

Agreement on Constitutional Reforms and the Electoral Regime

I. CONSTITUTIONAL REFORMS

Whereas the Constitution in force since 1986 sets forth the responsibility of the State, as the expression of the legal and political organization of society, for promoting the common good and the consolidation of the rule of legality, security, justice, equality, freedom and peace, and defines as a central concern the promotion of the full enjoyment of human rights within a stable, permanent and popular institutional order in which governed and government act with absolute adherence to the law,

Whereas in the Oslo Agreement of 30 March 1990, the delegation of the National Reconciliation Commission of Guatemala (CNR), acting with the full support of the Government of Guatemala, and the delegation of the Unidad Revolucionaria Nacional Guatemalteca (URNG), acting with the full support of its General Command, placed on record their express determination to find ways to solve the nation's problems peacefully by political means,

Whereas on 24 April 1991, the process of direct negotiation began between the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), the Parties having pledged that the political agreements reached would reflect the legitimate aspirations of all Guatemalans and would be drawn up in accordance with the constitutional framework in force and with the El Escorial agreements, in which URNG and the country's political parties had pledged to promote such reforms of the Political Constitution of the Republic as were necessary for the reconciliation of all Guatemalans, the ending of the internal armed conflict, the peaceful solution of the nation's problems by political means and full respect for and application of the law,

Whereas the constitutional reforms contained in this Agreement constitute a substantive, fundamental basis for the reconciliation of Guatemalan society within the framework of the rule of law, democratic coexistence, full observance of and strict respect for human rights, an end to impunity and, at the national level, the institutionalization of a culture of peace based upon mutual tolerance and respect, shared interests and the broadest possible public participation in all structures of power,

Whereas the above-mentioned reforms will contribute to political stability, the strengthening of civilian power and the agreed redefinition of the functions of the armed forces for the new era in the country's history which will begin with the signing of the Agreement on a Firm and Lasting Peace,

Whereas the above-mentioned reforms also systematize and develop the spirit and the letter of the commitments signed on institutional, political, economic, social and ethnic issues, on human rights and their strict observance and on efforts to combat impunity,

Whereas, at the national level, recognition of the identity of indigenous peoples is of fundamental importance for building national unity based on respect for and the

exercise of the political, cultural, economic and spiritual rights of all Guatemalans, as well as on the fulfilment of their duties,

Whereas the agreed constitutional reforms are a historic step which, at the institutional level, guarantees and ensures the building of a just peace and democratic stability by political and institutional means, within the framework of the political Constitution of the Republic,

The Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), hereinafter referred to as “the Parties”, have agreed as follows:

1. The Government of the Republic shall place before the Congress of the Republic the draft constitutional amendments contained in sections A and B of this Agreement 60 days after its entry into force.

2. It is understood that, where the text of a proposed constitutional amendment is not expressly drafted and the number of the corresponding article is not indicated, its drafting and numbering will be left to the legislative branch.

3. The Parties request the Congress of the Republic to promulgate or amend ordinary legislation, as necessary, to adapt it to the provisions agreed to by the Parties in the Peace Agreements and to the constitutional amendments contained in this Agreement; and also, if necessary, to agree to any other constitutional or legal amendments that may be required to maintain consistency and compatibility with the reforms proposed by the Parties.

A. Constitutional reforms contained in the Agreement on Identity and Rights of Indigenous Peoples

4. This Agreement provides for constitutional recognition of the identity of the Maya, Garifuna and Xinca peoples and, from that standpoint, of the need to define and characterize the Guatemalan State as being one of national unity and multi-ethnic, multicultural and multilingual in nature. It is not just a matter of recognizing the existence and identity of various ethnic groups, as Article 66 of the Constitution currently does, but of recognizing that the very make-up of society, without prejudice to the unity of the nation and the State, is characterized in that way; this also entails recognizing the specific nature of indigenous people’s spirituality as an essential component of their world view and of the transmission of their values, and granting official constitutional recognition to indigenous languages as one of the mainstays of national culture and as a vehicle for acquiring and transmitting indigenous people’s world view, knowledge and cultural values.

Identity of the Maya, Garifuna and Xinca peoples

5. Sponsor in the Congress of the Republic express constitutional recognition of the identity of the Maya, Garifuna and Xinca peoples, within the unity of the Guatemalan nation.

