THE GUATEMALAN PEACE ACCORDS: INDIGENOUS RIGHTS AND THE PROMISE OF PEACE

By

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To my family, for their love and constant encouragement—
Also, to my colleagues and professors, for their support and guidance
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<th>Abbreviation</th>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>CEH</td>
<td>Commission for Historical Clarification</td>
</tr>
<tr>
<td>CERD</td>
<td>Committee on the Elimination of Racial Discrimination</td>
</tr>
<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
</tr>
<tr>
<td>CICAM</td>
<td>Centre for Research, Training and Support for Women</td>
</tr>
<tr>
<td>COHA</td>
<td>Council on Hemispheric Affairs</td>
</tr>
<tr>
<td>CODISRA</td>
<td>Presidential Commission on Discrimination and Racism Against Indigenous Peoples in Guatemala</td>
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<tr>
<td>CONAPREVI</td>
<td>National Coordinating Office for the Prevention of Domestic Violence and Violence Against Women</td>
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<td>CONAVIGUA</td>
<td>Coordinadora Nacional de Viudas de Guatemala (National Coordinating Committee of Guatemalan Widows)</td>
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<tr>
<td>COPREDEH</td>
<td>Presidential Human Rights Commission</td>
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<tr>
<td>CUC</td>
<td>Comité de Unidad Campesina (Peasant Unity Committee)</td>
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<tr>
<td>DEFEM</td>
<td>Office for the Defence of Women’s Human Rights</td>
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<tr>
<td>DEMI</td>
<td>Office for Defence of Indigenous Women’s Rights</td>
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<tr>
<td>EXIMBAL</td>
<td>Izábal Exploration and Mining Corporation</td>
</tr>
<tr>
<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
</tr>
<tr>
<td>ILO</td>
<td>International Labor Organization</td>
</tr>
<tr>
<td>IRCA</td>
<td>International Railways of Central America</td>
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<tr>
<td>MINUGUA</td>
<td>United Nations Mission for the Verification of Human Rights and the Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala</td>
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<tr>
<td>NGO</td>
<td>Non-governmental organization</td>
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<tr>
<td>SEPREM</td>
<td>Presidential Secretariat for Women</td>
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<tr>
<td>Acronym</td>
<td>Full Name</td>
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<td>UFCO</td>
<td>United Fruit Company</td>
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<td>URNG</td>
<td>Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Unity)</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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This thesis evaluates the degree of implementation of Guatemala’s 1996 Peace Accords as the means for recognizing indigenous rights. Due to the extreme level of human rights violations committed against the indigenous peoples of Guatemala, it focuses specifically on discrimination as described in Section II of the Agreement on Identity and Rights of Indigenous Peoples (Agreement), one of the specific agreements comprising the Peace Accords. Further, it identifies the degree to which the state has been effective in realizing the goals of the accords.

To highlight the importance of the Peace Accords and the urgent need to recognize indigenous rights, this thesis traces the historical roots of indigenous subjugation originating during the colonial period and the ensuing evolution of oppression through Guatemala’s civil war. The continuing human rights violations throughout the nation beg for an effective response from the state, though its efforts thus far have not produced lasting effects. For this, a review of two non-governmental organizations (NGOs) operating in the local context will illustrate how adopting a bottom-up, or community-based, model can prove more effective in achieving the rights declared in the Peace Accords for Guatemala’s indigenous population.
CHAPTER 1
INTRODUCTION

Introduction

The signing of the Guatemalan Peace Accords in December 1996 signified an opportunity for major transformations in Guatemalan society. The extent to which the accords have been successfully executed on a national level, however, remains a matter of debate. This thesis evaluates the degree of implementation of Guatemala’s Peace Accords since their signing in 1996. Focusing specifically on discrimination as described in Section II of the Agreement, one of the specific agreements comprising the Peace Accords, I also aim to examine the status of the implementation of the mandates declared in this section and explore the reasons for both successful and unsuccessful execution.

To begin, the United States Agency for International Development (USAID) reported that for the FY 2002-2003, Guatemala received $968 million in development assistance, but due to a lack of monitoring by international donors, the majority of funds cannot be accounted for (USAID 2003). This highlights the corruption inherent within Guatemala’s government and suggests how the nation’s leadership is not capitalizing on the resources that are being offered in the ways intended.

The Guatemalan government is not the sole recipient of international assistance, however, as NGOs like the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA) and the Fundación Solar (the Foundation) work in conjunction with the international community to combat injustice, discrimination, and poverty. While the activities of the cooperatives range from the promotion of traditional weaving and painting, to programs emphasizing literacy and health, both organizations struggle to place the indigenous population on equal footing with the
rest of the nation. Despite their efforts, the achievements made at the local level\(^1\) have yet to translate to the national level and the recommendations of the United Nations and Amnesty International, among others, remain unaddressed. Nevertheless, accounting for struggles and triumphs alike provides an invaluable tool in the form of “lessons learned” for all actors within Guatemala’s peace process and serves as the foundation for determining future policy regarding the role of the international community (Warren 1998).

To determine how such successes and failures may influence the future of indigenous rights in Guatemala, Chapter 2 highlights the historic factors that caused the armed conflict. Chapter 2 also establishes a relationship between Guatemala’s history of human rights violations, the measures called for in the Peace Accords, and why the need to implement the accords is declared as “urgent” and “imperative” (United Nations 2003, 3). To effectively quantify the degree of implementation, Chapter 3 focuses on the Agreement and more specifically, on Section II regarding discrimination.

The issue of discrimination was chosen for its historical roots because “the exclusion of the indigenous peoples from their role as citizens has been a characteristic feature of the political structure of Guatemala since colonial times and throughout the life of the Republic” (United Nations 2003, 16). Furthermore, the UN ranks the continuation of discrimination second in terms of urgency, behind the issue of poverty, and notes that “they (the indigenous population) experience daily racial and ethnic discrimination, which takes the form of attitudes of disdain and rejection toward indigenous people. . . . and a general picture of disadvantage in gaining

\(^1\) I refer to CONAVIGUA in the local context throughout this thesis though it is important to note that CONAVIGUA is, in fact, a national organization. I refer to this organization as such to emphasize the fact that its programs are installed at the local or municipal level rather than universally at the national level. Moreover, CONAVIGUA is comprised of local boards and board members meet annually at a national meeting; it is the job of the local boards to design and implement projects while ensuring that they reflect the mission of the organization.
access to the benefits of development and political and social involvement” (2003, 2). That is to say that discrimination permeates all aspects of indigenous life.

Section II of the Agreement explicitly addresses the “struggle against de jure and de facto discrimination,” the “rights of indigenous women,” and “international instruments” (USIP N.d., 2-3). Such instruments include the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Labor Organization (ILO) Convention No. 169 regarding the rights of indigenous peoples with each of these instruments demanding specific rights for the indigenous people of Guatemala. Chapter 3 draws on each instrument, in addition to the United Nation’s Commission on Human Rights and the United Nations Verification Mission in Guatemala (MINUGUA), in order to review the Guatemalan government’s response to the rights set forth within these documents.

Chapter 4 also refers to Section II of the Agreement, but with the focus centered on two indigenous organizations operating at the local/community level; CONAVIGUA and the Foundation. And though CONAVIGUA is more closely tied to the language of the Agreement, both organizations function to improve the lives of the indigenous population by promoting programs that will allow them to break free the traditional system of social exclusion and discrimination.

Overview

The signing of the 1996 Guatemalan Peace Accords marked an end to nearly four decades of state-sponsored violence and the worst human rights violations experienced in the Western Hemisphere. Successful implementation of the Peace Accords, however, has been slow and has met resistance. For these reasons, the accords are sometimes categorized as “an ambitious attempt, by visionary Guatemalans and the international community as a whole, to end
an ostensibly internal conflict that has torn a country apart for almost two generations” (Jonas 2000, xiii).

Although nearly all Guatemalans were, in some way, victims of the violence, the focus here centers on the indigenous population due to “the fact that the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people . . .” (United Nations 2003, 6). Furthermore, as declared in the Agreement, “the indigenous peoples have been particularly subject to de facto levels of discrimination, exploitation and injustice, on account of their origin, culture and language and that, like many other sectors of the national community, they have to endure unequal and unjust treatment and conditions on account of their economic and social status” (USIP N.d., 1).

Recognizing the aforementioned human rights violations, the Agreement seeks to provide a framework within which to guide Guatemala toward a more equitable and inclusive society and assigns the indigenous population the right to identity as “fundamental to the construction of national unity” (USIP N.d., 1). Stressing the urgent need to implement the Peace Accords, the Special Rapporteur of the United Nations and MINUGUA noted in 2003 that most actions regarding indigenous rights are still pending and that they have far exceeded the originally accepted timetable (United Nations 2003, 8). Considering this, along with the recognition by the United Nations that the development of the Guatemalan economy and society will never be fully realized if this situation persists, why then has the government been so slow in implementing the Peace Accords?

The government’s gradual approach is attributed in part to past presidents’ superficial and unsustainable attempts to recognize the urgent need to rectify Guatemala’s human rights
violations. For example, Álvaro Arzú’s presidential term (1996-2000) will always be associated with the signing of the Peace Accords and perhaps has been the most successful to date.

The results of his policies are said to include an approximate 10% decrease in illiteracy and in the mortality rate; a five-year increase in life expectancy; a reduction in crime; an increase in electrical coverage of the country by 20%; the doubling of the number of paved roads; a 300% increase in telephone coverage; a 25% increase in the minimum wage; and a 3% decrease in inflation (Stevens 2005).

Arzú’s legacy also includes the promulgation of a congressional reform that acknowledges the multicultural nature of Guatemalan society. This reform (*Consulta Popular*), however, was not passed by the people of Guatemala.

Álvaro Arzú’s successor, Alfonso Portillo (2000-2004), is best known for his corrupt policies and his association with the former dictator responsible for Guatemala’s scorched earth campaigns, General Efraín Ríos Montt. “The few advances of the Portillo government were tempered by its failure to combat Guatemala’s crime wave, including continuing attacks on human rights workers, or to promote further implementation of the Peace Accords” (Booth et al. 2006, 129). Furthermore,

the military budget has returned to wartime levels, starving desperately needed health, education and other programs. Sinister military groups that were supposed to be dismantled are still active. Prominent human rights leaders and witnesses and judges in human rights cases have had to flee the country. Forensic anthropologists exhuming remains of the disappeared have received death threats (Losing Ground in Guatemala 2002).

Alfonso Portillo has since fled to Mexico on corruption charges and as of November 2006, was awaiting extradition.

confront the plan's powerful opponents” (Rule of Law in Guatemala 2004). Thus, current
president Álvaro Colom was left with a nation that continues to be plagued by violence and
ineffective leaders.

Suggesting the limited power held by the president, the government is accused of
“maintaining a dysfunctional state—that is, a state designed to be weak, to deliver no services, to
defend privilege, and to obstruct access except for the elites” (Jonas 2000, 177). But, is the
state\(^2\) an autonomous entity that governs society, or is it in fact a function of society? Foucault
relates state power “in the form of a person whose decisions form a system of orders,
prohibitions that direct and constrain social action” (Mitchell 1999, 86). Further, “state-centered
approaches to political expansion presented the state as an autonomous entity whose actions
were not reducible to or determined by forces in society” (Mitchell 1999, 81).

In the context of Guatemala, the state is “politically exclusive, ethnically discriminatory,
and economically monopolistic, [but] it may be precisely because of this insecurity, this
tenuousness, that the state is also so open in some way” (Nelson 1999, 84). In this sense, the
state is governed by society whereby representation of all citizens is sought. The reality in
Guatemala does not reflect this relationship and the state’s inability to protect its citizens and to
implement the accords begs the question as to whom the people, especially the indigenous
populations, of Guatemala are supposed to rely on; not only to implement the accords, but also to
uphold their basic human rights.

Unsuccessful implementation of the goals of the Peace Accords continues, and in August
2006, the Council on Hemispheric Affairs (COHA) noted that “one international body\(^3\) has
found that only one of the 626 massacres documented by the UN Commission for Historical

\(^2\) For further theoretical discussion on the state, see Bourdieu (1999), Dunkerley (2002), or Mitchell (1999).
\(^3\) The Council on Hemispheric Affairs did not name which international body made this claim.
Clarification (known informally as the Truth Commission) [(CEH)] has been successfully prosecuted by the Guatemalan courts” (2006, 1). During the presidential elections the following year, the COHA reported that “power and money can buy immunity from the law in Guatemala . . . where some of the most egregious perpetrators of genocide are still in office,” and that “institutionalized discrimination” still exists (2007, 2). Further, “the security situation has become so grave that. . . . ‘already the villages, who suffered most during the civil war by the hands of the military, are asking the military to come back and establish military bases to ‘protect’ the people’” (2009, 1). Calling upon the military in this sense, however, impedes the implementation of the accords as one of the primary goals of the agreement is the demilitarization of the state.

On the other hand, USAID offers a competing outlook, claiming that U.S. assistance programs have improved the quality of life for many. Although USAID has acknowledged the historical lack of democracy in Guatemala, it asserts that due to the United States’ support of the democratic process, peace and an increased awareness of the rule of law now exist (2003). Guatemala’s current President, Álvaro Colom, is fighting to strengthen and maintain this rule of law. In December 2008, he replaced his Defense Minister, Interior Minister, and the Deputy Chief of National Defense, among others, though such actions are too recent to effectively assess their impact (COHA 2009, 1).

The lack of action by previous governments is due not only to corruption, a lack of transparency, the strength of the military, and the resistance of Guatemala’s elite, but also to the general nature of the language utilized in the Peace Accords and the exclusion of the indigenous population in the writing process itself. An additional factor is the lack of accountability required of the Guatemalan government by international donors. Money pledged by these
donors funds organizations and programs working to promote the implementation of the Peace Accords, and supports valuable infrastructure and personnel. Hemisphere Initiatives subsequently observed that “the strongest pressure for the implementation of the accords comes from international donors who have indicated that post war funds will be conditioned on treaty compliance” (1998, 4).

International funding organizations are further called upon by Amnesty International to support human rights projects, as outlined by the United Nations, and to implement monitoring programs guaranteeing freedom from discrimination and the further marginalization of the indigenous population. To comply with Amnesty International’s recommendations, the Inter-American and World Banks are to consult with the local (indigenous) population and to faithfully consider their interests. Such a commitment to Guatemala’s human rights situation and the need to implement the Peace Accords will “send a clear message in words and actions that they [the Inter-American and World Banks] recognize that sustainable development which benefits all will not take place until the policies and practices which gave rise to human rights abuses have ended” (Amnesty International 2002, 79).

Moreover, consulting with local communities is imperative for successful implementation of the Peace Accords. Sally Engle Merry argues that “local communities . . . generally lack the knowledge of relevant documents and provisions of the human rights system” (2006, 1). She further articulates the difficulty in translating international law to the local level and suggests that the State must play a greater role in implementing the accords and restoring its citizens’ trust. Similarly, the CEH claims that “joint participation of the State and civil society is needed, as every Guatemalan without distinction should benefit from the recommendations” (1998, 67).

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4 Sally Engle Merry is professor in the Department of Anthropology and the Institute for Law and Society at New York University.
The United Nations, however, has found that Guatemala’s civil society remains “unequal and divided” and participation is lacking (Azpuru et al. 1999).

The 1999 vote on the Consulta Popular exemplifies this lack of participation. The primary goal of the Consulta Popular was to legally recognize Guatemala as a multiethnic and pluricultural society for a yes vote would have created the space for Congress to pass legislation regarding the implementation of the Agreement. “In the end, to the dismay of several sectors of civil society, those who had signed the Peace Accords, and the international community, the constitutional reforms were rejected by the population in a democratic exercise that drew scant participation” (Azpuru et al. 1999, 1). The no vote won a total of 55% of the votes; however, the vote does not necessarily reflect the general attitude of the nation, for abstention rates soared at approximately 82%. One explanation for such an extreme rate of abstention is the lack of dissemination of information regarding the referendum. Not only were opponents adept at utilizing the media machine to campaign for the no vote, but “the delay in passing the final draft through congress meant that only 76 days remained prior to the vote to educate the electorate about its content” (Carey 2004, 73). Moreover, some communities reported that they did not receive any information regarding the impending vote.

“As a result, Maya maintained their status as second-class citizens in the eyes of the state” (Carey 2004, 69). More disappointing yet was that “the negative impact of the popular referendum was felt immediately by the indigenous population, above all in urban areas. Racism and discrimination were legitimated and strengthened, heightening the negative treatment and discrediting of the indigenous population” (Azpuru et al. 1999, 23). Results such as these do not encourage participation in the democratic process and, therefore, highlight yet another factor behind the failure of the Peace Accords.
The lack of political participation and knowledge production are compounded by the variation that exists within indigenous movements, although the majority of indigenous organizations align themselves within one of two movements; the Pan-Maya movement or the popular [grassroots Left]. As it stands today, the popular movement presses for structural and social changes while the Pan-Maya movement emphasizes cultural revitalization. The popular movement also promotes an economic ideology by encouraging a transformation of the state though this challenges the traditional role of the state in Guatemala as it “maintains relationships between producers of capital and its owners” (i.e. the landed elite) (Mitchell 1999, 82). Rather than splintering the existing structure the popular movement declares that “autonomy does not signify the rupture of the state but rather its transformation, since it continues to exercise sovereignty” (Segundo Encuentro 2001, 37). Within the Pan-Maya movement, however, such separatist ideologies stand in opposition to the primary principles the movement advocates for; solidarity, spirituality, and peace (Montejo 2002).

