

Implementation of the Peace Accords in Guatemala 1990-the Present: Relationships of  
Cooperation, Complementarity, and Competition between the Government and NGOs

By

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## **Abstract**

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The 1996 Guatemalan Peace Accords attempted to address the major issues and grievances remaining from a 36 year long civil war that had ravaged the country. Peace Accord implementation requires work both from a government and NGOs. Using the relationship typology developed by Adil Najam and Jennifer Costen, this study finds that the Guatemalan government formed three distinct types of relationships (cooperation, complementarity, and competition) with the NGOs depending on the persistent post conflict issue. The Guatemalan Government assumed a relationship of cooperation with the NGOs on human rights and memorialization issues. The two entities assumed a relationship of complementarity on refugees and on indigenous rights. Finally, the entities assumed a relationship of competition on justice issues. Applying political survival theory, developed by James Morrow, Bruce Bueno de Mesquita, Randolph Siverson and Alastair Smith, onto the relationship types utilized in post conflict Guatemala, I argue that these relationships developed as a result of the political survival motivation by the Government who formed these relationships to retain its power in post-conflict Guatemala. The relationships have led to mixed results in terms of the implementation of the Peace Accords.

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## List of Abbreviations

<b>Abbreviation</b>	<b>Full Name</b>
ADICI	The Development Association of Indigenous Communities
ADIVIMA	The Association for the Integral Development of the Victims of the Violence of the Verapaces, Maya Achí
AJR	The Association for Justice and Reconciliation
ASC	Civil Society Association
CALDH	Centro Para la Acción Legal en Derechos Humanos
CCPP	Permanent Commissions
CEH	Historical Clarification Commission
CICIG	The International Commission against Impunity in Guatemala
CIRMA	Centro de Investigaciones Regionales de Mesoamérica
CONAVIGUA	The Coordinator of Guatemalan Widows
CONDEG	The National Coordinating Committee of Displaced Peoples of Guatemala
CONGCOOP	The Coordination of NGOs and Cooperatives
CONIC	National Coordinating Committee of Indigenous People and Campesinos
COMG	Council of Mayan Organizations of Guatemala
COPMAGUA	Co-ordination of Organizations of the Mayan People of Guatemala
CUC	The Committee of Campesino Unity
EGP	Guerrilla Army of the Poor
FAMDEGUA	Association of Relatives of Detained and Disappeared of Guatemala
FAR	Rebel Armed Forces
GAM	The Mutual Support Group
HIJOS	Hijos por la Identidad y la Justicia contra el Olvido y el Silencio
ICC	International Criminal Court
IDPs	Internally Displaced Persons
ILO	International Labor Organization
MINUGUA	United Nations Verification Mission in Guatemala
NGOs	Non Governmental Organizations
ORPA	The People in Arms Revolutionary Organization
PAC	Civil Defense Patrols
PGT	Guatemalan Worker's Party
PTSD	Post Traumatic Stress Disorder
SEPAZ	Secretariat for Peace
UDEFEGUA	Guatemalan Human Rights Defenders Protection Unit
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
URNG	Unidad Revolucionaria Nacional Guatemalteca

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This thesis stemmed from my travels to Guatemala, extensive studies of post-conflict issues across a multitude of countries, my ability to speak and read Spanish, and discussions with CISV-ers about the problems in Guatemala. This project acts as a culmination of my studies at the University of Michigan and is something that I hope to continue exploring and researching in the future.

## **Translations**

The vast majority of the documents cited in this project were already available in English. There were a few sources, especially news articles and websites of the NGOs, which were only in Spanish. I translated the Spanish-only sources based on my fluency in the Spanish language.

## **Chapter One: Introduction**

Guatemala's 36-year Civil War, persisting from 1960 through 1996, makes it Latin America's longest internal conflict. The country continues to deal with direct consequences of the Civil War's tactics and events, these include: the past human rights violations, a genocide allegation, and the legacy of disappeared persons. Furthermore, impunity is rampant in the country because many of the major perpetrators from the Civil War were never tried or convicted. The root causes of the Civil War are ever present in Guatemalan society, they include: inequality among indigenous peoples, discrimination, and poverty. This paper will examine the way in which the Guatemalan Government and Guatemalan Non-Governmental Organizations (NGOs) have worked to address these grievances in post-conflict society.

Beginning in 1990, the Guatemalan Government, the Unidad Revolucionaria Nacional Guatemalteca (the URNG)<sup>1</sup> and the United Nations (UN) entered into peace negotiations. The finalized version of the Peace Accords was signed in 1996. From 1996 until the present, the Guatemalan Government and Guatemalan NGOs have been attempting to implement the extensive accords.<sup>2</sup> The implementation stage is marked with successes in terms of new policies, programs, and departmental positions, but it also marred with major obstacles such as attacks on NGOs, a lack of political will, a lack of adequate funding, and continued discriminatory practices.

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<sup>1</sup> The URNG were the left wing socialist guerilla movement fighting against the Guatemalan Government during the Guatemalan Civil War. The origins of the URNG will be discussed more extensively later in the chapter.

<sup>2</sup> The Peace Accords had commitments for the URNG to adhere to. The primary focus was disarmament and demobilization. As a group they were tasked with converting into functioning members of society. They formed their own political party. According to the Peace Accords, the Guatemalan Government was the entity primarily responsible for implementing the Accords.



Peace accords are multi-faceted and can be best implemented through a combined effort of the government and NGOs. In the case of post-conflict Guatemala, the relationships between the Government and NGOs varied according to each Peace Agreement. The cooperation between the two entities was strongest on implementing human rights issues in Guatemala, specifically on education and memorializations. On refugees and indigenous rights, the Guatemalan Government worked collaboratively<sup>3</sup> with NGOs to address the grievances of these large population groups. On justice issues, the Guatemalan Government and NGOs clearly diverged in goals and tactics, forming a competitive relationship in addressing justice issues. This variation in the relationships between the two entities then begs the questions, when do the Government and NGOs cooperate on peace accord implementation? When do they compete? What drives these relationships? These questions will be answered through a case study of Guatemala that will contribute to a broad discussion of these issues.

### **History of the Guatemalan Civil War**

Guatemala's Civil War originated with the overthrow of President Jacobo Arbenz in 1954 during an anti-communist uprising led by the conservative faction of society and backed by the United States (US) Government. The violence began in 1960 after a failed nationalistic uprising by a series of guerilla groups who opposed the repressive government.<sup>4</sup> The uprising escalated the repressive rule across the country by a series of presidents who were all acting as military

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<sup>3</sup> Formally it is called by scholars a complementarity relationship (this type will be discussed more extensively later in this chapter)

<sup>4</sup> A group of left wing military officers from the National Military Academy led a failed revolt against the autocratic Guatemalan Government under Fuentes. The officers who survived the failed revolt fled into the hills, established communication with Fidel Castro, developed communist ideas, reached out to other organizations, and eventually developed into the larger guerilla movement

dictators throughout the entirety of the war. There were 12 presidents during the violent period.<sup>5</sup> The four initial guerilla groups were quickly destroyed.<sup>6</sup> However, the Guatemalan guerilla movement's ideas persisted and in the 1970s two new guerilla groups emerged: The People in Arms Revolutionary Organization (ORPA) and the Guerrilla Army of the Poor (EGP). In 1982, the guerilla groups formed the Guatemalan National Revolutionary Unity (URNG) that was "a unified command with a platform for a revolutionary government" (Costello et al., 1997, p. 39). Unfortunately, this unification was too little, too late: "the poorly-armed guerrillas were unable to defend their supporters in the rural highlands against the full brunt of military violence" (Costello et al., 1997, p. 39). It was during the period of fighting between the Guatemalan Government and the URNG that the country's citizens suffered under the most repressive actions. The Civil War ended with a Peace Agreement in 1996 between the Government of Guatemala and URNG, which, at this point was weak, having been destroyed by the Guatemalan Army.

The Civil War affected the majority of the country. The violence began in the east. During this period, victims were mainly peasants and guerilla sympathizers. As the violence became more geographically dispersed, those who were affected also expanded to include community leaders and outspoken social activists. In the bloodiest period (from 1978-1985), the operations were centered in Quiche, Huehuetenango, Chimaltenango, and Alta and Baja Verapaz (Mayan regions of the country). During this period the main victims were of Maya descent and the military carried out genocidal massacres (Tomoschat, Otilia & Tojo, 1999, p. 18).

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<sup>5</sup> The presidents who held power during these repressive periods and who are particularly noted for their vicious tactics are General Ríos Montt, Oscar Mejía Victores, and Vinicio Cerezo Arévalo.

<sup>6</sup> The guerilla groups included "the November 13th Revolutionary Movement, the Rebel Armed Forces (FAR), the armed branch of the Guatemalan Worker's Party (PGT), and the April 12th Revolutionary Front" (Paniagua, Amezquita, & Martinez, 2012, p. 11).

The Guatemalan army used a variety of strategies to destroy the guerillas and to harm civilians who were deemed enemies by the army. One tactic was a scorched earth policy utilized by the army between 1981 and 1983 against the indigenous population. The goal was to destroy communities that were considered to be guerilla support bases. This destruction by the army consisted of burning homes, slashing and burning crops and livestock, and bombing the villages (REMHI, 1999, p. 40). The physical destruction was compounded with other forms of violence:

[The army] carried out merciless massacres of children, women, and the elderly and unarmed men. The soldiers tortured the population, raped women, disappeared and executed community. This provoked a massive displacement of the indigenous population which hid in the mountains, fled to other parts of the country or sought refuge in Mexico. (Paniagua, Amezquita, & Martinez, 2012, p. 18)

The scorched earth policy was mainly directed at the indigenous population due to its potential to associate or aid the guerillas. To further control the indigenous villages, the military established Civil Defense Patrols (PAC). The PACs were state sponsored patrols made up of indigenous males tasked with guarding the villages and reporting any suspicious activity to the military. The PACs were labeled voluntary though failure to participate led the individual to be branded as a guerilla sympathizer. The PACs became as large as 900,000 members. As the eyes and ears for the army, the PACs monitored guerilla activities, limited guerilla sympathizers, and deterred future guerilla members from enlisting. The PACs allowed for the Guatemalan army to control the indigenous population from inside the rural communities (Costello et al., 1997, p. 40). A final tactic employed by the army was the creation of Development Pole Villages in 1983 throughout the rural regions of Guatemala to ensure complete control. The idea was that villagers who were displaced by violence in their communities would be resettled into a new community. In this new community, the army initiated psychological indoctrination aimed at garnering support for the Government rather than the guerillas and provided a way for the Government to keep eyes on the

“enemy” (USAID, 1988). These army strategies attempted to completely control the insurgents and all potential insurgents.

Throughout the entire conflict, the army deployed a general terror campaign that included disappearances, extra judicial executions, massacres, rape, torture, illegal arrests, and genocide against their broad category of “enemy.” These acts of violence left numerous victims. The government-sponsored truth commission, named the Commission for Historical Clarification (CEH),<sup>7</sup> registered a total “of 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”. The CEH also found 152 cases of rape, 4,219 instances of torture, and 5,079 instances of irregular detention during the Civil War. Furthermore, the Civil War produced up to one million internally displaced persons (IDPs) and over 200,000 refugees. Additionally, “eighty-three percent of fully identified victims were Mayan” (Tomoschat, Otilia & Tojo, 1999, p.13) leading the CEH to declare that acts of genocide took place during the Civil War (Costello et al., 1997, p. 292).<sup>8</sup> The state sponsored truth commission probably underestimated the number of victims, as many other sources report the numbers to be as high as 180,000 victims (Costello et al., 1997, p. 292). The numbers are staggering and have left a post-conflict society riddled with grievances. With a number of victims this large, the question of responsibility arises: the CEH found the Guatemalan army responsible for 93% of all human rights violations during the war (Paniagua,

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<sup>7</sup> The Commission for Historical Clarification (CEH) was established from the Peace Accords. CEH came from the “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer”. The commission presented its final report in 1999.

<sup>8</sup> The CEH used the internationally accepted of genocide. The definition of genocide, from the Convention on the Prevention and Punishment of the Crime of Genocide, states: "genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group” (Stanton, n.d.). Under this definition, the actions taken during the Civil War against the indigenous populations, namely the Mayan, constituted genocide. There was intent to destroy the ethnic group by killing, causing bodily harm, and using the scorched earth policy to lead to physical destruction.

Amezquita, & Martinez, 2012, p. 12). The Guatemalan Peace Accords tried to provide a solution and future to a country where the state was found responsible for staggering numbers of crimes against its citizens.

### **The Guatemalan Peace Accords**

In 1984, the armed conflict began to subside and the military government started to transition to democracy with the ousting of repressive General Rios Montt from power. In 1985, a new Guatemala Constitution was signed and implemented. In 1986, the first post-war democratically elected president, Vinicio Cerezo, entered office with a pledge to end to the violence. In 1990 the Government began the formal peace negotiation process. It took six years for the Peace Accords to be negotiated, created, and signed. Within the process, the Government of Guatemala, Unidad Revolucionaria Nacional Guatemalteca (URNG), and the UN approved five agreements regarding the structure of the Peace Accord process.<sup>9</sup> The signing of the Peace Accords on December 28, 1996 marked the official end of the Guatemalan Civil War.

Within the Peace Accord process were a series of key actors. In support of the Guatemalan Peace Accords were the “friendly country” alliance,<sup>10</sup> the International Monetary

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<sup>9</sup> The first agreement was The Basic Agreement on the Search for Peace by Political Means (the Oslo Accord), in 1990 which set out arrangement for future government- URNG dialogues and allowed for the UN to act as mediator. The second agreement was The Agreement on the Procedure for the Search for Peace by Political Means (The Mexico Accord) in 1991 in which the parties set an agenda for the negotiations. The third agreement was The Framework Agreement on Democratization in the Search for Peace by Political Means (The Querétaro Agreement) in 1991 that examined the meaning and implication of democratization. The fourth agreement was The Framework Agreement for the Resumption of Negotiations between the Government of Guatemala and the Guatemalan National Revolutionary Unity in 1994 which set ground rules for the negotiations, established Jean Arnault as the UN observer, invited Colombia, Mexico, Norway, Spain, the US and Venezuela to be ‘friendly country’ guarantors of the process, and assigned to the UN the responsibility for verification. Finally, the fifth agreement was The Agreement on a Timetable for Negotiations on a Firm and Lasting Peace in Guatemala in 1994 that set a schedule for the negotiations (Costello et al., 1997, p. 84).

<sup>10</sup> The ‘Friendly Alliance’ included Colombia, Mexico, Norway, Spain, USA, and Venezuela.

Fund, the World Bank,<sup>11</sup> and a variety of religious organizations.<sup>12</sup> Furthermore, the Guatemalan Peace Accords have been lauded for their participatory mechanisms that allowed for citizens and NGOs to partake in a series of commissions and dialogues about their content. In 1994, the Civil Society Association (ASC) was established to represent the voices of civil society within the Accords process (Salvesen, 2002, p. 25). In opposition to the Peace Accords were the army and high-ranking officials who were actively involved in the war crimes and many of whom have retained power, either continuing to lead the army or as elected or politically appointed government officials (Paniagua, Amezquita, & Martinez, 2012, p. 11). There has been continual resistance of the Peace Accords by some members of the Government because the Agreements pose a threat to its power.

The Peace Accords brought hope to a war torn country. The Peace Accords included 11 different agreements listed in Table 1.

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<sup>11</sup> “Once the momentum for a political settlement had begun to build in the early 1990s, the range of donors affiliated to the International Monetary Fund (IMF) and World Bank Consultative Group began to tie its support for Guatemala to a comprehensive neo-liberal agenda” (Costello et al., 1997, p. 83).

<sup>12</sup> The religious organizations include: Lutheran World Federation, Latin American Council of Churches, the World Council of Churches, and the National Council of the Churches of Christ in the USA (Costello et al., 1997, p. 84).

**Table 1: List of Agreements in the Guatemalan Peace Accords<sup>13</sup>**

<u>Agreement Name</u>	<u>Year</u>	<u>Summary of Agreement</u>
Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer	1994	“Defines a process for investigating human rights abuses taking place between the beginning of the war and the signing of the final peace agreement, and for producing recommendations that contribute to national reconciliation”.
Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict	1994	“The government commits itself to guarantee the conditions necessary for the safe return of the internally displaced to their places of origin or to another place of their choice, to promote the return of land abandoned by uprooted populations, and to involve them in the design and implementation of a comprehensive reintegration plan”.
Comprehensive Agreement on Human Rights	1994	Both the URNG and the government commit themselves to “fully observe human rights and to improve mechanisms for their protection”
Agreement on the Identity and Rights of Indigenous Peoples	1995	Contains four chapters that include broad commitments to recognize the identity of indigenous peoples, to eliminate discrimination against them and to guarantee their cultural, civil, political, social and economic rights.
Agreement on the Basis of Legal Integration of URNG	1996	Provides a comprehensive program for the integration of URNG members into Guatemalan society
Agreement on Constitutional Reforms and Electoral Regime	1996	Creates a series of proposals for constitutional reforms; “the proposals focus mainly on the recognition of the identity and rights of indigenous peoples and the mandate and structure of the country’s security forces”
Agreement on the Strengthening of Civilian Power	1996	Includes a series changes related to the strengthening of the three branches of the new democratic government. The Agreement calls for an overhaul to the security functions of the state including the civil patrols, the police, the penal code, and the army.
Agreement on Social and Economic Aspects and Agrarian Situation	1996	Contains four chapters. The first contains provisions for broader civic participation in all levels of the Government. The second guarantees economic growth. Chapter three focuses on rural development projects. Chapter four “promises increases in the tax base and a range of measures against tax evasion and fraud”.
Agreement on a Definitive Ceasefire	1996	Established a 60-day timetable for URNG disarmament and demobilization
Agreement on the Implementation, Compliance and Verification Timetable	1996	Creates a “detailed guide for the implementation of all the commitments undertaken since 1994. It sets out a calendar for their phased implementation from 1997 to the end of 2000 and for the establishment of a Follow-up Commission to ensure that the process is carried out effectively”
The Agreement on a Firm and Lasting Peace	1996	“Trigger[ed] implementation of all the previous agreements and binds them into a comprehensive nationwide agenda for peace”

<sup>13</sup> Costello et al., 1997, p. 86

The Comprehensive Agreement on Human Rights, the Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict, the Agreement on the Identity and Rights of Indigenous Peoples, and the Agreement on the Strengthening of Civilian Power will be discussed in greater extent in the subsequent chapters. These four Agreements explicitly address the largest issues resulting and remaining from the Civil War. These four Agreements also demonstrate the three relationship types between the Guatemalan Government and Guatemalan NGOs during implementation.

Though extensive in their coverage, the Peace Accords were plagued by a series of weaknesses. A major weakness was a lack of a coherent, central leadership to ensure implementation. The Guatemalan agencies had a watchdog role rather than an implementing role and there was no broad oversight. Other weaknesses included a lack of: financial resources to fund different programs and positions, trained personnel to run the programs, and political will to instigate implementation (Costello et al., 1997, p. 83). Furthermore, the results of a vote in 1999 created a major weakness for the implementation of the Peace Accords. Key components of the Accords needed to be included in the Guatemalan Constitution to receive greater political and financial support. A popular referendum on the various Peace Agreements was held in 1999 and failed. The reasons for the failed referendum include: only 18% of the population voted due to high abstentions in the country, the number of reforms created confusion among the general public,<sup>14</sup> and there was a powerful anti-reform publicity campaign before the vote by those opposed to the Accords (Stanley & Holiday, n.d., p. 21). Though the failure of the constitutional reform did not make the implementation of the Peace Accords impossible, it significantly slowed

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<sup>14</sup> “In the process [of debates in Congress], the package of proposed reforms grew from the minimal 12 required to implement the accords to 39 substantive reforms, 3 reforms that proposed minor changes in wording, and 8 transitory articles” (Stanley & Holiday, n.d., p. 25).



down the process. Because the Accords no longer had constitutional guarantees, the Government and NGOs had to utilize aspects of the government outside of the constitution and programs outside of government control to implement the Peace Accords.

