Reflections on the Political Constitution of the Republic of Guatemala concerning cultural diversity.

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Reflections on the Political Constitution of the Republic of Guatemala: concerning cultural diversity

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So much has been said, written and discussed in the last months about the proposed reforms by the Congress of the Republic for the Constitution. Finally, the public consultation was realized on May 16 (1999) and the votes did not favor those reforms, despite an abstention rate of more than 80%, the reforms did not conclude.

For the public consultation, voters were presented with 4 ballots containing the reforms according to 4 topics. The ballot No. 1 contained information about the Nation and Social Rights, this item includes the reform related to the multiethnic, multicultural and plurilingual aspects of Guatemalan society.

According to the data provided by the Supreme Electoral Tribunal, in the press release No. 14-99, the final results are presented. Regarding the question No.1, Nation and Social Rights:

Answers: Yes; 328,061. The departments with the highest number of votes: Alta Verapaz with 31,192 votes and Huehuetenango with 28,624 votes. The ones with the lowest number are: El Progreso with 2,751 and Jalapa with 3,954 votes.

It is clear that the ones with the highest number of votes are two departments that have a high rate of indigenous population and the ones with the lowest number correspond to the departments with a high rate of ladino-mestiza population.

Answer Yes to the same question: a total of 366,417 votes. Invalid votes: 45,750 and Blank votes: 17,503.

It is considered that the result of the consultation was due to several aspect that should be taken into account:

Poor promotion of the reforms.

Lack of knowledge of these

High rate of illiteracy and monolingualism (in some cases about only one language of Mayan origin is

Existence of racism and dis-

Campaign in favor of the NO vote by the dominant groups.

Disapproval towards politics (specially to the deputies). Lack of education and political consciousness in the majority of the population.

The purpose of this article is to establish some reflections about

the articles that were intended to be modified in the cultural field.

First of all, it is important to mention that the articles proposed for change were only a few, but the changes and additions were important to the majority of the country's inhabitants.

To make a reference to each article, each of the articles and its modifications will be copied verbatim. Reference will also be made to the Peace Agreement on Constitutional Reforms and the Electoral Regime it contains.

Regarding this agreement, it is necessary to remember that on December 7, 1996, it was signed in Stockholm, Sweden, between the government of Guatemala and the Guatemalan National Revolutionary Unit [URNG for its initials In Spanishl with the moderation of the United Nations and it forms part of the Agreement on a Firm and Lasting Peace and took effect when the latter was signed -on December 29, 1996-. This means that 60 days from that date the government of the Republic had to promote the project of Constitutional Reforms before the Congress to the Republic having as a base the numerals 1, 2 and 3 of the agreement.

On October 16, 1998 the Congress of the Republic approved the Reforms to the Political Constitution of the Republic, effective



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As of January 1986, reformed in November 1993, through the Legislative Decree 18-93 and submitted for public consultation on January 30, 1994.

The reformed articles are the following:

Title 1. The human person, aims and duties of the State.
Only chapter:

Article 1°. Protection of the person. The state of Guatemala is organized to protect the person and the family; its supreme goal is the realization of the common good. (Political Constitution of the Republic of Guatemala, 1998.1)

With the proposed reform, the Article 1° will read as follows:

Article 1°. The human person and the Nation. The state is organized to protect the person and the family, its supreme goal is the realization of the common good.

The Guatemalan Nation is one and united, is plurilingual, multiethnic and multicultural inside its unit and the integrity of the territory.

The agreement of the Constitutional Reforms refers to this article, contained in the Agreement of Identity and Indigenous People's Rights, where it reads as follows:

"This agreement provides for constitutionally 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 unit 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