Despite the divisions, the objective is the same: only the Maya can define and defend their rights. Herein lies the significance of the relationship between indigenous movements, the organizations aligned within each movement, and the implementation of various components of the Agreement. Víctor Montejo (2002) claims that although approximately 200 Mayan organizations exist, few operate in conjunction with one another, suggesting the breadth of potential agendas indigenous organizations may develop to define and defend the rights declared in the Agreement. Differing agendas, however, have led to the implementation of various components of the Agreement on a local/community level as organizations like CONAVISGUA institute programs attempting to combat Guatemala’s history of indigenous rights abuses and the gradual implementation of the Peace Accords.
The government has also made gains in recent years in addressing the importance of the Peace Accords and has installed inter-governmental offices, such as the Presidential Secretariat for Women (SEPREM), which are meant to not only serve as “guiding entities” in the implementation process, but also to influence national policy (United Nations 2004, 3). Additionally, the following offices have been created within the Guatemalan government with the purpose of addressing various components of the Agreement; the Office of Victim Services of the National Civilian Police, the Guatemalan Housing Fund, the Women in Government Bureau, the Guatemalan Fund for Indigenous Development, and the Office for the Defence of Women’s Human Rights (DEFEM), among others. Due to the creation of such offices, the Special Rapporteur of the United Nation’s Commission on Human Rights has “expressed his confidence that the [Guatemalan] Government, the indigenous peoples, the international community, and the other civil-society stakeholders will contribute to the process of building a fairer society in Guatemala for its least favorite groups” (United Nations 2003, 3).

But, in order to build this fairer society one must first understand what has been successful thus far, what has failed, and why. The goal of this study, therefore, is to compare the degree of implementation of the Agreement, the role played by the state to non-state actors, and to address the role of the NGO as mediator between local institutions and the state. Further, connections will be drawn between the government’s role in realizing the Peace Accords versus the achievements of the international community, NGOs, and local (indigenous) communities. Implementation on any level is to be considered a success and serves a potential model for not only community-based organizations, but for the nation as a whole.
CHAPTER 2
THE GUATEMALAN PEACE ACCORDS: HISTORICAL CONTEXT

Introduction

In order to understand both the basis for the Guatemalan Peace Accord objectives and for the feeling of urgency surrounding their implementation, an examination of the historical motivations behind the Peace Accords proves useful. The Peace Accords are often described as the result of Guatemala’s civil war, though the human rights violations occurring during this time are rooted in the Spanish conquest of Guatemala. In fact, Demetrio Cojtí Cuxil relates the fight for indigenous rights to the reproduction of Guatemala’s “500-year-old ethnic-racist paradigm” based on attempts at cultural assimilation occurring since the colonial period (2007, 126).

The colonial period in Guatemala began with the extensive exploration of the region after the conquest of the K’iche’ Maya by Spanish conquistador Pedro de Alvarado in 1523. “This invasion, which led to the prolonged conquest and pacification of Guatemala, opened the era of Spanish presence there. It brought warfare, Indian uprisings, unstable personalistic Spanish governments, and great problems of adjustment between Spaniards and Indians” (Jones 1994, 17-18). The 16th century saw the enslavement of indigenous populations and their decimation due to increased exposure to foreign disease, great city-states were reduced to pueblos, and missionaries slowly began chipping away at the traditional Mayan belief system.

The traditional belief system of Guatemala’s indigenous people, gave way to the enduring presence of missionaries and Catholicism remains the official religion in Guatemala today. The 16th and 17th centuries also saw the introduction of tributary and labor obligations though only those obligations related to labor endured. The Cádiz Constitution of 1812 attempted to acknowledge the indigenous population as equal to that of the rest of the population and pro-indigenous policies, though superficial, persisted until the mid-19th century.
Following this time period, coffee production began to increase, though its impact remained minimal until Justo Rufino Barrios assumed the presidency following Rafael Carrera’s death in 1865. Coffee production originally found on individual farms and within indigenous communities transformed into a nationwide coffee boom, the creation of a plantation class, and the modernization of Guatemala. The coffee boom and the influence of foreign investment triggered further encroachment on lands held by the indigenous populations and seasonal indentured servitude on the new coffee plantations.

This historical documentation helps to establish the earliest models of the exploitative relationships still present today in Guatemala. The cycles of occupation, oppression, and subsequent activism survived and was exacerbated during the period leading to Guatemala’s ten years of spring (1944-1954). As such, this time frame represents a point of departure, marking the most dramatic shift in Guatemala’s social and political environment; a shift that, consequently symbolizes what became known as Guatemala’s most violent period in history. Elucidation of the motivations behind the war and the violence carried out against the indigenous population is necessary in order to fully understand the implications of the Agreement and the future of peace in Guatemala.

**Background: The Guatemalan Crises and the Need for Peace**

The first Spaniards settled in a series of valleys running southeast from Quetzaltenango¹ to Antigua (the old capital) and subsequent waves of colonists continued to spread south and east occupying Guatemala’s most fertile lands. Here, cattle were raised and cash crops such as cacao, indigo, wheat, and sugarcane grew in abundance (Lutz and Lovell 1990, 37-38). In order to cultivate these lands, the Spanish brought with them African slaves. They also forced

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¹ For a map of Guatemala, and a map of Guatemala’s linguistic communities, see Appendix B.
enslavement upon the indigenous populations, and required them to supply fruits and vegetables, in addition to other staple crops.

Indigenous slavery was abolished around 1550, though even after this time the Spanish continued to encroach upon the indigenous way of life. Spanish farms and mills expanded outward onto lands traditionally held by indigenous people resulting in the creation of a ladino\textsuperscript{2} core and ultimately, the resettlement of the indigenous populations within an indigenous periphery. The core was comprised of the large ladino haciendas while the periphery held the least desirable lands or those which held little productive potential (Lutz and Lovell 1990, 39).

The periphery also served as protection from the growing pressure from Christian missionaries and as a refuge for Guatemala’s dwindling indigenous populations whereby little contact was maintained between the Spanish (Lutz and Lovell 1990, 40-41). Well into the 17\textsuperscript{th} century, the Church sought not only to convert Guatemala’s indigenous people, but also to resettle such populations (\textit{congregación}). Large numbers of indigenous Guatemalans remained scattered, however those who resided in close enough proximity to the core found themselves working under the \textit{encomienda}\textsuperscript{3} system and were forced to work for both the Spanish Crown as well as the Church. Ultimately this system produced two primary institutions: \textit{congregación} and what Spaniards called \textit{pueblos de indios} (Indian towns).

The Spanish noted that the Maya did not have a municipal core, rather indigenous communities maintained a sense of isolation from one another. \textit{Congregación} was designed to

\textsuperscript{2} The term \textit{ladino} has continued to evolve since the sixteenth century. Originally describing the indigenous populations in reference to their Spanish-speaking ability, by the eighteenth century \textit{ladino} came to refer to the mixed race, or those of European and indigenous descent. Since independence, \textit{ladino} now refers to those who bear little to no resemblance culturally to Guatemala’s indigenous populations.

\textsuperscript{3} The \textit{encomienda} system is a system which was installed throughout the Americas designed to extract tributary payments to benefit the Crown. Lands being worked by the indigenous populations were to remain under their control, though the \textit{encomienda} system was fraught with corruption and abuse by the Spanish \textit{encomenderos} living in Guatemala and indigenous lands ultimately ended up under Spanish control. However, by the time the Crown abolished \textit{encomienda} in the 18\textsuperscript{th} century, it “represented little more than a modest form of pension” (Lovell 2000, 117).
control the anarchy perceived to be inherent within indigenous society and to create *pueblos de indios*. “As promulgated by Spanish law, *congregación* was a means whereby Mayas found dwelling in scattered rural groups would be brought together, converted to Christianity, and moulded into harmonious, resourceful communities that reflected imperial notions of orderly, civilized life” (Lovell 2000, 117). The resulting Indian towns came under the control of various *encomiendas* and were the primary source of labor and tribute. Though these practices did not endure, the creation of Indian towns left its mark on the Guatemalan landscape as these geographic designations persist today in the form of officially recognized *municipios*, or townships (Lovell 2000, 118).

In addition to the *encomienda* system, the Spanish also contracted labor and fiscal obligations through labor *repartimiento* and the *terrazgo* system.⁴ *Repartimiento* extracted labor from indigenous populations throughout Guatemala where “they were set to work at various tasks: they farmed, tended flocks and herds of animals, hauled loads, helped build houses, baked bread, or cleaned streets in the city capital” (Lutz and Lovell 1990, 43). Communities were obligated to supply enough labor to fulfill a monetary quota that was often much below the appropriate wage. *Terrazgo*, on the other hand, was designed to enrich the Spanish by demanding payments for rent on house plots and their neighboring *milpas* rather than by exploiting physical labor.

Despite the various forms of exploitation utilized by the Spanish, a period of recovery began in the mid-17th century and by the 18th century, the Maya learned to speak Spanish and to grow European crops. By the late 1700s, cities like Quetzaltenango became booming

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⁴ *Repartimiento* and *terrazgo* endured until Guatemala’s independence (1821).
commercial centers and the main destinations of elites, both Spanish and K’iche’.\(^5\) In spite of
this, the drastically changing demographic nature of such towns led to massive outmigration of
native indigenous populations. Those who remained grew increasingly discontented with the
city’s new residents and the assumed power and privilege that accompanied them (Grandin 2000,
57). This time period reflects the first riots and acts of indigenous activism on a large scale
within Guatemala.

For the Bourbon monarchs in Spain, the power shift away from the Crown sparked a new
era of reform in Guatemala. Seeking to reverse the decline in Spanish prestige and power, the
Bourbons instituted a series of “administrative, military, economic, and ecclesiastical reforms”
(Woodward 1990, 52). Military reforms were designed to strengthen the central government
while ecclesiastical reforms checked the power of the clergy.

Economic reform stemmed from the divergence from the traditional subsistence
agricultural activities as a response to the industrial revolution in northern Europe. This response
laid the foundation for the Liberal party in Guatemala as it

stimulated a notable shift to agroexport production in many parts of the empire. Reducing taxes on commerce, freer trade, increased incentives to production,
expansion of African slavery, encouragement of new technology, improved roads and
navigational aids, more liberal credit and capital accumulation laws, easier acquisition of
land for agriculture, and authorization of new commercial organizations all promoted
capitalist growth and a trend away from subsistence agriculture toward plantation
production for export (Woodward 1990, 53).

The expansion of exports, however, led to variation in land use and, ultimately, to further
encroachment upon indigenous lands.

The Cádiz Constitution of 1812 was the first official attempt to recognize the abuses of
the indigenous populations in Guatemala. Here, legislators sought to place indigenous people on

\(^5\) The K‘iche’ Maya remain the largest indigenous linguistic group in Guatemala and second overall following
Spanish.
equal footing with the rest of Guatemalan society and eliminated the traditionally imposed tributary obligations. Public land was also distributed with the intention of spurring additional agricultural production, though the government retained the right to sell such lands at will or to transfer them for plantation development. The Cádiz Constitution became the model for the Guatemalan constitution and it installed mechanisms allowing for the election of town officials (Woodward 1990, 56).

Local participation grew in the following years and despite Napoleon’s defeat in 1814 and the restoration of authoritarian rule, the power of municipal governments was such that the local vote ultimately determined Guatemala’s independent status. The Creole elite, formerly classified as moderates, became the new Conservative party and called for annexation to Mexico, though the powerful Liberal party pushed for an independent republic. The Liberal party gained control of the government and created the Guatemalan constitution in 1824. The Liberals called for an egalitarian state which outlawed slavery, guaranteed individual civil liberties, and installed five autonomous state governments and legislatures. This constitution, however, “recognized no special protective status of the Indian” (Woodward 1990, 59).

The Liberals remained in control until 1839 when Rafael Carrera and the Conservative Party assumed power. Carrera’s era (1839-1865) is especially noteworthy for his pro-Indian policies. Here, the government attempted to recognize the indigenous population as a majority who also deserved the protection of their rights. Unfortunately, this special recognition was short-lived for even though “Carrera’s pro-Indian policy did indeed protect the Indians from further encroachment on their land and labor during the 1840s,” the 1850s saw Carrera’s alignment shift to favor Guatemalan elite (Lovell 2000, 127; Woodward 1990, 68).
Coffee was introduced during this time period as well though its production did not make a significant impact until after Carrera’s death in 1865. Initially, the Conservative party promoted coffee production within indigenous communities as well as on individual farms, though this policy changed once the Liberal party regained control in 1871. The presidency of Justo Rufino Barrios\(^6\) transformed Guatemala into a capitalist nation and established a plantation class. “To the state, coffee represented progress, civilization, and advancement; to Maya communities it meant loss of land and forced or indentured labour” (Lovell 2000, 137). The indigenous population viewed land as a cultural asset, though with the introduction of coffee, land would forever be utilized as an economic exploit.

The burgeoning coffee empire grew at astronomical rates with it constituting 50% of Guatemalan exports in 1871, and “by 1876 the quantity exported had almost doubled and by 1884 quintupled” (Smith 1990, 83). This attracted foreign investment and the migration of Europeans, predominantly Germans. The Germans became the new white Creole elite and the largest plantation owners in the country. They built schools and cultural centers but, moreover, they introduced their knowledge of the coffee market and the technology to advance the production of Guatemala’s coffee.

Beyond Germany’s contributions, the U.S. and France built and owned ports and railroads while British and German merchants ruled the marketing channels. For this, and “because of the speed with which land acquired and the means by which it was acquired (personal connections to the new ruling clique), Guatemala was to develop a large-estate rather than small-estate coffee economy and to have one of the smallest but most powerful coffee oligarchies in Central America” (Smith 1990, 84). The introduction of coffee not only affected

\(^6\) Justo Rufino Barrios also reinstated the colonial system of debt peonage and obligatory forms of employment as contemporary models of indentured servitude based on land assets, also known as vagrancy laws.
land use and occupation, but it also created a new ladino class based on class distinctions that survive to this day.

The breakup of indigenous communal property and the rapid acquisition of large landholdings by the coffee oligarchy created class divisions that did not occur in the rest of Central America. These divisions can be traced to the colonial era *pueblos de indios* as the non-indigenous were not permitted to reside in Indian towns unless they represented the Church or the Spanish Crown. Because this relationship was unique to western highland communities, ladinos who arrived during the coffee boom “did so as special agents of the state and the coffee economy—that is, as a different class” (Smith 1990, 86). Racial terms applied during the colonial period evolved into three primary classifications by the end of the 19th century: the Creole, or white elite and landowning class, the ladino, or non-indigenous Guatemalan, and the indigenous population who occupied the lowest social and economic class.

Anthropologist Carol A. Smith describes the redressing of class through the following process:

in a word, plantations created proletarians, semiproletarians, and agents of the proletarianization process. The proletariats and agents were to become ladinos; the semiproletarians were to remain Indians. As this process occurred, Guatemala’s rural population, which was mostly ‘Indian’ in the social judgment of the Carrera period, became one-third ladino by 1950. Virtually all the ‘Indian’ villages of eastern Guatemala, remote from the plantation labor dragnet, became ladino (1990, 88).

Whereas 18th and 19th century social distinctions and struggles were based upon one’s economic standing, the 20th century saw the birth of divisions between ladinos and the indigenous population based on ethnicity rather than strictly upon class.

The redefining of class in Guatemala was not the only hurdle in the struggle for justice as land rights have always been a prominent feature. In addition to the rapid accumulation of land during the coffee era, which subsequently stalled by 1944, the U.S.-based United Fruit Company
(UFCO) played a crucial role in this regard sharing a majority of the approximately four million acres of land acquired by plantation owners by 1950 (Lovell 2000, 140). Though UFCO was born from a banana importing venture in the Caribbean and a railroad construction project in Costa Rica, it grew to become one of the most influential actors directing Guatemala’s economy in the early 20th century.

The two formerly independent companies merged in 1899 and in 1901, UFCO obtained a contract from the Guatemalan government to carry mail on its ships. By 1904, the government had granted UFCO a 99-year concession to construct and operate the country’s primary rail line. Through similar concessions, UFCO grew to hold an operating capital of $215 million by 1930 and owned property throughout the Caribbean and Central America and in 1936, UFCO signed a 99-year agreement with dictator General Jorge Ubico to open a second plantation (Schlesinger and Kinzer 2005, 70).

“Ubico granted the company the kind of concessions to which it had become accustomed: total exemption from internal taxation, duty-free importation of all necessary goods and a guarantee of low wages” (Schlesinger and Kinzer 2005, 70). What is more, the formation of the International Railways of Central America (IRCA) and its operations within UFCO became official in 1936 and effectively granted UFCO control over Guatemala’s rail system and the country’s only Atlantic port at Puerto Barrios. As such, any company other than UFCO wishing to export or import through Guatemala had to use the port at Puerto Barrios and ultimately, was forced to operate under the control of UFCO.

With Ubico and UFCO controlling the majority of Guatemalan land and labor, popular unrest was growing. Fueling this unrest was the exposure to World War II and the promise of
democracy as articulated by U.S. President Franklin Roosevelt. Roosevelt’s Four Freedoms
and his support of trade unions and labor rights resonated throughout the country. Guatemalans
were becoming aware of the strengthened labor movement in Mexico and Ubico’s wavering
support from the U.S. All factors combined led to the beginning of popular protest, originally
organized by schoolteachers, and resulted in the Revolution of 1944-1954 (the October
Revolution). Guatemala’s middle class successfully overthrew Ubico in 1944 and this “marked a
new phase in Guatemala’s political development” (Fauriol and Loser 1991, 29).

Moreover,

the two governments of Juan Jose Arévalo (1945-1950) and Jacobo Arbenz (1951-54)
guaranteed basic democratic liberties (including free elections), abolished forced labor
(which had been nearly universal for the indigenous population), granted minimum
wages and basic rights for workers and peasants, and increased social welfare and
equality. In addition, the Revolution modernized Guatemalan capitalism, undertaking
agricultural diversification and industrialization programs, fomenting national
enterprises, and regulating foreign interest to serve national priorities. Most significant
was Arbenz’s far-reaching (but capitalist) agrarian reform of 1952, which distributed land
to over 100,000 peasant families (Jonas 2000, 18).