In response to the signing of the Peace Accords, four new organizations were created to help the implementation process. The first directly stemmed from the Comprehensive Agreement on Human Rights. The United Nations established the United Nations Verification Mission in Guatemala (MINUGUA), officially deployed in 1997. MINUGUA was tasked with aiding the implementation of the Peace Accords. Its role was:

- (i) To deal with and verify complaints of human rights violations;
- (ii) to monitor the performance of state institutions in dealing with these abuses;
- (iii) to conduct public information and education campaigns;
- (iv) to provide institutional support to existing human rights organizations;
- and (v), to make general recommendations to promote the full observance of human rights. (Costello et al., 1997, p. 85)

MINUGUA's mandate lasted for seven years, ending in 2004. MINUGUA played a large role in how the Peace Accords were implemented and how post-conflict Guatemala looked. The other three organizations, the International Commission against Impunity in Guatemala,<sup>15</sup> A Follow Up Commission,<sup>16</sup> and the Secretariat for Peace<sup>17</sup> were put into place to try to ensure that the Government and society kept the ideals and practices of the Peace Accords alive and intact through the whole implementation phase.

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<sup>15</sup> The International Commission against Impunity in Guatemala (CICIG) was created in 2007. Its goal was to help the Guatemalan Government restore the justice system through investigations and recommendations ("Guatemala's Crippled Peace Process", 2011). CICIG will be discussed more extensively in Chapter Four.

<sup>16</sup> A Follow Up Commission was created in 1997 to help ensure compliance with the Peace Accords by having diverse representatives review bills drafted by the government to ensure that they are following the Peace Accords. The makeup of the Commission was "two representatives from the parties [the Government and the URNG], one from Congress, four representatives from different sectors of civil society and the head of MINUGUA" (Salvesen, 2002, p. 25)

<sup>17</sup> The Secretariat for Peace (SEPAZ) was created in 1999. The Secretariat was a mechanism to ensure the institutionalization of peace by certifying that the plans and projects of the Guatemalan Presidents were in accordance with the Peace Accords (Salvesen, 2002, p. 26).

An additional move to establish peace was the creation of two truth commissions. The first Commission (CEH), established by the Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations in 1994, released their report in 1999. The other truth commission, created by the Catholic Church in Guatemala, released their report, *Guatemala Nunca Más*, in 1998. *Guatemala Nunca Mas* provided a different perspective from the Government sponsored truth commission by provided a better chronology of the victims' suffering (Paniagua, Amezquita, & Martinez, 2012, p. 123). The truth commissions established the facts of the war, the statistics, the background causes, and a list of perpetrators. The Commissions had mixed reception. For many, receiving a complete documentation of the realities of war acted as a first step towards reconciliation. However, to those whom were involved as perpetrators in the Civil War, the truth commissions exposed an abhorrent history and placed blame thereby creating active opposition.

The Peace Accords do not operate alone; they often respond to and support international conventions. In Latin America, during the last two decades of the 20<sup>th</sup> century, many countries, including Guatemala, recognized and ratified international human rights laws during the re-establishment of democracy in their states. "It is likely that part of the motivation was the need to protect their democracies against the danger of being overthrown. However, these ratifications were also intended to signal the countries' newly reestablished democratic identity and their reentry into the community of democratic states" (Lutz & Sikkink, 2001, p.7). In the case of Guatemala, many of the conventions were adopted in a time of transition and during the implementation phase of the Peace Accords as a way to signal to the international community their commitment to the content of the Peace Accords.<sup>18</sup> The ratification of these treaties is

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<sup>18</sup> Guatemala has signed all major Human Rights Conventions. For a complete list refer to the University of Minnesota's compilation.

indicative of the Guatemalan Government's effort to retain power in the newly democratizing country and in light of international pressures.

### **Discussion of the Two Major Entities Involved**

This thesis will refer to two different entities: The Guatemalan Government and the Guatemalan NGOs. The Guatemalan Government is a complex entity that has transformed since the beginning of the Peace Accord process. Guatemala operates under a constitutional democratic republic government. Since 1986, with the election of the first president under the new constitution, there have been 11 Guatemalan presidents. For the purpose of this thesis, I will examine the politics and decisions of the five most influential presidents in regards to the Peace Accord implementation. These five presidents are: Cerezo (1986-1993), De Leon (1993-1996), Arzu (1996-2000), Portillo (2000-2004), and Berger (2004-2008). The presidential regimes are all marked as coalition governments; the presidents were struggling to balance different factions and political parties. The regimes were not monolithic: they were composed of progressive representation (such as civil society actors and NGOs) as well as right wing representatives who had equal, if not greater, influence in the government. The coalition governments all required compromises to appease the factions involved and these compromises led to mixed and slow implementation of the Peace Accords.

Vinicio Cerezo was elected in 1986 as the first president under the new Guatemalan Constitution. Cerezo was in power from 1986 to 1991. Cerezo, a member of the moderate Guatemalan Christian Democrats, opposed Rios Montt's regime during the Civil War. Upon his inauguration, Cerezo prioritized ending political violence. During his term, he created the Human Rights Committee, established the Office of the Human Rights Ombudsman, and enacted new laws for habeas corpus (Agency and Department, 2012). Cerezo's efforts ushered in a

period of Peace Accord negotiation, creation, and eventually the signing of the Guatemalan Accords.

Ramiro De Leon Carpio, former Human Rights Ombudsman, was elected by the Guatemalan Congress to the Presidency in 1993 after a series of coups and a brief period of repression and violence.<sup>19</sup> De Leon launched an anti-corruption campaign aiming to ‘purify’ Congress and the Supreme Court through the forced resignation of numerous members. Under De Leon, the Guatemalan Peace Accords Process developed and progressed (Agency and Department, 2012).

In 1996, Alvaro Arzu, member of the center-right Unionist Party, was elected president. Under Arzu, the peace negotiations were concluded, the Government officially signed the Peace Accords in 1996 ending the 36 year long Civil War, and the human rights situation in the country improved (Agency and Department, 2012). Arzu beat Alfonso Portillo by a near margin (3%). This narrow defeat was significant because Portillo was supported by ex-dictator Efraim Rios Montt (“Timeline of Guatemala”, 2016). This was indicative of the state of political affairs and the reality in Guatemala during this regime since a large number of voters supported a candidate representing a time of repression and violence. Another indication of the mixed political climate was when Arzu appointed Bishop Mario Rios Montt, the brother of former dictator General Efraim Rios Montt, to the head of the Guatemalan human rights office (“Timeline of Guatemala”, 2016). It was also under Arzu that the Constitutional Referendum in 1999 failed and hindered the

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<sup>19</sup> “On May 25, 1993, Serrano [as an attempt to re-implement the military regime] illegally dissolved Congress and the Supreme Court and tried to restrict civil freedoms, allegedly to fight corruption. The ‘autogolpe’ (or self-initiated coup) failed due to unified, strong protests by most elements of Guatemalan society, international pressure, and the army's enforcement of the decisions of the Court of Constitutionality, which ruled against the attempted takeover. Serrano fled the country” (US Department of State, 2007).

progress of the Peace Accords implementation. Under Arzu, the two truth Commissions released their findings. Arzu's term proved to be varied in terms of progress for the Peace Accords.

Alfonso Portillo, a member of the modern, reformist Guatemalan Christian Democracy party won the election in 1999 and was inaugurated in 2000; he retained power until 2004. Portillo's term was mixed regarding implementation of the Peace Accords. Rios Montt, former dictator, was the head of Congress indicating the ongoing impunity during this term. However, it was during Portillo's term that the first indictment against Montt was filed in the Guatemalan's courts. Unfortunately this case was stalled, delayed and fought for more than ten years. Under Portillo a series of exhumations of the remains of victims of Government massacres and disappearances took place, Congress passed anti-discrimination laws, and a series of anti-impunity cases took place ("Timeline of Guatemala", 2016). Portillo's term can be labeled as a mixed success for the Peace Accords. Notably, during the terms of De Leon, Arzu, and Portillo, attacks on human rights defenders occurred and increased. This trend has continued through the terms of all presidents through the present.

Oscar Berger, former Mayor of Guatemala City and member of the conservative, right wing Grand National Alliance party, began his presidency in 2004, remaining in office until 2008. Berger's term was one of improvement for the country and progress for the implementation of the Peace Accords. Under Berger, Guatemala signed an agreement with the UN, forming the CICIG program, to handle organized crime and human rights cases. Under Berger, Rios Montt lost his parliamentary immunity when he was not reelected for Congress, and was therefore prosecutable. Berger recruited Nobel Peace prizewinner Rigoberta Menchu to become a top official in charge of monitoring adherence to the Peace Accords. Berger worked to alleviate poverty, a root cause of the war. He also cut spending to the army, a requirement of the

Accords that had been delayed. Berger's Government publicly admitted the responsibility by the state of human rights violations during the Civil War ("Timeline of Guatemala", 2016). Berger's term, in general, proved beneficial to the struggle for justice.

The other presidents who were inaugurated since 2008 have had a similar path to most of the presidents: varied, with progress and obstacles for the implementation of the Peace Accords. From 2008 until the present, there has been a marked increase in anti-impunity cases accepted by the Guatemalan courts. But, there has also been an increase in attacks on human rights defenders, drug related violence, and corruption.<sup>20</sup>

This brief, simplified timeline of significant presidents in the Peace Accord implementation phase will guide the analysis of how the Government reacted and interacted with NGOs. As a constitutionally democratic republic, the government has been composed of left wing, right wing, and central political parties, though traditionally the presidents have been right wing. As the Civil War's end draws further away, the government has tended to become younger and less polarized. Throughout this thesis it is important to remember that a government entails many positions. Therefore to classify a government as supportive, neutral, or opposed to the Accords is inaccurate. Within each of the presidencies since the Peace Accords there have been people actively fighting for the implementation of the Accords, there have also been those who are not engaged in the implementation, and they has been some in direct opposition. None of the terms have been marked by all positive or all negative aspects, rather each was a mixed result in terms of Peace Accord implementation. This project will use the broad term of government in subsequent chapters to simplify the narrative. The reader can place the government within a

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<sup>20</sup> Corruption scandals so large as to lead to the resignation of President Otto Perez Molina amid demands by civilians. This will be discussed more in Chapter Three.

specific presidential term if interested by using this section and the historical timeline in the appendix.

The Guatemalan NGOs refer broadly to groups of social activists and civil society actors whom are working in post-conflict Guatemala. In chapters two through four, the individual NGOs will be discussed in greater detail when referring to specific grievances and relationship types.

## **Literature Review**

This brief historical narrative on the Civil War, the Peace Accords, and the post-conflict situation now is supplemented with a literature review on peace accords and on Guatemala. The available literature on peace accords covers both the content of the accords and the implementation of the accords, though content is covered more extensively. There also is research on Guatemala's peace accord process and implementation stage. The analyses will be used to help guide this thesis' research question and argument regarding post-conflict Guatemala.

## **Literature Review on Peace Accords/ Peace Building**

Peace Accord theory can be divided into two parts: the content of the peace accords and the implementation phase.

Scholars have identified certain factors that lead to successful peace accords. These factors include police and judicial reform and human rights capacity building because they hold long-

term benefits on the implementation phase (Stedman, 2001, p. 3).<sup>21</sup> Another vital clause concerns the demobilization of soldiers and their reintegration into society; this is crucial for the implementation phase to ensure that the peace holds between the two parties (Stedman, 2001, p.16). Refugees must be part of the peace accords in some fashion, typically through repatriation. Regardless of how they are accounted for, the refugees must be discussed during the peace accords because, as a population, they require particular attention and services, often contingent on funding (Stedman, 2001, p. 18). These factors all focus on the content of peace accords.

Scholars have studied the implementation process, sometimes called the peace building process, significantly less than they have studied the peace accords themselves. This disparity leaves a major gap in the literature. The content of the peace accords and that process cannot be minimized. But, the implementation phase is noted across the board as the most vital stage. It is also the most volatile stage. Therefore, the dearth of information regarding the implementation process is alarming.

The literature on the implementation process emphasizes that this is the phase where the hard work and compromises from the peace accords must be put into place and acted upon. If the accords are not implemented, conflict can quickly arise again (DeRouen et al., 2001, p. 334). “Vital issues should be framed in the peace agreement in such a way as to lend themselves to be implemented speedily, simultaneously and around the time of the signing of a peace agreement” (Arnault, 2006, p. 13). As noted above, certain issues should be covered in the content of successful peace accords, but effective implementation requires quick actions on these same issues. “The chances for the successful implementation of a peace accord are increased by a general feeling of ownership of it and by its promotion by civil society” (Salvesen, 2002, p. 7).

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<sup>21</sup> Police and judicial reforms can limit the reemergence of violence and can lead to anti-impunity measures. Human rights capacity building leads to an improved post-conflict society.



The sentiment of ownership comes from a societal agreement with the content. Therefore, it is essential that the peace accords account for large sectors of society in their content to allow for effective implementation. Civil society, including NGOs, can aid in the realization of the Accords by working on a ground level and addressing key issues usually tied to root causes of the war. “Moreover, local organizations tend to have a longer time horizon and are more adept at sustaining long term processes that are integral to peace-building (Stedman, 2001, p. 19). Civil society organizations can help ensure that implementation is carried out. Third party involvement, like the UN, can also safeguard the implementation process (Salvesen, 2002, p. 8). Both civil society organizations and third party groups are especially important in light of the many obstacles that exist during the implementation phase. Some barriers that can lead to failed implementation include:

The physical security of the parties; Protection from judicial prosecution for actions relating to the conflict; The socioeconomic welfare of the leadership and combatants; The political viability of the parties, including their financial basis; Substantive aspirations that are deemed of vital interest by the parties, here these imply access to government positions (power sharing), changes in the political regime (democratization- demilitarization, fair electoral procedures and respect for political rights) or reforms in the socioeconomic and cultural underpinnings of the distribution of power. (Arnault, 2006, p. 6)

If these issues are present, the implementation phase may be plagued by a lack of political will, more conflict and debate, and eventually a failed peace. Political will is a major aspect of the implementation phase; in order for the accords to be implemented, there must be a force in the government that is advocating for them. Political will stems from a sense of security by the government about their political position and power, this motivation will be discussed in greater length later in the chapter. Additionally, a government may want to implement the accords but may be limited by insufficient resources (Salvesen, 2002, p. 6).

The available literature on peace accord content and peace accord implementation helps guide this project's research and analysis.

### **Literature Review on Guatemalan Peace Accords and Implementation**

There is substantial literature on the Guatemalan Peace Accord process. When looking at the content of the Guatemalan Peace Accords, scholars have noted that the Guatemalan Peace Accords were too extensive. They covered too many broad, societal issues and did not prioritize the Agreements. The content of the Guatemalan Peace Accords made the implementation stage more difficult (Salvesen, 2002, p. 1). Regarding the political will in Guatemala, scholars have noted how the political impetus was lost quickly after the signing of the Accords. Salvesen noted how a remedy to this situation would be an increased emphasis on the implementation stage and that the fundamental legal reforms needed to be passed as quickly as possible while political will and international support was still high (2002, p. 1). Furthermore, academics have noted how, in Guatemala, the third party involvement, particularly MINUGUA, required a long-term commitment; a commitment that was longer than what was first declared in the Peace Accords. Fortunately, the international community extended MINUGUA's contract and implemented additional international monitoring mechanisms to prolong the third party commitment (Salvesen, 2002, p.1). Scholars acknowledged the influence that MINUGUA played on Guatemala's implementation phase, however, third parties cannot be the basis for successful implementation. The foundation for effective implementation needs to be grounded in the state and society. Guatemala kept the channel of judicial prosecution open. Even though de jure protection for past militants had been put into place in a country with a weak judiciary and high rates of victims fearing the justice system, a certain degree of precariousness existed in the post-

conflict phase because some in positions of power could face prosecution. The threat of justice has led to a shaky implementation stage. Recently there has been progress on the justice front with cases against major past-militants (Arnault, 2006, p. 21), however, the justice reforms and anti-impunity measures still remain some of the least effectively implemented aspects of the Accords.

With this in mind, scholars have debated the success of the Guatemalan peace process. In the most basic sense, scholars agree that the Accords have been successful since there was no outbreak of new conflict related violence. However, on a grander scale, Guatemala is suffering from increasing crime rates and most people have not felt an improvement to their standard of living (Salvesen, 2002, p. 1). Guatemalan society has not felt drastic improvements indicating that the implementation stage of Guatemala has been weak and ineffective. Scholars have examined Guatemala and concluded that it accomplished the Peace Accord phase but on the peace implementation/ peace building phase had mixed results. The varied results stem from how the Government and the NGOs (the two main entities who can aid in implementation) formed relationships. These relationships, which differ according to the varying Peace Agreements, directly influence how effective the implementation phase has been.

**Answer/Theory:**

During the post-conflict period, the Guatemalan Government acted in a way that protected its control and power. During the Peace Accord implementation phase, the Government formed cooperative relationships with NGOs when the NGOs did not pose a threat to the Government. The Government formed a relationship of complementarity as a way to reign in potential threats. And the Guatemala Government created a competitive relationship with NGOs when they posed a real threat to their power and status quo.

### **Theoretical Component on Political Motivation:**

Political survival, coined by political scientists, international relations scholars, and other academics, is the desire to retain power and authority (Bueno de Mesquita et al., 2002, p. 22). This desire by the government “motivates the selection of policies and the allocation of benefits; it shapes the selection of political institutions and the objectives of foreign policy” (Bueno de Mesquita et al., 2002, p. 22). The desire to remain in political office is embedded in the politician. This desire shapes how a politician will act while in office. Academics have noted that competent leaders are those whom correctly analyze the political climate so as to retain power (Brown & Marcum, 2011, p. 146). The leader wants his supporters to view him as competent. This competency assessment by civilians is vital for the leader to retain power; if not viewed as capable, the leader may lose power through public disapproval, no reelection, or impeachment. Finally, the scholarship on political survival looks at the relationship of the government with its citizens:

The behavior of leaders arises from their own self-interest in holding their positions. If that coincides with or is compatible with the welfare of the citizenry, then many will benefit. If the welfare of a leader and the welfare of the society are at odds – and our theory and data will indicate that they often are – then it is more likely to go well for the leader than for society. (Bueno de Mesquita et al., 2002, p. 32)

Thus, if it is not within the leader’s best interest, his actions may not be beneficial to society as a whole. This is of the utmost importance because in a post-conflict situation, such as that of Guatemala, where there are numerous grievances to address, the citizens may present issues to the government that are incompatible with its aims (of self preservation) and, therefore, the government’s actions will leave the citizenry displeased.

## **Theoretical Component on Relationships**

While scholars label Guatemala as a mixed result on the peace-building phase, there is evidence of efforts done by the Government and the NGOs within the country to implement the Accords. The relationships between a government and NGOs have been categorized by scholars into three groups: Cooperation, Complementarity, and Competition.

The first relationship type is one of cooperation. Cooperation is likely when the government and the NGOs share similar goals and similar strategies for achieving them (Najam, 2000, p. 384). Cooperation occurs under three conditions, when: “[a] there is a free flow of information between the two sectors, in which each informs the other of its respective operations where it is deemed necessary; [b] NGOs follow the government’s rules; and [c] government policy is neutral toward the NGO sector” (Costen, 1998, p. 370). Under cooperation, the relationship between the two entities is of respect and/or neutrality. There are three activities that are found within a cooperative relationship and to which both sides can benefit from: information sharing, resource sharing and joint actions (Costen, 1998, p. 370).<sup>22</sup> The congruent strategies of the two entities embody these three activities. Finally, of importance is that in a cooperative relationship a “government is sympathetic to NGO efforts but not necessarily proactive in their support” (Costen, 1998, p. 370). This is a crucial distinction because it alludes to the possibility of a relationship of tolerance rather than active support. Cooperation is the pursuit of the same goal using similar strategies.

