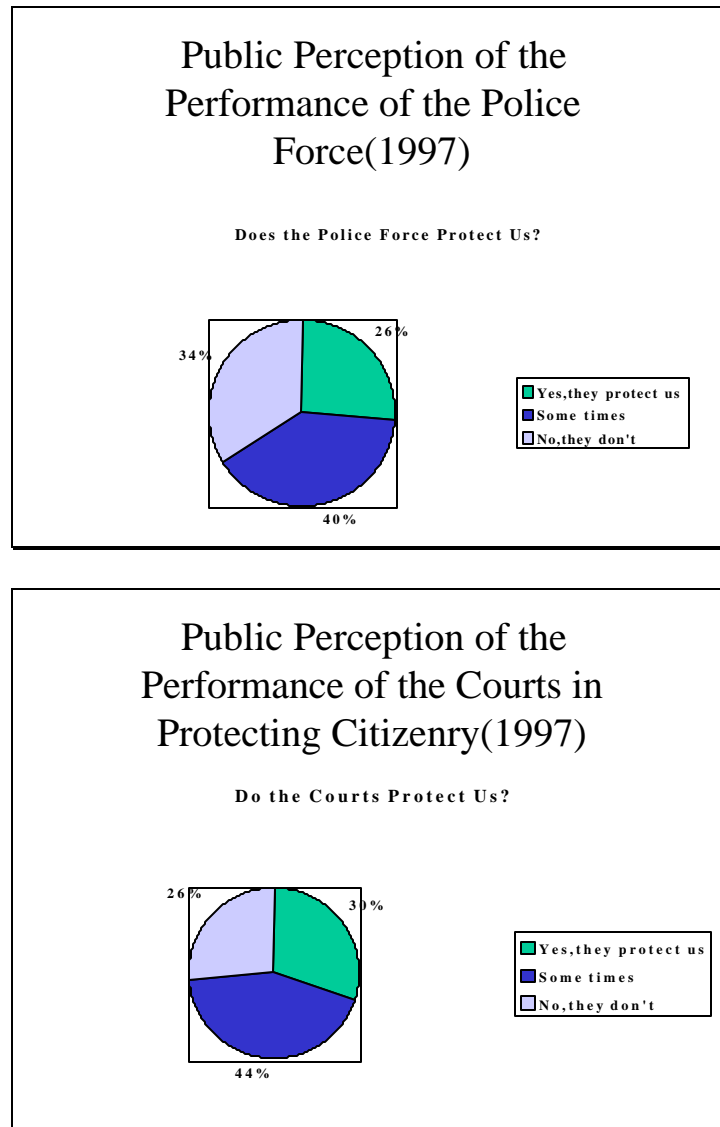
Two other aspects of the Guatemalan judicial system should also be pointed out. Firstly, since conflicts were solved in the country by force rather than by legal means, the justice system never played more than a marginal role in solving or arbitrating conflicts. Not surprisingly, funds designated from the national budget for the judiciary were tiny; in

fact, there were not even sufficient funds to support one judge for each county (*Plan de Modernización del Organismo Judicial* 1997).

Secondly, government sanctions were not imposed by legal means. For a long time, while military and police officers perpetrated atrocities, judges looked the other way. The Commission to Clarify Past Human Rights Violations was established by the Peace Accords. In its final report, it included a chapter on the role of the justice system during the internal conflict. The chapter was appropriately titled: “Denial of Justice.” (Pásara and Wagner, eds. 2000: 105-169)

In 1997, a public opinion poll assessed the degree of popular trust in the justice system in Guatemala. Four out of every five people admitted having a very low level of trust or no trust at all in the justice system. Figure 6 shows, in more detail, this finding of minimal respect among Guatemalans for the police and courts – institutions created to protect the citizens and their rights.

**Figure 6**  
**Public Perception on Police and Courts performance in Protecting Citizenry (1997)**



*Source: La Cultura Democrática de los Guatemaltecos, 1998.*

Peace Accords negotiators had to face this overwhelming legacy of dysfunctional government and a majority of citizens deeply distrustful of government. The institutional traditions of this government for the privileged were passed on to the judiciary through its older judges. According to the latest available report, about half of the current

Guatemalan judges “grew up” in a justice system where justice was not delivered. In 1997, 53% of judges had been working in the Judiciary for ten years or more (*Plan de Modernización del Organismo Judicial 1997*: 70).