While such progressive ideologies were initially beneficial to the Guatemalan people,
especially the agrarian reform policies of the early 1950s, they stood in direct opposition to the
economic interests of Guatemala’s landholding elite and the United States. Arbenz expropriated
unused land belonging to UFCO, which held the largest concentration of land in Guatemala, and
subsequently prompted U.S. intervention. Claiming potential subversion and an alliance with the
Soviet Union, the Central Intelligence Agency (CIA) used its fear of the spread of communism to
justify a military coup which overthrew Arbenz in 1954 (Spence 2004). The economic and
social power struggle that originated during this time period paved the way for a highly dynamic
and deeply intertwined series of crises.

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Roosevelt’s ‘Four Freedoms’ included “the declaration that all humanity was entitled to freedom of speech,
freedom of religion, freedom from want and freedom from fear” (Schlesinger and Kinzer 2005, 26).
The economic crisis was a result of Guatemala’s divergence from its mono-export economic model.

Between 1950 and 1975, population growth finally closed off subsistence production as an alternative to wage labor. . . . [and] many Maya, perhaps a majority of them, sought seasonal employment on coastal plantations to supplement their shrinking milpas, but a significant number of Indians stepped up their nonsubsistence activities, such as labor recruitment, commerce, manufacturing, and specialized agricultural production (Grandin 2000, 223).

Further, the failure of the Central American Common Market, the decrease in demand for agricultural products, and external shocks during the 1980s resulted in a period of austerity, failure in terms of economic growth, exploitation, and exacerbation of the already growing social polarization (Grandin 2000; Jonas 1991).

The social crisis unfolded as this social polarization and the disparity among the classes grew since “communities found themselves divided between a newly economically empowered bourgeoisie and an impoverished campesino class” (Grandin 2000, 223). In addition, reminiscent of much of Latin America during this period, the bourgeoisie, or ruling class, tightened their control over the means of production and thus, their access to the majority of the capital. This “hegemonic consolidation” of the ruling class was said to have adopted modernization and industrialization ideologies, though reformation was never a priority (Jonas 1991, 87).

During the 1970s as the conflict was gaining momentum, so were fractions developing within the bourgeoisie, as the effects of economic diversification and accumulation of land and assets by the army, or the “beaurocratic bourgeoisie,” led to competing outlooks on taxation and protectionist policies (Jonas 1991, 90). Despite any divisive potential due to these competing outlooks, unity among the ruling class was strengthened, albeit at the expense of the majority of the population. This point is often discussed in contrast to Nicaragua and the Somoza regime.
and helps place Guatemala’s steadfastly united ruling class in a broader context. It also explains the pivotal role this played in the creation of an oppressed, “revolutionary,” and predominately indigenous class which the army would eventually attempt to pacify (Jonas 1991, 91-92).

The marginalization of the indigenous population stemmed from economic exploitation and the attempt at cultural consolidation, or the creation of a national, non-indigenous, identity. With the Maya accounting for over 50% of Guatemala’s population, their crisis rested not in the definition of their culture, but rather in the denial of their right to exist independent of the coercive and oppressive hands of the ladino world; a point which is explicitly addressed in the United Nations’ *Universal Declaration of Human Rights* and the Guatemalan Peace Accords.

This approach has been at the forefront of the debate surrounding the crisis in Guatemala and much of the literature (e.g. Carmack 1988) supports ethnicity and cultural assimilation as the focal point around which the war ensued. Ethnic bonds in this sense are utilized to premise the notion of a “social awakening” which occurred throughout the Guatemalan countryside, especially in the highlands. Successful organization was not widespread, however, and the Guatemalan social structure proved to be just as volatile as its economy. More volatile yet was the Guatemalan political system for,

historically, Guatemala’s political elites have not demonstrated a desire to take the necessary steps to forge a national consensus. Instead, these groups have tended to view political affairs in terms of a ‘winner take all’ system, blocking the path toward any form of agreement. The development of a democratic environment has had to overcome the violent features of Guatemalan society (Fauriol and Loser 1991, 41).

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8 Diane Nelson highlights an essential point regarding the role of the ladino and the ladino state in the subjugation of the indigenous population. She affirms that we “must remember that these struggles have been about which ladinos will control the state apparatus,” rather than the argument that is solely posed against a ladino state (Nelson 1999, 77).
Moreover, “the modernization of the political party system has operated under a panopoly of military regimes—the most common and enduring feature of Guatemala’s entire political experience” (Fauriol and Loser 1991, 41).

Militarization of the political system in this sense led to the development of a few primary grassroots organizations\(^9\) during the 1970s, such as the Comité de Unidad Campesina\(^{10}\) (CUC). This significant, Indian-led organization contributes greatly to the understanding of the ensuing revolutionary crisis due to its relationship with the 1978 massacre at Panzós.\(^{11}\) The community of Panzós asserts that the military opened fire on an unarmed crowd of peaceful protesters demanding land rights and killing anywhere from 35 to over 100 people. The army argues that the crowd, in fact, was armed, angry, and extremely violent. Though the debate surrounding the specific events leading up to the massacre remains, “one report cites witnesses claiming that Monzón (a ladino plantation owner) organized a meeting on the day before the massacre between planters and the military and that he ordered a large grave to be excavated in preparation for the killing to come,” suggesting a premeditated massacre (Grandin 2004, 154).

While this case was not unique, it served as the catalyst for mobilization and demonstrates the brutality and blatant disregard for human rights representative of the Guatemalan army throughout the period. And, just as Jonas labeled 1954 as the “turning point” for the Guatemalan government after the U.S. backed overthrow of then President Jacobo Arbenz, so was the 1978 massacre at Panzós the “turning point” for the awakening of the

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\(^9\) Early forms of organization were instituted by the Christian Democrat Party during the 1960s where hundreds of agrarian cooperatives and a labor union movement were established.

\(^{10}\) The CUC also supported a strike in February 1980. “By March seventy-five thousand workers on seventy large cotton and sugar plantations had joined the strike, virtually shutting down the economy of the Pacific coastal plain” (Williams 1986, 177). The government not only gave in to workers’ demands and raised the minimum wage, but it raised the minimum wage a second time in hopes of preventing additional strikes. Success was short-lived, however, as violent attacks continued against union leaders and peasants and the worst human rights violations under General Ríos Montt were yet to come.

\(^{11}\) The town of Panzós is located in the southeastern corner in the department of Alta Verapaz.
indigenous population. This event “triggered the mass involvement of Guatemala’s Indian population in the armed resistance” (Williams 1986, 177).

The revolutionary crisis, inherent within the social awakening in the countryside, had been developing for nearly 20 years before the establishment of the Unidad Revolucionaria Nacional Guatemalteca (URNG) in 1982. In the late 1950s/early 1960s, popular movements and grassroots organizations gained momentum but were increasingly met with disappointing results throughout the 1970s. Internal disorganization within the URNG is a key component in attempting to answer the question as to why the battle for Guatemala persisted as it did. Additionally, and arguably the most influential factor, is the role of the United States and their relationship with the Guatemalan government. The U.S. had been responsible for training and supplying aid and arms to Guatemala’s army leaving the revolutionary forces both unprepared for the army’s brutality and unable to compete technologically and financially.

With the continuation of the war and the army’s inability to defeat the revolutionary movement, oppositional voices grew louder and greater attention was paid to the worsening human rights situation. The Inter-American Commission on Human Rights of the Organization of American States and Americas Watch, among others, established monitoring protocols as a result of the signing of the Central American Peace Accords after 1987. And though death squad activities reportedly increased in the following years, the peace process had been set in motion.

**Armed Conflict**

While the previous pages highlight the general themes propelling the armed confrontation, closer examination of the conflict itself is necessary to shed light on the human rights violations which occurred throughout the period and served as the motivation behind international intervention and, ultimately, intervention by the United Nations. Figure 2-1 demonstrates the evolution of the violence over the duration of the 36 officially recognized years.
of conflict by elucidating the progression of the various forms of violence; namely arbitrary execution, forced disappearance, and torture. Overall, the documentation of human rights violations and acts of violence associated with the war accounts for “42,275 victims including men, women and children. Of these, 23,671 were victims of arbitrary execution and 6,159 were victims of forced disappearance” (CEH 1998, 17).


Additionally, the CEH reports that of the approximately 200,000 total Guatemalans killed or disappeared, over 83% were Maya with just under 17% Ladino. Figure 2-2 illustrates the total number of human rights violations and acts of violence according to ethnic classification. Moreover, victimization and geographic location are correlated as the CEH claims that relevant differences in the territorial concentration of military operations and the type of victims can be confirmed, depending on the specific period of the armed confrontation. In the period from 1962 to 1970, operations were concentrated in the eastern parts of the
country, Guatemala City and the south coast, the victims being mainly peasants, members of rural union organizations, university and secondary school teachers and guerilla sympathisers. In the years from 1971 to 1977, the repressive operations were more selective and geographically dispersed. Victims included community and union leaders, catechists and students…During the most violent and bloody period of the entire armed confrontation, 1978-1985, military operations were concentrated in Quiché, Huehuetenango, Chimaltenango, Alta and Baja Verapaz, the south coast and the capital, the victims being principally Mayan (1998, 22).


Though every human is guaranteed the “right to life” as declared in the Universal Declaration of Human Rights, the Guatemalan government has failed in this regard. And while the U.S. State Department claimed that the guerilla factions throughout Guatemala were responsible for the worst violations and that the Guatemalan army was simply responding to this, the reality is much different. The Inter-American Commission on Human Rights reports that the pacification campaign carried out by Guatemala’s army, under U.S. tutelage, is “directly
responsible” for the majority, and the most severe, violations of the indigenous population’s “right to life,” especially in rural areas. As demonstrated in Figure 2-3, the CEH proclaims that the Army is indeed responsible for committing the majority of human rights violations at approximately 85%, with the State (including the Army, security forces, Civil Patrols, military commissioners, and death squads) responsible for 93% of the total violence.

![Figure 2-3. Forces responsible for human rights violations and acts of violence.](http://shr.aaas.org/guatemala/ceh/report/english/graphics/charts/page86.gif)

Figure 2-3. Forces responsible for human rights violations and acts of violence. (Note: The columns indicate the percentage of responsibility by different groups, whether acting alone or in conjunction with other forces, with regard to the total number of human rights violations and acts of violence committed. Consequently, the “Army” category accounts not only for the violations committed by this force when acting alone, but also for those committed in conjunction with Civil Patrols, military commissioners, death squads or other members of State security forces. In the same way, the “Civil Patrol” category records the violations committed by its members, acting alone or together with another force. This logic holds true for all of the categories, therefore the sum total of the percentage is greater than 100). [Adapted from Commission for Historical Clarification (CEH). 1998. Guatemala, Memory of Silence=Tz’inil na’tab’al; Report of the Commission for Historical Clarification, Conclusions and Recommendations. Guatemala: CEH. <http://shr.aaas.org/guatemala/ceh/report/english/graphics/charts/page86.gif> Accessed November 17, 2009.]
The International Community and the Peace Process

Neither the United States government nor the Guatemalan government were impartial participants in Guatemala’s peace process, and thus, the international community was a crucial actor. The peace process began with the Catholic Church acting as mediator and the United Nations only serving as an observer. In the 1991 Mexico Agreement, an agenda was set forth leading the United Nations to assume the role of mediator in the 1992 negotiations for peace between the URNG and the Guatemalan government. The following year, the military launched a failed coup d’état out of frustration at its inability to force the URNG to sign the Peace Accords and to disarm (Nasi 2002). Support for the military waned further and an agreement to resume bilateral negotiations was not reached until early January 1994.

With the signing of a firm and lasting peace agreement as the ultimate goal, the Guatemalan government and the URNG agreed to request that the Secretary-General of the United Nations appoint a moderator who had the additional responsibility of keeping all participating parties informed (USIP N.d.). To further facilitate the negotiation process, the governments of the United States, Norway, Spain, Venezuela, Mexico, and Colombia were requested to constitute a “group of friends” to certify and verify compliance with any proclaimed commitments.

One such commitment was the installation of MINUGUA. The initial purpose of the MINUGUA mission was to carry out verification and institution-building activities throughout the country (Jonas 2000). Once the agreement on a ceasefire was affirmed in early December 1996, the Security Council of the United Nations, in late 1997, changed the mission’s name to the United Nations Verification Mission in Guatemala.

With the help of an additional 155 military observers and medical personnel, MINUGUA assisted the government in demobilizing and disarming the URNG by establishing assembly
points and surrounding security zones, locating clandestine arms caches, and conducting de-mining procedures. And, while the Secretary-General applauded the dedication of the URNG and the Guatemalan government in their willingness and commitment to maintain peace, other sources, such as Nasi (2002), claim that the mission did little more than alleviate the guerillas’ fear of assassination.

In addition to the MINUGUA mission, the CEH was established. Set to begin the day of the signing of the Peace Accords for the duration of 6-12 months, the CEH was expected to consider accounts from all individuals and institutions, civilian or military, in order to provide a detailed report to the Secretary-General of the United Nations. The publication of *Guatemala: Memory of Silence*, as the report is now called, attempted not only to provide recommendations in hopes of fostering lasting peace, respect, and regard for human rights and the democratic process, but also to help preserve the memory of the victims of the conflict.

**Agreement on Identity and Rights of Indigenous Peoples**

Moving beyond the conflict itself, the following paragraphs attempt to develop a deeper understanding of the state of implementation of the Agreement on Identity and Rights of Indigenous Peoples.12 This will be done by reviewing its various components in conjunction with the recommendations on behalf of the Special Rapporteur of the Commission on Human Rights.

The Agreement is divided into seven parts. The first four relate to specific rights to be gained by the indigenous population. The remaining three make accommodations for the resources necessary for successful implementation. These three parts also discuss the role of various commissions that are to be established and the responsibility of the state in verifying the

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12 See Appendix A for the complete text of the Agreement on Identity and Rights of Indigenous Peoples.
implementation of the Agreement. The ultimate goal is to foster an environment in which Guatemala’s indigenous populations can stand on equal footing economically, socially, and politically by strengthening national unity, as well as by respecting Guatemala’s status as a “multi-ethnic, multicultural, and multilingual” nation (USIP N.d., 1). The Agreement also considers “that the parties recognize and respect the identity and political, economic, social and cultural rights of the Maya... within the unity of the Guatemalan nation, and subject to the indivisibility of the territory of the Guatemalan States, as components of that unity” (USIP N.d., 1).

One of the most basic human rights, other than the right to life, is the right to cultural identity. As a result, the Maya, along with the Garifuna and the Xinca peoples,¹³ are granted the right to “sense of their own identity” and a common culture through a common philosophy and a unique and long withstanding tradition (USIP N.d., 2). Section II of the Agreement promises eradication of discrimination based upon this identification and declares any such action as a criminal offense. Utilizing the educational system and the media to disseminate information, law offices and legal services are also to be established to effectively protect this right.

Access to land, in terms of resettlement and land tenure, as discussed in Section IV (Civil, Political, Social, and Economic Rights) Part F entitled “Land tenure and use and administration of natural resources” attempts to recognize the traditional use of land, for spiritual as well as daily subsistence activities (USIP N.d., 7). The section also guarantees the community’s right to participate in land use, protection and preservation of the surrounding environment, and compensation for potential loss of land due to government activities. Though

¹³ The Garifuna are descendants of Caribbean and African slaves who have settled along the Caribbean coast from Nicaragua to Belize. The Xinca are the non-Mayan indigenous populations who originally resided along Guatemala’s southern border with El Salvador.
ambiguously stated, the reality is that the indigenous population, as of 2003, has struggled to receive a response to their land-related claims. Further, the Guatemalan government has not fulfilled the guarantee of choice of location of resettlement of displaced persons due to economic development projects, and forced resettlement and additional loss of land is exacerbating the unresolved tensions in this regard (United Nations 2003, 2).

Further examples of the challenges to the implementation of the Accords are found in the inadequacies within the educational system. Section III-G acknowledges education as an integral vehicle with which to transmit cultural knowledge, improve socio-economic standing, and promote bilingualism and technology (USIP N.d., 6). The measures addressed in this section call for a complete reform of the educational system meant to better serve the indigenous community. It also aims to provide scholarships for those most in need and to promote higher levels of learning by establishing Mayan universities.

While the Special Rapporteur recommends that “education should be strengthened as a national priority,” the government has been unable to provide sufficient teaching materials and training for instructors in rural areas (United Nations 2003, 25). Furthermore, school attendance among the indigenous population is lower than the rest of the population and though this cannot be blamed directly on the Guatemalan government, exclusion is being maintained.

In order to enforce the rights guaranteed to the indigenous population, especially those mentioned above, the Agreement also mandates increased access to justice. Section IV-F establishes the guidelines for developing a legal structure which is more conducive to indigenous communities thereby granting greater access to legal services, including courts, legal advisories, a stronger curriculum in regards to agrarian law, elimination of discrimination (against women in
particular), and free interpreters (USIP N.d., 10). However, pervasive corruption still plagues the justice system as judges are prone to intimidation, especially at the lower levels (Spence 2004).

In addition to corruption, there is still inadequate access to information among the indigenous population. Dissemination of information about land rights and availability of legal services is encouraged, though, much like the educational system, attempts to broaden the judicial system remain ineffective as well. The Special Rapporteur calls for greater enforcement of the aforementioned measures but gives an additional suggestion in recommending that there needs to be greater respect for the practice of indigenous law (USIP N.d., 8). In order for this to be accomplished, the government must first resolve the difficulties it faces in implementing the Agreement and delivering justice. Additionally, it must remove the fear that accompanies the desire for justice (Sanford 2003, 212).

Conclusion

The Agreement attempts to recognize and reverse the centuries of exploitation of Guatemala’s indigenous populations. The Cádiz Constitution of 1812 was the earliest attempt to rectify the abuses against the indigenous population though much like the efforts of the government in the most recent decades, such attempts were merely superficial and did not grant freedom of culture and self-determination. Forms of fiscal and labor obligations originating during the colonial era were simply transformed into contemporary forms of debt peonage throughout the 19th and 20th centuries.

Within the last decade, however, “the international community, through the United Nations and the agencies and programmes of the United Nations system, the Organization of American States . . . have recognized the aspirations of the indigenous peoples who wish to gain control over their own constitutions and forms of life as peoples” (USIP N.d., 1). In order to achieve this, the State must also uphold guaranteeing the rights it agreed upon in 1995 and
remove the obstacles to this self-determination it installed. Whether this is accomplished internally, or with further assistance from the international community, greater emphasis must be placed on the urgency of such tasks.