List of the languages existing in the country

6. Sponsor in the Congress of the Republic an amendment to the Constitution incorporating in its article 143 a list of all languages existing in the Republic, which the Government is required to recognize, respect and promote.

Official recognition of indigenous languages

7. Sponsor in the Congress of the Republic, in accordance with the conclusions of the Official Recognition Commission established under the Agreement on Identity and Rights of Indigenous Peoples, the necessary constitutional amendments arising out of the Commission's work.

Spirituality of the Maya, Garifuna and Xinca peoples

8. Sponsor in the Congress of the Republic the amendment of Article 66 of the Constitution to stipulate that the State recognizes, respects and protects the various forms of spirituality practised by the Maya, Garifuna and Xinca peoples.

Definition and characterization of the Guatemalan nation

9. Sponsor in the Congress of the Republic an amendment to Article 140 of the Constitution to define and characterize the Guatemalan nation as being one of national unity and multi-ethnic, multicultural and multilingual in nature.

B. Constitutional reforms included in the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society

10. Within the framework of the modernization of State institutions, the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society provides for constitutional reforms with respect to the Congress of the Republic, the Judiciary, the functions of the President of the Republic, and the Guatemalan armed forces. The aim is not to propose case-by-case measures, but to reformulate the whole conception of State organs and institutions with a view to strengthening democracy in line with present-day constitutional trends.

Congress of the Republic

11. With regard to the Congress of the Republic, present conditions have prompted various social sectors to raise the issue of the number of deputies, with a view to preventing their numbers from exceeding a predetermined reasonable level while preserving their representativeness as a characteristic expression of democracy. In addition, that representativeness raises the need for an equally reasonable turnover of deputies; accordingly, it is envisaged that deputies will not be able to be re-elected for more than two consecutive terms.

Fixed number of deputies

12. Sponsor in the Congress of the Republic an amendment to Article 157 of the Constitution to maintain the number of deputies in the Congress at the current level.

13. An amendment to the same article, stating that deputies cannot be re-elected for more than two consecutive terms, should also be sponsored, so as not to prevent parliamentary careers but at the same time to permit a turnover of political leadership in the Congress.

Administration of justice

14. The integrity and efficiency of the judicial function fulfil the task of guaranteeing the rules of social relations, a guarantee which can become operative only if there is security, as manifested in the substantive rights prescribed by law, the fair settlement of disputes, universal respect for procedural norms, the punishment of offenders and reparation for injury.

15. That is why it is important to strengthen the judicial function so that, within the constitutional framework that provides general guarantees for the administration of justice, free access to the administration of justice, regardless of financial means, can become a reality, based, in particular, on the multi-ethnic, multicultural and multilingual nature of Guatemala; the impartiality and independence of judges; the reasonable and prompt resolution of social conflicts; the provision of alternative mechanisms for resolving such conflicts; and a career judicial service which strives to ensure the professional excellence of judges, as well as proper recognition of the dignity of their profession and of their rights and responsibilities with regard to training and advanced training, without prejudice to a disciplinary system which, while respecting the rights of defence and due process, guarantees the proper exercise of the judicial function, with the power to impose penalties being exercised solely by the judiciary.

Guarantees for the administration of justice

16. Sponsor in the Congress of the Republic an amendment to Article 203 of the Constitution which would make an initial express reference to guarantees of the administration of justice and, as such, include: (a) free access to the administration of justice in the person's own language; (b) respect for the multi-ethnic, multicultural and multilingual nature of Guatemala; (c) defence counsel for those who cannot afford it; (d) impartiality and independence of judges; (e) reasonable and prompt resolution of social conflicts; and (f) provision of alternative conflict-resolution mechanisms. In addition, the present content of Article 203 should be reproduced in summarized form in a separate paragraph.

Career judicial service

17. Sponsor in the Congress of the Republic the amendment of Articles 207, 208 and 209 of the Constitution, which would include a reference to the Act on the Career Judicial Service and establish its content as follows:

- (a) Rights and responsibilities of judges, dignity of the profession and adequate remuneration;
- (b) System of appointments and promotions of judges based on public competitive examinations designed to ensure professional excellence;

(c) Right and duty to pursue judicial training and advanced training;

(d) Disciplinary system, with pre-established guarantees, procedures, levels of jurisdiction and penalties, and the principle that a judge or magistrate can be investigated and punished only by his peers.