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<sup>22</sup> “Mechanisms for information sharing can range from response to informal inquiries to ‘distributing reports; holding meetings, briefings or seminars; setting up liaison units; of forming committees.’ Resources sharing can include user fees and volunteer labor, or more formally ‘loans, grants, budget allocations, contracts and agreements, and secondment of personnel or equipment’. Finally, joint action is the collaborative engagement in activities between two organizations using their own resources” (Costen, 1998, p. 370).

The second type of relationship is that of complementarity. Complementarity results when governments and NGOs share similar goals but prefer different strategies (Najam, 2000, p. 387). For a complementary relationship to work, a degree of cooperation is needed:

NGOs must work within the rules set by government [...] this also means that NGOs must not resist, compete, or rival government efforts. Complementarity is built on some minimum degree of mutual respect, where the rights of each to operate are acknowledged. In other words, government must not repress or rival NGOs, and NGOs should not inhibit the proper expansion of government efforts in particular geographical and service areas. (Costen, 1998, p. 372)

Once a degree of cooperation is established, the complementary relationship can develop more. This relationship is based on the use of the NGO's bottom up approach paired with the top down actions of the government. Their strategies are divergent here because of the relative power each entity has in their approach. NGOs are able to work on a broader ground level because of their composition and structure whereas the government has laws and institutions behind them to support their top down approach. This relationship can also be "geographically complementary, where NGOs provide outreach to remote areas inaccessible to or not prioritized by government" (Costen, 1998, p. 371). Complementarity is the pursuit of the same goal from different strategies.

The final type of relationship is that of competition. A relationship of competition<sup>23</sup> is one in which the government and the NGOs are not working together. Competitive relationships are likely when the two parties consider "each other's goals and strategies to be antithetical to their own" (Najam, 2000, p. 385). The basis for this relationship type rests in the perceived threat to governmental power. Governments will avoid relationships with groups who challenge their "political control or provide political bases for subversion. This perspective is not unreasonable, especially when one considers NGOs' frequent role in pressing for government accountability and their work in such volatile areas as human rights, the environment and the mobilization of

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<sup>23</sup> Sometimes called a confrontational relationship

the poor” (Costen, 1998, p. 365). It is not within a government’s best interest to enter into a cooperative relationship with their potential opposition/ enemy. This type of relationship exists when NGOs emerge as forces of reaction to particular government policies or when NGOs urge for policy changes (Najam, 2000, p. 386). Relationships of competition are based on perceived threats to power.

The three relationships provide information onto why and when the Guatemalan government decided to cooperate and/or compete with the local NGOs on post-conflict issues.

**Argument:**

The Guatemalan Civil War resulted in a myriad of lingering grievances. In the aftermath of the conflict, the Peace Accords attempted to address these injustices, but implementation has been mixed. I will focus on the implementation of provisions of the Accords that were designed to address three major issues: human rights and memorializations, refugees and indigenous rights, and justice.

On human rights issues, the Guatemalan Government and NGOs formed a cooperative relationship to implement the Comprehensive Agreement on Human Rights. They collaborated on memorializing victims from the Civil War; creating education curriculums covering the facts of the war, anti-discrimination ideals, and issues of (in) equality; and in developing civic participation programs across the nation. Guatemala was under the international spotlight during and after the Peace Accords process. This international pressure encouraged the newly democratizing Government to implement the Peace Accords to retain power in post-conflict Guatemala. The Government utilized all its available resources to address the international pressure; one of these crucial resources was NGOs. Retaining power included maintaining their

international reputation and avoiding the consequences of naming and shaming techniques.<sup>24</sup> The Government sought to appear favorably to their international funders. The acted in a way to guarantee funding for different government programs so as to retain status and support from their constituents. Accordingly, as a way to preserve their power internationally, a cooperative relationship was utilized.

The Guatemalan Government and NGOs adopted a relationship of complementarity when addressing refugee repatriation and indigenous rights, as specified by the Guatemalan Peace Accords. This type of relationship formed because the refugee and indigenous populations consisted of large sectors of society, thus, had their grievances not been addressed, they could have posed as a direct threat to the Guatemalan Government. Their force by numbers led the Government to complement the work of NGOs on these issues. In order to maintain its status quo and power, the Government worked with these large populations, or at least gave them the illusion of inclusion, so as to squelch their potentially disrupting calls for policy changes and actions.

The relative strength of international and domestic pressures help explain why relationships of cooperation and relationships of complementarity formed. As this paper will demonstrate, a cooperative relationship developed between the state and NGOS around human rights issues because the international community incentivized the Government to act. The international community monitored whether the state was implement the Accords and made offers of financial support contingent on the state's compliance. The direct pressures influenced the state to act as powerfully and proactively as it could, which meant utilizing the help of the

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<sup>24</sup> Naming and shaming is a practice whereby actors attempt to publicize different activities and events of different countries/ actors. The publicity is usually over something seen are morally repugnant or a violation of human rights. The naming leads to shaming for the country/actor named. Naming and shaming hurts reputations. "The naming and shaming mechanism can produce enough pressure on violating states to make some positive changes" (Tsutsui et al., 2012).



NGOs. A complementary relationship between the two entities developed as they addressed refugee and indigenous rights because although the international community exerted some pressure on the Government to address these issues, internal pressures by the large population groups were stronger. The refugees and indigenous community were in a position to hold the leaders accountable and thus had the opportunity to influence the political survival of the Guatemala Government. The strength of the domestic pressures illuminates why the Government engaged in strategies to appease the large population groups; these strategies may not have been the Government's preferred strategy but still helped them to retain office. The relationship types developed out of political motivation in response to the relative strength of the international community and the domestic pressures.

Finally, on calls for justice and an end to impunity, the Guatemalan Government formed a competitive relationship with the NGOs. NGOs addressing justice issues from the Civil War posed a direct threat to the Government. Many government officials committed crimes during the Civil War but retained their positions of power. Anti-impunity measures, as advocated by the NGOs, would threaten these state officials' power. The Government did implement some of the judicial reforms as dictated by the Peace Accords, yet it did little to attack the de facto obstacles that existed within society and that prevented justice from being obtained. Additionally, even as the NGOs began to gain traction on some anti-impunity cases, some in the Government put up a fight against these measures. The competitive relationship between the Guatemalan Government and the NGOs is a result of the desire of many powerful Government officials to protect themselves and their power.

The relation types adopted by the Guatemalan government can be explained by political survival motivations. While addressing human rights issues, the Government sought to retain

their power by appeasing the NGOs and the international community who posed a threat to the financial resources of the country and who threatened the Government's reputation internationally. To retain the power status quo while addressing refugees and indigenous peoples, the Government had to subdue the large population groups and their calls for change because these groups were potential threats to the Government's power. Finally, for some in the government, calls for justice were direct threats to the political survival of different government personnel. Thus, the government acted to retain the status quo of power by challenging anti-impunity actions and measures. The Guatemalan Government acted in a way to preserve its power when it formed relationships with NGOs addressing different grievances and while implementing the Peace Accords.

### **Methodology and Design:**

The project uses a temporal frame that spans from 1990 (the beginning of the Peace Accords process) until 2015. This frame will allow for a study of the peace implementation stage in its entirety until the present.

This project will use evidence from state reports, international reports, NGO websites, and the truth commissions' reports to gauge the type of relationship, the work done by the two groups, the outcome of the relationships, and the ongoing areas of concern. The post-conflict phase in Guatemala is still continuing to this day. Because of its recentness, there has not been an overarching analysis of the implementation phase of the Peace Accords. This project will construct an analysis regarding the relationships formed and their outcomes during the implementation phase as of 2015.

This project is a case study of Guatemala in the post-conflict phase. The case will be divided into three sections based on each issue: human rights, refugees and indigenous rights,

and justice. The first section will show a cooperative relationship, the second will show one of complementarity, and the third is one of competition. These sections will operate as three hypotheses to test the theory of political survival and relationships. These sections will all be examined under the same lens and will be subdivided as such: the content of the relevant Peace Agreement, actions of implementation by the state, the NGO community’s reaction, the current state of implementation of the Peace Accords, and finally, why this relationship type exists between the two groups.

The level of compliance of the two groups will be analyzed using the relationship theory. This theory postulated three different relationship types each that are formed based on similar or dissimilar goals and strategies. In cooperative relationships both the government and the NGOs share similar goals and will use similar strategies to achieve those goals. In relationships of complementarity the government and the NGOs have similar goals but will use different tactics to accomplish the goals. Finally, in competitive relationships the government and the NGOs have divergent goals and strategies. The table below illustrates this theory.

**Table 2: Government and NGO Relationships<sup>25</sup>**

<u>Type of relationship:</u>	<u>Cooperative</u>	<u>Complementarity</u>	<u>Competitive</u>
<i>Do the two groups share goals?</i>	Yes	Yes	No
<i>Do the two groups have similar strategies?</i>	Yes	No	No

This project will examine the goals and strategies of the Guatemalan Government and of the NGOs in the post-conflict period to postulate why that particular relationship existed between these two entities.

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<sup>25</sup> (Najam, 2000, p. 384-387).

Chapters two through four examine specific relationships between the Guatemalan Government and NGOs on the greatest issues plaguing post-conflict Guatemala. Each chapter will use evidence from secondary sources to prove the existence of a certain relationship type and to demonstrate why the Government adopted this relationship type (i.e. how the relationship aided in the political survival of the state). The fifth and final chapter will expand on the implications of this research and point to further areas of study.

## **Chapter 2: Cooperation on Disseminating Human Rights Ideals and Memorializations**

Human rights violations were central to the crimes committed during the Guatemalan Civil War. In the aftermath of the conflict, civilians throughout the country had lingering human rights grievances specifically on the deeply rooted discrimination and inequality in the country. In the post-conflict phase there was a call for memory initiatives by victims and families of victims to memorialize those who suffered during the conflict and to ensure that a conflict of this intensity never occurred again. As Guatemala transitioned into democracy, human rights became a priority because a stable democracy cannot develop and progress unless its society is grounded in human rights norms.<sup>26</sup> Human rights played a prominent role in the Guatemala Peace Accords with the creation of the Comprehensive Agreement of Human Rights. The Guatemalan Government and NGOs formed a cooperative relationship in implementing the Peace Agreement. This relationship reflected the shared goals and strategies of disseminating human rights throughout society. The cooperation grew out of the Guatemalan Government's desire to appear to the international community and its engaged human rights activists as active in implementing Peace Accords as a way to retain their power.

### **Content of the Peace Agreement**

The Government of Guatemala, the URNG, and the UN signed the Comprehensive Agreement on Human Rights in Mexico City on March 24, 1994. The Agreement established a series of commitments by the Guatemalan Government to reestablish human rights norms within the post-conflict society. The Comprehensive Agreement on Human Rights had nine major

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<sup>26</sup> Democracies tend to be grounded in civil and political rights due to their ties to elections and voting. These rights are guaranteed through the International Convention on Civil and Political Rights that Guatemala has ratified.

goals. The commitments attempted to address the comprehensive category of human rights by addressing human rights norms in their broadest sense and then narrowing in on specific rights that were relevant to post-conflict Guatemala.

**Table 3: The Goals of the Comprehensive Agreement on Human Rights<sup>27</sup>**

<u>Goal Number</u>	<u>Objective</u>
One	A general commitment to human rights norms. This commitment was expanded in the subsequent goals and embraced by MINUGUA. The goal prioritized civil and political rights over cultural, economic and social rights. <sup>28</sup>
Two	A general commitment to strengthen institutions, such as the courts and the public prosecutors office, through funding and the support of autonomy to reflect human rights norms. Created a new position within the government titled The Human Rights Ombudsman, whom would ensure human rights ideals permeated throughout the Government and ultimately throughout the greater Guatemalan society
Three	A commitment against impunity especially in regard to potential efforts by supporters of the previous regime to create legislation to prevent prosecution and punishment of people responsible for human rights violations
Four	A commitment against any manifestation of illegal security forces or clandestine structures as well as a regulation of the right to bear arms to limit violence from recurring
Five	A guarantee regarding freedom of association and movement; a direct commitment to rights as defined in the Universal Declaration for Human Rights, Article 17
Six	Terminated forced military recruitment
Seven	Included safeguards and protection for individuals and organizations working on the protection of human rights
Eight	Provided compensation and/or assistance to victims of human rights violations from the Civil War
Nine	Created a guarantee of respect of human rights for those wounded, captured, or those who remained outside the conflict during the period of violence.

<sup>27</sup> This information came from the Comprehensive Agreement on Human Rights and Mersky's *Human Rights in Negotiating Peace Agreements: Guatemala*

<sup>28</sup> They paid "particular attention to the rights to life, integrity and security of the person, to individual liberty, to due process, to freedom of expression, to freedom of movement, to freedom of association and to political rights" (Mersky, 2005, p. 9).

The Comprehensive Agreement also created the United Nations Verification Mission in Guatemala (MINUGUA) to aid in the implementation of the Peace Agreement. MINUGUA was deployed in 1994. MINUGUA's mission was to ensure that no further human rights violations were taking place and to guarantee that the Guatemalan institutions were respecting human rights. MINUGUA acted as a deterrent to abuse (Stanley & Holiday, n.d., p. 30) because it was internationally backed and therefore acted as a monitoring mechanism. MINUGUA was originally tasked with individual case work, which had limited societal impact, but gradually expanded its work to include broader analyses of human rights issues in Guatemalan society which covered a myriad of issues, including "the justice sector, the prison system, children, and two reports each on exhumations and lynchings" (Mersky, 2005, p. 15). MINUGUA's expanding role indicated its growing responsibility within Guatemalan society in relation to the implementation of human rights ideals. MINUGUA's mandate ended in 2004 but international monitoring mechanisms within the country continue to the present.<sup>29</sup>

The Guatemalan Government and Guatemalan NGOs implemented The Comprehensive Agreement on Human Rights through a cooperative relationship based on similar goals and strategies. The state adhered to their commitments from the Agreement via policy changes that the NGOs then utilized and expanded upon.

### **Government Response to the Peace Accords**

The Comprehensive Agreement was rather effective since it was implemented immediately rather than the two-year delay (until 1996) that most of the other Guatemalan Peace Accords suffered as the opposing sides continued to debate particulars and as each agreement

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<sup>29</sup> MINUGUA is discussed more extensively in Chapter One and the international monitoring is discussed in the final section of this chapter.

sought political backing and funding (Mersky, 2005, p. 2). Because of how quickly the Comprehensive Agreement was put into effect, MINUGUA was swiftly deployed. The rapid deployment strengthened how quickly and effectively the Government acted on human rights since it received international financial support and was constrained by international monitoring. The Guatemalan Government in the years since the signing of the Peace Accords has implemented the ideals of the Comprehensive Agreement through four specific activities: new policies and reforms, education, memorializations, and reparations.

The Government utilized a top down approach on human rights and initiated change through institutional and legal reforms. “In 1998, the Human Rights Commission of the UN concluded that there no longer existed an institutional policy by the state of violating human rights in Guatemala” (Salvesen, 2005, p. 12). The first four years of implementation showed major strides: human rights violations were significantly lower than they had been in the past and the signing of the entire Peace Accords created a sentiment of respect throughout the country. “A large part of Guatemala’s legal framework was revised to include explicit commitments to the protection and fulfillment of human rights – civil, political, economic, social, and cultural” (World Bank, n.d., p. 9). More specifically, in regards to implementing the Comprehensive Peace Agreement’s recommendations on justice reforms, the Government established the Comisión de Seguimiento y Apoyo al Fortalecimiento de la Justicia to create dialogues on human rights and judicial reforms.<sup>30</sup> They also implemented a Justice Sector Modernization Law in 1997 (Salvesen, 2005, p. 12). The Government instituted a series of laws on equality beginning in 2008 since equality is a pivotal aspect of human rights standards (“Replies of Guatemala to the

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<sup>30</sup> English translation: Commission for Monitoring and Supporting the Strengthening of Justice



List of Issues”, 2015, p. 6).<sup>31</sup> The Guatemalan Government also created a series of new laws that had a human rights basis but were not directly related to the Comprehensive Agreement on Human Rights. More specifically, the state enacted laws on non-discrimination<sup>32</sup>, favorable work conditions<sup>33</sup>, protection of families, mothers and children<sup>34</sup>, the right to adequate standard of living<sup>35</sup>, and education<sup>36</sup> (“Replies of Guatemala to the List of Issues”, 2014). These policies

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<sup>31</sup> The equality laws include: Decree No. 22-2008, Act on Femicide and Other Forms of Violence against Women; Decree No. 9-2009, Act against Sexual Violence, Exploitation and Trafficking in Persons; Decree No. 32-2010, Act on Healthy Motherhood; Decree No. 21-2009, Act on Criminal Jurisdiction in High-Risk Trials; The National Policy on the Comprehensive Advancement of Women and the Equal Opportunities Plan 2008–2023; The updated National Youth Policy 2012–2020; The National Policy on Violence and Crime Prevention, Public Safety and Peaceful Coexistence 2014–2034; The National Policy on Job Creation and Safe, Decent, Quality Employment; The Zero Hunger Pact, a macroeconomic policy on the needs of vulnerable groups; The National Policy for the Development of Micro, Small and Medium-sized Enterprises. The Equal Opportunities Plan 2008–2023 (National Policy for the Advancement and Development of Guatemalan Women); The National Plan for the Prevention and Elimination of Domestic Violence and Violence against Women and the Punishment of Offenders; Municipal pacts on equity, implemented in four departments through municipal women’s affairs offices; The Comprehensive Training Plan of the Office for the Defense of Indigenous Women; The Action Plan for the Reduction of Neonatal and Maternal Mortality and Improvement of Reproductive Health 2010–2015; The Institutional Strategic Plan on Gender and Ethnicity 2011–2015, which champions the rights of indigenous women; In 2011, the Supreme Electoral Court took measures to increase women’s participation in public; The establishment in 2013 of the Department for the Advancement of Women in Politics” (“Replies of Guatemala to the List of Issues”, 2014).

<sup>32</sup> The Non Discrimination laws include: “The Budget Act; The National Policy on Coexistence and the Elimination of Racism and Racial Discrimination; The consideration of culture and multiculturalism in the recruitment and posting of new National Civil Police officers; The development by the National Institute of Statistics of a conceptual framework and guide for mainstreaming indicators related to gender and indigenous peoples; The National Development Plan entitled “K’atun: Our Guatemala 2032”, which focuses on indigenous peoples” (“Replies of Guatemala to the List of Issues”, 2014, p. 6).

<sup>33</sup> The Right to just and favorable conditions of work policies include: “The Ministry of Labor and Social Welfare has initiated the dialogue and ratification process for the ILO Domestic Workers Convention, 2011” (“Replies of Guatemala to the List of Issues”, 2014, p. 13).

<sup>34</sup> The policies regarding the protection of the family, mothers and children include: “The Department against Violence, Exploitation and Trafficking in Persons and the Ministry of Labor and Social Welfare devised a protocol for the identification of victims of dangerous child labor and the worst forms of child labor and human trafficking” (“Replies of Guatemala to the List of Issues”, 2014, p. 17).

<sup>35</sup> The policies in regard to the Right to an adequate standard of living include: “In June 2013, the Comprehensive Rural Development Cabinet was set up; Progress has been made towards achieving the eight Millennium Development Goals, as reflected in the favorable results with regard to 34 of the 54 indicators analyzed (63 per cent)” (“Replies of Guatemala to the List of Issues”, 2014, p. 20).

<sup>36</sup> The policies in regard to the Right to education include: “the Ministry of Education has implemented measures such as school transport subsidies, scholarships and guaranteed free education. In addition, it runs the school meals program (linked to the Zero Hunger Pact), which has nationwide coverage and in 2013 provided meals to more than 2.6 million child in pre-primary and primary school, thus contributing to better nutrition with a view to improving school performance; The Indigenous Development Fund promotes access by indigenous communities to technology,

include human rights goals as generally referenced in goal one of the Comprehensive Agreement on Human Rights. The political and institutional changes have created a de jure dissemination of human rights norms throughout the country. The Government's policies were not geared necessarily at the persistent de facto issues. The Government's top down approach began early within the implementation stage and has carried on throughout the 20+ years since the signing of the Peace Accords.