Building upon the historical factors that created the need for indigenous rights, Chapter 3 will dissect Section II of the Agreement in order to explore the efforts of the state in realizing the promise of the accords and the protection of indigenous rights. The Guatemalan government is consistently labeled as ineffective, corrupt, and weak, therefore, closer examination of Section II of the Agreement will highlight where the state has, in fact, failed. This study will also demonstrate where progress has been made and how avoiding corruption, and preparing for the strength and resistance of opponents, can ensure successful implementation of the Peace Accords.
CHAPTER 3
SECTION II: THE STRUGGLE AGAINST DISCRIMINATION

Introduction

Building upon the themes propelling Guatemala’s armed conflict and the motivations behind the Peace Accords highlighted in Chapter 2, Chapter 3 focuses on the degree of implementation regarding Section II of the Agreement. As previously discussed, the Agreement seeks to grant land rights, access to education and justice, and a life free from discrimination and poverty and further provides recommendations illustrating how these rights are to be realized. Despite many recommendations, however, “the United Nations High Commissioner for Human Rights expresses her disquiet at the ineffectiveness of the State in preventing, investigating and punishing acts of violence and in embarking on public policies to reduce poverty, discrimination and the lack of opportunity” (United Nations 2006a, 2).

The majority of monitoring reports published, regardless of their affiliation, note the general ineffectiveness of the State as the leading impediment to implementing the accords. The list goes on to name corruption and a weak democracy, among others causes, though all can be universally applied to any of the measures mandated in the Peace Accords. For this, a focus on just one section of the Agreement will allow for a more lucid articulation of exactly where the State has struggled, and where it has made progress. Moreover, this narrower focus will demonstrate how varying factors, such as corruption and the absence of accountability, have affected the implementation of the Agreement thus far.

Section II of the Agreement relates to indigenous rights in terms of freedom from discrimination. Part A of this section, the “struggle against de jure and de facto discrimination,” discusses the responsibility of the government in classifying discrimination against the indigenous population as a criminal offense and suggests the government should remove any
legislation with “discriminatory implications” (USIP N.d., 2). The government is also urged to promote the protection of indigenous rights through education, use of the media, and increased access to legal services.

Part B pays particular attention to the protection of the rights of indigenous women as “it is recognized that indigenous women are particularly vulnerable and helpless, being confronted with twofold discrimination both as women and indigenous people, and also having to deal with a social situation characterized by intense poverty and exploitation” (USIP N.d., 3). Here, the government is to follow the same measures outlined in Part A to effectively protect women’s rights through the classification of sexual harassment as a criminal offense. The government is also asked to create an Office for the Defense of Indigenous Women’s Rights, to disseminate information regarding their rights through the media, and finally, to implement the reforms called for in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹ Finally, Part C provides additional assistance in protecting the indigenous population against discrimination through the use of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),² and the approval in Congress of the International Labor Organization’s Convention on Indigenous and Tribal Peoples (ILO Convention No. 169)³ (USIP N.d., 3).

### Measuring Success and the State of Implementation

Part A(1) of Section II declares that in order to overcome the age-old discrimination against indigenous peoples the assistance of all citizens will be needed in the effort to change thinking, attitudes and behavior. This change must begin with a clear recognition by all Guatemalans of the reality of racial discrimination and of the compelling need to overcome it and achieve true peaceful coexistence (USIP N.d., 2).

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¹ For the full text of CEDAW, visit http://www.un.org.womenwatch/daw/cedaw/text/econvention.htm
² For the full text of ICERD, visit http://www2.ohchr.org/english/law/kerd.htm
In 2006, however, the Special Rapporteur of the United Nations reported “that there was no intellectual and ethical strategy to combat racism and discrimination, and no efforts had been made to analyse the origins or expressions of racism in the country” (United Nations 2006c, 6). Moreover, Guatemala’s Criminal Code has yet to include a definition of discrimination which is inclusive enough to reflect the various forms of discrimination as indicated by the United Nations: legal, interpersonal, institutional, structural, racial, and ethnic. Without a sufficient definition, the government cannot protect the indigenous population against discrimination and will not successfully fulfill Part A(2) §a of the Agreement calling for the classification of ethnic discrimination as a criminal offense.

As such, the Special Rapporteur illustrated this need in a 2003 report submitted to the United Nations, noting that although the Guatemalan government adopted an amendment to the Penal Code labeling ethnic discrimination a criminal offense, overall progress in combating discrimination remains uneven (United Nations 2003, 9). In 2006, the Committee on the Elimination of Racial Discrimination (CERD) similarly reported that although Guatemala’s efforts reflected progress, the government has not taken sufficient action in promulgating domestic legislation (United Nations 2006b, 3). Interestingly, this report comes just two months after Guatemala reported to CERD that “the prohibition of racial discrimination was enshrined in Guatemalan legislation” (United Nations 2006b, 3).

Ultimately, while the Guatemalan government has fulfilled Part A(2) §a of the Agreement, the United Nations observes that this measure is superficial and the legislation is not in fact a law, nor does it address the eradication of discrimination (United Nations 2003, 9). Additionally, the Special Rapporteur concludes that because this legislation has failed, a review of all existing legislation is needed. Part A(2) §b also expresses this need and “promote[s] a
review by the Guatemalan Congress of existing legislation with a view to abolishing any law or
provision that could have discriminatory implications for the indigenous peoples” (USIP N.d., 2).
The majority of the reforms of the Criminal Code regarding anti-discriminatory measures are in
relation to indigenous women’s rights rather than the indigenous population as a whole. This is
due in part to the lack of compliance with ICERD and the recommendations of CERD. In fact,
until 2006, Guatemala had not submitted a report to CERD since 1999; a fact which is reflected
in the lack of comprehensive documentation holistically representing Guatemala’s indigenous
populations. Nevertheless, some such decrees do exist.

For example, the Act on National Languages (Decree No. 19-2002) “provides for
recognition of and respect for the languages of Maya peoples” (United Nations 2004, 18).
Because a significant percentage of the population speaks only one indigenous language, the
inclusion of such recognition in legislation removes the potential for discrimination based upon
this classification. Similarly, the government reformed the framework agreement of the National
Coordinating Office for the Prevention of Domestic Violence and Violence Against Women
(CONAPREVI) to reflect more inclusive language in its dealings with SEPREM. Specifically,
the framework agreement was altered to indicate equal coordination between organizations as it
“eliminates any wording which might lead to confusion or error as to the existence of some sort
of subordination between CONAPREVI and SEPREM” (United Nations 2004, 20).

The justice system was also reformed to provide increased respect for indigenous rights.
The Code of Criminal Procedure was modified so as not to exclude the indigenous peoples living
in isolated communities, as well as those hindered by difficulties with Guatemala’s
transportation system. In 2003, the Special Rapporteur of the United Nations called on “the
Government to provide access to justice for everyone, and in particular to take measures to
ensure that areas predominantly inhabited by indigenous peoples are able to benefit from access to the legal system” (United Nations 2003, 24). Through the creation of mobile courts decreed in this reform, the indigenous population is granted just that.

Despite the promulgation of new laws and the reform of existing legislation, CERD expressed its concern “at the extent to which racism and racial discrimination against [the indigenous population] is entrenched within the territory of the State party and at the inadequacy of public policies to eliminate racial discrimination” (United Nations 2006c, 2). Additionally, the Country Rapporteur is concerned that “anti-discriminatory legislation [had] not necessarily yielded tangible benefits for the population affected” (United Nations 2006b, 4). Moreover, future legislation has the potential for further indigenous rights violations as outlined in ILO Convention No. 169; the right to be consulted (United Nations 2006b, 4).

The potential for future indigenous rights violations is not limited to the promulgation of new legislation and

the Special Rapporteur wishes to stress the particular responsibility of the mass media in combating discrimination and racism vis-à-vis the indigenous peoples. He recommends that, in the absence of adequate legislation, the mass media should adopt measures for monitoring and self-regulation in order to eliminate all vestiges of racism and ethnic discrimination in their programmes and content (United Nations 2003, 27).

Part A(2) §c asks the government to “widely disseminate information on the rights of the indigenous peoples through education, the communications media and through other channels” (USIP N.d., 2). Dissemination of information in general is problematic, however, as the media continues to display attitudes of contempt and rejection toward the indigenous population and community radio stations are limited in their broadcasting range (United Nations 2006c, 5).

In addition to the problems faced in the dissemination of information through the media, communication through the educational system has met resistance from political and economic groups, despite the efforts of civil-society organizations. The United Nations notes that “there is
still no overall system of intercultural and bilingual education set out in curricula adapted to the language and the needs, values and systems of the indigenous people themselves and effectively reaching schools in small localities,” much like the media (2003, 19). And though primary school enrollment has risen from 72% in 1991, to 85% in 2001, and 92.3% in 2006, only 65.1% actually complete 6th grade (United Nations 2006a, 11; USAID 2003, 17). It is also noteworthy that some indigenous families oppose educational reform, as do those who wish their children be taught only in Spanish, thus disregarding the right to bilingual education.

Despite disparaging attitudes, “this topic is most systematically monitored by the civil-society organizations and is possibly the area in which most interaction and dialogue between them and government institutions have been achieved” (United Nations 2003, 19). Moreover, this dialogue occurred at every level of government, from the national to the local levels. Also, the local level is seeing the production of bilingual teaching materials, teacher training in bilingual education, and the development of a national bilingual curriculum (United Nations 2003, 19). While acknowledging that the previous paragraphs do not explicitly discuss the dissemination of indigenous rights through education, it is important to note that the increase in interest within government structures signifies that not only are bilingual and multicultural education a possibility, but ultimately, indigenous rights education is as well.

Transitioning from dissemination of information to the protection of human rights, the final Part of Section II of the Agreement discusses legal matters and the means with which the government is to protect the right against discrimination. Specifically, Part A(2) §d calls for the promotion of legal offices and free legal services that give special attention to Guatemala’s indigenous peoples. The United Nations commends the Guatemalan government for the rapid rise in the number of available courts in the nation. Civil, criminal, financial, peace, and family
courts more than doubled in number and spread outside the capital boundaries. And, as mentioned in Part A(2) §b, reforms within the Code of Criminal Procedure made allowances for mobile courts available to the most isolated indigenous communities. This proliferation of courts is enhanced by the establishment of the Public Institute for Criminal Defense, the School of Judicial Studies, and a unit for the defense of indigenous peoples within the Office of the Human Rights Prosecutor (United Nations 2003, 13).

However, in the same report, the United Nations observes that despite the expansion of the court system and the government’s attempts at inclusion, it is still too difficult for many the indigenous people to reach their local court houses. Furthermore, judicial officials are accused of maintaining attitudes of prejudice and ignorance toward indigenous customs and beliefs. Additionally, disrespect and corruption are blamed for impeding any advances the court system has made. CERD summarizes that though “progress that has been made in preventing racial discrimination in the administration of justice in respect to indigenous peoples,” the greatest challenge lies “in gaining access to the justice system” (United Nations 2003, 3).

Indigenous women in Guatemala also face great challenges in gaining access to the justice system, albeit their struggle against discrimination is compounded by their gender. Part B of Section II of the Agreement establishes similar guidelines for the defense of indigenous women’s rights and the prevention of discrimination. Subsequently, the Centre for Research, Training and Support for Women (CICAM), “Mujeres Vamos Adelante,” and the Maya Women’s Group, among other women’s groups, prepared a proposal outlining a variety of measures to ensure the protection of women (United Nations 2004, 21).

Within this proposal, sexual harassment and domestic violence are defined as criminal offenses as is mandated in Part B(1) §a. The provision for increased penalties associated with
sexual offenses is also included. And though the United Nations does not report whether this initiative was adopted, it was sent before Congress in 2004 as a draft legislative initiative. In this case, therefore, the Guatemalan government is in compliance with the Agreement.

Strides have also been made toward the realization of the measures articulated in Part B(1) §b. Here, the government is asked to create an Office for the Defence of Indigenous Women’s Rights (DEMI) with the participation of women, which additionally includes social and legal advice services (USIP N.d., 3). CEDAW provides many examples of progress made in this regard, though most reflect the participation of women.

Working alongside the Presidential Human Rights Commission (COPREDEH), DEMI promoted a program supporting the teaching of human rights and awarded grants and scholarships to 30 female students who were about to take the bar examination (United Nations 2004, 14). DEMI gave additional financial support making it possible for three professional women to obtain their master’s degrees in human rights at Rafael Landívar University. Within this arrangement, Rafael Landívar University agreed to offer legal support for cases submitted to DEMI (United Nations 2004, 15).

DEMI also promotes the Programme for the Defence and Promotion of Indigenous Peoples’ Rights and organized seminars for its staff related to indigenous women’s rights in the workplace. They also trained 24 women representing each of Guatemala’s principal linguistic communities. Another project promoted by DEMI is the Project on the promotion and Defence of Indigenous Women’s Rights in which 58 facilitators were trained on the protection of indigenous women’s rights and on the implementation of the Act on the Prevention, Punishment and Eradication of Domestic Violence. These 58 facilitators were then sent out to train women leaders in each of Guatemala’s 24 linguistic communities (United Nations 2004, 15).
Similar programs promoting the training and participation of women do exist outside DEMI, however, and are equally influential within Guatemalan society. For example, the Women in Government Bureau is an agency that promotes women’s participation and “arranged training for 20 women community representatives from municipalities near Guatemala City on such topics as self-esteem, gender, citizenship, voter registration, organization, political impact, decentralization, urban and rural development councils and the municipal code, among others” (United Nations 2004, 10). Here, the Women in Government Bureau collaborated with the government’s Presidential Secretariat for Executive Coordination to produce and disseminate information regarding women representatives within the government.

The Guatemalan government has taken additional steps in regards to social and legal services as articulated in Part B(1) §b; though these efforts fall outside the realm of DEMI as well. The Women’s Consultative Council in the Ministry of Public Health and Social Welfare was formed to facilitate the inclusion of a gender perspective within its programs and to raise awareness of gender equality through gender training of the Ministry’s staff (United Nations 2004, 11). Similarly, within the Ministry of Labour, the National Office for Women’s Affairs worked to amend Guatemala’s Labour Code by integrating a gender perspective into labor reforms and policies. Further, the National Office for Women’s Affairs supported programs with topics ranging from peace-building, to women and democracy, and taught women about agricultural legislation and the importance of the female voice in national dialogue; training accompanied these programs as well.

Education and training are integral components of the aforementioned programs, though dissemination of information regarding such projects and their outcomes is crucial to their endurance in the national arena. Part B(1) §c refers to the need for dissemination, as well as to
the implementation of CEDAW. Discussion of the following program, however, relates specifically to the dissemination of information regarding CEDAW.

The National Women’s Forum is an agency that was established in conjunction with SEPREM under the Peace Accords. It presented the Action Plan for the Full Participation of Guatemalan Women 2003-2006 and has promoted the participation of women in the government’s Development Councils at all levels. It also prepared a training manual on development and planning procedures and on the rights of indigenous women. Additionally, the Forum worked in coordination with SEPREM to disseminate the contents of CEDAW. And, as of 2002, it found initial success in that “95 per cent of the 59 Forum structures in the various regions of the country were set up. A total of 56 assemblies were held in which 1,800 women in leadership positions in the organizations and institutions throughout 21 departments participated” (United Nations 2004, 8).

Describing another success story, CEDAW highlights the Plan of Action 2002-2012 that is being promoted by the Presidential Commission to Combat Discrimination and Racism against Indigenous Peoples of the Peace Secretariat. The primary goal of this plan is to increase the participation of women through three ongoing projects. The project on “Gender equity in the framework of the Peace Agreements,” seeks to contribute not only to the implementation process, but to the democratic process as well. The goals of the project include the strengthening of human rights and increasing participation and political influence based on gender equity and social justice (United Nations 2004, 13). Within two years of the project’s start date, initial progress was made whereby a total of “40 outreach workers and 240 women from the communities have received training in the area of local development and incorporation into municipalities in eight regions” (United Nations 2004, 13).
A second project, the project on “Advancement and gender equity: prevention and protection of women against violence in the framework of police modernization,” was developed within the context of the National Civil Police (United Nations 2004, 13). The Commission’s third project, the National Compensation Programme, carries out projects benefitting the victims of the armed conflict. And similar to the project on “Gender equity in the framework of the Peace Agreements,” the National Compensation Programme has achieved initial success with a total of 2,077 women receiving benefits within the first two years (United Nations 2004, 13).

Despite the previous examples, however, not all attempts at the implementation of CEDAW have accomplished their goals. The Committee on the Elimination of Discrimination against Women (the Committee) notes that there have been no attempts at accelerating de facto equality between men and women. And in June 2006, the Committee expressed concern over the lack of responsibility assumed by the State. Thus,

while welcoming the active role played by the women’s movement to achieve progress in the realization of gender equality and the cooperation between [SEPREM] and women’s organizations, the Committee is concerned that the State party may be delegating some of its responsibilities with regard to the implementation of the Convention to women’s groups and organizations, leading to an imbalance in the interaction between those different stakeholders (United Nations 2006d, 4).

Such an imbalance can cause a lack of commitment by the State and elucidates one factor behind the struggle to implement CEDAW.

The lack of commitment is apparent when considering that even with CEDAW’s commendation of the State’s efforts toward revising discriminatory legislation, the Committee notes that “the domestic legislation is still not in conformity with the convention” (United Nations 2006d, 3). This is attributed to the lack of awareness amongst the legislative bodies and is viewed as an obstruction to the adoption of various reforms.
Another obstacle to the State’s progress is the lack of a comprehensive definition which includes both direct and indirect discrimination. Much the same as in Part A(2) §a regarding discrimination against the indigenous population, an adequate definition of gender discrimination is notably absent within much of Guatemala’s current legislation. Additionally, there is a general lack of awareness reported and CEDAW recommends that the government carry out campaigns promoting the equality between men and women. These awareness campaigns\(^4\) should be directed at “the general public, legislators, the judiciary and the legal profession,” for this would positively influence the potential adoption of legislative reforms benefitting indigenous women (United Nations 2006d, 3).