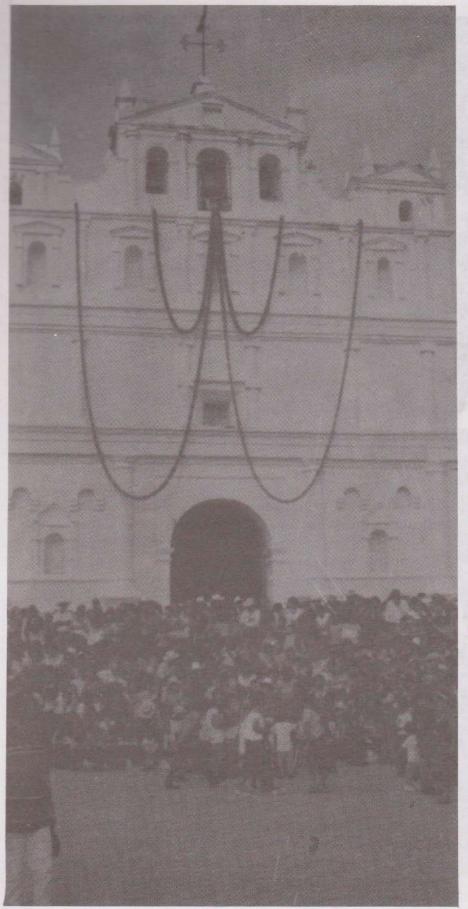


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recognition to indigenous languages as one of the mainstays of national culture and as a vehicle for acquiring and transmitting indigenous people's world view, knowledge and cultural values."

Article 66. Protection of Ethnic Groups. Guatemala is formed by diverse ethnic groups among which are found the indigenous groups of Mayan descent. The State recognizes, respects, and promotes their forms of life, customs, traditions, forms of social organization, the use of the indigenous attire by men and women, [and their] languages and dialects.

With the proposed reform, the article will read as follows:

Article 66. Identity and spirituality of indigenous people. The State recognizes, respects, and protects the right to identity of the Maya, Garifuna, and Xinca people; their ways of life, social organization, customs, and traditions; use of indigenous dress by men and women alike, and their different forms of spirituality languages, and dialects, and their right to pass these on to their descendants. For these purposes and under the terms of the final paragraph of the Article 203 of this Constitution, the State recognizes the traditional authorities of the indigenous communities, and that priority shall be given to the unity of the Nation, territorial integrity, and the indivisibility of the Guatemalan State. It also recognizes, respects, and protects their right to use, conserve and develop their art, science, and technology, as well as the right

of access to the sacred places of these peoples, under the terms and conditions set forth in the law.

The reform contained in the Agreement on a Firm and Lasting Peace, contained in the Agreement of Identity of the Indigenous peoples, points out in this regard:

Identity of the Maya, Garifuna and Xinca people.

Promote before the Congress of the Republic that the Constitution recognizes the Identity of the Maya, *Garifuna* and *Xinca* people will be recognized, as part of the unit of the Guatemalan Nation.

Spirituality of the Maya, Garifuna and Xinca people.

Promote to the Congress of the Republic the reform of the article 66 of the Political Constitution of the Republic in order to stipulate that the State recognizes, respects and protects the different forms of spirituality, practiced by the Maya, *Garifuna* and *Xinca* people.

Article 70. Specific Law A law will regulate the matters related to this section. With the reform, the article will read as follows:

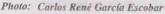
When administrative measures are foreseen to directly affect indigenous peoples such peoples shall be consulted through the mechanisms established by law.

Article 143. Official language. The official language of Guatemala is Spanish. Native dialects are part of the cultural heritage of the Nation.

The reform modifies this article, and reads as follows:

Article 143. The official languages of the State are: Spanish throughout national territory, and the indigenous languages established by law, setting its material scope of application in accordance with technical, linguistic and territorial criteria. The State recognizes, respects and







Promotes the following indigenous languages: Achí, Akateco, Awakateco, Chalchiteko, Ch'ortí, Chuj, Itzá, Ixil, Popti', Kaqchikel, K'iche, Mam, Mopán, Poqomam, Poqomchi, Q'anjoba'l, Q'eqchí, Sakapulteco, Sikapapense, Tektiketo, Tz'utujil, Uspanteko, Garífuna y Xinca.

The Agreement of the Constitutional Reforms, contained in the Agreement of Identity and Indigenous People's Rights, consider:

List of the existing languages in established the country. established

Promote before the Congress

of the Republic a reform of the Political Constitution in order to include the list of all the languages existing in the Republic, which the State is obliged to recognize, respect and promote, by including them in the article 143 of the Political Constitution.

Officialization of the Indigenous Languages.

Promote before the Congress of the Republic, in accordance with the result of the Commission of Officialization that the Agreement of Identity and Indigenous People's the Rights, necessary reforms to the Political Constitution derived from the work of the mentioned Commission.

Other article, whose reform is proposed, although it belongs to the Judicial Organism, but it is closely linked with cultural aspects is the:

Article 204:

Essential conditions of the administration of justice. In all their decisions or sentences, the tribunals of justice will obligatorily observe the principle that the Constitution of the Republic prevails over any law or treaty.