Personnel of the judiciary

18. Sponsor in the Congress of the Republic an amendment to Article 210 of the Constitution eliminating the guarantee set forth in the second paragraph, since its content would be subsumed under the three preceding articles. Article 210 should refer only to personnel of the judiciary who are not judges or magistrates.

National Civil Police

19. Sponsor in the Congress of the Republic the inclusion of an article in the Constitution defining the functions and main characteristics of the National Civil Police as follows:

“The National Civil Police is a professional and hierarchical institution. It is the only armed police force with national jurisdiction and its function is to protect and safeguard the exercise of the rights and freedoms of individuals; to prevent, investigate and combat crime; and to maintain public order and internal security. It shall be under the control of civilian authorities and shall show strict respect for human rights in carrying out its functions.

“The law shall regulate the requirements and procedures for admission to the police profession, as well as promotions, advancement, transfers, disciplinary action against police officials and employees and other questions related to the functioning of the National Civil Police.”

Guatemalan armed forces

20. In a democratic society, the typical functions of the armed forces relate to the defence of sovereignty and territorial integrity; any other function is atypical and exceptional; like any other government institution, their exercise of other functions must take place in a context of subordination to lawfully constituted authority and be preceded by a decision of and be monitored by the lawfully constituted authorities of the State within their specific sphere of competence. Any exceptional function of the armed forces must therefore be decided by the President of the Republic, as Head of State and Commander-in-Chief of the Armed Forces, and be subject to oversight by the Congress of the Republic.

21. Moreover, like other Ministers of State, the Minister of Defence is called upon to perform policy-making functions which do not necessarily require that he have a strictly technical background. As a result, the current requirement that he be a member of the armed forces is not justified. In keeping with present-day conceptions of the organization of the judiciary, exclusive military jurisdiction in criminal matters should be confined to strictly military crimes and misdemeanours.

Constitution, organization and functions of the armed forces

22. Sponsor in the Congress of the Republic an amendment to Article 244 of the Constitution so that it reads as follows:

“Article 244. Constitution, organization and functions of the armed forces. The Guatemalan armed forces are a permanent institution in the service of the nation. They are unique and indivisible, essentially professional, apolitical, obedient and non-deliberative. Their function is to defend the sovereignty of the State and the integrity of its territory. They consist of land, sea and air forces. Their organization is hierarchical and is based on the principles of discipline and obedience.”

Functions of the President of the Republic

23. Sponsor in the Congress of the Republic an amendment to Article 183 of the Constitution which would include the following:

“Delete paragraph (r) of Article 183 and amend the wording of paragraph (t) to read: ‘To grant special pensions’”.

24. With regard to the functions of the President of the Republic, it has been agreed to sponsor the inclusion of the following in Article 183:

“Where the normal means for the maintenance of public order and internal peace have been exhausted, the President of the Republic may, on an exceptional basis, use the armed forces for this purpose. The action of the armed forces shall always be temporary, shall be conducted under civilian authority and shall involve no limitation whatsoever on the exercise of the constitutional rights of citizens.

“To order these exceptional measures, the President of the Republic shall issue the corresponding agreement. The action of the armed forces shall be limited to such time and modalities as are strictly necessary and shall cease as soon as its purpose has been achieved. The President of the Republic shall keep the Congress informed of the operations of the armed forces, and the Congress may at any time order that such operations shall cease. In any event, within 15 days following the end of such operations, the President of the Republic shall submit to the Congress a detailed report on the action of the armed forces.”

Duties and powers of the President over the armed forces

25. Sponsor in the Congress of the Republic an amendment whereby the final sentence of paragraph (b) of Article 246 of the Constitution, which reads: “He may, likewise, approve special pensions”, would be deleted.

26. Also sponsor the redrafting of the first paragraph of Article 246 so that it reads as follows:

“The President of the Republic is the Commander-in-Chief of the Armed Forces and shall issue his orders through the Minister of National Defence, whether the Minister is a civilian or a member of the armed forces.”

Military courts

27. Sponsor in the Congress of the Republic the total redrafting of Article 219 of the Constitution, so that it reads as follows:

“Article 219. Military courts. The military courts shall try the crimes and misdemeanours specified in the Military Code and in the corresponding regulations. Ordinary crimes and misdemeanours committed by military personnel shall be tried and judged by the ordinary courts. No civilian may be judged by military courts.”