The Government's top down approach focused specifically on education via norm dissemination. The Government recognized the need for human rights norms and respect to permeate the country. The policy work of the Government had limited ground level impact. To supplement their own work, the Guatemalan state held two national events on discrimination and racism in 2013 and 2014 to educate the entire country on the root causes of the Civil War. Furthermore, the Government agreed to the importance of educating the population about the history of the Civil War. To signify its commitment to human rights and education, the Guatemalan Government created a separate Peace Agreement, the Agreement on the Establishment of the Commission to Clarify Past Human Rights (CEH), which extensively documented the human rights violations from the Civil War and doled out responsibility for the crimes, with a majority of the crimes having been committed by the Government.<sup>37</sup> The fact that the Government permitted and established the CEH was indicative of their commitment on the human rights front. In 1999, President Arzu formally apologized for the role of the Government in the human rights abuses during the Civil War. This formal admission of responsibility was a major step forward for human rights (Salvesen, 2005, p. 12). The CEH report and official

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virtual connectivity, inter-community communication and the right to technology and cyberspace through its Virtual Network Program" ("Replies of Guatemala to the List of Issues", 2014, p. 29).

<sup>37</sup> They released their report on February 25, 1999. Refer to chapter one for more information about this truth commission and their report.

admission of guilt illustrated the Government's policy on human rights. The Government's denouncement of its past actions indicated its stance: these actions had no place in the future society. The Government took steps to educate Guatemalan civilians on the root causes and on the history of the Civil War as a way to demonstrate its intention to encompass a multitude of human rights aspects in the post-conflict society.

The Guatemalan Government took actions to address the grievances shared by a majority of civilians: how to commemorate and memorialize the victims of the Civil War. In response to the CEH's release and findings, Guatemala's Congress issued a legislative order in 2000 establishing February 25<sup>th</sup> (the day the CEH released its report) as Victims of Violence Day/ Day of Dignity to annually honor those who suffered during the Civil War (Salvesen, 2005, p. 12). In 2011, the Guatemalan Government under Colom aided the memorialization process by publicly acknowledging two revolutionaries from the Civil War who were killed by the repressive Government.<sup>38</sup> This commemoration was significant because it stemmed from a coalition Government who was still struggling against the left wing members of the Government who opposed the contents of the Peace Accords and denied their wrongdoings. The dedication of a day and the public acknowledgement of the consequences of the Civil War demonstrated the Government's active desire to instill broad human rights norms across society.

In direct reference to goal eight of the Comprehensive Agreement, the Guatemalan Government took a series of actions to provide reparations to victims of the Civil War.<sup>39</sup> In 2001,

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<sup>38</sup> "The commemoration was promoted by the Peace Secretariat (SEPAZ), the Presidential Human Rights Commission (COPREDEH), the National Reparations Program (PNR) and the Peace Archives with the approval of the families of Otto René Castillo and Nora Paiz. The goal was to acknowledge the two young revolutionaries, victims of intolerance and repression, to accept the responsibility of the government in the crimes, and to ask for pardon from the families of the victims. In a public event, in the presidential palace, President Alvaro Colom acknowledged the responsibility of the government in these crimes and officially asked for the families' forgiveness" (Paniagua, Amezquita, & Martinez, 2012, p. 35).

President Portillo paid \$1.8 million in compensation to survivors of families who suffered from the Dos Erres massacre of 1982 as a first step in implementing the Agreement's goal (BBC, 2012).<sup>40</sup> In 2005, the Government created the National Reparations Program to more uniformly handle reparations. The Government's actions on reparations were delayed in the post-conflict phase; this most likely was due to hard liners in the coalition Government resisting these actions and because the chronically weak state needed their financial resources for rebuilding after the Civil War and therefore delayed reparations until the state was more stable. Though delayed, the actions are indicative of the Government's intention to implement the Comprehensive Agreement on Human Rights.

The actions of the Guatemalan Government during the implementation phase of the Comprehensive Agreement on Human Rights reflect institutional changes through new positions and laws. The actions are also more symbolic with apologies and days of dedication. The actions in the twenty-two years indicate how the Guatemalan Government has been actively trying to disseminate human rights norms throughout the country.

### **NGOs during the Implementation Stage**

The relationship between the Guatemalan Government and the NGOs was one of cooperation. The work by the NGOs parallels the actions of the Government. The two entities collaborated on creating education curriculums covering the facts of the war, anti-discrimination ideals, and norms of equality and the collaborated on holding memorializations.<sup>41</sup>

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<sup>39</sup> This topic will be discussed in greater detail in chapter four which discusses justice issues in post-conflict Guatemala.

<sup>40</sup> During this massacre, 200 people were murdered. Chapter four will discuss some of the actions for justice that has transpired in relation to this incident.

For the NGOs, education was grounded in ensuring the application of human rights in present and future Guatemalan society. There are four prominent NGOs who worked on education during the implementation stage. One of the most prominent human rights activists from Guatemala was Rigoberta Menchu, recipient of the Nobel Peace Prize. She created the Rigoberta Menchu Tum Foundation whose work included disseminating the Peace Accords to the rural population and covering a whole spectrum of post-conflict issues that had a human rights basis (“Rigoberta Menchu Tum Foundation”, n.d.).<sup>42</sup> The Foundation’s human rights work, especially in education, empowerment, and activism supported the Government’s goals of societal human rights norm dissemination. Sons and Daughters for Identity and Justice Against Oblivion and Silence (HIJOS)<sup>43</sup> was another NGO whose mission statement included active participation in the defense of human rights.<sup>44</sup> Some of their work included raising awareness among Guatemalan youth about what happened during the conflict and illuminating how many of the same problems continue to persist, especially inequality and racism. Their ultimate goal was to create a society of educated youth who will never allow the human rights violations that

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<sup>41</sup> The work done by NGOs regarding reparations will be discussed in chapter four.

<sup>42</sup> Rigoberta Menchu Tum Foundation’s human rights work spanned across many sectors of Guatemalan society. The NGO trained educators to take a leadership role in indigenous communities, created Peace Jam to empower youth, sought justice within and outside of Guatemala for the Civil War’s human rights violations, created a Program for Sustainable Management of Natural Resources to protect the land and resources on indigenous lands, and, created the Political Formation program to aid in indigenous citizenship and political activism. An example of cooperation between the Rigoberta Menchu Tum Foundation and the Government not directly related to education but related to human rights work is the Foundation’s funds and credits program which corresponds to the Government’s creation of K’atun: Our Guatemala 2032 development program (this program will be discussed in chapter three) (“Rigoberta Menchu Tum Foundation”, n.d.).

<sup>43</sup> HIJOS began in Argentina in 1995 and then expanded to Guatemala in 1999 to raise awareness about those who disappeared during the bloody wars. Both organizations use public displays, graffiti, and demonstrations to raise awareness.

<sup>44</sup> The other two aspects of the HIJOS mission statement are to: “find the appropriate mechanisms to achieve trial and punishment to the military mass murderers and their accomplices and to keep alive the individual and collective memory of our parents, relatives, friends or comrades fallen in fight for a decent tomorrow” (“HIJOS Guatemala”, n.d.).

took place to occur again (“HIJOS Guatemala”, n.d.).<sup>45</sup> This was a goal the Government tried to address in their education work as well. The Development Association of Indigenous Communities (ADICI) used international funding to develop educational materials with human rights goals and a true version of what happened during the war (Paniagua, Amezquita, & Martinez, 2012, p. 26). Like HIJOS, ADICI worked to disseminate victims’ perspectives of what happened during the dictatorships. A final prominent NGO that fought for human rights norms in society is the Centro de Investigaciones Regionales de Mesoamérica (CIRMA)<sup>46</sup> which, beginning in 2004, created the national campaign “Why Are We the Way We Are?” which initiated a debate on racism and discrimination in the country (Paniagua, Amezquita, & Martinez, 2012, p. 31). This NGO-led dialogue was in line with the Government’s national events in 2013 and 2014 on discrimination by initiating conversations with the ultimate goals of equality and human rights norms. These NGOs worked to ensure human rights standards existed in present and future Guatemalan society.

There are also several NGOs that addressed human rights by confronting the violations of the past and memorializing the victims of the violations. Memory initiatives are important to a grieving society to give some closure and hopefully make way for positive changes in the future. The Peace Accords did not mention honoring the victims of the war, however the work of the NGOs was beneficial to the Government since it was something the population wanted since a majority had suffered in some manner during the Civil War. It was a grievance that could have created a threat to the Government’s power had it not been addressed. Moreover, the Government was actively pursuing commemorations and memorializations with their own

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<sup>45</sup> Some of this work is done through teaching the true history of the war, rather than the Government’s official story. This alternative stories gives a voice to the victims and civilians. By showing a true reality, HIJOS hopes to educate for change.

<sup>46</sup> English translation: Regional Research Center in Mesoamerica

activities. Once the violence subsided, the NGOs immediately began to address memorializations as a way to move on. The Association for the Integral Development of the Victims of the Violence of the Verapaces, Maya Achi (ADIVIMA) was one of the major NGOs who focused on memorializing the dead. Their activities included exhumations of clandestine cemeteries, proper burials, and memorials for the victims (“ADIVIMA”, n.d.).<sup>47</sup> Their work brought dignity back to those who were murdered by giving closure and a future to the families of the victims. The desire to commemorate the dead was felt across the nation and acknowledged by other NGOs, such as CONAVIGUA and the Memory Ixhil Initiative.<sup>48 49</sup> The memorializations provided closure to many who grieved and who suffered human rights violations. Closure, in turn, allowed for progress and for a country to move forward. Therefore, if the Government wanted the Peace Accords to be successful, they had to respect and encourage the work of the memory NGOs, often with direct support, as seen in the Government’s own commemoration activities.

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<sup>47</sup> ADIVIMA’S memorialization work also included “legal processes against those responsible for the human rights violations, legalization the heritage of the survivors, personal documentation of those affected, search and localization of those who disappeared during the violence, productive and sustainable projects for widows and orphans, rotating credit, housing and land acquisition projects, disclosing the information found in the Peace Accords and reports from the Truth Commission and REMHI to the affected on their rights and obligations in order to influence state affairs” (“ADIVIMA”, n.d.). Like many of the listed NGOs, ADIVIMA’s work ranged across a number of issues. ADIVIMA’s other programs included attention to other focal points of universal human rights norms, namely education and equality: they provided education development programs in rural areas and gave special concern to females in the machismo Guatemalan society (“ADIVIMA”, n.d.).

<sup>48</sup> The Coordinator of Guatemalan Widows (CONAVIGUA) constructed a number of monuments throughout the country that listed the names of victims of the conflict (Paniagua, Amezquita, & Martinez, 2012, p. 16).

<sup>49</sup> The Reconstruction of the Ixhil Historical Memory initiative was created in 2005. It was an initiative led by indigenous rural citizens who felt a need to document their “history of survival in the mountains, the repression carried out by the army against their communities during the 1980s, and the long history of oppression and resistance of the Ixhil people in the broader sense from their origins to the present day” (Paniagua, Amezquita, & Martinez, 2012, p. 20). 60-80 people participated in the initiative and led to the writing of the book in 2006 by Alfonso Huet titled *Nos salvó la sagrada selva: la memoria de veinte comunidades Q’eqchi’es que sobrevivieron al genocidio* (Paniagua, Amezquita, & Martinez, 2012).

## **Cooperative Relationship**

The commitments from the Comprehensive Agreement on Human Rights have been and continue to be worked on through cooperation between the Guatemalan Government and the human rights NGOs. The Guatemalan Government's actions on implementing the Comprehensive Agreement were grounded in institutional changes, new policies, programs and positions, and public acknowledgement of responsibility. To support the top down Government's approach, the NGO's sought to supplement policies with development projects, education efforts, and memorializations. The NGO's acted in ways that enhanced the Government's actions. The work of the two often interacted; the two entities have often jointly engaged in human rights dialogues and commemoration/ memorialization events. As noted in the literature review on relationships, cooperation includes three activities to which both sides can benefit from: information sharing, resource sharing, and joint actions. In Guatemala, the two entities shared information regarding history and facts, they shared resources via laws and development projects, and they jointly acted on dialogues and memorializations. The cooperative relationship has helped the country move into a democratic state beginning to be grounded in human rights ideals.

## **Current State of the Peace Accord Implementation**

The work done by NGOs regarding human rights education and memorializations was in line with what the Guatemala Government was trying to achieve in the aftermath of the Peace Accords. The Guatemalan state took the lead on disseminating their goals as evidenced by the policies they adopted. The NGOs supplemented the policies with their own work, emphasizing the education and memorialization goals. This collaborative work led to some positive changes in the country in regard to human rights. The fact that human rights violations are no longer



considered acceptable within governmental policy was a positive step (Salvesen, 2002, 14). In addition to the multitude of policy changes and new laws implemented, there was “a total of 8,761 workshops [for government actors, social activists, and civilians] held nationwide between 2006 and 2014 on civil, political, economic, social and cultural rights, the rights of indigenous peoples and national and international human rights protection mechanisms for the benefit of indigenous authorities and community leaders” (“Replies of Guatemala to the List of Issues”, 2014, p. 3). Each and every workshop was a positive step in regards to progress for human rights because it created conversations on human rights ideals. Additionally, the Comprehensive Agreement as a document has been used and cited by the Government to justify their actions and has given language to the NGOs to legitimize their actions. The Comprehensive Agreement on Human Rights initiated policy changes, norm dissemination, and memorializations, and gave legitimacy to post-conflict actions.

While there have been positive changes in post-conflict Guatemala, there are several human rights issues that still persist. In regards to issues that are directly tied to the Comprehensive Agreement on Human Rights, a significant lingering problem is the discrimination and biases that exist in post-conflict Guatemalan society. The International Committee on the Elimination of Racial Discrimination has continually published concerns about the deeply rooted racism that exists in everyday social life and that persists politically and institutionally in Guatemala.<sup>50</sup> The Committee notes that some of the legislation, which was intended to eliminate discrimination and inequality within the country, has been implemented, but de facto obstacles still persist and prevent the policies from successful realization (“Compilación de Observaciones Finales”, 2006, p. 281). Guatemala has a strong legal basis in regard to the right to education with a multitude of

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<sup>50</sup> In 2011 there were 79 cases presented before the courts on issues of discrimination and biases in society, and only one of the 79 cases was tried (“Compilación de Observaciones Finales”, 2006, p. 285).

laws and policies. However, in spite of these laws, the use of human rights terminology within the education sector is limited and the curriculum still contains discriminatory stereotypes (Otto, 2008, p. 14). Furthermore, in regards to memorialization, the state has failed to address a major issue: the fate of the forced disappeared persons from the Civil War.<sup>51</sup> The Government has not created a National Commission of Inquiry to address the whereabouts of the disappeared nor has it created a centralized registry of disappeared persons (“Concluding Observations of the Human Rights Committee”, 2008, p. 6). The continuing discrimination and the lack of information regarding the fate of the disappeared leaves human rights grievances ever-present in society.

By far the most serious problem in post-conflict Guatemala is the attacks on human rights defenders. These attacks are human rights violations in themselves but they are also preventing NGOs from addressing the myriad of human rights issues in post-conflict society. This is an issue across the board for NGOs in Guatemala. The situation is so dire that in 2001, international observers labeled Guatemala as suffering a “human rights meltdown” and the violent situation persists (Amnesty International, 2002, p. 5).<sup>52</sup> The rates of attack are high and have been increasing since the early 2000s to the present: “the NGO Guatemalan Human Rights Defenders Protection Unit (UDEFEUGA) [...] reported 622 attacks against human rights defenders through November [2013], compared with 326 attacks in 2012” (“Guatemala 2013 Human Rights Report”, 2013, p. 15). The attacks range from threats to physical attacks on NGOs working in

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<sup>51</sup> In the 2000s a series of exhumations took place which helped lead to information on the disappeared. However, most of the actions on exhumations were initiated by NGOs rather than the Government. The Government, particularly the army, has withheld information that could lead to more information. The classified documents will be discussed to a greater extent in Chapter Four. Regardless of the exhumations, there has not been a coordinated Government effort to address this major human rights violation nor has there been an effort to address and console the victims’ loved ones who seek more information.

<sup>52</sup> The human rights violations discussed in this paragraph are targeting NGOs, activists, and as Chapter Four will discuss, witnesses/ justice officials. These violations are on the rise. However, as this section states, generally, Guatemala’s human rights violations have decreased from what they were during the Civil War. Attacks during the Civil War were broader reaching and targeted large sectors of society (i.e. the indigenous population). The current attacks focus on activists. The current attacks however are escalating and leading to an increase of human rights violations in post-conflict Guatemala.

post-conflict Guatemala.<sup>53</sup> The Government has sought to address these issues with creation of The Unit for the Analysis of Attacks against Human Rights Defenders<sup>54</sup> and the Coordination Unit for the Protection of Human Rights Defenders, Justice Administrators and Operators, Journalists and Social Communicators. However, it is not enough. The attacks on those defending human rights, those testifying in human rights cases, and those doing ground level work is disturbing and indicates that the Guatemalan Government has much work to do in its post-conflict society: it needs to continue to address grievances from the conflict but also address current human rights violations.

The persisting injustices and the obstacles to addressing these grievances are significant aspects of the post-conflict phase in Guatemala. Though the issues are substantial, the cooperative relationship of the Government and the NGOs provides the best prospects for a future Guatemalan society grounded in human rights norms.

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<sup>53</sup> There have been a series of attacks on well-known human rights groups and activists. “The staff of the Fundación Rigoberta Menchú received death threats after filing suit in Spain against a number of former Guatemalan officials for genocide [...] Other Guatemalan NGOs, including the indigenous rights group Comité de Unidad Campesina (CUC), Peasants’ Unity Committee, who joined the Menchú writ, also reported threats and harassment.” Additionally, “threats were sent to Miguel Angel Albizures, a contributor to the newspaper El Periódico and a prominent member of the NGO umbrella group, the Alianza contra la Impunidad; in August 2000, Celso Balán, a representative of the Centro de Acción Legal en Derechos Humanos was seized by two men; [...] “In September 2000 the headquarters of FAMDEGUA were raided; [...] Repeated attacks upon CEIBAS eventually forced it to stop working in Guatemala and reorganize abroad. Staff members of the Fundación de Antropología Forense de Guatemala (FAFG) were attacked in October 2000; The office of the Asociación de Estudiantes Universitarios (AEU), Students Association, was broken into; [...] The offices of the Asociación de Mujeres Vamos Adelante were raided in October 2000 by four armed men; [...] Members of the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA) received death threats because of their efforts to bring a former military commissioner to justice for repeated rapes; [...] Members of the Grupo de Apoyo Mútuo (GAM) reported death threats and surveillance in November and December 2000; [...] Staff of the Fundación Myrna Mack, Myrna Mack Foundation, and members of a REMHI team disseminating conclusions of the REMHI report in Chimaltenango reported threats in February 2001 (Amnesty International, 2002, p. 14).

<sup>54</sup> “The Unit for the Analysis of Attacks against Human Rights Defenders does not protect human rights defenders. Its main function is to examine, in context, the pattern of attacks against this group” (“Replies from the Government of Guatemala”, 2011, p. 26) and therefore is not a directly useful organization for protecting the human rights activists.

## **Why Cooperation?**

The Guatemalan Government entered into a cooperative relationship with the Guatemalan NGOs as a way to protect their political power. This relationship stemmed from the NGO's involvement in the Peace Accords process and international pressure.