The reform of this article



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add several paragraphs to the last paragraph, reads as follows:

Article 204: Essential conditions of the administration of justice.

In all their decisions or sentences, the tribunals of justice will obligatorily observe the principle that the Constitution of the Republic prevails over any law or treaty.

The tribunals shall impart in an impartially, promptly and in accordance way with the principle of equality before the law, and must respect the multiethnic, pluricultural and multilingual nature of the population. The law will develop regulations that guarantee to the population of the indigenous people the consideration of their cultural values, through judicial information media, including the cultural expertise.

The service of the administration of justice is free and uninterrupted. The law will develop ways, environments and modalities that guarantee the access of the Guatemalan population to justice in their own language.

The independence and impartiality of the judge, the procedural immediacy and concentration are also essential conditions in the administration of justice, and non-compliance will be sanctioned. Prevalence of orality in the proceedings, the publicity, except in those cases that according to the law are exempted in order to preserve the interests of

justice, and clear and simple procedural rules devoid of further formalities. The sentences and judicial resolutions that are not of a procedural nature, shall be duly reasoned and motivated.

Laws shall regulate the right to free professional assistance to those who can not afford it and, in criminal matters, the professional defense is compulsory.

In the Peace Agreements of Constitutional Reforms, in the Agreement of the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society it is suggested to reform article 203 of the

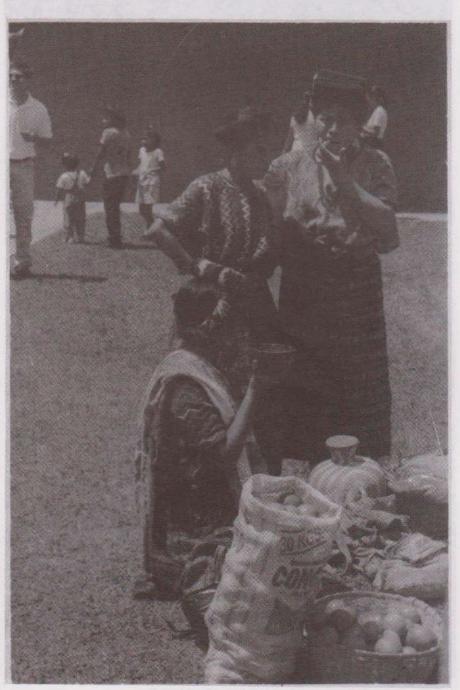


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Constitution in which there is an initial specific reference to the guarantees of the administration of justice, and as such include: a) the free access to it and in their own language, b) the respect for the country's multiethnic, pluricultural and multilingual character. c) the defense of those who cannot afford it. d) the impartiality and independence of the judge, e) the reasoned and prompt resolution of social conflicts, and f) the opening of alternative methods in conflict resolution. It is added that "in addition to the separate paragraph, the of article current content 203, summarized, should be included."

Articulo 225 National Council of Urban and Rural Development. For the organization and coordination of the Public Administration, the National Council of Urban and Rural Development is created, coordinated by the President of the Republic and structured in the form established by the law.

This council shall have as its charge the formulation of urban and rural development policies, and territorial planning.

With the reform, the article will read as follows:

225. Development Article Councils. The system development councils will be the principal method of participation of the population in the public gestion in order to process perform the democratic planification taking consideration principles of national, multiethand pluricultural nic.

multilingual unity of the Guatemalan nation, through the formulation and implementation of development policies, budgetary plans and programs and the promotion of the inter-institutional public and private coordination.

The National Council of Development is created for the organization and coordination of the public administration, coordinated by the President or Vice-president of the Republic, composed of representatives of the public and private sector as established by law.

This Council will be responsible for the formulation of the policies on urban and rural development, as well as the territorial planning.

The Municipal Council of Development shall be composed of the members of the Municipal Council, as well as representatives of the public and private sectors and of the Community Councils of Development of the corresponding municipality in the matter established by law.

The Community Councils of Development are the representative entities of the neighbors and of the different existing organizations of the urban and rural communities of each municipality. They are integrated and participate in the planning for the development of the municipality in the matter established by law.