CEDAW further details that the lack of adequate and accurate documentation is a matter of concern which implicitly hinders the implementation of the Convention. It observes that not all of the recommendations from the Committee from previous reports were included in the government’s most recent submission to the United Nations and that without such documentation, the ability to monitor progress is severely stalled (United Nations 2006d, 2). The Committee also reiterates its concern that the State’s contributions are uneven and that “not all relevant government entities, in particular the legislative and judicial branches, may have been fully involved in the process of elaborating the report” (United Nations 2006d, 2).

In addition to the absence of crucial parties in the reporting process, the Committee communicates yet another concern regarding the shortage of statistical information; particularly relating to indigenous women. In order to improve the government’s data and to more effectively monitor the progress of CEDAW’s implementation, the Committee suggests that the

\(^4\) As mandated in Section II Part B(2) of the Agreement, CEDAW also recommends that the media assist in such awareness raising campaigns; particularly relating to equality in education and the elimination of sexist roles and stereotypes (United Nations 2004).
State modify its data collection processes to disaggregate by sex (United Nations 2006d, 7). The Committee views this as one measure to enhance policy and program development. Moreover, the long-term potential for such data would positively impact the State’s ability to accurately assess the advances made in terms of women’s rights.

Nonetheless, even with insufficient statistical data, CEDAW is able to account for perhaps the most critical situation affecting indigenous women in Guatemala. “The Committee is deeply concerned about the continuing and increasing cases of disappearances, rape, torture and murders of women, the engrained culture of impunity for such crimes, and the gender-based nature of crimes committed, which constitute grave and systematic violations of women’s human rights” (United Nations 2006d, 4). At the root of this is the State’s inability to thoroughly investigate crimes, which cultivates continued impunity in the country. Without criminal punishment, impunity deters victims and their families not only from reporting crimes initially, but also dissuades participation in their investigations; all of which precludes the government’s capacity to provide sound statistical data (United Nations 2006d, 4).

The dearth of statistical data observed by CEDAW is not reserved to the documentation of women’s rights alone. CERD notes that “the statistics in the State party’s report on the country’s indigenous peoples are incomplete and that the State party does not keep statistics relating to the population of African descent. The Committee recalls that such information is necessary to assess how the Convention is implemented in respect of these groups” (United Nations 2006c, 2). As previously discussed, however, the Guatemalan government had not submitted a report concerning ICERD in 7 years. This illustrates a problem even greater than inaccurate statistical data as Part C of the Agreement mandates compliance with ICERD and the approval of ILO Convention No. 169.
In CERD’s May 2006 report, it acknowledged that despite the seven year delay from Guatemala, the government had made progress in respecting indigenous rights. One such advance is the creation of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA). Additionally, the government has initiated attempts to legally recognize bilingual education, indigenous dress in schools, traditional indigenous authorities, and the indigenous legal system (United Nations 2006c, 2). But perhaps the greatest achievement is “the promulgation of the Framework Law concerning the Peace Agreements by which the Peace Agreements, and in particular the Agreement on Identity and Rights of Indigenous Peoples, become binding on the State” (United Nations 2006c, 1).

Apart from the positive aspects noted above, and in addition to the previous discussion of the implementation of Section II Part A, CERD makes yet another request pertaining to discrimination. The Office of the Human Rights Prosecutor investigates offences involving discrimination and racism and noted that out of 79 cases, one resulted in a conviction (United Nations 2006c, 5). The request in this case was for an explanation as to why there was only one conviction. Further, CERD conveyed its desire for statistical data regarding any and all cases brought before the Office of the Human Rights Prosecutor, as well as detailed information regarding cases of racial or ethnic discrimination, the subsequent proceedings, and their outcomes. This information is requested to be included in the government’s next periodic report submitted to CERD, provided that the government is willing to do so.

What is more, both the Committee and CERD communicate the need for the Guatemalan government to adhere to the standards set forth in ILO Convention No. 169. Section II Part C(3) of the Agreement specifically asks the government to promote and facilitate the approval of this
Convention by Congress. As such, ILO Convention No. 169 was ratified by the Guatemalan government in 1996.

Since its ratification, the government has acknowledged various recommendations made on behalf of CEDAW. For example, the Department for the Advancement and Training of Working Women set up a system near the capital for complaints of violations of labor statutes within the maquila industry. The maquila industry in Guatemala was introduced as a USAID development program in the 1970s because it was not a perceived threat to the landed elite (Petersen 1994, 270). By the end of the 1980s, the maquila industry gained massive appeal, predominantly to women, as it promised stable employment. As the industry grew at increasingly rapid rates, so did the migration of women to Guatemala City. Within the last decade, however, the work force has grown to include men and women alike.

The principal function of the maquila worker is to efficiently manufacture clothing in any of its various stages of production. The factories prioritize investment and high production rates rather than emphasizing the health and safety of its employees and “critics argue that this ‘employment option’ is a contemporary form of servitude in which fourteen-year-old girls work fourteen hours a day for a pittance” (Petersen 1994, 269). Of the complaints given to the Department for the Advancement and Training of Working Women, the most common was dismissal due to pregnancy, which is in violation of ILO Convention No.100. Other violations involve mandatory overtime, mass layoffs, and illegal wage deductions (United Nations 2004, 38). With regards to wages, however, CEDAW noted in 2004 that the National Wage Commission had increased minimum wages by 16 percent from 2002 to 2003.

Outside of the maquila industry, however, various enterprises experience gross violations of ILO Convention No. 169. Within the mining industry, CERD noted that the Ministry of
Energy and Mines granted licenses to concession enterprises without consulting interested indigenous peoples. These concession licenses refer to the subsoil of an indigenous territory, and for this reason, the Ministry of Energy and Mines is in direct violation Article 17 Number 3, in which the language articulates prevention rather than exploitation.

In this same case, CERD “expresses its concern at the draft legislation on consultative procedures which, if adopted, would infringe indigenous peoples’ right to participate in decisions affecting them” (United Nations 2006c, 4). The infringement upon the right to participate goes against Article 6 Number 1(a) whereby “Governments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative of administrative measures which may affect them directly” (ILO 1989, 3).

The ILO documents a similar instance in which the government has ceded lands originally sold to an indigenous group. The Izábal Exploration and Mining Corporation (EXMIBAL) began exploratory mining for nickel and other minerals in the territory of the Maya Q’eqchi, though the government claims that this community does not in fact own the land (ILO 2008, 695). The ILO recommends that the government and EXMIBAL respect Article 15 of the Convention and engage in communication prior to actions regarding such lands. They further suggested conducting environmental impact studies, providing compensation if deemed appropriate, and establishing a stream of communication through relevant organizations so as to ensure straightforward dialogue in future interactions (ILO 2008,695). As with the recommendations by CERD in the previous matter, documentation reflecting all parties’ efforts is anticipated, though the outcomes remain to be seen.
Conclusion

A review of Section II of the Agreement provides valuable insight as to where, and why, the State has struggled to implement the accords. Generally speaking, monitoring reports conclude that the government is corrupt, inefficient, weak, and it not only permits, but facilitates a culture of impunity. More specifically, the COHA reported that “power and money can buy immunity from the law, as is the case with former dictator General Efrain Rios Montt’s efforts to become a congressman in order to avoid prosecution for his role in the deaths of tens of thousands of Mayans” (2007, 3). Additionally, “many Guatemalans do not even bother voting because they feel disenfranchised by the system and are tired of hearing empty promises by shallow (presidential) candidates, whose only desire is to selfishly reach the potentially personally lucrative office of the presidency” (COHA 2007, 3).

Corruption was also seen in regards to the judicial system as it relates to both indigenous women, and the indigenous population as a whole. The Committee and CERD expressed concern over the inherent corruption of judicial officials and in the difficulties in gaining access to justice. Attitudes of contempt are pervasive and permeate not only the justice system, but the media as well.

The media was considered an integral tool in the dissemination of indigenous rights, and the measures articulated in CEDAW and ICERD. However, limitations prevented substantial circulation in this regard. Other limitations manifested themselves in the State’s inability to collect and provide adequate and accurate statistical data, which partially explains the uneven approach to implementation of the Agreement. The Guatemalan government consistently portrayed an optimistic picture of its progress in protecting indigenous rights, while the Committee, CERD, and the ILO alike communicated an environment in which the government
struggled to make any progress. And while every Committee commended the government’s
efforts in some regard, they also noted the inadequacies.

With a government unable to protect its most vulnerable citizens, the question remains as
to what should be done to properly ensure social equality and a life free from discrimination. To
attempt to answer this question, Chapter 4 will consider two indigenous organizations operating
on the local level. Having identified the primary flaws within the government’s ability to
implement the Agreement at the national level, Chapter 4 will identify where such organizations
have stepped in to act as intermediaries and how this relationship has influenced the realization
of indigenous rights.
CHAPTER 4
INDIGENOUS RIGHTS IN THE LOCAL CONTEXT: CONAVISGA AND FUNDACIÓN SOLAR

Introduction

Guatemala’s 1996 Peace Accords are an attempt to rectify the injustice and discrimination inherent in Guatemalan society. The Guatemalan government, however, has continually displayed a general disregard for the well-being of the indigenous majority as evidenced in its uneven approach to the implementation of Section II of the Agreement. Through an examination of the struggle against discrimination, Chapter 3 highlighted several factors contributing to the government’s seemingly complacent attitude. In addition to the corruption and ineffectiveness of the State in implementing the accords in their entirety, other sources, such as inadequate documentation and the lack of compliance with CEDAW, ICERD, and ILO Convention No. 169, were also revealed.

Though implementation at the national level has proven to be challenging, the need for success remains urgent. The interests of the indigenous population are not reflected within national policy because “the government tolerates the indigenous presence to an extent, allowing some policy implementation yet maintaining its decision-making power and responsibility” (Cojtí Cuxil 2007, 130). As such, USAID claims that “the starting point is at the local level, building on the finding that municipal governments generate a higher level of confidence among Guatemalans than any other government institution” (2003, 6).

This is due not only to the increase in indigenous representatives at the municipal level, but also to local government’s willingness to act in coordination with NGOs that reflect the interests of the community. For, “a strong civil society, which includes NGOs and other non-state entities, can complement the larger municipal governance system and is necessary for the democratization of local governments” (Keese and Freire Argudo 2006, 115). Therefore, focus
will now shift to the consideration of the local/municipal government and its relationship with NGOs operating at the local level; specifically the Foundation and CONAVIGUA.

Chapter 4 will not only address the issue of discrimination, but also poverty\(^1\) as a result of social and economic exclusion. Here, the Foundation and CONAVIGUA have initiated programs with sole purpose of creating an equitable, yet sustainable, lifestyle for certain segments of Guatemala’s indigenous peoples. In fact, CONAVIGUA played a crucial role in the negotiation of the Peace Accords and in recent years, has continued to utilize its political power in the promulgation of new legislation designed to benefit the nation’s poorest inhabitants. And though this organization was formed with the goal of aiding Mayan widows, it has grown to provide assistance to those with the greatest need, regardless of gender or ethnicity.

The Foundation, on the other hand, maintains a primarily local residence with a focus on the indigenous population in general, as well as on income-generating activities. Through the development of various projects and cooperatives, the Foundation has facilitated not only an increase in earnings, but also, a sense of empowerment, participation in economic spheres, and knowledge production and dissemination. An examination of both the Foundation and CONAVIGUA will reveal the processes by which these achievements have been realized.

**Non-governmental Organizations and the Government in the Local Context**

In recent decades, there has been a shift away from large government projects to community-based development projects through smaller NGOs.\(^2\) The role of NGOs in local

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\(^1\) Poverty rates have almost doubled since the early 1990s. Booth et al. (2006) report poverty levels at 28.5% in the early 1990s and 25.1% by the late 1990s. The United Nations reports poverty level in 2000 at 56.2% and at 57% in 2006.

\(^2\) Microcredit, or microfinance, organizations also attempt to combat poverty and inequality by providing small loans with substantially lower interest rates than larger banks to underrepresented segments of the population in developing countries. For more information on microcredit organizations, see the *Council on Hemispheric Affairs.* As it relates to Guatemalan women, see website [http://anti-poverty-activism.suite101.com/article.cfm/microcredit_helps_guatemalan_women](http://anti-poverty-activism.suite101.com/article.cfm/microcredit_helps_guatemalan_women), or for links to microcredit organizations throughout the world see website [http://www.microcreditsummit.org/weblinks.htm](http://www.microcreditsummit.org/weblinks.htm).
communities varies widely, however, as they provide financial support, training and education, and help build and maintain relationships between local non-state actors and the government. The debate remains as to whether a top-down or bottom-up approach is more effective despite the fact that numerous studies have documented the failure of top-down, interventionist projects to bring sustainable and meaningful change to populations in developing nations. Since the 1980s, large international donors have relied increasingly on NGOs instead of government agencies to administer development aid. This shift arose out of a critique of large government administered development projects that failed to take local realities into account. Often idealized as independent of the state, politics, and the market and therefore free to provide strictly humanitarian aid to those in need, NGOs have been almost universally embraced as a local, community-based solution to the ineffective top-down projects of the past (Blue 2005, 101).

The ineffective nature of the top-down model is caused in part by the lack of consideration for local interests and indigenous representation within the legislative branch of the government. Demetrio Cojtí Cuxil argues that “because institutionalized mechanisms do not exist for the appointment and representation of indigenous nations and communities, indigenous officials are selected based on their indigeneity,” rather than on merit (2007, 133). Moreover, since the signing of the Peace Accords in 1996, the number of indigenous delegates elected to Congress has remained relatively constant representing 7.6%, 11.5%, and 7.6% of the total number delegates over the last three elections (Cojtí Cuxil 2007, 134).

Indigenous representation at the municipal level (i.e. mayors), however, has increased steadily by 1% over the last three elections with the current number of indigenous mayors being 119 (35.95%). Though only by a small margin, the increase is a promising sign despite the relative absence of power. NGOs help to fill this void and “act as intermediaries, providing links between governments, donors, other NGOs, and local communities” (Keese and Freire Argudo 2006, 115). Moreover, “there is a common expression that all politics is local. . . . and there is an increasing need for effective municipal government” (Keese and Freire Argudo 2006, 114).
For NGOs and municipal governments to be effective, a solid foundation must be in existence. NGOs act as agents of communication between actors at all levels, while providing the basic infrastructure needed at the local level to carry out their projects. Organizations such as CONAVIGUA demonstrate how fostering relationships between government institutions and community needs influences structural change and policy implementation while the Foundation exhibits how training provided by NGOs and capacity building promises sustainability. For, “NGOs have captured considerable institutional space as governments restructure, scale down services, or simply fail to meet the needs of marginalised groups within society” (Keese and Freire Argudo 2006, 115).

La Fundación Solar

San Juan La Laguna

The Foundation is an NGO based in Guatemala City, though it maintains offices locally in San Juan La Laguna, a town with 3,000 inhabitants sandwiched between San Pedro and San Pablo on the southern edge of Lake Atitlán in the western highlands of Guatemala. The people of San Juan, or juaneros, describe their town as safe and tranquil though they express a desire to invite an increase in tourism to the area. Their challenge lies in maintaining a balance between the perceived sense of tranquility and the influx of tourists for this has proven difficult in neighboring towns like Santiago Atitlán and San Pedro la Laguna. Santiago is being overrun by tourists and traditional subsistence activities are being replaced by jobs in the service industry and the production of handicrafts.

The problems faced by the people of San Pedro represent even greater challenges. Here, the constant presence of tourists from Europe and the United States has led to the Evangelism of the local population. San Pedro, like San Juan, is overwhelmingly Catholic though missionaries
and Evangelical ideologies are invading the traditional belief system and *juaneros* fear that with greater tourism in the area, this may spread to the town of San Juan.

In addition to religious concerns, *juaneros* fear the spread of the drug culture which plagues San Pedro. The tourist infrastructure in place in San Pedro, however, far exceeds that of San Juan and San Pedro has become a popular destination for those primarily uninterested in the cultural attractions in the area as tourists seek the easy and constant access to the drug trade. Unfortunately, access to drugs is not reserved for tourists alone and the youth of San Pedro are being adversely affected. This is not to say that *juaneros* do not have access to the same drugs, rather San Juan simply cannot support the same expansive tourist presence.

Because of the growth in drug related issues, crime and violence have also increased. Most crimes occur as robberies though, according to *juaneros*, violent attacks have become more common. Violence is yet another concern for *juaneros* for the town is flanked on either side by towns that are notorious for crime. The increase in crime in San Pedro is attributed to tourism but crime in the town of San Pablo (directly north of San Juan) extends from higher levels of poverty. All *juaneros* that I interviewed expressed a general sense of apprehension in regards to travel through San Pablo fearing robbery or some form of violent attack, even in the daytime. Their poverty has created a desperate society and some *juaneros* also fear that sentiments as such may spread to San Juan.

The examples set by neighboring towns have determined the path that *juaneros* are following in regards to inviting greater tourism. Working closely with the Foundation is permitting ownership in the process and the inclusion of all that live in San Juan. Making determinations with the interest of all *juaneros* brings hope that San Juan’s peaceful nature will remain intact.
Fundación Solar

Due to its relative size, San Juan lacks a major tourist infrastructure. For this, the mayor's office and the juaneros have begun working more extensively with neighboring towns and NGO's to help increase the tourist flow to the area. This will be accomplished by utilizing their resources in ways that will not only draw attention to the area, but that will also help teach the juaneros how positive exploitation of such resources can help preserve their culture.

The Foundation focuses its projects in the geographic region located in the southern watershed area of Lake Atitlán; including the municipalities of San Juan, San Pedro, Santiago Atitlán, and San Lucas Toliman. In order to design their projects, it has conducted extensive polling of the local people in order to learn what is most important to them; and have started with what is most feasible. The Foundation will not consider a project that has come from an outside source, as one of their primary goals is to help the people of this area learn about and preserve their natural habitat, and not to impose someone else's ideals on them. One common theme in all of their projects is education, for they believe that if the people do not understand what they are being asked to do, they are less likely to commit to it long-term, if at all (personal communication with María, June 10, 2005).