The Guatemalan Government did not have to search high and low to form a cooperative relationship with the NGOs; it was already available. The Peace Accords included extensive participatory mechanisms. In 1994, the Civil Society Association (ASC) was established to represent civil societies opinions and grievances during the Peace Accord process (Salvesen, 2002, p. 25). The Peace Accords process also produced dozens of commissions that created debates and dialogues among the Government and civil society (Stanley & Holiday, n.d., p. 5). NGOs were active in both because many of the NGOs were composed of activists and those who suffered during the Civil War all who sought to see improvements for human rights in post-conflict society. Thus, NGOs already were forming a cooperative relationship with the Government prior to the implementation phase and it was easier for the Government to maintain the camaraderie. Moreover, since the NGOs had been involved in the Peace Accords process, they also had a higher stake in the implementation phase and could have become less cooperative had the Government not been active in the implementation. Therefore, the cooperative relationship proved beneficial to both entities.

The other major reason the Government and the NGOs cooperated is due to international presence. The international community played two roles: provision of financial support and monitoring. "By accepting an unprecedented level of international scrutiny into Guatemalan domestic affairs, the Government was able to demonstrate its commitment to fundamental change in relation to human rights" (Arnault, 2006, p.16). Guatemala wanted to mark its progress

in democratization and in moving past their long, violent conflict. Thus, the Government allowed the international community to play an important role in supporting the cooperative relationship because the state was compelled to apply human rights norms under international financial obligations and international watchdog pressures.

The international community provided the guarantee of much needed financial resources. The funding came with the stipulation of actual implementation of the Peace Accords. It was in the state's best interest to do everything it could, including working with NGOs, to ensure they received the funding. Prior to the signing of the Peace Accords, "the United States in 1990 began to pressure for human rights improvements, and multilateral institutions such as the World Bank and the European Parliament began to condition aid on progress in human rights" (Stanley & Holiday, n.d., p.15). The Guatemalan state needed to show progress in implementing the Comprehensive Agreement and on instilling human rights ideals in order to maintain the status quo of aid. As the Peace Accords process proceeded, the chronically weak Guatemalan State was promised money to strengthen their political institutions; there was a promise of \$1.9 billion by international donors (Stanley & Holiday, n.d., p. 12).<sup>55</sup> For a government to survive, it needs funding. Thus out of a political survival motivation, the Guatemalan Government utilized the resources available to them: their resources included NGOs whom could supplement the Government's actions. For a Government to retain power, it needs to be seen as working to improve society, therefore as the Guatemalan Government implemented new policies and programs in response to the Peace Accords, they needed resources to efficiently operate them.

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<sup>55</sup> "The international donor community (25 countries and 22 international bodies) promised to fund US\$ 1.9 billion for Guatemala's reconstruction efforts between 1997 and 2000, and the actual contributions made – US\$ 2.4 billion for the period 1996–99 – even exceeded their promises" (Salvesen, 2002, p. 29).

Accordingly, as a way to maintain political power nationally, the Government needed to respond to the international pressure and pursued a political platform composed of human rights norms.

The international community played another major role in the implementation of the Peace Accords: monitoring. MINUGUA was the result of direct international involvement. MINUGUA carried out the verification and institution building activities that aided the Government and NGO relationship. MINUGUA's mandate expired in 2004 but the international community continued its direct involvement with the establishment of the Office of the High Commissioner for Human Rights in 2005 that continues to monitor the human rights concerns within the country by issuing reports and recommendations ("Guatemala's Crippled Peace Agreement", 2011). The international community also played a less direct role in Guatemala as watchdogs that vocalized Guatemala's human rights issues. Major players include the 'Group of Friends' (Mexico, Colombia, Venezuela, Spain, Norway and the United States), the Inter-American Development Bank (Salvesen, 2002, p. 29), and international NGOs such as the Washington Office on Latin America, Amnesty International Americas Watch, and Human Rights Watch (Mersky, 2005, p. 7). These countries, institutions, and NGOs were aware of the post-conflict situation in Guatemala and applied pressure (through investigations, reports, media, and naming and shaming) to ensure change. As a way to retain their power and status internationally, the Guatemalan Government acted progressively on human rights.

The Guatemalan Government acted in a way to strengthen its position politically. By working cooperatively with NGOs, the Government showed its intent to address human rights issues and implement the Peace Agreement. This willingness was vital in international eyes and in the eyes of civilians with numerous grievances. The Government's resolve developed out of a political survival motivation to retain their power in post-conflict Guatemala.

### **Chapter 3: Relationship of Complementarity on Refugees and Indigenous Rights**

The Guatemalan Civil War left one million Internally Displaced Persons (IDPs) and “400,000 exiled in Mexico, Belize, Honduras, Costa Rica, and the US” (REMHI, 1999, p. 55).<sup>56</sup> The Guatemalan refugees were addressed relatively quickly during the Peace Accords with The Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict.<sup>57</sup> The refugees’ return was a particular concern to the success of the Peace Accords process and to the sustainability of the newly democratizing state.<sup>58</sup> A majority of the refugees were of Mayan descent, therefore the grievances of the refugees morphed into grievances of the indigenous populations. Thus, refugee repatriation and indigenous rights are tied together. These two populations constituted a majority within Guatemala’s population. As this chapter will explore, the Guatemalan Government operated with Guatemalan NGOs in a relationship of complementarity in reaction to the voices and demands of the large population groups. Complementarity is based on work to achieve the same goal through different strategies, namely a government’s top down approach complemented by the NGO’s bottom up approach. This chapter will demonstrate that when addressing refugees, the relationship arose due competing repatriation plans resulting in two different strategies. When addressing indigenous rights,

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<sup>56</sup> This number is up to some debate. The data is not that precise because the country was in war. One example of the discrepancy is the difference between the actual numbers of uprooted persons and how many the UNCHR registered as official refugees: “In flight from a vicious civil war in the early 1980s, 150,000 to 200,000 Guatemalans crossed over to Mexico; some 46,000 were eventually registered by UNHCR as refugees” (Jamal, 2000, p. 5). Other data discrepancies include the number of refugees recognized by a variety of institutions and NGOs, varying from 40,000 up to 400,000.

<sup>57</sup> Of note, the Guatemalan refugees were part of the Accords but the IDPs were largely ignored and forgotten in the Peace Accords Process. This population is still a lingering consequence of the Civil War.

<sup>58</sup> As discussed in Chapter One’s literature review on peace accords: refugees, due to their large population and necessity for funding, require explicit attention during peace accords process.

indigenous activism resulted in significant ground level work that complemented Government policies.

Refugees had their own set of grievances while in exile, these included: homelessness, poverty, fear, negative aspects of living in refugee camps, and a loss of identity.<sup>59</sup> Refugees when returning then suffered from land loss, post-traumatic stress disorder (PTSD), reestablishing communities, and economic and productive reintegration (De Rivero, 2001, p. 10).<sup>60</sup> Many of the repatriated persons unfortunately faced further issues because of their Mayan identity. “83.3% of the crimes during the war were suffered by members of the Mayan people, who also suffered extreme acts of cruelty and violence that reached to establish the crimes as genocide” (Rostica, 2007, p. 76). During the Civil War, the cultural rights of the Mayan were destroyed; this devastation included the repression of language and dress, the physical annihilation of “ceremonial centers, sacred places and cultural symbols” (Tomuschat, Lux de Coti & Tojo, 1999, p. 35), and the repression of social and religious life, structures, norms, and traditions. The NGOs tackling indigenous rights concerns were dealing with the historical issues of inequality and exclusionary practices that permeated all aspects of society and still continues to this day while also addressing the human rights violations that occurred during the Civil War. The Peace Accords addressed the grievances of both the refugees and the indigenous populations.

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<sup>59</sup> In relation to identity: “Many people felt that they had forfeited their original identity by not remaining in their community. Others, in contrast, acquired a new identity based on their positive experience in their receiving community or their involvement in different movements” (REMHI, 1999, p. 61). This lack of identity can lead to changed individuals and changed communities when the refugees do repatriate.

<sup>60</sup> Many resettled communities are still dependent on outside (foreign and international) aid and subsistence farming.



## Content of the Peace Agreements

The Peace accords yielded two agreements of relevance to this chapter: The Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict and The Agreement on the Identity and Rights of Indigenous Peoples.

The Government of Guatemala, The URNG, and the UN signed the Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict on June 17th, 1994 in Oslo. The deliberations for this Peace Agreement began in 1992 when the Office of the United Nations High Commissioner for Refugees (UNHCR) noted and publicized the refugee situation. Under this UNHCR pressure, the parties to the Accords agreed to address the issues the refugee population was facing while in exile and would confront upon returning to Guatemala.<sup>61</sup> Based on these areas of concern, the parties generated specific topics to address during repatriation, these included: full respect for human rights, special protections for women and children who were particularly affected and vulnerable, respect for indigenous rights, emphasis on the security of those resettled,<sup>62</sup> and attention to the lack of personal documentation.<sup>63</sup> As the deliberations proceeded, the parties established five goals for a comprehensive resettlement strategy. The goals were: to ensure that the refugee population would enjoy all their fundamental rights, to reintegrate the uprooted population, to fight poverty<sup>64</sup>, to strengthen the democratization of state

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<sup>61</sup> Refer to the introduction of this chapter, second paragraph, to understand the areas of concern for the refugees

<sup>62</sup> The security concerns addressed the physical safety of the repatriated: “the Parties recognize the urgent need to remove all types of mines or explosive devices buried or abandoned in these areas” (“Agreement on Resettlement of Population Groups”, 1994).

<sup>63</sup> “The lack of personal documentation for the majority of the uprooted population groups increases their vulnerability and limits their access to basic services and the enjoyment of their civil and political rights” (“Agreement on Resettlement of Population Groups”, 1994).

<sup>64</sup> Poverty had a particularly large effect on the areas where the populations were uprooted and where they were resettled

structures,<sup>65</sup> and to promote genuine reconciliation<sup>66</sup> (“Agreement on Resettlement of Population Groups”, 1994). The Agreement arose out of actions by the Government and NGOs on repatriation plans, which will be discussed more extensively in the next section. The Agreement on the Uprooted Populations was one of the first Agreements put into effect after the end of the Civil War because of the pressing need to address the refugee population.

The Government of Guatemala, the URNG, and the UN signed The Agreement on The Identity and Rights of Indigenous Peoples on March 31, 1995 in Mexico City. This Agreement was the first of its type across Latin America and was different than the other Peace Accords from Guatemala in that it acknowledged a root cause of the war: discrimination. The Peace Agreement stated: “the indigenous peoples have been particularly subject to de facto levels of discrimination, exploitation and injustice, on account of their origin, culture and language” (“Agreement on the Identity and Rights of Indigenous Peoples”, 1995).<sup>67</sup> The Peace Agreement was divided into four chapters; table four will illustrate the content of each chapter.

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<sup>65</sup> The strengthening of democratic structures is important to ensure that the constitutional rights of the resettled populations are respected at all levels of governance.

<sup>66</sup> The promotion of genuine reconciliation is vital to instilling a culture of peace in the resettlement areas. The reconciliation can also be beneficial on a national level with broader political participation, tolerance and respect.

<sup>67</sup> The full script of the Peace Accord preamble where discrimination and inequality is noted is as follows: “That 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; That this historical reality has affected and continues to affect these peoples profoundly, denying them the full exercise of their rights and political participation, and hampering the configuration of a national unity which should adequately reflect the rich and diversified physiognomy of Guatemala with its wealth of values; That until this problem affecting Guatemalan society is resolved, its economic, political, social and cultural potential will never be able to develop fully and neither will it be able to take the place in the community of nations due to it by virtue of its ancient history and the spiritual grandeur of its people” (“Agreement on the Identity and Rights of Indigenous Peoples”, 1995).

**Table 4: Chapter Content of the Agreement on Indigenous Rights<sup>68</sup>**

Chapter Number	Content
One	The identity of the indigenous people <sup>69</sup>
Two	The struggle against discrimination <sup>70</sup> (specifically the rights of indigenous women <sup>71</sup> )
Three	Cultural rights (specifically language <sup>72</sup> , names, spirituality <sup>73</sup> , ceremonial centers <sup>74</sup> , the use of indigenous dress <sup>75</sup> , education reform <sup>76</sup> , and mass media <sup>77</sup> )
Four	Civil, political, social, and economic rights of indigenous populations

<sup>68</sup> The information in the table comes from the Agreement on the Identity and Rights of Indigenous Peoples

<sup>69</sup> “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”

<sup>70</sup> The Government promised four actions in hopes of eliminating discrimination, these include that the Government will: “(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 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”

<sup>71</sup> Indigenous women face double discrimination for being women and indigenous, thus they deserve special protections. The Government promised to: “ (a) Promote legislation to classify sexual harassment as a criminal offence [...] (b) Establish an Office for the Defense of Indigenous Women’s Rights [...]; and (c) Promote the dissemination and faithful implementation of the Convention on the Elimination of All Forms of Discrimination against Women”

<sup>72</sup> To address the language rights of the indigenous populations, the Government agreed to these 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 (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. (e) Promote programs for the training of bilingual judges and court interpreters from and into indigenous languages; (f) Enhance the status of indigenous languages (g) Promote the granting of official status to indigenous languages”

<sup>73</sup> “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. [...] 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 practiced by the Maya, Garifuna and Xinca peoples”

<sup>74</sup> “According to the Guatemalan Constitution, temples and ceremonial centers of archaeological value constitute part of the national cultural heritage. As such, they are the property of the State and must be protected”

<sup>75</sup> “The constitutional right to wear indigenous dress must be respected and guaranteed in all areas of national life”

<sup>76</sup> The Accords recognized that education is a major aspect in the development of cultural values and knowledge. Thus, the Government agreed to: “(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 (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 programs 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 [...]; (h) Pursue the effective realization of the constitutional right to education [...]; Increase the budget of the Ministry of Education”

<sup>77</sup> “Media play[s] a paramount role in the defense, 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”

The Peace Agreement on Indigenous Rights created five commissions of mixed composition who worked to ensure active indigenous representation and inclusion while simultaneously addressing major grievances specific to these communities.<sup>78</sup> The Agreement gave verification power to MINUGUA on addressing the human rights issues inherently tied to indigenous rights. The Agreement was comprehensive in its coverage of indigenous rights on an individual level, cultural level, and national level.

### **Actions by the Guatemalan Government and NGOs**

To understand the relationship of complementarity established between the Government of Guatemala and the Guatemalan NGOs while addressing refugees and the rights of indigenous peoples, it is important to analyze them separately. The following subsections will examine the actions of the entities during the post-conflict phase.

### **The Government and NGOs on Addressing Refugee Populations**

The Guatemalan refugee population's reintegration and resettlement should be historically examined in order to grasp how the Guatemalan Government and the NGOs interacted and complemented one another's actions.

In 1987, before the Civil War had ended, the UNHCR, the Guatemalan Government, and the Mexican Government signed a tripartite Agreement to address the refugee situation through a repatriation plan.<sup>79</sup> This repatriation plan monitored by the still repressive Guatemalan army was

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<sup>78</sup> "Three of these [were] composed of government and indigenous representatives and tasked to develop specific proposals on educational reform, political reform and participation, and indigenous peoples' land rights. The other two, not necessarily of mixed composition, [were] to address the granting of official status for indigenous languages and the definition and preservation of sacred areas" (Costello et al., 1997, p. 267).

<sup>79</sup> Mexico was part of this agreement because the vast majority of Guatemalan Refugees took refuge in Mexico during the Civil War and therefore the fate of the refugees was important to the Mexican Government.

intended to be a “process to restore the refugee’s obedience to the state” (Long, 2007). Refugees received amnesty as they reentered the country but were then resettled into model villages and development poles that suffered under the military who imposed their counter-insurgency doctrine upon the population of refugees (De Rivero, 2001, p. 9).<sup>80</sup> Unsurprisingly, the refugees largely rejected this government sponsored repatriation strategy stating that the program did not offer short term security nor long term stability for the uprooted populations; only 6,000 refugees of the 400,000 utilized this option (Long, 2007, p. 4). Dissatisfied with the Guatemalan Government’s repatriation attempt, the refugees mobilized and formed their own political group to influence their resettlement; this group was called Permanent Commissions (CCPP).<sup>81</sup> The active participation by refugees was unprecedented and led to the formation of NGOs advocating for refugees rights upon return. The political awakening stemmed from the refugees’ experiences while in exile with democracy and liberal human rights ideals through international connections and activists, like Rigoberta Menchu (who will be discussed later on) (Long, 2007, p. 4). The way that the CCPP developed and demanded their own rights included the refugees “building networks of support outside state control and citing international law and human rights theory as mechanisms limiting state power, while simultaneously building upon community and collective organization to promote local development” (Long, 2007, p. 8). The CCPP became a political group who, rather than allowing repatriation to be a reassertion of state control on its citizens, became active agents that asserted their own autonomy and needs. The CCPP negotiated an agreement (signed in 1992) that specified certain conditions for the refugees’ return; these

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<sup>80</sup> Refer to Chapter One: Background information for information about the Development Poles

<sup>81</sup> Rigoberta Menchu, human rights activists and recipient of the Nobel Peace prize, was active in mobilization of the refugees. As a refugee herself, she internationalized the plight and helped increase the development of the skills of the refugees to enter into the government negotiations via the CCPP. Menchu’s influence on both refugees and indigenous rights will be discussed more extensively later in this chapter.

included safety concerns, the need for a comprehensive reintegration program,<sup>82</sup> and a guaranteed access to land and credit (De Rivero, 2001, p. 9). In 1993, the first round of CCPP refugees (about 2,500) returned to Guatemala (Long, 2007, p. 4) and by 1999, the last of the refugees had been repatriated (Jamal, 2000, p. 1).<sup>83</sup> The 1994 Peace Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict reflected the CCPP negotiations through a direct reference in the Agreement: “Uprooted population groups shall participate in decision-making concerning the design, implementation and supervision of the comprehensive resettlement strategy and its specific projects” (“Agreement on Resettlement of Population Groups”, 1994). The Agreement on Uprooted Populations was intended to supplement the work of the CCPP and address the needs of resettled populations.

The relationship between the Guatemalan Government and the NGOs (the CCPP was made up of social activists and can be considered a NGO) is unique. The Government tried to pursue their own strategy but met resistance from the more than 400,000 refugees. Thus, the Government formed a relationship of complementarity with the refugees. The main goal was to repatriate the uprooted populations. The realization of this goal was dependent on satisfying the needs of all involved parties. The Government sought this relationship type as a way to placate all relevant parties and to retain political power in spite of the massive population of refugees demanding improved repatriation policies. The Government sought to control the idea that “returnees should [...] be viewed as potential agents of change, rather than objects of charity” (Jamal, 2000, p. 2). As agents of change, these refugees could pose a threat to the Government’s

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<sup>82</sup> More specifically, this program addressed the six main concerns by the refugees: the right of a refugee to decide when, how and where to return, the right of refugees to land, freedom of association, right to life, security and integrity, international support, and freedom of movement.

<sup>83</sup> Only about 20,000 refugees of the approximately 400,000 returned to Guatemala. The rest resettled elsewhere.

political plans and power. The Government addressed and contained these potential threats by complying with the refugees' demands.

The refugees were active within the CCPP and on addressing other issues surrounding their resettlement. Returnees were engaged in promoting the implementation of the Peace Accords. Female refugees also began to develop their own women's organizations to encourage political participation and gender equality (De Rivero, 2001, p. 9). The way that the returnees confronted the Guatemalan Government on repatriation efforts enabled them to confront the state's failings on other issues. The Coordination of NGOs and Cooperatives (CONGCOOP) was active during the period of settlement of the refugees. It arose in 1992 to aid in the collective return of refugees by vocalizing and developing projects based on the needs and rights of the uprooted populations. Once the CCPP and the Guatemalan Government established their agreement and refugees began to resettle, CONGCOOP, now made up of some resettled citizens (as well as indigenous activists), used their prior strategies to tackle new topics. Beginning in 1996, CONGCOOP's priorities shifted to include: compliance with the Peace Accords,<sup>84</sup> increasing rural public political participation,<sup>85</sup> developing rural community capacities,<sup>86</sup> and addressing water and the environment ("CONGCOOP", n.d.).<sup>87</sup> The shift by CONGCOOP to address a greater range of issues revealed the empowerment that was felt among resettled populations. This expanded coverage also demonstrated the way that resettled activists were

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<sup>84</sup> CONGCOOP was mainly focused on "the Agreement on Social and Economic Aspects and Agrarian Situation (ASESA), with regard to access to land, economic and social rights" ("CONGCOOP", n.d.).