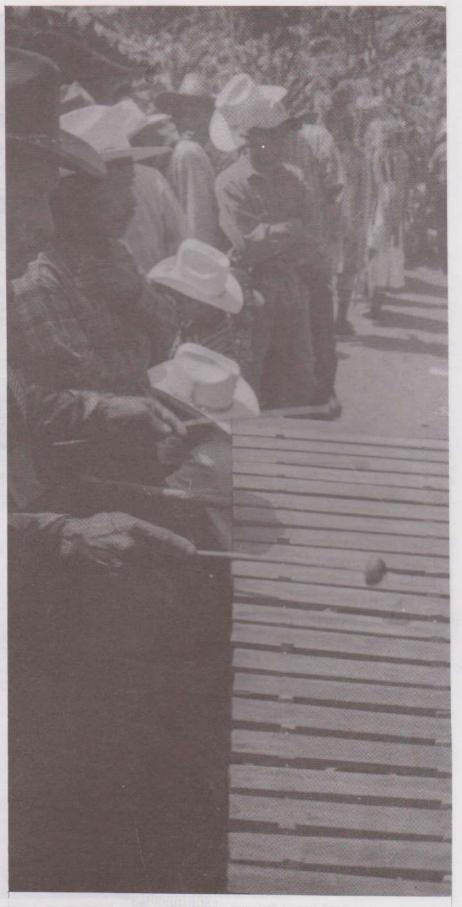


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The drums performing the rhythm of Punta¹ in the community of Corozal, Honduras.

Photo: Alfonso Arrivillaga Cortés.

The law shall establish an adequate distribution and harmonization of the competencies Nacional, Regional, the Community Municipal and Councils, in order for the system of councils to contribute to improve the quality of life of the Guatemalans with fairer distribution and better administration of the public resources.

In situations where provision is made for administrative measures that are likely to have a direct impact on the population, these shall be consulted through the Development Councils.

Analysis of the Constitutional Reforms.

MINUGUA's [Mission of Verification of the United Nations in Guatemala] working group on popular consultation analyzes constitutional reforms in several areas. Regarding multiculturalism, it states that: "The constitutional reform is aimed at the State taking charge of the pluricultural and multilingual reality of Guatemala."

Additionally, "Expressly recognizes the right to the identity of the Maya, *Garifuna* and *Xinca* people, as well as their different forms of spirituality."

Regarding how the first article of the Political Constitution of the Republic is proposed, the Group states that this: "Implies recognizing the social reality of the Guatemalan nation as a political reality. This constitutional principle obligates the State to adequate its political institutions, plans and programs to such fundamental principle."

It states that by recognizing the existence of the indigenous people, they are granted the status of subjects of economic, social and political rights within the frameworks established by the Constitution itself. The State recognizes, respects and protects the



identity and spirituality of indigenous people, including the recognition of their languages, their ways of life, social organization, customs and traditions, their right to use, conserve and develop their art, science and technology, including their traditional medicine, the use of the mayan calendar, their cosmovision, etc. The traditional authorities of the indigenous communities in the role of applying their own regulations known as customary law, are also recognized.

Regarding the officialization of the indigenous languages, states that it is important that the State to recognize, respect and promote the languages of indigenous peoples. In addition, it is pointed out that with this, Spanish is no longer the only recognized language.

In relation to the recognition of the right of access to the sacred sites of indigenous people, it is recalled that a commission has been set up with the participation of the government and the spiritual guides of the indigenous people to draft a law proposal that will make the content of this reform viable.

Regarding the recognition of the customary law of the indigenous people, it is noted that this has been recognized under three conditions: 1. that the

subjection to it is voluntary. 2. that the authority's decisions do not violate fundamental rights defined by the national legal system and the international human rights agreements, signed and ratified Guatemala. 3. that 110 third-party interests are affected.

Regarding the reform to the System of Development Councils, states that with this "the participation of indigenous people in democratic development planning at national, regional, departmental, municipal and community levels is ensured and facilitated."

Lastly, reference is made to



First and second drum ensemble, accompanied by children playing the snail trumpet. Corozal, Honduras.

Photo: Alfonso Arriaga Cortés.