II. ELECTORAL REGIME

Whereas:

Elections are the essential instrument for the transition which Guatemala is currently making towards a functional, participatory democracy,

For that purpose, Guatemala has, in the form of the Supreme Electoral Tribunal, an independent institution of recognized impartiality and prestige which is a key element in safeguarding and strengthening the electoral regime,

It is necessary to increase citizens' participation in the electoral process and to overcome the phenomenon of abstentionism in order to strengthen the legitimacy of public authority and consolidate a pluralistic, representative democracy in Guatemala,

The level of electoral participation is the result of many different social and political factors, including the impact of civil institutions on the daily lives of Guatemalans, the capacity of political parties to fulfil people's expectations, the degree of organized participation by citizens in social and political life and their level of civic education, all of which are elements which the package of peace agreements already signed seeks to strengthen.

The electoral process is marred by specific shortcomings which impede the effective enjoyment of the right to vote. These shortcomings include citizens' lack of reliable documentation, the absence of technically prepared electoral rolls, difficulty of access to registration and voting, lack of information and the need for greater transparency in election campaigns.

This Agreement seeks to promote legal and institutional reforms which will remedy those shortcomings and constraints and, together with the other peace agreements, help to improve the electoral regime as an instrument of democratic transformation.

The Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (hereinafter referred to as “the Parties”) have agreed as follows:

Electoral Reform Commission

1. Recognizing the role of the Supreme Electoral Tribunal in safeguarding and strengthening the electoral regime, the Parties agree to request the Tribunal, through this Agreement, to establish and preside over an Electoral Reform Commission charged with publishing a report and making a series of recommendations on electoral reform and the corresponding legislative amendments.

2. In addition to its Chairman, who would be appointed by the Supreme Electoral Tribunal, the Commission would consist of one representative and one alternate for each of the political parties with representation in Parliament and two members and their respective alternates to be appointed, at its discretion, by the Supreme Electoral Tribunal. The Electoral Reform Commission would receive all such support and advisory services as it considered necessary.

3. It is recommended that the above Commission be constituted no later than three months after the signing of the Agreement on a Firm and Lasting Peace and that it complete its work no later than six months from the date of its establishment. In order to achieve its objectives, the Commission would have to encourage an extensive pluralistic debate on the subject of Guatemala's electoral regime.

4. As a minimum, non-restrictive agenda for modernizing the electoral regime, the Commission would consider the following items:

- (a) Documentation;
- (b) Electoral rolls;
- (c) Voting;
- (d) Transparency and publicity;
- (e) Information campaign;
- (f) Institution-building.

Basic proposals

5. In connection with these items, the Parties agree that, in keeping with the efforts being made to strengthen the electoral process, they would put forward for consideration by the Electoral Reform Commission the following basic proposals:

Documentation

6. Given that lack of reliable documentation is an obstacle to the implementation of the various phases of the electoral process, the Parties consider that it would be useful to introduce a single identity document, with a photograph of the holder, which would replace the present local identity card and which, as an identification document for all civil matters, would also serve for elections. Such a document would be issued by the Supreme Electoral Tribunal, through the National Registry. To this end, the

appropriate reforms of the Elections and Political Parties Act and the Civil Code would be undertaken.

7. As a contribution to the next general elections, it would be extremely important and useful for all citizens to use the new single identity document.

Electoral rolls

8. Bearing in mind the need to steadily improve the electoral rolls which the Supreme Electoral Tribunal is responsible for compiling and updating, the Parties consider that it would be useful for the Electoral Reform Commission to study ways of ensuring that deaths and changes of address are recorded systematically.

9. In order to establish electoral districts within each municipality, with their own electoral roll, where necessary, to facilitate voting, it is proposed that the Commission should recommend the reform of the Elections and Political Parties Act to ensure that the electoral rolls are based on place of residence.

10. The Electoral Reform Commission should examine ways of facilitating citizens' access to voter registration centres and of ensuring that the Supreme Electoral Tribunal has the resources to expand its coverage in rural areas.

11. Taking into account the new functions of the Guatemalan armed forces, as set forth in the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, and considering the Parties' shared objective of promoting the broadest possible participation of citizens in the electoral process, the Commission is invited to examine the desirability of granting, in the future, members of the Guatemalan armed forces on active duty the political right of voting in Guatemalan elections.