The Foundation’s vision, according to its annual publication Memoria, is "to contribute to the construction of a society that respects its natural and cultural heritage, and which all individuals participate in the region's social and economic development--with equal opportunity regardless of their sex, class, or ethnicity" (Fundación Solar 2002:2). Their mission is "to promote renewable energy services, environmental services, and water and energy policy and legislation, energy and the environmental, in order to support economic and social development that is compatible with a sensible management of the environmental” (Fundación Solar 2002, 2).
These articles are noteworthy for the fact that the language utilized herein reflects that of the Agreement.

**Projects and Main Objectives**

In general, the Foundation’s projects range from reforestation, to recycling and garbage programs, painting cooperatives, midwifery programs, and weaving cooperatives. In the neighboring town of San Pedro, the Foundation’s reforestation project asks local tour guides to voluntarily plant trees, along with native plants, in order to prevent erosion on the San Pedro volcano, thus protecting local farmland. And, though most tourists do not venture far from the path, combating erosion is a constant struggle due to the high volume of rainfall in the summer months (personal communication with María, June 10, 2005).

The Foundation has also worked with the NGO, Vivamos Mejor, in a limited manner, with regards to ecotourism in the area. The proposed plan between the two NGOs was to construct an ecotourism trail from the town of Santa Clara down to San Pedro. The mayor, however, decided that San Juan would not be a participant in their plans for the reason that he wishes to concentrate on the Foundation’s more local projects; including work with local midwives, and in the more remote areas, the development of a solar energy project (personal communication with María, June 10, 2005).

The Foundation is perhaps most enthusiastic about their upcoming project involving a new system of waste management. Rather than throwing garbage into the streets and exacerbating the spread of disease, people will be asked to pay Q1 (approximately US$ 0.125) for garbage removal which will in turn be brought to a new processing plant. Some will be recycled, whereby the remainder will be converted into fertilizer to be given to local farmers at a greatly reduced cost (Fundación Solar 2002, 3). The Foundation maintains numerous other small
projects in the area, though the focus here will be on the cooperatives working with local painters and weavers; Xokomeel: Arte Maya and Lemá: Tinta Natural.

**Xokomeel: Arte Maya**

In 1998, after two years of public meetings held by local painters in San Juan, Xokomeel: Arte Maya became an organization officially recognized by the Guatemalan government. With financial help from the Foundation, Xokomeel’s projects and objectives were legalized and an internal infrastructure was established. The painters determined that in order to become a member, the artist (painter) must be from San Juan and contribute for one year (personal communication with Roberto, June 28, 2005). Once a member, elections are held every two years to determine who will occupy the organization’s various hierarchical positions. And though the Foundation helped to facilitate the establishment and legalization of Xokomeel, it does not have a voice regarding internal matters (personal communication with Eduardo, June 18, 2005).

An integral role that the Foundation does play involves arranging local and regional exhibitions. Local exhibitions most often occur during July and August when the area experiences greater tourism. During these months, each painter will bring a pre-determined number of pieces to a specific gallery signaled by murals of the actors with traditional and historic themes of the Tz'utujil culture. Regional exhibitions, however, do not occur as often; perhaps twice a year. This is due to the difficulty in traveling long distances to reach the departmental capitals most often visited by tourists, and those with the largest regional markets (personal communication with Roberto, June 28, 2005).

In addition to sales and fostering increases in artists’ monthly earnings, the Foundation, along with Xokomeel, seeks to realize the following objectives: the preservation of traditional Tz’utujil Maya culture and its subsequent transmission to future generations, the preservation of
communal/indigenous memory through art representative of traditional Tz’utujil themes, and the empowerment of the local indigenous community. For, in addition to generating income and improving quality of life, empowerment is seen as a tool with which the local population is able to maintain the elevation of their socio-economic standing (personal communication with María May 29, 2005).

**Lemá: Tinta Natural**

According to the current president of Lemá, the process of natural tinting and weaving had been in practice long before the Foundation initiated communications. Each of the women currently working with Lemá had been independently working and selling from their homes, but began open discussions with Katie, a Mexican master’s student, and the Foundation in 1999. Together, they outlined Lemá’s vision, mission, and overall goals and objectives with additional financial assistance from the Foundation with regard to the legalization process.

Though many decisions, such as choosing the name, are made through a democratic process, there is a hierarchical organizational structure in place. The highest position, and one that is held with great honor, is that of president. They continue to rank in order from president, vice president, secretary, and treasurer, to the accountant who handles all bills and sales. These positions are decided in elections held in September every two years where only the active members meet in a general assembly to vote. Most of the women see these positions as an honor and a duty, for the art of tinting and weaving is a tradition shared across generations.

As of July 2005, there were 22 officially inscribed women, with only 18 being active. In order to become a member the women must undergo a three-month trial period. During this trial, the women are required to assist with meetings, tint hilo, or yarn, (the most difficult part of the

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3 All information regarding Lemá, its members, and its activities comes directly from personal communication with Rosario, the President of Lemá (June 30, 2005).
tinting process), and work without pay. Once this period is complete, it is then decided whether the individual will be inscribed or whether they must undergo an additional trial period; if they are wanted at all.

In recent years, Lemá has evolved into a self-sufficient organization due in part to the addition of "designers" that work with the Foundation. The role of designer is crucial to the success of Lemá for they are responsible for introducing new colors, patterns, and products from around the world which help the women of Lemá to see through the eyes of a tourist. This new creative knowledge allowed Lemá to become more successful, which in turn led to greater sales, and justifies working without pay during the members’ trial period.

In addition to introducing the role of designer, the Foundation is responsible for increased visibility. In November 2004, the Foundation invited 20 associations from all over Guatemala to take part in an exhibition in Guatemala City for two days. Here, Lemá sold hilo from throughout San Juan, as well as plants used for a variety of steps in the tinting process. They placed third out of 20 associations and gained not only international recognition, but greater confidence as well. In its success, Lemá now has stores in San Juan, Quetzaltenango, Panajachel, Antigua, and Guatemala City, and tourists arrive from throughout the country just to visit their store.

**CONAVIGUA**

*Background*

CONAVIGUA is a popular organization composed of Mayan women, formed during the war in the mid 1980s. Widows met through Church activities or “while making denuncias to the military or while working on the fincas” (Schirmer 1993, 50). Its purpose is to fight against injustice, discrimination, and poverty not only for women, but for the Mayan population as a whole. Their programs range from construction of homes for poor women, widows, and victims of the armed conflict, to health education and literacy. CONAVIGUA’s vision is to “work for
justice, equality, and a true democracy in [their] country, with a national and international
presence;” all of which represent rights articulated throughout the Agreement (CONAVIGUA
2008).

CONAVIGUA sees their organization’s history as encompassing three main time
periods; 1989-1992, 1993-1996, and 1996 to the present. Before this first time period, however,
CONAVIGUA was in its initial stages of organization and communication with Mayan widows
throughout the country. Beginning in 1985, they sought to denounce poverty, repression, forced
disappearances, and rape, among other human rights violations, and in the following years, the
organization matured, striving to define its goals. The widows demanded “their dignity be
respected, as women and as widows who are struggling against the many abuses present in their
lives, to fight against the abuse, rape and exploitation they suffer at the hands of the military”
(Schirmer 1993, 52).

1988 marked the start of negotiations in the peace process, in which CONAVIGUA was a
participant. This year is also significant because it signifies the point when the organization was
formalized and when members adopted a constitution. Concurrently, CONAVIGUA defined its
purpose in the national arena with respect to the fight against social and economic exclusion,
sexual violence, and persecution. In 1992, CONAVIGUA commemorated the 500th anniversary
of the conquest, as well as set out on an international tour promoting their work against
militarization (CONAVIGUA 2008).

In its second phase, CONAVIGUA increased its presence both nationally and
internationally, to press for the recognition of human rights and to fight against Guatemala’s
forced military recruitment. Members gathered tens of thousands of signatures in order to bring
a bill before Congress condemning the government’s discriminatory practice of military
CONAVIGUA considers this to be a groundbreaking event for the fact that men and women fought alongside each other and, what is more, they demonstrated the power of peaceful resistance rather than military might (CONAVIGUA 2008).

CONAVIGUA (2008) discusses the third and final phase as the time period occurring since the signing of the Peace Accords. Although the organization had already established itself as an internationally recognized political actor, it sought to expand its campaigns to include the promotion of sustainability initiatives regarding handicraft production and education. Today, CONAVIGUA (2008) defines its agenda as encompassing the following: full respect for human rights, demilitarization, training and participation in policy decisions and legislation, and the improvement in women’s economic situation.

**Projects and Main Objectives**

In order to promote the participation of women, CONAVIGUA notes that it is imperative to develop and strengthen partnerships with local as well as regional organizations which also encourage training and leadership of women in local, regional, and municipal forums. Further, CONAVIGUA calls on organizations to promote education and to “support local structures in the formulation and promotion of proposals to address the immediate needs of women in their communities” (2008).

One such need lies in the lack of adequate housing due to structural discrimination within the government’s housing department. In addition to the displacement suffered during the armed conflict, CONAVIGUA observes that Q’eqchi women in the department of Alta Verapaz also suffered from the devastation of hurricane Mitch. CONAVIGUA’s project *Techo Mínimo* thus far has provided 101 families with construction materials so that they may construct homes which meet the most basic requirements.
Another project undertaken by CONAVIGUA aims to improve minimal health standards in the department of Chimaltenango by providing the materials necessary to construct a drainage system diverting sewage away from homes. This will not only help to deter odor and the increase in the number of disease spreading insects, but will also prevent chemical contamination of water supplies enjoyed by humans and animals alike. Moreover, health and hygiene awareness among youth will be promoted.

CONAVIGUA also seeks to raise awareness regarding education and training programs available to women, and to disseminate information regarding the goals of the organization and of indigenous and women’s rights. Through the development of a Comprehensive Plan, CONAVIGUA endeavors promote a familiarity with human rights discourse and how racism and discrimination are aptly defined and applied in the context of local organizations. To achieve this, the organization recognizes the need to support women’s access to training and literacy programs and has instituted a project designed to target widows and orphans in the department of Chimaltenango and surrounding rural areas.

**Conclusion**

An examination of CONAVIGUA and the Foundation reveals that although the Guatemalan government has not been able to fulfill its duties in implementing the Peace Accords and protecting indigenous rights at the national level, organizations operating at the local level are capable of defining and defending their own agendas. Even though the Foundation promotes economic objectives, San Juan’s cultural heritage remains intact. The community is responsible for communicating their needs on a much smaller scale, which has proven to be effective in this regard.

CONAVIGUA, on the other hand, has adopted a different approach. The organization implements programs on a local level, eventually spreading throughout the country. Here, the
goals are embedded in education, literacy, and a palpable desire for equality. Moreover, CONAVIGUA has aligned itself politically at all levels of participation and encourages the same for the indigenous population. “As pre-literate, rural women, with some previous community- and religious-based organizing . . . CONAVIGUA represent[s] the new kind of popular forms of resistance by women arising in Central America over the last fifteen years which cross both class and ethnic boundaries” (Schirmer 1993, 57). Their plight has demonstrated that working from the ground up can prove more effective in achieving recognition of indigenous rights in the long term.

But, is seeking implementation at the local level as effective for all communities? Chapter 5 will compare and contrast the methods undertaken by actors at the local, national, and international levels. Through the identification of specific inadequacies within the Guatemalan government and their inability to realize the objectives of Section II of the Agreement, the potential pitfalls for future implementation have been exposed. Moreover, this has revealed where the local community, as well as international monitoring bodies and donor organizations need to intervene in order to ensure that the protection of human rights will be enforced.
CHAPTER 5
CONCLUSION

Implementation of Guatemala’s 1996 Peace Accords can be described as variable at best. The Agreement, on the other hand, can best be described as pending implementation. An ineffective state and a lack of urgency on the part of past governments are often to blame. This is attributed to any number of factors ranging from inadequate funding, to corruption, impunity, the strength of oppositional forces, and even difficulties due to the diversity inherent within the indigenous populations. MINUGUA observes that the government is not fully committed to implementing the Agreement and, furthermore, the United Nations notes that “this suggests that the change proposed in the Peace Agreements has not been addressed and that the exclusive and monocultural model persists” (United Nations 2003, 8). This stands in direct opposition to the mandates declared in the Agreement for the United Nations, USAID, Amnesty International, and MINUGUA acknowledge the multilingual and multicultural aspect of Guatemalan society.

“The exclusion of the indigenous peoples from their roles as citizens has been a characteristic feature of the political structure of Guatemala since colonial times and throughout the life of the Republic” (United Nations 2003, 16). Demetrio Cojtí Cuxil (2007) argues that the refusal to accept indigenous nations as equal to the ladino minority is based on centuries of failed attempts at cultural assimilation not only of the Maya population, but of the Xinca and the Garifuna as well. And, “as a result of the sociological application and reproduction of this 500-year-old ethnic-racist paradigm, the Guatemalan state remains mono-ethnic or ethnically creole-ladino in all of its dimensions” (Cojtí Cuxil 2007, 126).

The growing ethnic awareness in recent decades, however, has aided the indigenous populations throughout the region in attaining knowledge, as well as capital, from international NGOs who have vowed to defend human rights in Latin America (Ramos 2002). In addition to
increasing awareness, Demetrio Cojtí Cuxil proclaims that the implementation process would be more efficient if the government were to engage civil society. Nonetheless, as the evaluation of the degree of implementation of Section II revealed, the government continues to be plagued by rampant violence, ineffective leaders, and a general lack of consideration for the development of an equitable state.

The violence and continued impunity hinder the justice system, for not only are courts difficult to access, officials are unwilling to guarantee the safety of the victims and their families. This obstructs the data collection process and further hampers the accurate reporting of such crimes. Without adequate data, it is difficult to assess where assistance is needed most, despite the measures allowed the Guatemalan government through international conventions.

The Agreement provides ample tools in the form of ICERD, CEDAW and ILO Convention No. 169 outlining the means with which the government could effectively protect its indigenous peoples. However, as each convention noted, there is a notable absence of accurate data, and, moreover, a general lack of dialogue between government entities and the Committees associated with such Conventions. Section II Part B of the Agreement, which deals with women’s rights, is the case in which the greatest progress has been made. Numerous laws have been promulgated within Congress and the government has acted in concordance with the Agreement in the installation of DEMI. But, as is all too common, for every gain, there are innumerable regressions and such legislation has had little effect within the government.

The United Nations laments that despite the proliferation of commissions, committees and ombudsmen, progress in dismantling ethnic and racial discrimination at the institutional level has been slow. Underlying this situation is the structural discrimination against the indigenous peoples which is founded on the historical mechanisms already referred to, by means of which the indigenous peoples were excluded from access to economic, political, and institutional
resources they needed in order to live on equal footing with the remainder of the population (2003, 10).

However, historical exclusion is not the only factor impeding the successful implementation of the Agreement. Viewing the Peace Accords as a panacea is problematic for, as anthropologist Brent Metz argues, there is great variation amongst Guatemala’s indigenous peoples. Such variance has led to varying agendas within indigenous organizations and, subsequently, to the increased susceptibility to corruption, and coercion by non-Maya political groups (Montejo 2002).

In the case of the Ch’orti’ of eastern Guatemala, Metz claims that they do not accept representation from any of the parties involved in the negotiation of the Peace Accords. Distrust runs rampant and “despite the Peace Process, Ch’orti’s remain alienated from the concept of a singular Guatemalan nation” (1998, 331). Moreover, terminology generally associated with the Maya of the western highlands “such as ‘culture,’ ‘marginalization,’ ‘ethnic,’ ‘cosmovision,’ ‘nature,’ and ‘human rights,’ not to mention western Maya concepts such as ‘heart of sky’ and ‘Maya Priest,’ were alien to most participants” (Metz 1998, 337). In this sense, the Ch’orti have maintained a level of autonomy from the Pan-Maya movement due to a different belief system.

Some degree of local autonomy within indigenous communities has always existed and Deborah Yashar states that “the politicization of ethnic cleavages and the motive for organizing resulted from the shift in citizenship regimes and the challenge to local autonomy that ensued” (2005, 55). This shift is most notably seen in the 1970s as organizations, such as the CUC, formed to protect indigenous lands being encroached upon by the State. In the years since the signing of the Peace Accords, the politicization of indigenous communities is seen not only

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1 For more information regarding the Pan-Maya movement, see Warren and Jackson (2002), Arias (2006), and Cojti Cuxil (2007).
through the Pan-Maya and *popular* movements, but through increased social activism\(^2\) in general.

Booth et al. discuss this increase in activism whereby

Central American citizens in 2004 engaged more in civil society activism where both political repression and economic risk (indicating a relatively insecure investment climate) were higher. This highlights the importance of organizations to those operating in Central America’s more unstable political and economic environments. It likely reflects a strategy of citizens in turbulent politico-economic contexts to pool efforts and share risks in pursuit of their interests in diverse social and economic arenas (economic, communal, religious, and civic) (2006, 153).

Moreover, increased participation was seen where the political environment allowed freedom of expression and access to education; factors which are said to be controllable by elites and the government itself thus determining the degree of citizen participation (Booth et al. 2006).

The uneven political opening experienced in Guatemala partially explains why unified political organization has not occurred; rather, there are competing ideologies driving indigenous organizations throughout the country. As previously discussed, NGOs and indigenous organizations operating on the local level have met success, though any sense of universality remains obscure. Generally speaking, ethnic bonds have been strengthened in the last decade and for this, Deborah Yashar pronounces that “where autonomy was possible, ethnic cleavages were weak. Where autonomy was subsequently challenged, ethnic cleavages became more salient” (2005, 54).