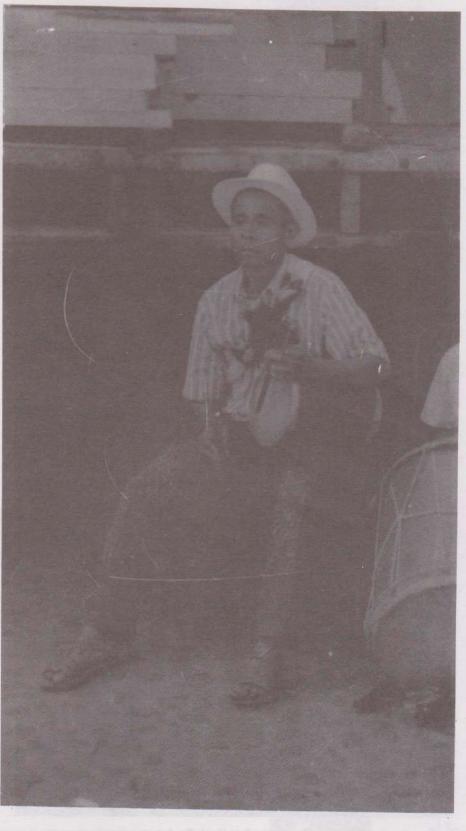
the importance of recognizing the right of indigenous people to be consulted when administrative measures that could affect them are envisaged.

Demetrio Cojtí, when referring to the Agreement of Identity and Indigenous People's Rights, states that in the agreement "it is established that the government is committed to promote before the Congress a Reform to the Political Constitution to recognize the identity of the indigenous peoples." According to this author, "in the agreement, all recognitions are positive for indigenous people." Additionally, he states that "almost all of the acquired commitments made are the government and from few from the society". Despite the above comments, Cojtí, indicates that: "the indigenous people recognize that the agreement falls short or did not consider different demands that were important to them. The most pessimistic indicates that 50% of their demands were not taken into account..."

In their personal capacity, they considered that the Constitutional Reforms proposed by the Congress of the Republic regarding Title 1, The human person, aims and duties of the State, which make reference to cultural and social aspects of the Guatemalan Nation, constitute a significant advance in terms of the recognition of the multiculturalism, multilingualism and multiethnicity of Guatemala. I believe that it only constitutes the beginning of such recognition, because the fact of implementing a law, in the Constitution in this case, that is the fundamental regulation of the State, does not guarantee that this recognition will be fully acknowledged by the government and the citizens. It would be necessary for what is written in the law to be fulfilled in concrete reality, that the authorities seek the appropriate methods to enforce the law, and if they are not fulfilled, the corresponding sanctions must be enforced.

I agree with the approach of Peace Agreements, when it points out that in addition to the legal reforms is necessary an Educative Reform (which has already begun) so that the different ethnic groups that togetherin Guatemala learn to respect and value other cultures. Through systematized education they should implement adequate programs to the different cultural realities and educate within their values, taking consideration the into values of cultural the other ethnic groups that make up the Guatemalan Nation.

I believe that this is the first time in the 507 years since the conquest and colonization of the indigenous people (of Mayan origin) by Western culture, that they had been recognized as individuals, their values and their identity. It seems as if the ladino-mestizo ethnic group, which has been the dominant one and has held the power during all