<sup>85</sup> CONGCOOPs strategy included increasing gender and cultural participation across local, regional, national and international levels of politics ("CONGCOOP", n.d.).

<sup>86</sup> CONGCOOP aimed to increase living standards in rural populations, with special emphasis on land and product diversification

<sup>87</sup> CONGCOOP aimed to protect and raise awareness about environmental threats and the threat of privatization of public services and natural resources

finding new ways to remain politically relevant and active in post-conflict Guatemala. The refugees gained, both physically by returning, but also through empowerment, from their interactions with the Government on refugee resettlement. The Guatemalan Government also gained politically through this interaction by addressing the refugee crisis that had garnered international attention and by alleviating the pressure that had posed a threat to their power.

### **The Government and NGOs on Indigenous Rights**

The actions of the Guatemalan Government and Guatemalan NGOs can be more clearly divided when looking at indigenous rights. The two entities were both working towards a mutual goal but their strategies diverged, thus forming a relationship of complementarity.

#### ***The Guatemalan Government's Actions on Indigenous Rights***

During the implementation stage of The Agreement on The Identity and Rights of Indigenous Peoples, the Guatemalan Government acted in compliance with the requirements of the Agreement. The main governmental actions can be separated into three general categories: general discrimination, justice, and education.

On general discrimination issues, the Guatemalan Government sought to eliminate discrimination within its policies, programs, and sectors. The Government established a Commission on Coexistence and the Elimination of Racism and Racial Discrimination to signify its intention to counter the longstanding culture of discrimination in the country. This commission was supplemented with changes to other sectors of the Government. The changes included: acknowledgement of discrimination within The Budget Act and plans to avoid biases,<sup>88</sup>

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<sup>88</sup> The Budget Act of Guatemala was an act proposing a unified approach to the control and operation of the state's financial resources by integrating the budget, public lending, accounting, and the management of public sector into



the development of the National Institute of Statistics to better grasp the degree of discrimination across the country, and the creation of a new development plan, called “K’atun: Our Guatemala 2032” to increase the standard of living for indigenous populations by addressing the gaps in education and health services for indigenous peoples (“Replies of Guatemala to the List of Issues”, 2013, p. 6). The Government created an office in 1999 under the Presidential Commission on Human Rights for the defense of indigenous women, who faced double discrimination on account of their ethnicity and gender (Salvesen, 2002, p. 14). The Government’s policy and subsequent structural and systematic changes indicated its desire to eliminate discrimination against indigenous peoples from its policies and systems.

The Guatemalan Government applied a series of changes to the judicial sector to address indigenous rights. The Guatemalan Supreme Court set up the Indigenous Affairs Unit in 2012 to aid in the acknowledgement of indigenous rights. The Unit created the Indigenous Interpreting and Translation Center in 2013, which hired 89 official interpreters to help with language barriers. The Public Criminal Defense Institute of Guatemala created 15 indigenous advocacy offices nationwide to provide legal services to rural, indigenous populations. Finally, the Government increased the capacity of indigenous authorities to run their own legal system (“Replies of Guatemala to the List of Issues”, 2013, p. 7). Justice is a major branch of the political system. Thus, by addressing some of the major areas of concern for access and utilization by indigenous populations, the Guatemalan Government indicated its commitment to indigenous rights.

Within the education sector, the Guatemalan Government applied changes to address indigenous rights as dictated by the Peace Accords. The Ministry of Education implemented the Strategic Education Plan that focused on curriculum development to better include indigenous

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one larger institution (“Replies of Guatemala to the List of Issues”, 2013).

rights, ideas, and traditions within the educational system. The Ministry classified 5,083 primary schools in 2013 as bilingual schools so as to better accommodate indigenous learners (“Replies of Guatemala to the List of Issues”, 2013, p. 7). Additionally, the Indigenous Development Fund increased access by indigenous communities to technology and virtual connectivity and promoted training for the labor market with the development of training centers across the country (“Replies of Guatemala to the List of Issues”, 2013, p. 31). The activities by the Government to address education were indicative of the Government’s commitment to indigenous rights.

The Government’s actions in the aftermath of the signing of the Indigenous Rights Peace Agreement showed the coalition government’s commitment to address the deeply rooted discrimination against indigenous populations. The Government’s strategy utilized policy changes and the development of new offices to address the issues.

### ***NGOs during the Implementation Stage for Indigenous Rights***

Indigenous activism in Guatemala arose out of a broader growth of indigenous activism across the Americas that began in the late 1980s. The movement began with the ‘500 Years of Resistance Campaign’ that was “a continental protest movement against official celebration of the ‘discovery’ of the Americas” (Costello et al., 1997). In Guatemala, the Majawil Q’ij (‘New Dawn’) NGO was established in 1990 in response to the 500 Years Campaign and to reflect growing indigenous activism.<sup>89</sup> The increasing indigenous activism within Guatemala led to the formation of the Council of Mayan Organizations of Guatemala (COMG) in 1991 who

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<sup>89</sup> The “group was also responsible for coordinating the second continental meeting, in Guatemala’s second city of Quetzaltenango, of ‘500 Years of Indigenous and Popular Resistance’. This summit, held in 1991, had a huge impact, strengthening Mayan consciousness and for, the first time, putting Guatemalans in touch with other indigenous organizations throughout North and South America” (Costello et al., 1997).

advocated for the “recognition of Guatemala’s ethnic and cultural diversity, basic human rights, and restitution for victims of the Civil War” (Garcia, Escarfuller & Andre, n.d., p. 4). This engagement transformed into a Pan-Mayan agenda in Guatemala, advocated by COMG but made up of “indigenous professionals, teachers, development workers, small business owners, and agriculturalists” (Warren, n.d.). The Pan-Mayan Agenda promoted indigenous rights by creating “hundreds of research centers, schools, and language committees throughout indigenous regions of the country” (Warren, n.d.).<sup>90</sup> The Pan Mayan activism led to the adoption and ratification in Guatemala of ILO Convention 169 on Indigenous and Tribal Peoples, which gave credence to the indigenous movement and helped put indigenous rights on the national agenda. The ILO Convention became relevant to indigenous activists who utilized it to assert their rights (on issues like mining projects on indigenous lands) in the absence of sufficient national policies (Garcia, Escarfuller & Andre, n.d., p. 9). “Without the Pan-Mayan movement, the recognition of indigenous rights might have remained little more than a political gesture in the peace process” (Warren, n.d.). The Pan Mayan movement’s momentum was further substantiated by the work of Rigoberta Menchu who brought international attention to the movement’s grievances through her writing, formation of various political groups, and her outspokenness.<sup>91</sup> Menchu was exiled to Mexico during the Guatemalan Civil War and thus represents both the refugees and the indigenous populations, showing how the grievances and struggles for rights are intertwined. Menchu received the Nobel Peace Prize in 1992 for her social justice work with the indigenous peoples. The publicity from the prize garnered international attention focused on human rights

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<sup>90</sup> The Pan Mayan movement’s agenda attempted to: “unify diverse Mayan language communities, which make up 60% of the national population; to revitalize indigenous culture, language, religion, and environmentalism; and to promote culturally aware education at all levels including informal adult education” (Warren, n.d.).

<sup>91</sup> The most outspoken group was the United Representation of the Guatemalan Opposition (RUOG), which was a group of activists opposed to the War from abroad.

and indigenous rights issues (“Maya”, 2008). This attention only increased the expansion, strength, and impact of the indigenous rights movement.

The Pan Mayan movement, aided by Rigoberta Menchu’s activism, shifted focus during the mid-1990s to the Guatemalan Peace Accord process. In 1994, the NGO Co-ordination of Organizations of the Mayan People of Guatemala (COPMAGUA) was formed. This NGO represented over 200 different NGOs fighting for indigenous peoples. COPMAGUA’s goals focused on presenting a pro-Mayan agenda during the Peace Accords process.<sup>92</sup> This indigenous movement had direct impact on the Peace Accords and their content (as seen in the creation of the unprecedented Agreement on the Identity and Rights of Indigenous Populations). COMPAGUA continued its fight for the implementation of the Peace Accords until 2000 when the NGO disbanded and other NGO’s fighting for indigenous rights could take the spotlight (Costello et al., 1997).<sup>93</sup>

Despite the persistent discrimination that the indigenous population suffers from, their large numbers have allowed for triumphs and the formation of numerous groups. As of 2015, around 300 Mayan organizations existed in Guatemala and are continuing the fight for indigenous rights (Otzoy, n.d.). These NGOs tackle a wide variety of topics related to indigenous rights. The Committee of Campesino Unity (CUC) and the National Coordinating Committee of Indigenous People and Campesinos (CONIC) deal with land rights and indigenous labor organizations. Other groups arose after the implementation of the Peace Accords as there was new spaces for

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<sup>92</sup> COPMAGUA presented a proposal for the Agreement on Indigenous rights which “outlined the historic discrimination and violence suffered by indigenous peoples. It mainly condemned the army, but it also blamed the URNG for miscalculating the disproportionate and genocidal response to its guerrilla activities” (Costello et al., 1997).

<sup>93</sup> The reason COPMAGUA disbanded was because “almost all the activists and leaders who had been in COPMAGUA took up government posts. Maya politics were now being exercised from within the state itself and international organizations rather than [just] from indigenous organizations. Maya activists were transformed into public policy managers” (Bastos, 2010).

organizing: The Mutual Support Group (GAM) arose to cover a variety of human rights needs, the National Committee of Guatemalan Widows (CONAVIGUA) focused on exhumations of the disappeared, and the National Coordinating Committee of Displaced Peoples of Guatemala (CONDEG) began to demand for social and economic rights (Otzoy, n.d.). The NGOs fighting for indigenous rights undertook work on a myriad of issues.<sup>94</sup> Their work directly tied to some of the goals from the Peace Accords; the NGOs are:

Working to promote Mayan schools as forums in which children might gain an education supportive of indigenous culture and language. Additionally, they publish a wide variety of educational texts on indigenous issues, provide scholarships to indigenous students, and press for legal recognition of indigenous customary norms and the authority of elders in rural communities. Clearly, indigenous groups are not waiting for the official establishment of the accords; rather, they are already networking internationally and organizing locally to pursue their agenda for peace and a more inclusive national society. (“The Indigenous Role in Guatemalan Peace”, n.d.)

NGOs have been and continue to be active in the implementation of the Peace Accords and the plight for indigenous rights. And their work has had distinct impact: “the growing numbers of indigenous middle-level professionals, such as teachers, nurses, NGO promoters and technical personnel in various fields, and an ever-growing number of university students will begin to have an increasing effect on achievement of indigenous rights” (Minority Rights Group International, 2008).

The indigenous rights movement momentum that began in the 1980s continues today. Indigenous activists are actively fighting for rights that they deserve and have not yet achieved or gained through Accords and Government actions. These NGOs have the same goals of the Government in terms of indigenous rights, in part, because the indigenous activists formulated

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<sup>94</sup> Some groups emphasize the cultural oppression that Mayas have suffered since the Spanish Conquest. They see cultural and racial discrimination at the root of the economic exploitation of the Mayas. Other Mayan organizations focus on more projects such as technical training and literacy workshops. One subset of this tendency is working with the Government's social-compensation funds. Mayas are also active in popular organizations that fight for human rights and socioeconomic demands, including health, education, housing, and land (Otzoy, n.d.).

the Agreement the state is adhering to. However, the NGOs and the Guatemala Government have pursued different strategies in attaining the goals. NGOs have developed their own movement and increased their conception of rights; this increase in rights mobilization has permeated indigenous populations and led to the development of hundreds of NGOs fighting for social justice on a ground level.

### **Relationship of Complementarity:**

The Guatemalan Government and the Guatemalan NGOs entered into a relationship of complementarity in Guatemala's post conflict phase when addressing refugees and indigenous rights.

During the refugee resettlement, the Guatemalan Government created and tried to implement its own repatriation plan; this plan was then countered with a resettlement strategy designed by the uprooted populations. The refugees' plan was eventually accepted and promoted by the Government. The Government's top down approach did repatriate 6,000 refugees (Long, 2007, p. 4). The more bottom-up approach allowed for greater autonomy and ownership of the process by the uprooted populations. The goal for these two entities was the same: resettle those who had been uprooted during the war. Their two different strategies both supported this goal.

In terms of indigenous rights, the Guatemalan Government and the Guatemalan NGOs pursued different strategies in the effort to implement indigenous rights across the state's institutions and across the nation. The Government's actions reflect a top down approach: they changed policies, created laws, and established new offices in hopes of implementing the Agreement on Indigenous Rights. The NGO's took a bottom up approach. A myriad of NGOs arose, so many so that a pro-Mayan movement developed with tremendous momentum. This

movement addressed ground level issues. Indigenous rights NGOs operated outside of policy work. Their work was often concerned with developing activists, trying to educate the indigenous communities and the general public on indigenous issues and rights, developing projects to improve standards of life, and vocalizing their struggles.

The relationship of complementarity during refugee repatriation and indigenous rights dissemination is grounded in the relative power of the NGOs in relation to the Government in enacting changes and addressing grievances from ground level approaches. The Government utilized a top down approach because of their power to create and change laws, institutions, and programs.

### **Current State of the Peace Accord Implementation for Indigenous Rights**

The work by both the Guatemalan Government and the NGOs has resulted in some positive developments for indigenous rights. To begin with, the fact that the Guatemala Peace Accords included an Agreement on Indigenous Rights is a significant step because it shows the Government's commitment to addressing one of the root causes of the war: the social inequality and discrimination faced by the majority of the Guatemalan population. This Peace Agreement has led to transformations of the Guatemalan state. Since the signing of the Agreement, Mayan leaders have begun to occupy important government positions,<sup>95</sup> which helps advance those particular indigenous citizens but also helps the general indigenous movement, because those in leadership positions will be aware and sensitive to particular issues. Furthermore, the Peace Agreement has opened up new spaces for indigenous rights and themes to be discussed and acted upon. These new opportunities include: “the Academy of Mayan Languages, the Fund of

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<sup>95</sup> These positions include: Culture Minister, General Director of Bilingual Education, and Secretary of Peace

Indigenous Development, the Defense Council for Indigenous Women, the Presidential Commission Against Discrimination and Racism, and the multitude of small offices within ministries that make up the Indigenous State Coordinator” (Bastos, 2010). The UN Committee for the Elimination of Racial Discrimination generates reports annually on the state of implementation of indigenous rights and the elimination of racial/ ethnic discrimination. This Committee commends the work by the Guatemalan Government in enacting laws for Mayan Languages, for respecting indigenous dress in schools, and for encouraging bilingual education (“Compilación de Observaciones Finales”, 2006, p. 281). In 2008, an NGO driven action was successful with the inauguration of a TV station dedicated to the diffusion of Mayan Culture and language (Minority Rights Group International, 2008)<sup>96</sup>. This TV channel was a major success for the NGOs who sought to educate the citizens of Guatemala about the indigenous communities. NGOs have accomplished many ground level initiatives for indigenous rights with dissemination of information about their culture, development projects, and increased visibility across the nation. The work by both NGOs and the Guatemalan Government on implementing the Agreement on Indigenous Rights has achieved some of the goals, yet there are a number of persist problems within the post-conflict society.

The areas of concern regarding indigenous rights range across all sectors of society. In their annual report, the UN Committee on the Elimination of Racial Discrimination expressed its concern with: the dearth of statistical data on indigenous people, the deeply embedded racism and racial discrimination persisting in society, the continuing inequality in society,<sup>97</sup> the lack of

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<sup>96</sup> This was particularly important because the Committee on the Elimination of Racial Discrimination had recognized “the attitudes of disdain and rejection towards indigenous people in the media” (“Compilación de Observaciones Finales”, 2006, p. 285) so the work by the NGOs was vital to counter this.

<sup>97</sup> “In numbers recognized and accepted in governmental spheres shows that [...] Poverty in Indigenous Peoples is 74%” (“A Critical View”, 2010, p. 9). Poverty is a good indicator of social inequality.



access to justice by indigenous populations,<sup>98</sup> the low political participation by indigenous peoples, the lack of access to land by indigenous people, the lack of respect for traditional indigenous territories,<sup>99</sup> the granting of mining licenses by the state on indigenous lands,<sup>100</sup> and the high illiteracy rates of indigenous populations (“Compilación de Observaciones Finales”, 2006, p. 284).<sup>101</sup> There are also health concerns for indigenous populations: “indigenous Guatemalan women are three times more likely to die during pregnancy and childbirth than non-indigenous women” (Center for Economic and Social Rights, 2009). Even though the Guatemalan Peace Accords designated for improved access to voting for indigenous populations, there are still access issues including: “tedious voter registration requirements, elections scheduled during harvest season, and inadequate transportation” (Minority Rights Group International, 2008). These persistent voter access issues limit increased political participation for the indigenous populations thereby limiting the dissemination of their rights and the addressing of their grievances. Indigenous Guatemalans continue to have a number of other key grievances, including:

[Issues of] protection, redistribution and access to land [...] Other enduring issues include lack of constitutional support for indigenous civil rights and status; the location and identification of indigenous persons disappeared or dead since the internal armed conflict; the

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<sup>98</sup> In particular, the committee is concerned about the “lack of recognition and enforcement of the indigenous legal system and the lack of adequate interpreters and competent bilingual ex-officio defenders in court proceedings” (“Compilación de Observaciones Finales”, 2006, p. 285).

<sup>99</sup> “Many indigenous groups consider the Government's use of sacred grounds (so called Mayan ruins) as profitable tourist destinations as an affront to their spiritual rights. There is no free access to these sacred sites for indigenous Guatemalans and no government policy guaranteeing the long-term preservation or protection of ceremonial sites as archaeological preserves” (Minority Rights Group International, 2008).

<sup>100</sup> As of 2010, there were “459 concessions [licenses] (259 to exploit, 136 to mineral exploration and 64 hydroelectric projects among others). All of them located on indigenous territories. These megaprojects are generating disastrous cultural, social and environmental effects for our Life and Mother Earth” (“A Critical View”, 2010, p. 9).

<sup>101</sup> As of 2010: “from every 10 illiterate persons, 6 are indigenous; 53% of indigenous people between the ages of 15 and 64 know how to read and write; 23% of indigenous children have no degree of schooling” (“A Critical View”, 2010, p. 17).

prosecution of war crimes and human rights abuses committed during the civil war;<sup>102</sup> the right to teach, publish and deal with the government in indigenous languages; less discriminatory police services; greater political rights in their own communities; access to justice, including the right to administer indigenous justice. (Minority Rights Group International, 2008)

Work by both the Guatemalan Government and Guatemalan NGOs is needed to challenge the myriad of lasting issues.

There are a few obstacles that are preventing the fulfillment of the promises by Guatemalan Government and NGOs on indigenous rights. These barriers include a lack of resources, a lack of political will, and deeply embedded biases. During the implementation phase, the Guatemalan Government created a series of offices and policies to address the inequalities and the lack of access to education and health for indigenous populations. While in theory those were good steps for indigenous rights, inadequate resources have undermined their potential. “Guatemala has among the lowest levels of health and education spending relative to GDP in Latin America and the Caribbean, despite steps taken since the 1996 Peace Accords to increase social spending” (Center for Economic and Social Rights, 2009, p. 6). Many of the efforts to promote indigenous culture and social rights were hindered because of a lack of political will (Minority Rights Group International, 2008). Although there is a commitment on paper for the Government to disseminate and protect indigenous rights, they largely have not followed through. Rigoberta Menchu’s declaration that “this world's not going to change unless we're willing to change ourselves” (“Rigoberta Menchu Tum Foundation”, n.d.) is indicative of her understanding about the limited political resolve within the Government. Change needed to come from sources outside of government structures.<sup>103</sup> The Guatemalan Government has

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<sup>102</sup> This issue will be discussed in greater detail in Chapter Four on Justice issues.