The Peace Accords related to each particular subject usually offered an initial diagnosis before articulating specific commitments for reform.

The dire state of the justice system in Guatemala was explicitly addressed in one of the accords (*Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society*, which was enacted in September 1996). It is useful to note that, at the negotiation table, the negotiators completely agreed on the perception among Guatemalans that the justice system was in very bad shape in the country. However, the lack of public debate on the subject made it difficult for them to plan reform. Herein was a perfect example of a vicious political circle: the more desperate the need for political reform and social change, the more difficult it was to find a way to achieve it.

In addressing that situation, the UN Moderator made a significant contribution in spelling out a working agenda. This working agenda included the commitment to prepare a complete diagnosis of the subject and then, some detailed proposals for basic reforms.

According to public reports prepared by the UN Mission in Guatemala, by the end of 1999 the most significant justice-related commitments had already been accomplished (MINUGUA 1999: 34-35). The diagnosis published in April 1998 (*Una nueva justicia para la paz 1998*), was the first overall analysis of the problems in the justice system. It included some specific recommendations for reforms to be adopted. One of the

recommendations consisted of a proposal for constitutional reform, passed by Congress later that year. As previously mentioned, it was defeated the following year in a referendum.

The defeat through referendum has had a regressive effect on the total system of justice, especially because the five-year appointment period for judges, established in the constitution, has not been modified. This important failure alone shows how peace accords which end an internal conflict are not viable and can't be implemented when their content is not closely related to social concerns and mainstream public opinion.

Although no change was made to the Guatemalan constitution, Congress passed a judicial career law in December 1999. It established a recruitment process before appointments were to be made. The statute also clearly defined judges' rights and duties and a due process procedure for internal control of the judges' performance.

The international community's funding made the reform process possible. The Inter-American Development Bank (IDB) and the World Bank have provided loans for a total of US\$ 57 million. But the main deficit is not in funds but in human resources. As was suggested before, many of the lawyers working in the judicial system should be replaced. Training is useless when there is a basic lack of academic preparation and fundamental attitudes that result in unfairness when cases are heard and decided. (Pásara 2000). Unfortunately, there are no replacements for these incompetent judges. Guatemalan law Schools are not turning out enough quality lawyers.

Nonetheless, it is possible—and fair--to argue that Guatemala's current justice system is in better condition than it was in 1996. Judges are appointed through public competition. Before going on the bench, these judges go to a "judicial school" in order to

improve their academic knowledge and practical skills. Judicial independence has begun to be recognized as an important principle and some judges behave accordingly.

Four positive developments can be highlighted. First, the concept of judicial reform has been accepted both in the media and inside the courts. The Supreme Court has adopted change as an institutional policy. Second, there is an agenda for the reform process. The Supreme Court has approved a master plan for reform that provides a conceptual framework for specific reform projects. Third, the responsibility for specific reforms has been given to specific departments, which are accountable during the implementation process. Fourth, the “lack-of-money” excuse is no longer valid. . The international support--through donations and loans--is strong enough to implement and support the proposed goals.

Strong international pressure for social and political reform in Guatemala and a core of national actors who led the process made these hopeful developments possible. Even so, the process advanced and fell back several times. There has been rejection and even sabotage of the reform, by some inside the justice institutions. Vested interest groups have frequently worked against the reform, in Congress and in the Judiciary. In the long run, the depth of reform and the sustainability of the entire plan are endangered by the lack of human resources in Guatemala.

Those who expected a complete political overhaul in Guatemala in four years as a result of the peace process and peace accords are probably disappointed. If so, it is because they did not understand that institutional change in any underdeveloped country is a long-term process--if it is possible at all. It is not just a matter of changing institutions

through new laws<sup>1</sup>. The true transformation depends on changing minds, beliefs and attitudes. That is anything but a sure and short-term process.

One must understand the peace accords as a precipitating factor in this process of political reform. In some ways the accords were effective tools for change; in other ways, they were not. Once signed, the accords were employed in a more complex and conflictual game—one usually called “social life.” Some years from now, analysts will have the needed historical perspective to assess the contribution made by the peace accords to social transformation in Guatemala. It is still too soon to speculate about that.