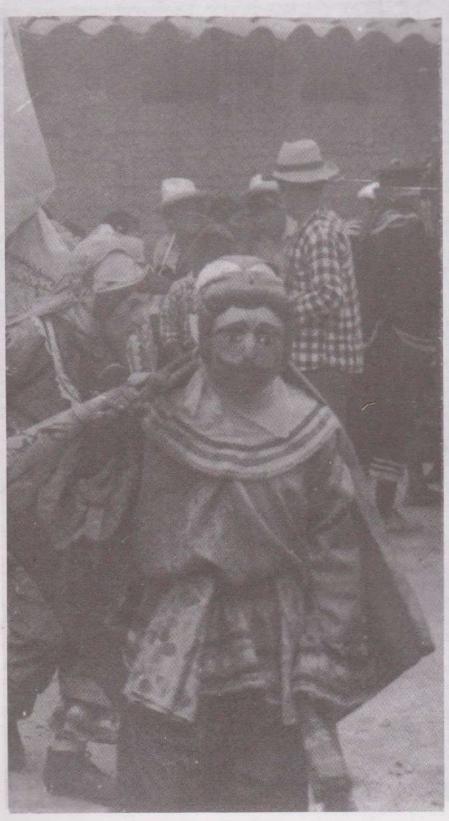


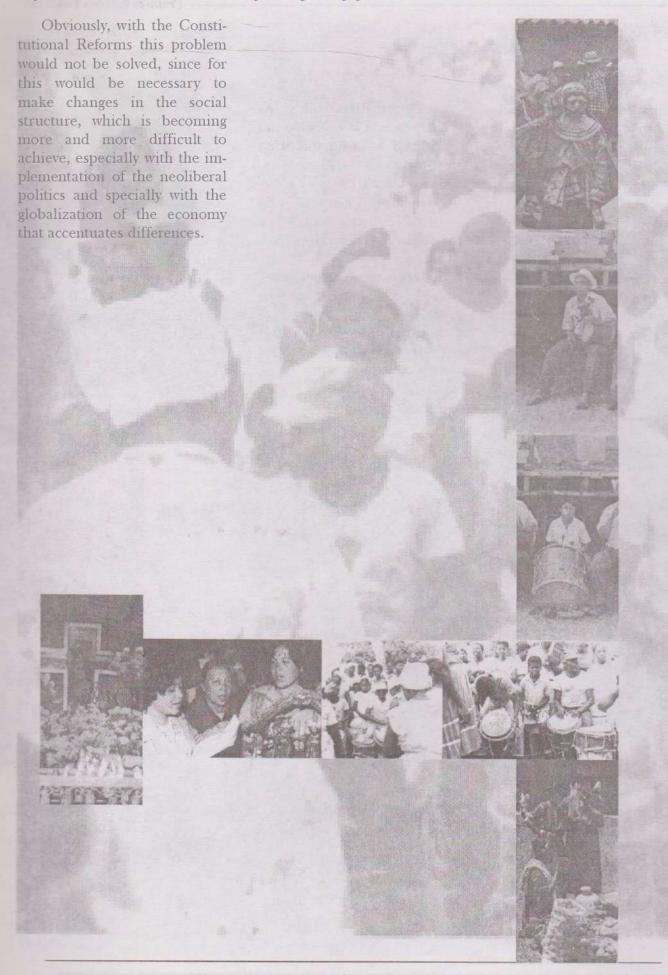
Photo: Carlos René García Escobar

of these years, has not realized that it is not the only one, nor the superior, nor the center of the universe (ethnocentrism) but that others exist and coexist with it, others that possess important values and, in many cases, superior to their own.

One of the objections presented by some people of ladino-mestizo origin, refers to the fact that in the reforms, specifically those referring to the ethnic groups that make up the Guatemalan society, no mention is made of the ladino group and they believe that this should not have been the case, since equal rights should be granted to this group.

I considered that the ladino-mestizo legislators (in large majority), belonging to the group that has held power over the historical process, did not take this ethnic group into account, because it is the one that has always had rights and it was not necessary to include them.

Additionally, these ladinos express that with the reforms, by recognizing other ethnic groups with their diversity, this implied "dividing" Guatemala. Wrong idea, because this is a divided and diverse nation, not only in terms of ethnicity, but also in terms of socio-economic classes and gender. Here exist dominated and dominant, exploited and exploiters, subordinated, marginalized, etc.



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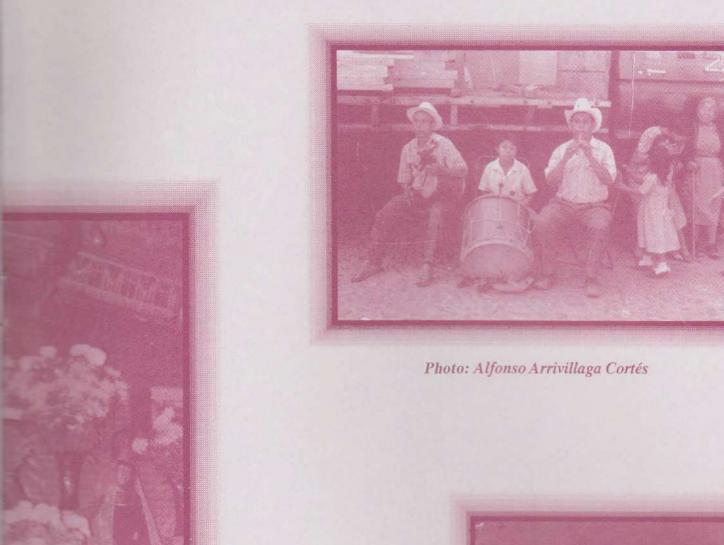
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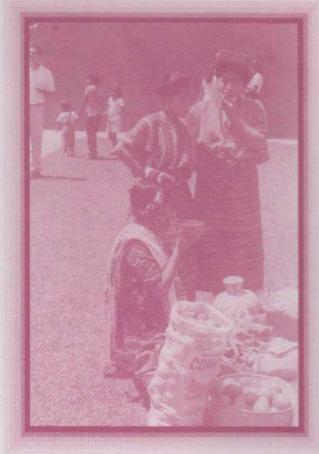


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