<sup>103</sup> It is important to note however that political will may not be the sole reason that indigenous rights, and other issues from the Accords, have not been implemented. There is an argument that would assert that even with political

traditionally been comprised of non-indigenous people, thus those with the power to act had no connection and/or knowledge to indigenous problems and rights.<sup>104</sup> This lack of diversity could limit their will to act politically for indigenous rights. The limited political motivation could have also stemmed from the deeply rooted biases that still exist in post-conflict society about indigenous peoples; those in power may have been biased against some of the programs to enhance indigenous rights. This bias was evident in the words of UN Secretary General Kofi Annan who warned that Guatemala was still facing entrenched problems of “the previously taboo topics of racism and discrimination’ against the country’s indigenous population” even in 2004 as MINUGUA’s mandate ended (“UN Mission”, 2004).<sup>105</sup> This continuing discrimination, racism, and stereotyping is preventing the attainment of rights by indigenous populations in Guatemala because society does not view this population as equals and does not respect their history, traditions, and culture.

### **Why Complementarity?**

The Guatemalan Government entered into a relationship of complementarity with the NGOs because both the uprooted populations and the indigenous populations constituted a large

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will, little would have been done due to weak structures and strong corruption within the Government. This argument could be valid. However, for the purpose of the argument on relationships in this project, the emphasis is placed on political will. Political will speaks to the nature of the coalition government and illuminates the reasons the refugees and indigenous rights activists have become so active in their own rights and futures (since the Government was not directly motivated to do so).

<sup>104</sup> Since the end of the Civil War, the coalition governments have been dominated by non indigenous politicians—these politicians want to appease NGOs but they do not have a greater interest in transforming and addressing discrimination at a deeper level. Indigenous peoples have been unable to fill positions of power due to obstacles to voting and limited emphasis placed on indigenous political participation. There have been attempts, and a few successes, for indigenous activists to fill government positions as noted in this chapter. However, overall there lacks sustained political empowerment of indigenous leaders.

<sup>105</sup> MINUGUA was supposed to bring with it changes and improvements in Guatemala. As MINUGUA ended, post-conflict Guatemala should have reflected the progress of the implementation of the Accords. Kofi Annan’s words are indicative of the deeply entrenched discrimination that is persistent and to which MINUGUA was unable to fully address prior to leaving the country.

sector of people and voices. These communities, if not addressed, could have become a potential threat to the status quo of those in powerful political positions. Thus, in order to squelch potential threats, the Guatemalan Government acted in its best interest and worked with the groups.

In terms of the uprooted populations, the refugees acted in an unprecedented way by engaging in the dialogues about their repatriation. The Guatemalan Government understood that there was international pressure to address their grievances and therefore accepted this direct demand for engagement. For the Guatemalan Government to retain power, in the face of international pressure (like the UNHCR and Rigoberta Menchu's pleas), it had to accept what this large sector of society was asking for. The domestic pressures were stronger than those of the international community, therefore the Government responded with a relationship of complementarity. The Government accepted a strategy that may not have been their preferred plan but would ensure that they would retain power. The new Government had its first direct confrontation by the uprooted populations early on. The majority of the refugees rejected the Government's repatriation plan; this rejection was a challenge to the power and authority of the state. As a way to regain their status, the Guatemalan Government acquiesced to the refugees' demands. The refugees' unprecedented actions countered the Guatemalan Government in the early 1990s but also presented a developing power by this large population group. Their time in exile and their work with the UNHCR and the Guatemalan Government gave the refugees negotiation techniques and tools that could be utilized again upon returning to the country. This perceived skills development by the refugees provided an incentive to the Government to comply with their demands so as to prevent further political challenges by this group. The Guatemalan Government formed the relationship of complementarity in reaction to direct and perceived threats to their political power.

The Guatemala Government's actions in regards to the indigenous rights movement reflect this same political survival. In the aftermath of the conflict, indigenous activists began to grasp a new conception of their rights and used this new notion to develop a powerful pro-Mayan movement. This movement included more than 300 NGOs fighting for indigenous rights. The indigenous population in Guatemala makes up the majority: "60 percent of Guatemala's population is made up of indigenous peoples - more than 60 million inhabitants" ("Indigenous Peoples in Guatemala", 2015). The indigenous peoples had power in numbers. Thus, it was in the Government's best interest to appease the indigenous activists. If their grievances were not addressed, or their rights not attained, or at least sought after, the indigenous populations could have posed a real threat to the Government's power and political survival. Indigenous activists have shown their power in numbers, they frequently hold make protests and marches throughout the country. The Guatemalan Government in the 1990s predicted the power of the indigenous activists correctly. The Government's fears came to reality in 2015 when President Molina was ousted from his position as a result of protests from thousands of demonstrators, including 72 rural and indigenous organizations (Kearns, 2015). The political potential shown in 2015 by indigenous activists has been increasing for the last 22 years. Therefore, for the Government there has been a significant threat to their political survival from the indigenous populations during the post-conflict phase. The Guatemalan Government supported indigenous activism by providing the political mechanisms and machinery that aided their ground level work. By creating the Agreement on Indigenous Rights, new laws, positions, and programs from a top down approach, the Government was constructing spaces for indigenous activists to act from a ground level approach. The changes in laws and policies bettered the indigenous population, but they were intended to preserve the political status quo of the Government.

The relationship of complementarity formed by the Guatemalan Government and the NGOs reflects the nature of the oppressed and complaints (there were many of them and they were vocal) in relationship to the Government's plight for political survival. This relationship arose out of the mutual goals shared by the entities but the varied strategies taken by the two groups.

## **Chapter 4: Relationship of Competition on Justice Issues**

The Guatemalan Civil War left numerous human rights violations in its wake. The Government sponsored Guatemalan Truth Commission registered 42,275 victims of the Civil War (Tomuschat, Lux de Coti, & Tojo, 1999, p. 17).<sup>106</sup> The conflict also constituted acts of genocide (REMHI, 1999, p. 292).<sup>107</sup> Genocide is incredibly destructive and generates strong, persistent calls for justice for the heinous crime. The calls for justice for the multitude of human rights violations are reverberating across the Guatemalan state; these demands began during the Peace Accords process and have continued to this day. Justice has been the weakest of the three areas studied in post-conflict Guatemala. Very few of those responsible for crimes during the Civil War have been indicted and prosecuted. Furthermore, the State sponsored truth commission (CEH) illuminated major problems within the justice system in Guatemala during the armed conflict. These included the: “systematic denial of habeas corpus, continuous interpretation of the law favorable to the authorities, [and] indifference to the torture of detainees” (Mersky, 2005, p. 17). Overall, the judiciary submitted to the demands of the repressive state through tolerance and direct participation thereby losing credibility as a guarantor of justice. “This allowed impunity to become one of the most important mechanisms for generating and maintaining a

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<sup>106</sup> These numbers come directly from the Government’s records. Within these number “23,671 were victims of arbitrary execution and 6,159 were victims of forced disappearance” (Tomuschat, Lux de Coti, & Tojo, 1999, p. 17). This number most likely is lower than the real numbers since it is Government sponsored. The Government is responsible for committing a majority of the crimes and therefore would be less willing to share the extent of their responsibility.

<sup>107</sup> The international, legally accepted definition of genocide comes from the Genocide Convention of 1948 and defines the crime as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group (Van der Vyver, 1999, p. 289).

climate of terror” (Mersky, 2005, p. 17). The issues within the judiciary prevented justice from being obtained during the conflict and therefore left numerous grievances unaddressed.

The Peace Accords sought to tackle some of the justice issues and limit the culture of impunity arising in the aftermath of the conflict through the Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society. This Agreement had limited impact on reigning in the impunity in the post-conflict society.

The Guatemalan Government was responsible for 93% of the violations during the Civil War (Tomuschat, Lux de Coti, & Tojo, 1999, p. 20). Many of those responsible for committing crimes retain power to this day. In the aftermath of the conflict, members of the previous regime gained important posts and remained influential. Past perpetrators who occupy positions in the coalition governments have little motivation to pursue justice reforms and stop the culture of impunity. The coalition Government has had to mediate between calls for justice from the progressives and calls of protection from past violators within its own institution. NGOs have been tirelessly working on justice issues since the end of the Civil War; their success began in the early 2000s and they have continually made substantial progress and spearheaded landmark cases on the justice front. The Guatemalan Government and the NGOs have formed a competitive relationship on justice issues because of their competing goals and the Government’s desire to retain power despite their past wrong doings.

### **Content of the Peace Agreement**

The Guatemalan Government, the URNG and the UN signed the Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society on September 19, 1996 in Mexico City. The Peace Agreement was a broad package of provisions aimed at strengthening the democratic government; it called for reforms in the legislative,



executive, and judicial branches. For this chapter, the most relevant aspects of this Agreement lay in the reforms for the justice sector. The Agreement declared that reforms of the justice sector were necessary to prevent the judiciary from causing and covering up a system of impunity. The reforms were developed to: “put an end to inefficiency, eradicate corruption and guarantee free access to the justice system,<sup>108</sup> [and to guarantee] impartiality in the application of the law, judicial independence, ethical authority and the integrity and modernization of the system as a whole” (“Agreement on the Strengthening of Civilian Power”, 1996). The Agreement also called for reforms to the penal code which prioritized prosecution of offenses that “are most detrimental to society, takes into account the country's cultural differences and customs, fully protects human rights, and characterizes threats and coercion of judicial personnel, bribery, graft and corruption as particularly serious offences which are severely punished” (“Agreement on the Strengthening of Civilian Power”, 1996). Another key provision of the Agreement was an effective protection plan for witnesses and prosecutors. The Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society established reforms for the Government to implement to improve the justice system and end the culture of impunity.

### **Actions by the Guatemalan Government to Implement the Peace Agreement**

The Guatemala Government took a series of steps to implement the Peace Agreement on Civilian Power.<sup>109</sup> Right after signing the Agreement, the Guatemalan Congress approved a new

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<sup>108</sup> Access is described further on in the Agreement: “free access to the system of justice in the person's own language; respect for the multi-ethnic, multicultural and multilingual nature of Guatemala; legal assistance to those who cannot afford their own counsel” (“Agreement on the Strengthening of Civilian Power”, 1996).

<sup>109</sup> This chapter focuses on the justice sector reforms that are relevant to the Government-NGO relationship. The Government has implemented other policies and laws to address public security functions and a restructuring of the military and intelligence functions. More information of this can be found in “Guatemala: Five Years After the

Criminal Procedure code in 1994 that included guarantees of due process and human rights (Mersky, 2005, p. 17). The Government made some notable advances on justice system reforms and on implementing the Peace Accords, the improvements included:

[The] creation of the legal and administrative framework for the reform of the sector (Judiciary, Public Prosecutor, Public Defender Institute, and penitentiary system); modernization plans defined for the Supreme Court, Public Ministry and prison system; advances in justice sector coordination, both centrally and locally; greatly increased territorial coverage of the judiciary at the municipal level; creation of a free public defenders service; increased space for civil society proposals and monitoring of the justice system, both centrally and locally; increased numbers of court interpreters and judiciary officials who speak indigenous languages; reform of procedures for selecting judges and magistrates; and passage of the Judicial Career Law and Judicial Systems Civil Service law. (Mersky, 2005, p. 18)

The Guatemalan Government, at least on the surface level, tried to reform many aspects of the justice system. Another major Governmental action was the ratification of the Rome Statute of the International Criminal Court (ICC) in 2012 (“Concluding Observations”, 2012, p. 1) which established international jurisdiction over major crimes against humanity—including genocide. The Guatemalan Government established a new security protocol for protecting justice officials (“Replies from the Government of Guatemala”, 2011, p. 23). The National Reparations Program created in 2005 provided compensation for victims of “enforced disappearance, extrajudicial execution, physical and psychological torture, forced displacement, forced recruitment of minors, sexual violence, child rape, and massacres” (“Replies from the Government of Guatemala”, 2011, p. 6).<sup>110</sup> The Reparations program aimed to provide five forms of reparation including material compensation, monetary compensation, psychological reparation, psychosocial

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Peace Accords” Page 10 in the table for The Agreement on Strengthening of Civilian Power and the Role of The Armed Forces

<sup>110</sup> The work for reparations is tied to the commitments in the Comprehensive Agreement on Human Rights. Reparations are grounded in the human rights violations that were caused and therefore this program is discussed here. Furthermore, receiving the reparations acted as a form of justice for many.

rehabilitation, and restoration of dignity. Though the Government established this program, it did not guarantee that all victims received proper compensation and thus the grievance persists. The Government signed a bilateral cooperation agreement with the UN to establish the Guatemala and the International Commission against Impunity in Guatemala (CICIG) to help investigate human rights violations and organized crime (“Concluding Observations”, 2012, p. 2).<sup>111</sup> CICIG did beneficial justice work on the ground through investigations, but it also created international pressure, through the UN, on the Guatemalan Government regarding justice issues.

Despite their judicial reform policy efforts, the Government created a law that impeded justice. In 1996, one day after the final Peace Accord was signed, Congress passed the National Reconciliation Law. This law provided an permanent extinction of criminal responsibility for crimes committed during the armed conflict. However, “the amnesty would not apply to ‘genocide, torture, forced disappearance, or other crimes that are imprescriptible or which do not permit amnesty under domestic law or international treaties ratified by Guatemala’” (Mersky, 2005, p. 28). This stipulation is important because it left open the possibility of cases for major human rights violations which did occur during the conflict and for which the 1990s and early 2000s did not produce any major convictions. The National Reconciliation Law was a early indicator of the Government’s stance of justice and impunity because it was a mechanism created to essentially protect those in governmental positions.

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<sup>111</sup> “The Commission was endowed with the ability to bring criminal charges as a complementary prosecutor in Guatemalan courts. In addition, it has the power to propose public policies, including judicial and institutional reforms aimed at eradicating the [dismantle illegal groups and clandestine security structures]. It also has the power to request disciplinary procedures against any public official that fails to cooperate or obstructs the CICIG’s work. In sum, it is an international organization established to investigate and support the prosecution and dismantling of criminal networks under Guatemalan legislation and within Guatemala’s justice system, whose goal is to build capacity in local state institutions” (The Washington Office on Latin America, 2015, p. 4).

## **Timeline of Court Cases Related to the Conflict**

To best understand the work by the Government and NGOs on justice issues in post-conflict Guatemala, this section will create a timeline of major cases.

It is important to note that under Guatemalan Constitutional law, those who hold governmental positions cannot be tried under the court of law. The provision that creates this immunity is known as The Ley of Antejucio.<sup>112</sup> This immunity is terminated when the political official no longer holds office. The Ley of Antejucio covers the Guatemalan President, the vice President, congressmen, mayors, deputies, secretaries, judges, attorney general, Human Rights Ombudsman, and more. As Guatemala transitioned into democracy, many of human rights violators who had previously held positions of power retained those positions and therefore gained immunity. This was an immunity that was outside the amnesty applied under the National Reconciliation Law. An example of this immunity in practice is with General Rios Montt, a major perpetrator of crimes against humanity, war crimes and genocide, who was protected for 15 years because he was a member of Congress. However, after a failed reelection in 2012, his immunity expired and the criminal proceedings began against him (White, n.d.).<sup>113</sup> Many of the justice cases that have occurred, and will be explored in the next section, are against those who were formally part of the Government but no longer are and therefore no longer immune. The perpetrators still in governmental positions could not and, to this day, cannot, be tried.

The timeline is divided by significant years in the post-conflict phase and will include the

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<sup>112</sup> The Ley of Antejucio reads: “dignitaries and public officials [are] not be arrested or subject to criminal proceedings before the relevant courts [...] The preliminary hearing is a right inherent to the position, inalienable, imprescriptible and inalienable. The right of impeachment ends when the officer or public officer ceases to hold office, and may not invoke in his favor, even when they are called for actions occurring during the performance of their duties” (Palacios, 2015).

<sup>113</sup> The Timeline of Events section in this chapter will discuss the criminal proceedings against Montt

major justice cases. This timeline will illustrate the progress in the 21<sup>st</sup> century on the justice front in Guatemala. The timeline intends to demonstrate the competitive relationship present between the coalition government and the NGOs on justice issues since the signing of the Accords. This timeline will expose the active struggles by NGOs to pursue justice as they are met with begrudging help and/or direct opposition through obstacles to justice by some members in the Government.

**Table 5: Timeline of Justice Events**

<u>Year</u>	<u>Information</u>
1999	Genocide Case brought to the Spanish National Court
2000	'Friendly Settlements' with the Inter-American Human Rights System
2001	Complaint filed against General Rios Montt
2003	Complaints filed for forced disappearances
2007	Request for the declassification of military documents was filed
2009	4 former military members found guilty for forced disappearances
2010	3 former military members found guilty for forced disappearances
2011	4 former military officers found guilty for Dos Erres Massacre
2011	General Hector Mario López Fuentes arrested for crimes of genocide
2011	Rios Montt indicted for masterminding Dos Erres Massacre
2012	Rios Montt found guilty in Dos Erres Massacre
2012	Ixhil Genocide Case proceeding
2012	Pedro Pimental found guilty for role in Dos Erres Massacre
2012	Pedro Garcia Arredondo found guilty for forced disappearance
2013	Two former military members convicted for forced disappearances
2013	Rios Montt found guilty of Genocide
2013	Constitutional Court overturns Montt Conviction
2015	Retrial for Montt

In 1999, The Rigoberta Menchu Tum Foundation filed a complaint in the Spanish National Court charging General Efraín Ríos Montt and other Guatemalan officials for terrorism, genocide and torture.<sup>114</sup> Guatemalan NGOs filed this case using the principle of universal

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<sup>114</sup> The complaint was based on three major events during the Civil War: “the attack on the Spanish Embassy in Guatemala by the Guatemalan security forces in January 1980 in which 37 people died, including Spanish Embassy

jurisdiction because they were not satisfied by their national justice system to fairly prosecute cases from the Civil War.<sup>115</sup> “Because of the refusal of Guatemalan courts to prosecute those responsible for the genocide, the Guatemalan Genocide Case in Spain became a critical avenue of justice for these survivors” (“Justice in Guatemala”, n.d.). From 2000 to 2005, the Spanish National Court engaged in legal battles over the claim, regarding jurisdiction, and the rights of non-Spanish citizens to bring claims in Spain. In 2006, Judge Pedraz of Spain issued arrest warrants for the eight defendants. However, in 2007 the Guatemalan Constitutional Court declared the arrests warrants and the calls for extradition invalid. In 2008, Judge Pedraz invited witnesses of the Guatemalan genocide to come witness and testify in Spain; 40 indigenous Guatemalans went to Madrid, marking the first recorded documentation of the genocide from the Civil War (“The Guatemalan Genocide Case”, n.d.).<sup>116</sup> Unfortunately, to this day, the case is still pending and delayed based on claims of invalidity from the Guatemalan judiciary.<sup>117</sup> Throughout the entire Spanish genocide case proceedings, the coalition Government has shown their resistance to justice.

In 2000, NGOs made significant progress on the justice front. After years of efforts by a

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staff and Rigoberta Menchú’s father; [the] persecution suffered by the Menchú family, exemplifying targeting of indigenous peoples by the Guatemalan security services; the “disappearance” or extrajudicial execution of several Spanish clergy during Guatemala’s conflict years” (“Guatemala’s Lethal Legacy”, 2002, p. 65).

<sup>115</sup> Universal Jurisdiction is the principle that “all states have the obligation to cooperate in the identification, detention, extradition or trial of persons responsible for certain crimes, regardless of the victims’ nationality, the place committed, or the nationality or position of perpetrators” (“Guatemala’s Lethal Legacy”, 2002, p. 64). This was a precedent that had been applied in the genocide case against Dictator Pinochet from Chile.

<sup>116</sup> The Truth Commissions noted that ‘acts that constituted genocide’ had taken place, but no testimony was provided in the commissions regarding the genocide. The testimony in Madrid was the first recorded testimony by witnesses that highlighted the acts of genocide, the victims, and the consequences.