Voting

12. It is necessary to facilitate citizens' access to voting centres. To that end, the Parties propose that, based on the electoral rolls, the Supreme Electoral Tribunal, in consultation with political parties, should identify the places in which voting centres are to be set up within municipalities; such places would be those which have large numbers of residents living a long way from the municipal capital and which are also accessible to party poll-watchers and electoral observers. Voting centres should correspond to a municipal electoral district with its own electoral roll, thereby avoiding any problems which might otherwise arise from having a common municipal electoral roll for all voting centres.

13. The Electoral Reform Commission should study and propose the necessary legislative and/or administrative changes to facilitate the participation of internal migrant workers in elections, which currently coincide with the period of seasonal migration of labour.

Transparency and publicity

14. In order to promote greater transparency in the presentation of candidates by assemblies of political parties, action should be taken to ensure that all party members are informed of the convocation and holding of the general assemblies of political parties. The Electoral Reform Commission could examine whether compliance in convoking and holding the assemblies of political parties might be verified as a matter of routine by the National Registry or whether it would be useful to amend the law to enable the Supreme Electoral Tribunal to supervise effectively the convocation and holding of assemblies of political parties, as well as their results.

15. In order to ensure transparency in the financing of election campaigns and that voter preference is not supplanted by spending power, the Parties consider that the Supreme Electoral Tribunal should have the power to set a ceiling for campaign spending by each presidential candidate in the mass media. It is recommended that consideration be given to the possibility of providing and facilitating the use of media time and space free of charge for all parties on an equal footing.

16. Parties and candidates should be compelled to make available such accounting records and reports as may be required from them by the National Registry in order to verify that their sources of funding are lawful. The calculation of campaign spending should include, at market prices, any advertising donated to the parties during the election campaign.

17. It would also be useful to promote a reform of the Penal Code to characterize the acceptance of illicit campaign funding as a crime, establishing that anyone who receives or authorizes the receipt of such contributions for the funding of political organizations or election campaigns is guilty of such a crime. The reform would establish the corresponding criminal penalties.

Public information campaigns

18. The increasingly active participation of citizens in the electoral process is a guarantee of the legitimacy and representativeness of the elected authorities. This objective would be more easily achieved if ongoing campaigns to educate, motivate and inform citizens were carried out. The Electoral Reform Commission would examine the possibility of conducting information campaigns to:

- (a) Explain the importance of the right of citizens to vote and to be elected;
- (b) Encourage and promote the timely preparation of electoral rolls;
- (c) Provide information on how to vote, the documents to be presented at voting tables and centres and the hours during which voting takes place;
- (d) Provide information on how to organize civic committees or join a political party.

19. In order to ensure that these campaigns are effective, account would have to be taken of the importance of using the various languages of indigenous peoples, as agreed in the Agreement on Identity and Rights of Indigenous Peoples.

Institution-building

20. In order to strengthen the electoral regime, the Parties agree to request the Electoral Reform Commission to design a programme for modernizing the National Registry. Such a programme, with the corresponding activities to train and professionalize the personnel involved, would permit the automation of data and their incorporation into coordinated networks so that electoral rolls could be effectively cross-checked, maintained and updated.

21. Bearing in mind the role of the Supreme Electoral Tribunal in the electoral reform proposed in this Agreement, the Parties consider that it would be helpful if the Electoral Reform Commission were to analyse what resources the Tribunal requires in order to function efficiently, particularly in order to perform its ongoing functions in the areas of voter registration, preparation of electoral rolls and public information campaigns. The executive branch, for its part, will review the Electoral Reform Commission's analysis of such resources and take whatever action it can to strengthen the operations of the Supreme Electoral Tribunal.

III. FINAL PROVISIONS

First. This Agreement forms part of the Agreement on a Firm and Lasting Peace and shall enter in force on the day when the latter is signed.

Second. In accordance with the Framework Agreement, the Secretary-General of the United Nations is requested to verify compliance with this Agreement.

Third. This Agreement shall be widely publicized.

Stockholm, 7 December 1996.

(signed)

For the Government of Guatemala:

Gustavo PORRASCASTEJÓN

Otto PÉREZ MOLINA

Raquel ZELAYA ROSALES

Richard AITKENHEAD CASTILLO

For the Unidad Revolucionaria Nacional Guatemalteca:

Carlos GONZALES

Commander Rolando MORÁN

Commander Pablo MONSANTO

Jorge ROSAL

For the United Nations:

Jean ARNAULT