The critical question remaining is whether there is enough time to fully develop the reform process. According to public perception, very little has improved in the system of justice. Careless and poorly trained personnel, process delays and corruption are as prevalent as they ever were in the Guatemalan justice system. A brand new justice system, even if it could be created, would take so much time to build. It’s difficult to predict whether people’s patience would endure until an acceptable “product” was produced. Public impatience is already a difficulty. High expectations for the justice system for numerous and speedy sentences for alleged criminals are a danger in building a system of justice based on due process. When people wish to take justice into their own hands, they are taking a dangerous route toward a lawless society. Unfortunately, this route has already being taken in Guatemala.

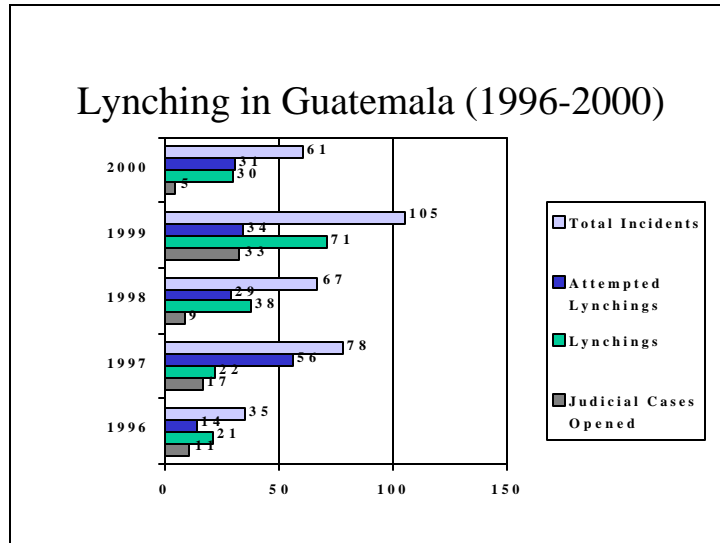
A sad case in point is the recent development of lynching. Lynching started in Guatemala in 1995, when an American citizen was burned to death because she allegedly tried to kidnap a child in a small town. Since then, the number of lynching cases has been

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<sup>1</sup> .This is a classic and critical mistake made by external judicial reform experts who “advise” the receiving countries to adopt a sort of “legal recipes”, usually designed—and occasionally not tested—in the

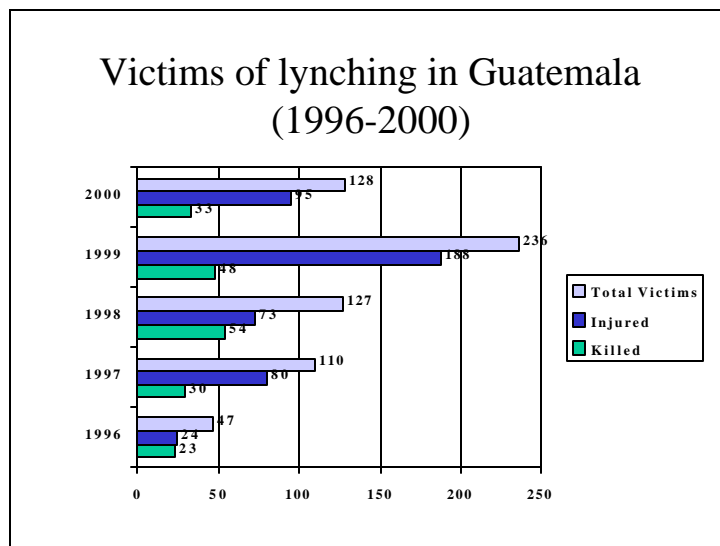
increasing constantly. The figures provided by the UN Mission in Guatemala for this development are presented in figures 7 and 8.

**Figure 7**  
**Lynching in Guatemala, 1996-2000**



*Source:* UN Mission in Guatemala

**Figure 8**  
**Victims of lynching in Guatemala, 1996-2000**



*Source:* UN Mission in Guatemala

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cooperating countries, regardless the particular situation, needs and capabilities, of the receiving country.

In a typical lynching case, the accused are detained, usually in a police station or jail in a rural community. More than 80% of these lynching cases have occurred in rural areas. The victims have been dragged by a mob out of the police station or jail, and then brutally beaten. When they are unconscious, they are often burned to death by a mob – a group too large for the local police to confront.