The Zapatista movement in Chiapas\(^3\) is an example of how the threat to autonomy can unite ethnic communities. “Our autonomy doesn’t need permission from the government; it already exists. That’s why the government no longer wants laws that permit pluricultural society to thrive” (Speed 2008, 38). In this case, it wasn’t the challenge to autonomy as described by

\(^2\) For information regarding activism in Central America, see Booth et al. (2006). For information regarding indigenous activism, see Yashar (2005).

\(^3\) For more information regarding the Zapatista movement in Chiapas, see Speed (2008).
Yashar, it was the failure of the Mexican government to recognize it. One Zapatista leader articulates that “what we want is to defend our own rights. That’s what we mean by ‘assuming our own defense.’ It is part of our autogestión. If someone else is always defending our rights, that’s fine, but we aren’t living our autonomy” (Speed 2008, 137). Much the same as is found within the Pan-Maya movement, it is the desire to defend their own rights that defines the movement. However, the same unilateral approach adopted by the Zapatistas is notably absent in Guatemala and for some, such diversity and disorganization absolves the government from a certain level of responsibility.

However, the Peace Accords are designed to serve as a guide to be utilized by the government in constructing a fairer society. Herein lies the utility of organizations like CONAVIGUA and the Foundation. For,

numerous Mayan organizations have emerged on the fringes of the government machinery and take action and pursue programmes and projects in areas such as intercultural education, spirituality, defence of human rights and economic and social development. As a result of their own efforts, these civil organizations have achieved high levels of participation and considerable impact on social life in Guatemala (United Nations 2003, 18).

As articulated by Víctor Montejo (2002), only Guatemala’s indigenous peoples can define their rights. Perhaps this explains the success of CONAVIGUA and the Foundation. And though these organizations operate in different capacities, the key is that their programs come from the ground up and allow the community to feel that their contributions are genuinely benefitting their families, and their community as a whole.

The Foundation draws upon the natural and cultural resources of San Juan and the surrounding area in order to define their projects. Understanding the importance of empowerment for the maintenance of their projects, the Foundation serves only to offer guidance when needed. The success of their projects not only provides additional income, but allows this
indigenous group to act within Guatemala’s non-indigenous society. CONAVIGUA facilitates the same interaction through literacy and health campaigns and seeks to stand on equal ground with (non-indigenous) men. The women of this organization have been fighting for equality and a life free from discrimination and poverty since the mid 1980s. Their success is due in large part to their ability to effectively and persistently communicate their demands. CONAVIGUA demonstrates how this communication, in addition to commitment, can help to place Guatemala’s indigenous women on more equitable footing with the rest of the population.

Moreover, if the Agreement is to realize successful implementation, all parties involved must find a way to communicate their demands. Specifically, the government must create the space for dialogue between actors at the local level and the government entities responsible to protecting their rights. Additionally, the government must take steps toward ensuring greater accountability.

USAID suggests that by building social capital, greater transparency and accountability will be achieved (2003, 7). However, according to the United Nations and Amnesty International, the role of monitoring the Guatemalan government cannot fall on the United Nations alone. USAID, the World Bank, and the Inter-American Development Bank all contribute substantial resources to the implementation process though Amnesty International calls on these organizations to employ the recommendations made by the United Nations. For, as Warren suggests, “the accord process has made it very clear that funding models are not designed by Mayanists but rather by the international community and increasingly by groups like the World Bank, which has less experience with indigenous issues” (1998, 204).

The inexperience amongst donor organizations explains their lack of urgency in requiring greater accountability from the Guatemalan government, and in adopting conditionality clauses
dependent upon the implementation of the Peace Accords. The top-down approach executed in this manner has yet to terminate the government’s delayed approach in recognizing indigenous rights. Moreover, recognizing that funding models are designed by those with less experience dealing with indigenous issues suggests that the indigenous population is not involved in project planning.

The lack of inclusion here implies the violation of ILO Convention No. 169 and the indigenous population’s right to be consulted. Again, communication needs to come from all directions in order for successful implementation of the accords to occur. As demonstrated by CONAVIGUA and the Foundation, community level organizing produces results and the incorporation of local development into the national agenda could have profound effects on Guatemalan society. The limitation or revocation of funds from donor institutions due to violations of conditionality clauses could further trigger an immediate response. However, until the Guatemalan government is willing to adopt and enforce the law and to prove that indigenous rights are a long-term priority successful implementation of the Peace Accords will remain elusive.
APPENDIX A
AGREEMENT ON IDENTITY AND RIGHTS OF INDIGENOUS PEOPLES

Considering

That the question of identity and rights of indigenous peoples is a vital issue of historic importance for the present and future of Guatemala;

That the indigenous peoples include the Maya people, the Garifuna people and the Xinca people, and that the Maya people consist of various socio-cultural groups having a common origin;

That, because of its history, conquest, colonization, movements and migrations, the Guatemalan nation is multi-ethnic, multicultural and multilingual in nature;

That all matters of direct interest to the indigenous peoples need to be dealt with by and with them and that the present agreement seeks to create, expand and strengthen the structures, conditions, opportunities and guarantees regarding participation of the indigenous peoples, with full respect for their identity and the exercise of their rights;

That the international community, through the United Nations and the agencies and programmes of the United Nations system, the Organization of American States and other international

1 The Agreement as it appears throughout Appendix A is a direct copy from the United States Institute of Peace website at http://www.usip.org/library/pa/Guatemala/guat_950331.html. For the complete reference, see p. 108.
agencies and instruments have recognized the aspirations of the indigenous peoples who wish to gain control over their own institutions and forms of life as peoples;

The Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (hereinafter referred to as the parties) have agreed as followed:

I. IDENTITY OF INDIGENOUS PEOPLES

1. Recognition of the identity of the indigenous peoples is fundamental to the construction of a national unity based on respect for and the exercise of political, cultural, economic and spiritual rights of all Guatemalans.

2. The identity of the peoples is a set of elements which define them and, in turn, ensure their self-recognition. In the case of the Mayan identity, which has shown an age-old capacity for resistance to assimilation, those fundamental elements are as follows:

   a. Direct descent from the ancient Mayas;

   b. Languages deriving from a common Mayan root;

   c. A view of the world based on the harmonious relationship of all elements of the universe, in which the human being is only one additional element, in which the earth is the mother who gives life and maize is a sacred symbol around which Mayan culture revolves. This view of the world has been handed down from generation to generation through material and written artifacts and by an oral tradition in which women have played a determining role;

   d. A common culture based on the principles and structures of Mayan thought, a philosophy, a legacy of scientific and technical knowledge, artistic and aesthetic values of their own, a collective historical memory, a community organization based on solidarity and respect for one's peers, and a concept of authority based on ethical and moral values; and

   e. A sense of their own identity.

3. The multiplicity of socio-cultural groups of the Maya people, which include the Achi, Akateco, Awakateko, Chorti, Chuj, Itza, Ixil, Jakalteco, Kanjobal, Kaqchikel, Kiche, Mam, Mopan, Poqomam, Poqomchi, Q'eqchi, Sakapulteko, Sikapakense, Tectiteco, Tz'utujil and Uspanteco, has not affected the cohesion of their identity.

4. The identity of the Maya people, as well as the identities of the Garifuna and Xinca peoples is recognized within the unity of the Guatemalan nation and the Government undertakes to promote, in the Guatemalan Congress, a reform of the Guatemalan Constitution to that effect.
II. STRUGGLE AGAINST DISCRIMINATION

A. Struggle against de jure and de facto discrimination

1. To overcome the age-old discrimination against indigenous peoples the assistance of all citizens will be needed in the effort to change thinking, attitudes and behaviour. This change must begin with a clear recognition by all Guatemalans of the reality of racial discrimination and of the compelling need to overcome it and achieve true peaceful coexistence.

2. For its part, with a view to eradicating discrimination against the indigenous peoples, the Government shall take the following measures:

   a. Promote in the Guatemalan Congress, the classification of ethnic discrimination as a criminal offence;

   b. Promote a review by the Guatemalan Congress of existing legislation with a view to abolishing any law or provision that could have discriminatory implications for the indigenous peoples;

   c. Widely disseminate information on the rights of the indigenous peoples through education, the communications media and through other channels; and

   d. Promote the effective protection of such rights. To that end, promote the creation of legal offices for the defence of indigenous rights and the installation of popular law offices to provide free legal assistance for persons of limited economic means in municipalities in which indigenous communities are prevalent. Furthermore, the Office of the Counsel for Human Rights and other organizations for the protection of human rights are urged to give special attention to the protection of the rights of the Maya, Garifuna and Xinca peoples.

B. Rights of indigenous women

1. It is recognized that indigenous women are particularly vulnerable and helpless, being confronted with twofold discrimination both as women and indigenous people, and also having to deal with a social situation characterized by intense poverty and exploitation. The Government undertakes to take the following measures:

   a. Promote legislation to classify sexual harassment as a criminal offence, considering as an aggravating factor in determining the penalty for sexual offences the fact that the offence was committed against an indigenous woman;
b. Establish an Office for the Defence of Indigenous Women's Rights, with the participation of such women, including legal advice services and social services; and

c. Promote the dissemination and faithful implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

2. The communications media and organizations concerned with the promotion of human rights are urged to cooperate in the attainment of the objectives listed in this section.

C. International instruments

International Convention on the Elimination of All Forms of Racial Discrimination

1. The Government undertakes to promote, in the Guatemalan Congress, a bill incorporating the provisions of the Convention in the Penal Code.

2. Since Guatemala is a party to the Convention it undertakes to use all available means aiming at recognition of the Committee on the Elimination of Racial Discrimination, as provided in article 14 of that Convention.

Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169)

3. The Government has transmitted to the Guatemalan Congress, for its approval, Convention No. 169 of the International Labour Organization and will accordingly promote approval of that Convention by the Congress. The parties urge the political parties to facilitate approval of the Convention.

Draft declaration on the rights of indigenous peoples

4. The Government shall promote approval of the draft declaration on the rights of indigenous peoples in the appropriate forums of the United Nations, in consultation with the indigenous peoples of Guatemala.

III. CULTURAL RIGHTS

1. Mayan culture is the original basis of Guatemalan culture and, in conjunction with the other indigenous cultures, is an active and dynamic factor in the development and progress of Guatemalan society.

2. The development of the national culture is therefore inconceivable without recognition and promotion of the culture of the indigenous peoples. Thus, in contrast with the past, educational and cultural policy must be oriented to focus on recognition, respect and encouragement of indigenous cultural values. With such recognition of cultural differences in mind, an effort must be made to promote contributions and exchanges that can help to enrich Guatemalan society.
3. The Maya, Garifuna and Xinca peoples are the authors of their cultural development. The role of the State is to support that development by eliminating obstacles to the exercise of this right, adopting the necessary legislative and administrative measures to strengthen indigenous cultural development in all fields covered by the State and ensuring the participation of indigenous persons in decisions on the planning and execution of cultural programmes and projects through their organizations and institutions.

A. Language

1. Language is one of the mainstays of culture since, in particular, it is the vehicle for learning and passing on the indigenous view of the world, and indigenous knowledge and cultural values. Thus, all the languages spoken in Guatemala deserve equal respect. In that context provision must be made to recover and protect indigenous languages and to promote the development and use of those languages.

2. To that end, the Government shall take the following measures:

   a. Promote a constitutional reform calling for the listing of all languages existing in Guatemala which the State is constitutionally required to recognize, respect and promote;

   b. Promote the use of all indigenous languages in the educational system, to enable children to read and write in their own tongue or in the language most commonly spoken in the community to which they belong and, in particular, protect bilingual and intercultural education and institutions such as the Mayan Schools and other indigenous educational projects;

   c. Promote the use of the languages of the indigenous people when providing State social services at the community level;

   d. Inform indigenous communities, in their own languages in keeping with the traditions of the indigenous peoples and by adequate means, of their rights, obligations and opportunities in various areas of national life. Recourse shall be had, if necessary, to written translations and the use of mass communications media in the languages of those peoples;

   e. Promote programmes for the training of bilingual judges and court interpreters from and into indigenous languages;

   f. Enhance the status of indigenous languages, opening up new opportunities for them in the mass communications and cultural transmission media, strengthening such organizations as the Academy of Mayan Languages and other similar institutions; and

   g. Promote the granting of official status to indigenous languages. To that end an officialization commission will be set up with the participation of representatives of the linguistic communities and the Academy of Mayan Languages of
Guatemala, which shall study arrangements for granting official status, taking account of linguistic and territorial criteria. The Government shall promote, in the Guatemalan Congress, a reform of article 143 of the Constitution to reflect the results of the officialization commission's work.

B. Names, surnames and place names

The Government reaffirms the full right to register indigenous names, surnames and place names. It also reaffirms the right of communities to change the names of places in which they reside, when a majority of members so decide. The Government shall take the measures provided for in part II, section A, of this agreement to combat any de facto discrimination in the exercise of this right.

C. Spirituality

1. Recognition is accorded to the importance and special nature of Mayan spirituality as an essential component in the Mayan vision of the world and in the transmittal of its values, as well as those of the other indigenous peoples.

2. The Government undertakes to secure respect for the exercise of this spirituality in all its manifestations, and particularly for the right to practice it, both in public and in private by means of education, worship and observance. Recognition is also given to the importance of the respect due to indigenous spiritual guides and to sacred ceremonies and holy places.

3. The Government shall promote, in the Guatemalan Congress, the reform 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.

D. Temples, ceremonial centres and holy places

1. Recognition is accorded to the historical value and current importance of temples and ceremonial centres as part of the cultural, historical and spiritual heritage of the Maya and other indigenous peoples.

2. According to the Guatemalan Constitution, temples and ceremonial centres of archaeological value constitute part of the national cultural heritage. As such, they are the property of the State and must be protected. In that context, measures must be taken to ensure that this principle is not violated in the case of temples and ceremonial centres of archaeological value situated or found on private property.

3. The right of the Maya, Garifuna and Xinca peoples to participate in the conservation and administration of such places is recognized. To guarantee this right the Government undertakes to promote, with the participation of indigenous peoples, legal measures to ensure redefinition of State entities responsible for this function in order to make this right effective.
4. Changes shall be made in the regulations for the protection of ceremonial centres in archaeological areas to ensure that such regulations permit the practice of spirituality and cannot be made an impediment to the exercise of spiritual values. The Government shall promote, in cooperation with indigenous spiritual organizations, regulations governing access to ceremonial centres to guarantee the free practice of indigenous spirituality in conditions of respect laid down by spiritual guides.

Holy places

5. It is recognized that there are other holy places in which indigenous spirituality and, in particular, Mayan spirituality, is traditionally practised and which need to be preserved. A commission formed of representatives of the Government and indigenous organizations and of indigenous spiritual guides shall be set up to identify these places and establish rules for their preservation.

E. Use of indigenous dress

1. The constitutional right to wear indigenous dress must be respected and guaranteed in all areas of national life. The Government shall take the measures provided for in part II, section A, of this agreement to combat any de facto discrimination regarding the use of indigenous dress.

2. Furthermore, in a campaign to make the public more aware of the different manifestations of the Mayan, Garifuna and Xinca cultures, information shall be provided on the spiritual and cultural value of indigenous dress and the need to respect it.

F. Science and technology

1. The existence and value of the scientific and technological knowledge of the Maya and other indigenous peoples are recognized. This legacy must be retrieved, developed and disseminated.

2. The Government undertakes to promote the study and dissemination of this knowledge and to help put it to practical use. Universities, academic centres, the communications media, non-governmental organizations and international cooperation agencies are urged to validate and publicize the scientific and technical contributions of indigenous peoples.

3. Furthermore, the Government shall facilitate access by indigenous peoples to contemporary knowledge and shall promote scientific and technical exchanges.

G. Education reform

1. The educational system is one of the most important vehicles for the transmittal and development of cultural values and knowledge. It must be responsive to the cultural and linguistic diversity of Guatemala, recognizing and strengthening the cultural identity of indigenous peoples, the values and educational systems of the Maya and other indigenous peoples, and the need to afford access to formal and non-formal education and to include the educational concepts of indigenous peoples in national school curricula.
2. To this end, the Government undertakes to promote the following reforms in the educational system:

   a. Decentralize and regionalize the system in order to adapt it to linguistic and cultural needs and specific features;

   b. Give communities and families, which are a source of education, an active role in determining curricula and the school calendar and the authority to recommend the appointment or removal of teachers in order better to serve the educational and cultural interests of communities;

   c. Incorporate the educational concepts of the Maya and other indigenous peoples, particularly in the philosophical, scientific, artistic, pedagogical, historical, linguistic and socio-political areas, as part of the overall reform of the educational system;

   d. Expand and promote intercultural bilingual education and place emphasis on the study and knowledge of indigenous languages at all educational levels;

   e. Promote improvements in the socio-economic living conditions of communities by developing the values, content and methods of their culture, technological innovations and the ethical principle of protection of the environment;

   f. Include in educational syllabuses programmes that strengthen national unity through respect for cultural diversity;

   g. Recruit and train indigenous bilingual teachers and technical and administrative officials to develop education in their communities and to introduce mechanisms to permit consultation with and the participation of representatives of indigenous communities and organizations in the educational process;

   h. Pursue the effective realization of the constitutional right to education to which the entire population is entitled, especially in indigenous communities which exhibit the lowest levels of educational coverage, by expanding such coverage and taking steps to ensure the achievement of these objectives; and

   i. Increase the budget of the Ministry of Education, so that a substantial part of this increase can be allocated to the implementation of educational reform.

3. As part of the educational reform, full account shall be taken of the different Mayan educational experiences. The Mayan Schools shall continue to be encouraged and the National Programme of Intercultural Bilingual Education for indigenous peoples and the Mayan Culture and Language Component for the entire school population of Guatemala shall be consolidated. The establishment of a Mayan university or indigenous institutions of higher learning and the operation of the National Council of Mayan Education shall also be promoted.
4. In order to facilitate access by indigenous people to formal and non-formal education, the system of scholarships and student grants shall be strengthened. Teaching materials containing cultural and gender stereotypes shall also be revised.

5. A joint commission comprised of representatives of the Government and of indigenous organizations shall be established to design the above-mentioned reform.