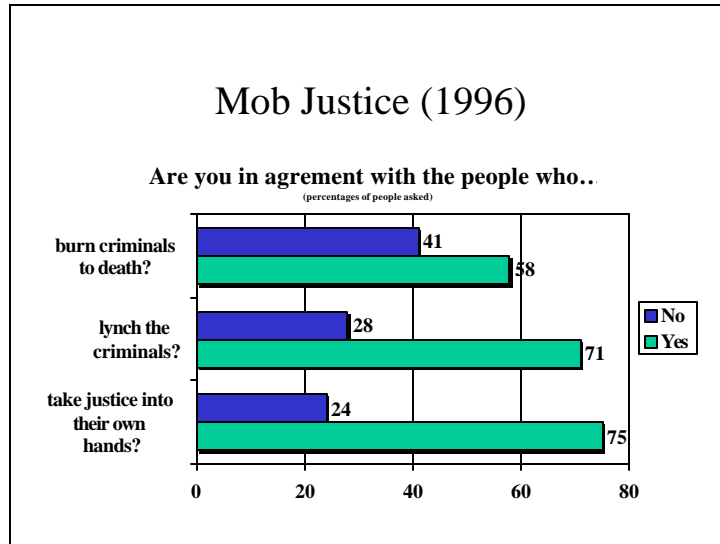
In three out of four of these lynching cases, the alleged crime has been related to property issues. Only one out of ten cases involved serious or violent crimes. In a significant number of the lynching cases, the victims were outsiders, that is, not members of the community.

Some analysts cite these horrendous lynching cases as another example of the justice's system ineffectual performance. In their view, lynching is a social response to the system failure. But these theorists should also explore in depth the Guatemalan concept of popular justice. It is, very closely linked to private revenge. As a matter of fact, it is not unusual in both rural and urban areas to use violence to collect debts or to pay back grievances. When discussing problems and shortcomings of the justice system with people on the street, most of them expressed admiration for General Ubico's era, between 1931 and 1944. Ubico was a heavy-handed dictator who executed even petty thieves to impose not the rule of law, but the rule of order in Guatemala.

The absence of the army in the field, since the peace accords were signed, and the terrible precedent of counterinsurgency repression are probably crucial factors in explaining the lynchings taking place all over the country. But it is not the lack of a state

justice system that explains the lynching wave. As figure 9 suggests, there is a popular preference for taking justice into one's own hands.

**Figure 9**  
**Mob Justice**



*Source:* Aragón & Asociados, August 1996.

An analysis of the media, would point to a “modern” version of this sort of primitive justice. Interestingly, every time a trial concludes by declaring a defendant “not guilty”, public opinion shapers deem the decision as evidence of rampant corruption and a judicial purge is urged. In this approach to justice there is no presumption of innocence, no due process. Those considered by police forces as responsible for a crime should be expeditiously jailed or executed. Period.

This prevalent approach to justice makes it very difficult to gain public understanding and approval of a modernized and civilized process of justice system

reform, as the peace accords aimed to. As the judicial reform ship sails into troubled waters, mob justice is increasingly legitimated socially.

### **Conclusion: First Lessons Learned**

It is very difficult to try to conclude what the lessons are to be learned from the Guatemalan case. At the least, three questions should be addressed.

First, what should have been the realistic expectation for a peace process in a country like Guatemala? It is probably the most difficult question to answer. What we may modestly conclude is that in no country can a peace process adopt goals that are not shared by important sectors of its society.

Second, what is the role of a comprehensive package of peace accords? The lesson suggested in Guatemala is that peace accords should be considered just one element of the social process taking place in the country. Consequently, the performance of the peace accords should not be evaluated only by the letter of the agreements but with respect to their long-term institutional and social outcomes.

Third, what kind of role should the international community play in order to attain the best possible results? It is very clear to me that the international community should not try to replace national actors during any peace process. In other words, international community intervention is not useful when it intends to achieve a new balance of power. As the Guatemalan case suggests, by substituting national actors a new political balance may be gained on paper but not in reality.

I would argue that each time the international community participation “produces” an agreement, a failure in compliance will probably follow.

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