H. Mass media

1. Like the educational system, the communications media play a paramount role in the defence, development and transmittal of cultural values and knowledge. It is the responsibility not only of the Government but also of all those working in and involved with the news media to promote respect for indigenous cultures, the dissemination of such cultures, and the elimination of all forms of discrimination, and to help all Guatemalans to take full possession of their multicultural heritage.

2. For its part, in order to promote the broadest possible access to the communications media by the Maya communities and institutions and those of the other indigenous peoples, the widest possible dissemination in indigenous languages of the indigenous, and especially Mayan, cultural heritage, as well as of the universal cultural heritage, the Government shall, in particular, take the following measures:

   a. Create opportunities in the official media for the dissemination of expressions of indigenous culture and promote a similar opening in the private media;

   b. Promote, in the Guatemalan Congress, the reforms of the existing Act on radio communications that are required in order to make frequencies available for indigenous projects and to ensure respect for the principle of non-discrimination in the use of the communications media. Furthermore, promote the abolition of any provision in the national legislation which is an obstacle to the right of indigenous peoples to have their own communications media for the development of their identity; and

   c. Regulate and support a system of informational, scientific, artistic and educational programmes on indigenous cultures in their languages, through the national radio, television and the written media.

IV. CIVIL, POLITICAL, SOCIAL AND ECONOMIC RIGHTS

A. Constitutional framework

The Government of Guatemala undertakes to promote a reform of the Constitution in order to define and characterize the Guatemalan nation as being of national unity, multi-ethnic, multicultural and multilingual.

B. Local indigenous communities and authorities
1. Recognition is accorded to the importance the Maya and other indigenous communities have had and continue to have in the political, economic, social, cultural and spiritual spheres. Their cohesion and dynamism have enabled the Maya, Garifuna and Xinca peoples to preserve and develop their culture and way of life, despite the discrimination to which they have been subjected.

2. Bearing in mind the constitutional commitment of the State to recognize, respect and promote these forms of organization which are peculiar to the indigenous communities, recognition is accorded to the role of the community authorities that were constituted in accordance with the customary norms of the communities, in the management of their affairs.

3. Recognizing the role of the communities, within the framework of municipal autonomy, in exercising the right of indigenous peoples to determine their own development priorities, particularly in the fields of education, health, culture and the infrastructure, the Government undertakes to strengthen the capacity of such communities in this area.

4. To this end, and in order to promote the participation of the indigenous communities in the decision-making process in all matters which affect them the Government shall promote a reform of the Municipal Code.

5. That reform shall be promoted in accordance with the conclusions adopted by the commission on reform and participation, established in section D, paragraph 4, of this part in the following areas, within the framework of municipal autonomy and the legal provisions granting indigenous communities the right to manage their internal affairs in accordance with their customary norms, as mentioned in section E, paragraph 3, of this part:

   a. Definition of the status and legal capacity of indigenous communities and their authorities constituted in accordance with traditional norms;

   b. Definition of the modalities concerning respect for customary law and all matters related to the habitat in the discharge of municipal functions, taking into consideration, where necessary, the situation of linguistic, ethnic and cultural diversity of the municipalities;

   c. Definition of the modalities for promoting the equitable distribution of government expenditure, including the percentage of the State's general budget of regular revenue which is transferred annually to the municipalities, among the communities, indigenous or non-indigenous, that make up the municipality, strengthening the capacity of those communities to manage resources and to be the instruments of their own development; and

   d. Definition of the modalities for communities to join together in the defence of their rights and interests and the conclusion of agreements for the design and implementation of communal and regional development projects.
C. Regionalization

Taking account of the advisability of having a regional administration based on far-reaching decentralization and deconcentration, the pattern of which reflects economic, social, cultural, linguistic and environmental criteria, the Government undertakes to regionalize the administration of the educational, health and cultural services of the indigenous peoples on the basis of linguistic criteria; in addition, it undertakes to facilitate the effective participation of community representatives in the management of education and culture at the local level in order to guarantee efficiency and relevance.

D. Participation at all levels

1. It is recognized that the indigenous peoples have been excluded from the decision-making process in the country's political life, so that it is extremely difficult, if not impossible, for them freely and fully to express their demands and defend their rights.

2. In this connection, it is reaffirmed that the Maya, Garifuna and Xinca peoples have the right to create and manage their own institutions, to control their development and to have a genuine opportunity freely to exercise their political rights. It is also recognized and reaffirmed that the free exercise of these rights gives validity to their institutions and strengthens the unity of the nation.

3. Consequently, it is necessary to institutionalize the representation of indigenous peoples at the local, regional and national levels and to ensure their free participation in the decision-making process in the various areas of national life.

4. The Government undertakes to promote legal and institutional reforms to facilitate, regulate and guarantee such participation. It also undertakes to plan such reforms with the participation of representatives of the indigenous organizations through the establishment of a joint commission on reform and participation, made up of representatives of the Government and of the indigenous organizations.

5. Without limiting its mandate, the commission may consider reforms or measures in the following areas:

   a. Mandatory mechanisms for consultation with the indigenous peoples whenever legislative and administrative measures likely to affect the Maya, Garifuna and Xinca peoples are being considered;

   b. Institutional forms of individual and collective participation in the decision-making process, such as advisory, consultative or other bodies that ensure a permanent dialogue between organs of the State and the indigenous peoples;

   c. Institutions representing the indigenous peoples which defend the interests of the indigenous peoples at the regional and/or national level and which have statutes that ensure their representativity and powers that guarantee the adequate defence
and promotion of those interests, including the power to make proposals to the executive and legislative bodies; and

d. Guarantee of free access by indigenous peoples to the various branches of public service, promoting their appointment to posts within the local, regional and national government administrations whose work most directly concerns their interests or whose activities are limited to predominantly indigenous areas.

E. Customary law

1. The traditional norms of indigenous peoples have been and continue to be an essential element for the social regulation of the life of the communities and, consequently, for the maintenance of their cohesion.

2. The Government recognizes that both the failure of national legislation to take account of the customary norms which govern life in the indigenous communities and the lack of access by indigenous peoples to the resources of the national judicial system have resulted in the denial of rights, in discrimination and in marginalization.

3. To strengthen the security before the law of the indigenous communities, the Government undertakes to promote, before the legislative organ and with the participation of indigenous organizations, the development of rules of law which would recognize the right of the indigenous communities to manage their own internal affairs in accordance with their customary norms, provided that the latter are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized human rights.

4. In cases where the intervention of the courts is required, and in particular in criminal matters, the competent authorities should take fully into account the traditional norms governing the communities. To this end, the Government undertakes to take the following measures:

   a. Propose, with the participation of representatives of indigenous organizations, legal provisions calling for the inclusion of cultural expertise and the development of mechanisms which would permit the community authorities to indicate the customs which constitute their set of internal norms; and

   b. Promote, in coordination with Guatemalan universities, professional associations and indigenous organizations, a continuing programme for judges and officers of the court (Ministerio Público) on the culture and identifying features of the indigenous peoples and, in particular, an understanding of the norms and mechanisms which govern their community life.

5. To ensure the access of indigenous peoples to the resources of the national legal system, the Government undertakes to promote free legal advisory services for those with limited economic resources and reiterates its obligation to make court interpreters available to the indigenous communities, free of charge, thus ensuring the application of the principle that no one may be judged without having had the assistance of interpretation into his own language.
6. The Government, in cooperation with indigenous organizations, national universities and competent professional associations, shall promote the systematic and in-depth study of the values and procedures of the traditional system of norms.

F. Rights relating to land of the indigenous peoples

1. The rights relating to land of the indigenous peoples include both the communal or collective and the individual tenure of land, rights of ownership and possession and other real rights, and the use of natural resources for the benefit of the communities without detriment to their habitat. Legislative and administrative measures must be developed to ensure recognition, the awarding of title, protection, recovery, restitution and compensation for those rights.

2. The lack of protection of the rights relating to land and natural resources of the indigenous peoples is part of a very wide-ranging set of problems resulting, inter alia, from the fact that both the indigenous and the non-indigenous peasants have had difficulty in having their rights legalized through the acquisition of title and land registration. When, in exceptional cases, they have been able to have their rights legalized, they have not had access to legal mechanisms to defend them. Since this problem is not exclusive to the indigenous population - although the latter has been particularly affected - it should be dealt with in the context of "Social and economic issues and the agrarian question", as one of the considerations to be taken into account in connection with the reform of the land tenure structure.

3. However, the situation with regard to the particular lack of protection and plundering of indigenous communal or collectively held lands merits special attention within the framework of this agreement. The Guatemalan Constitution establishes the obligation of the State to give special protection to cooperative, communal or collectively-held lands; recognizes the right of indigenous and other communities to maintain the system of administration of the lands which they hold and which historically belong to them; and lays down the obligation of the State to provide State lands for the indigenous communities which need them for their development.

4. Recognizing the special importance which their relationship to the land has for the indigenous communities, and in order to strengthen the exercise of their collective rights to the land and its natural resources, the Government undertakes to adopt directly, when that is within its competence, and to promote, when that is within the competence of the legislative organ or the municipal authorities, the following measures, inter alia, which shall be implemented in consultation and coordination with the indigenous communities concerned.

Regularization of the land tenure of indigenous communities

5. The Government shall adopt or promote measures to regularize the legal situation with regard to the communal possession of lands by communities which do not have the title deeds to those lands, including measures to award title to municipal or national lands with a clear communal tradition. To that end, an inventory of the land tenure situation shall be drawn up in each municipality.

Land tenure and use and administration of natural resources
6. The Government shall adopt or promote the following measures:

   a. Recognize and guarantee the right of access to lands and resources which are not occupied exclusively by communities but to which the latter have historically had access for their traditional activities and their subsistence (rights of way, such as passage, wood-cutting, access to springs, etc., and use of natural resources) and for their spiritual activities;

   b. Recognize and guarantee the right of communities to participate in the use, administration and conservation of the natural resources existing in their lands;

   c. Secure the approval of the indigenous communities prior to the implementation of any project for the exploitation of natural resources which might affect the subsistence and way of life of the communities. The communities affected shall receive fair compensation for any loss which they may suffer as a result of these activities; and

   d. Adopt, in cooperation with the communities, the measures necessary for the protection and preservation of the environment.

Restitution of communal lands and compensation for rights

7. Recognizing the particularly vulnerable situation of the indigenous communities, which have historically been the victims of land plundering, the Government undertakes to institute proceedings to settle the claims to communal lands formulated by the communities and to restore or pay compensation for those lands. In particular, the Government shall adopt or promote the following measures:

   a. Suspend the awarding of supplementary titles in respect of property to which the indigenous communities have claimed a right;

   b. Suspend the statute of limitations in respect of any action involving the plundering of the indigenous communities; and

   c. When the statute of limitations has already expired, however, establish procedures to compensate the communities which have been plundered with lands acquired for that purpose.

Acquisition of land for the development of indigenous communities

8. The Government shall take the necessary measures, without detriment to peasant smallholdings, to discharge its constitutional mandate to provide State lands for the indigenous communities which need them for their development.

Legal protection of the rights of indigenous communities
9. In order to facilitate the defence of the aforementioned rights and to protect the communities effectively, the Government undertakes to adopt or promote the following measures:

   a. Develop legal rules recognizing the right of indigenous communities to administer their lands in accordance with their customary norms;

   b. Promote an increase in the number of courts dealing with land cases and expedite procedures for the settlement of those cases;

   c. Urge faculties of law and the social sciences to strengthen the agrarian law component of the curriculum and include a knowledge of the relevant customary norms;

   d. Establish competent legal advisory services to advise on land claims;

   e. Provide the indigenous communities with the services of interpreters, free of charge, in respect of legal matters;

   f. Promote the widest dissemination, within indigenous communities, of information about land rights and the legal recourses available; and

   g. Eliminate any form of discrimination against women, in fact or in law, with regard to facilitating access to land, housing, loans and participation in development projects.

10. The Government undertakes to give the fulfilment of the undertakings set out in this section the priority which the situation of insecurity and urgency that characterize the land problems of the indigenous communities deserves. To that end, the Government shall, in consultation with the indigenous peoples, establish a joint commission on the rights relating to land of the indigenous peoples to study, devise and propose more appropriate institutional arrangements and procedures. The commission shall be composed of representatives of the Government and of indigenous organizations.

V. JOINT COMMISSIONS

With regard to the composition and functioning of the commission on education reform referred to in part III, section G, paragraph 5, the commission on reform and participation referred to in part IV, section D, paragraph 4, and the commission on rights relating to land of the indigenous peoples referred to in part IV, section F, paragraph 10, the parties agree as follows:

   a. The commissions shall be composed of an equal number of representatives of the Government and representatives of indigenous organizations;

   b. The number of members of the commissions shall be established in consultations between the Government and the Maya sectors of the Assembly of Civil Society;
c. The Maya sectors of the Assembly of Civil Society shall convene the Maya, Garifuna and Xinca organizations interested in participating in the said commissions for them to designate indigenous representatives to them;

d. The commissions shall adopt their conclusions by consensus;

e. The commissions shall base their operation on the mandates set out in this agreement; and

f. The commissions may request the advice and cooperation of national and international organs relevant to the discharge of their mandates.

VI. RESOURCES

In view of the importance of the measures set out in this agreement, the Government undertakes to make every effort to mobilize the resources which are essential for the fulfilment of the undertakings it has given in this agreement. In addition to the Government, broad sectors of the national community may play an active role in promoting respect for the identity of the indigenous peoples and the full exercise of their rights. Those sectors are urged to contribute to the implementation of this agreement in the areas within their competence with the resources available to them. International cooperation is essential to supplement national efforts with technical and financial resources, particularly in the context of the International Decade of the World's Indigenous People (1994-2004).

VII. FINAL PROVISIONS

1. In accordance with the Framework Agreement, the Secretary-General of the United Nations is requested to undertake the verification of the implementation of this agreement, and it is suggested that, in planning the verification mechanism, he should take into account the views of indigenous organizations.

2. The aspects of this agreement which relate to the human rights recognized in the legislation of Guatemala and in the treaties, conventions and other international instruments in that area to which Guatemala is a party, shall have immediate force and application. It is requested that the verification should be carried out by the United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA).

3. This agreement shall form part of the firm and lasting peace agreement and, except as otherwise provided in the previous paragraph, shall enter into force at the time of the signing of the latter agreement.

4. This agreement shall be disseminated as widely as possible both in Spanish and in the principal indigenous languages. To this end, international financial cooperation is requested.
Note. The statements contained in the consensus document of the Assembly of Civil Society on this subject which relate more directly to outstanding items in the negotiating agenda will be discussed in due course.

Mexico City, 31 March 1995.

For the Government of the Republic of Guatemala:

[Signed] Héctor ROSADA GRANADOS [Signed] Brigadier General Carlos Enrique PINEDA CARRANZA


[Signed] Mario PERMUTH [Signed] Brigadier General José Horacio SOTO SALAN


For the Unidad Revolucionaria Nacional Guatemalteca:

General Command

[Signed] Commander Gaspar ILÓM [Signed] Commander Rolando MORÁN

[Signed] Commander Pablo MONSANTO [Signed] Carlos GONZALES

Political and Diplomatic Commission

[Signed] Luis Felipe BECKER GUZMAN [Signed] Miguel Angel SANDOVAL

[Signed] Francisco VILLAGRAN MUÑOZ [Signed] Luz MENDEZ GUTIERREZ

Advisers


For the United Nations:

[Signed] Gilberto Bueno SCHLITTLER-SILVA

Director, Guatemala Unit

[Signed] Jean ARNAULT

Moderator
Figure B-1. Map of Guatemala [Adapted from <http://www.lib.utexas.edu/maps/americas/guatemala_pol00.jpg> Accessed April 1, 2009.]
During June and July 2005, I conducted a series of semi-structured interviews with various members of Fundación Solar, as well as attended two meetings with Lemá. My professor during this field school experience introduced me to María, the Director of the Foundation at the time. My first two interviews were with María and consisted of obtaining basic infrastructural data regarding the Foundation’s overall mission in San Juan. Here, María provided me with access to their computer system highlighting upcoming projects and potential advances in their reporting process. Due to financial constrictions, the Foundation was not able to regularly update its publications, though Monica did provide me with access to those publications which were most recent.

After these first two interviews, María introduced me to Richard, the designer working with Lemá. Richard and the members of Lemá met bi-monthly and I served as a participant observer in two such meetings. The structure of both meetings was similar in that the members discussed any new ideas they had for the design and the production of their products, and the objectives for the following two weeks were negotiated. My role in researching and interacting with Lemá was severely inhibited due to language barriers as very few members spoke more than their native Tz’utujil language. I did, however, interview Richard and Rosario, then President of Lemá. Richard focused on his role as a designer and as an outsider within the community. Rosario discussed in great detail the hierarchical structure of Lemá, the decision-making process, the production process, and speaking as a representative of all the women in Lemá, Rosario articulated the relationship between their organization and the impact it has made in their lives.
My interviews with the painters of Xokomeel were also semi-structured and were conducted over a four week period. Members of Xokomeel did not hold any formal meetings as Lemá had, though I was granted even greater access to information regarding this cooperative due to the fact that my host family belonged to Xokomeel and my host father had helped in the organization and legalization process. My interviews here were much more informal and occurred throughout my two-months in San Juan.

My host family further served as a gate-keeper to the community of San Juan, and to the painters of Xokomeel. The remaining four interviews with additional members were more structured as informants were asked to discuss not only how they came to be painters and members of Xokomeel, but they also relayed the attitudes of their family members regarding their participation in such a cooperative. Here, differing opinions cross-generationally were revealed.
LIST OF REFERENCES


BIOGRAPHICAL SKETCH

Brie Bailey was born in Minneapolis, Minnesota in 1981. In 2006 she received her B.A. from the University of Minnesota with majors in anthropology and Spanish and a minor in Latin American studies. She completed her Master of Arts in Latin American studies with a development specialization at the Center for Latin American Studies at the University of Florida in the spring of 2009. Upon graduation, she will continue to pursue a career in development in Latin America.