<sup>117</sup> One success from the Spanish National Court was that “In April 2011, Pedraz issued an arrest warrant and an extradition request for Jorge Sosa Orantes for his participation in the Dos Erres massacre of 1982, where more than 200 people, including women, children, and the elderly, were brutally slaughtered. Orantes was arrested by Canadian authorities after taking up residence in Lethbridge, Alberta” (“The Guatemalan Genocide Case”, n.d.).

variety of NGOs to bring the human rights violation cases to the Inter-American Human Rights System, the work of the NGOs led to a victory “when the Guatemalan Government agreed to ‘friendly settlements’ on a number of cases under the aegis of the Inter-American Commission on Human Rights. Under this procedure, the Government acknowledged generalized responsibility of state agents for a number of specific past abuses and agreed to pay unspecified compensation” (“Guatemala’s Lethal Legacy”, 2002, p. 63). This admission of responsibility was a significant step for NGOs who had become frustrated by the futile justice system in Guatemala and were looking for some sort of resolution to their continuing grievances; the ‘friendly suits’ guaranteed reparations to some victims.

A significant human rights violation during the Civil War was the tactic of forced disappearances which produced thousands of victims and left a post-conflict society yearning for answers about the disappeared. In 2003, a case for forced disappearances was brought to court. The NGO Association of Relatives of Detained and Disappeared of Guatemala, (FAMDEGUA) joined Centro Para la Acción Legal en Derechos Humanos (CALDH) in filing a court case on behalf of a relative of a disappeared person. The case proceeded slowly, but in 2009, former member of the Guatemalan military, Felipe Cusanero Coj, was sentenced to 150 years in prison for the forced disappearances of six people (“CALDH”, n.d.). Enforced disappearance was not covered by the National Reconciliation Law and therefore no amnesty existed. This landmark case opened up the possibility for other cases to be brought to the Guatemalan court in regard to disappearances during the conflict, thereby leading to increased threats for the security of the coalition Government in light of this new category of cases. In fact, from 2009 to 2013, ten

major convictions for the crimes of enforced disappearances occurred.<sup>118</sup>

2007 was a major year for human rights activists who had been pushing for the Government to release documents from the war which demonstrated the Government's guilt and gave information that would be beneficial to court proceedings. A variety of NGOs in 2007 requested that the Government declassify four military documents: "the Operation Victory 82 plan, the Firmness 83 plan, Operation Ixil, and Operation Sophia" (Martinez, 2013). These documents would help lead to convictions in a series of cases because they would point to information about the victims and the guilty. The process was slow, but in 2009 the Public Ministry of Guatemala and a variety of NGOs received the declassified documents.

2011 and 2012 were significant years for the pursuit of justice. Justice finally was served for the Dos Erres Massacre, a massacre in 1982 where soldiers murdered over 250 people, including children (Human Rights Watch, 2013, p. 4). Four retired officers were sentenced to life in prison for their participation in the Dos Erres Massacre, A Guatemalan judge indicted Montt for allegedly masterminding the Dos Erres massacre and the judge ruled there was sufficient evidence to try him. "The prosecution contend[ed] that while Rios did not directly organize the massacre itself, he orchestrated the state policies that gave rise to it. Furthermore as supreme commander of the armed forces he bore ultimate responsibility" (White, n.d.). And in 2012, a

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<sup>118</sup> Four former members of the Guatemalan military were tried and convicted for crimes of forced disappearances in 2009: Colonel Marco Antonio Sánchez Samayoa and former military commissioners José Domingo Ríos Martínez, Gabriel Álvarez Ramos, and Salomón Maldonado Ríos were each sentenced to 53 years of imprisonment. In 2010, three other former military officers were tried and convicted for the crime of forced disappearances: former military officer Felipe Cusanero was sentenced to 150 years of imprisonment for the enforced disappearances of six people between 1982 and 1984 and former agents of the now defunct national police force, Héctor Ramírez Ríos and Abraham Lancerio Gómez, were sentenced each to 40 years for forced disappearances ("Replies from the Government of Guatemala", 2011, p. 5). In 2012, Former Police Commander Pedro Garcia Arredondo was sentenced to prison for 70 years for a forced disappearance case. In 2013, Hector Bol de la Cruz and Jorge Humberto Gomez Lopez were convicted and sentenced each to 40 years in prison for their role in the disappearance of a person in 1984 ("Guatemala 2013 Human Rights Report", 2013, p. 3).



former member of the Army's Special Forces, Pedro Pimental was sentenced to 6,060 years in prison for his role in the Dos Erres Massacre (Human Rights Watch, 2013, p. 3). The first actions for a national genocide case took place this year. General Hector Mario López Fuentes was arrested in 2011 for the crimes of genocide and other crimes against humanity committed in the Ixil region during the conflict. The case was put on hold because of Fuentes' health, and he has since passed away (White, n.d.). 2011 was a major year in Guatemala because the state was beginning to show its inclination to prosecute the crimes from the Civil War. The budding willingness can partially be attributed to President Otto Perez Molina yearning to see the US ban on military aid lifted. This conditional agreement was based on whether or not Guatemala would begin "prosecuting war criminals and improving its justice system" (White, n.d.). This motivation for greater anti-impunity actions created a relatively successful 2011 and led the way for victories in 2012. The justice momentum in these two years demonstrated how the work of activists was paying off and how some members of the coalition Government were slowly beginning to acquiesce and fight for justice.

In 2013, the struggle for a conviction of genocide came to a head. This case began in 2001 when the Association for Justice and Reconciliation (AJR) filed a complaint to the Guatemalan public prosecutor against former head of State, Efraín Ríos Montt, for genocide, war crimes and crimes against humanity in the Ixil region. The complaint accused Ríos Montt of using and directing his troops to use the 'Scorched Earth' policy that destroyed communities in their entirety during the conflict ("CALDH", n.d.).<sup>119</sup> Criminal proceedings began in 2012 (Paniagua, Amezquita & Martínez, 2012, p. 24).<sup>120</sup> This case was significant because the victims

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<sup>119</sup> Refer back to Chapter One for information on the Scorched Earth tactic.

<sup>120</sup> This genocide case followed on the heels of the case Dos Erres Massacre Case also involving Ríos Montt which

(and victims' relatives) from the region participated as plaintiffs to advance the genocide charges. In 2013, Guatemalan Judge Miguel Angel Galvez sent Rios Montt's case to court for the crime of genocide in the Ixhil region; this trial was significant because it was the "first time in Latin American history that a former Head of State will be tried for genocide in a national court" (White, n.d.). On May 10, 2013 Rios Montt was convicted of genocide and was sentenced to 80 years in jail. However, on May 20, the Guatemalan Constitutional Court overturned the conviction claiming a mistrial based on a technicality. The retrial was delayed and began in January 2015. A caveat of the retrial is that Rios Montt can be found guilty or not guilty, but will not receive a sentence because of his age and failing health (White, n.d.). The struggle for justice against Montt still continues. The Government has used a series of appeals to try to protect Montt. These appeals include: "that he was not responsible for all the actions of his troops on the ground, that the state policies to exterminate the Ixhil were in place before he came to power, and that he is immune from prosecution, due to an amnesty law passed in 1996 [The 1996 Law of National Reconciliation]" (White, n.d.). Montt's case and appeals are examples of how hard some members of Guatemalan Government are working to protect one of its own to hinder further justice efforts as members exit their protected positions.

The above cases are examples of major, landmark events in the pursuit for justice. The Guatemalan Public Prosecutors office has "received 3,385 case files of human rights violations and crimes against humanity committed against 5,908 victims of the internal armed conflict" ("Replies from the Government of Guatemala", 2011, p. 7) since the Peace Accords were signed in 1996. Though the landmark cases make the news, the work on justice is progressing on numerous cases related to human rights violations from the Civil War. NGOs are active in work

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concluded in early 2012; Montt was found guilty, but his lawyers are still appealing to the present day by using the amnesty defense (Human Rights Watch, 2013).

for justice: they are bringing the cases to the courts and thereby forcing the hands of the Government to act against impunity.

This timeline intends to create a historical narrative relating to justice in post-conflict Guatemala. This narrative illuminates the slow justice work within the country. The timeline illustrates how NGOs have been at the heart of the work, often against a begrudging Government who is accused in the landmark cases. An understanding of the justice history will help clarify the competitive relationship type adopted on justice issues during the Peace Accord implementation phase.

### **Actions by NGOs on Justice Issues**

The timeline shows how crucial NGOs were in bringing justice cases to the courts. This section will briefly explore the work of three NGOs who played a role in the struggle of justice. It should also be noted that numerous NGOs have been pursuing justice and have aided these three main organizations.

The Association for Justice and Reconciliation (AJR) is an NGO composed of victims from 22 communities who suffered during the genocide (“CALDH”, n.d.). AJR worked on a series of justice issues: they instigated the court cases against Rios Montt and Lucas Garcia for the crimes of genocide, they initiated the request to declassify a series of military documents, and they acted as witnesses (since they are composed of victims) on a series of cases (“CALDH”, n.d.). The NGOs AJR and Center for Legal Action on Human Rights in Guatemala (CALDH) are intimately twined: CALDH provided the legal services for the AJR. CALDH was founded in Washington DC during the armed conflict but moved back to Guatemala after the signing of the Peace Accords in 1996 (Martinez, 2015). CALDH has helped lead to landmark justice cases in Guatemala and also operated a few other influential programs: on addressing violence against

women,<sup>121</sup> on fighting racism and discrimination,<sup>122</sup> on the rights of indigenous peoples,<sup>123</sup> and on youth rights (“CALDH”, n.d.).<sup>124</sup> CALDH helped train other smaller justice NGOs thereby creating trained activists to generate more momentum in the plight against impunity. AJR and CALDH were instrumental in leading to some of the triumphs on the justice front.

Another NGO that helped fight for justice is the Mutual Support Group (GAM). In 1984 GAM was established by a widow, Nineth Montenegro, who had sought to find information about her disappeared husband and used this motivation to create an NGO with other families of the disappeared (Skeen, n.d.). GAM’s goals were to provide advice and support to families of the disappeared who wanted information, wanted to conduct exhumations, and/ or wanted to hold burials. GAM enabled surviving relatives to access the compensation they were entitled via the National Reparations Law (Proyecto DIGAP, 2007). Finally, GAM’s eyewitness testimonies have led to convictions in cases of the disappeared. Unfortunately, GAM’s direct work on contested justice issues led to the deaths or disappearances of 90 of its members (Skeen, n.d.). The NGOs who have taken it upon themselves to address justice issues do so at their own risk. They have had to engage in work on disputed issues, issues that the Government would rather not address.

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<sup>121</sup> CALDH looks at the patriarchal society that existed during the conflict and still persists in post-conflict Guatemala.

<sup>122</sup> These root causes of the conflict are still persistent in society and have implications on current society. One example of the manifestation of this issue is the granting of licenses for natural resource extraction on indigenous lands

<sup>123</sup> CALDH has formed a program that creates a large indigenous community across the country who are aware and able to fight against the State’s current violations of their rights (ex: the exploitation of indigenous resources)

<sup>124</sup> CALDH created a youth program so that the youth can creatively express and educate the community about what happened during the conflict. The program strengthens other youth groups to ensure that youth rights remain protected.

The above NGOs worked both within and outside the state's structures on their pursuit of justice. The NGO's have been fighting for justice since their human rights were violated and they continue the pursuit to this day.

### **Competitive Relationship**

The Guatemalan Government and the Guatemalan NGOs formed a competitive relationship when addressing justice grievances in the post-conflict period. A competitive relationship is one in which there are opposing goals and strategies. Some in the coalition Government did not want to pursue justice for crimes committed during the Civil War. NGOs, largely composed of victims from the Civil War, wanted justice for the crimes committed against them, their relatives, and their communities. These diverging goals led to two different approaches in the post-conflict phase. The Guatemalan Government implemented the Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society to an extent. Besides the partial Peace Agreement implementation, the Guatemalan Government did little in terms of a positive pursuit of justice. The Government's creation and passage of the National Reconciliation Law to try to grant themselves amnesty demonstrated the Government's intention to protect themselves. The Government has not prosecuted the cases of the attacks on human rights workers, such as the murders of GAM members, also demonstrating their anti-impunity efforts. Guatemalan NGOs, in contrast, pursued a very active strategy on addressing justice issues. The NGOs worked continuously to stop the rampant impunity in the state and to receive justice for their grievances from the Civil War. The NGOs took steps within the country, within the region, and within the world to seek justice. In the country, NGOs spearheaded the cases against ex-military officials in Guatemala, they provided evidence for the cases, and they served as crucial witnesses in the cases. In the region, the NGOs utilized the

Inter-American Human Rights Court system to pressure the Guatemalan Government to act and to gain more reparations than were granted purely by the Government. Finally, in the world, the NGOs utilized the norm of international jurisdiction to bring a genocide case to Spain. Although the case did not yield a decision, it did lead to the Guatemalan Government's decision to initiate a national genocide case. With divergent goals, the two entities adopted opposing strategies in the post-conflict phase.

### **Current State of the Implementation of the Peace Accords**

The hard work of NGOs has produced some positive implications on the justice front. The Guatemalan Government, particularly the judiciary, has acquiesced and taken certain landmark cases to trial, especially in the mid to late 2000s. In the years following the Peace Accords, the Guatemalan Government did implement judicial reforms as called for in the Agreement on Civilian Power. Nevertheless, just reforming the system was not sufficient to stop the impunity raging throughout the country. NGOs, therefore, had to work against political survival motivations and other obstacles to obtain justice. Furthermore, sentiments of justice and anti-impunity are reverberating across the country in the aftermath of the signing of the Peace Accords.

Besides the fact that trials have taken place, there are other important successes on the justice front. A victory was the opportunity for victims or families of the victims to share their stories as witnesses and in testimonies. For many who felt that their voices had largely been ignored following the conflict, the opportunity to testify provided a sense of justice. These stories also proved to be beneficial in courts of law for substantiating facts and evidence. Another success was the development of the National Reparations Program because it provided specific types of reparation, particularly material compensation, to some who suffered. This program was

especially important to many of Guatemala's indigent populations for whom the money was significant. Other accomplishments included: increased access to the courts and protection for judges and witnesses.

The number of victories that have taken place in regards to justice and the fact that cases have proceeded can in no way be minimized. However, there are a myriad of negative aspects in relation to justice that are ever present.

A major hindrance in pursuing justice is political resistance. For some in the Government, it was in their best interest to counter the works by anti-impunity activists. Furthermore, some Government officials issued messages undermining justice efforts. Additionally, the state has yet to adopt a policy of support for the investigatory and punishment initiatives ("Concluding Observations", 2012). Government reforms and initiatives have little strength and merit if there is not a sense of support behind them. MINUGUA noted that, "what has been lacking throughout is the political will to attack the structural issues, ensconced powers, and remnant ties to current and past military intelligence operatives, which are the deepest and most resistant impediments to the proper functioning of justice" (Mersky, 2005, p. 19) Justice cannot be achieved unless there is political impetus.

Another negative aspect lays in the way that the Government plan, the National Reparations Program, has been implemented. The implementation phase focused only on the economic aspects of the program. This narrowed focus was most likely because economic reparation was the most straightforward and least contested route to grant reparations. However, the program involved five types of reparation and efforts on psychosocial support and on restoring dignity have been insufficient ("Concluding Observations", 2012). For many, justice

was fulfilled with the closure found in the reparations program.<sup>125</sup> However, if the program was inadequately implemented, then the grievances persist.

Thousands of families of the disappeared still do not know about the whereabouts of their loved ones nor do they know information of what led to their death. GAM has been active in discovering information on the thousands of the disappeared; however, the work of GAM and a few other NGOs is not enough. The state has done little on addressing this major issue. Even though the Peace Accords and others have called for a National Commission of Inquiry on the fate of the disappeared, one has yet to be established. Furthermore, there is not a centralized register of disappeared persons (“Concluding Observations”, 2012). The Commission and the register could both be helpful in justice cases for establishing facts and implicating certain individuals as perpetrators.

As discussed in Chapter One, human rights workers are being attacked at alarming rates in Guatemala. Activists specifically focused on fighting for justice have been attacked at even higher rates than other activists since they are tackling contested issues. The attacks are spreading to include judges, scribes, members of the court, and witnesses who are attacked for their participation, opinion, and/or stances in certain anti-impunity cases. In fact, in the early 2000s, 160 judicial officials complained about receiving death threats (Heasley et al., 2001). The intimidation of court officials was said to be the cause of the slow progress on the Dos Erres Massacre Case: forensic anthropologists found the remains of 162 bodies thus creating overwhelming evidence that should have led to cases right away, however, the local prosecutor refused to prosecute the case because he had received threats against him and his family (Heasley et al., 2001). Witnesses were receiving threats to discourage them from both testifying

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<sup>125</sup> For many who had been waiting for justice and/or had been disillusioned by the struggle for justice through the court system, reparations helped alleviate their suffering and could in turn substitute for justice not received via the courts.



and pursuing investigations. Threats to both witnesses and judges are hampering the attainment of justice in Guatemala. Furthermore, the Guatemalan Government in the late 1990s directly hindered the pursuit for justice. President Alvaro Arzú in 1998 said, “those critical of his Government’s supposed advances in human rights protection and implementation of the 1996 Accords were ‘traitors to the country’” (“Guatemala’s Lethal Legacy”, 2002). The Government’s own involvement with berating of activists indicated that, even after the Civil war ended, some in the Government sought to continue the regime of violence impunity. The attacks on social activists have not been challenged, investigated, or brought to trial (Amnesty International, 2012).<sup>126</sup> Thus, impunity continues to reign in post-conflict Guatemala.

There is a major problem concerning the makeup of powerful positions within Guatemala’s political system as large portions of the spots are filled by those responsible for massive human rights violations during the Civil War. Those in powerful positions gained immunity based on the constitutional law protecting Government officials from being indicted. Besides the major issues that stemmed from past perpetrators occupying powerful government positions, the implications of impunity are also felt at a local level. “It means that in many communities, victims often live next door to their victimizers, humbled daily by their own impotence” (Mersky, 2005, p. 32). The reality that victims may be forced to coexist with perpetrators highlights the issue of impunity still reigning in the country. The norm of impunity has kept the calls for justice alive because, until recently, cases were not taken to court for the human rights violations.

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<sup>126</sup> The fact the cases have not been brought to trial is significant because it is part of the its international obligations: “As part of the Guatemalan State's obligations under international law to promote timely justice in the massacre cases, the State has several specific obligations requiring it to combat intimidation. First, threats against the judiciary violate the U.N. Basic Principles on the Independence of the Judiciary. Second, threats against lawyers or witnesses violate the U.N. Principles. Article 15 of the U.N. Principles calls for the protection of witnesses, complainants, and families of victims." Article 4 requires that prosecutors be permitted to perform their functions without intimidation or improper interference.' In addition, the U.N. Principles obligate prosecutors to prosecute cases of corruption and threats against judges, lawyers, and victims” (Hesley et al., 2001).

Finally, a major negative aspect in terms of implementing the ideals of the Peace Agreement is how the slow progress of justice, the hindrance of judicial reforms, and a lack of political will to address impunity has led to new crime networks within the country. A number of now retired, high-ranking military men, many of whom worked in the elaborate intelligence structures during the Civil War, have now converted their knowledge of clandestine operations to build their own crime networks. These networks commit a variety of crimes including: corruption, violence, “drug trafficking, trafficking of persons, contraband of arms, alcohol, and fuel, and money laundering” (The Washington Office on Latin America, 2015, p. 5). These structures have led to a post-conflict society riddled with crime; a society in which human rights violators go unpunished.

There are a few obstacles that have helped cause the negative justice aspects persisting in the country and which need to be noted to understand Guatemala’s complex relationship with justice. The obstacles include: lack of documentation, a new amnesty law, lack of funding, and the insistence on identifying victims.

For cases to go to trial, they need evidence to support the claims of human rights violations. There is a notable dearth of information regarding the Guatemalan Civil War. As noted in the timeline above, in 2007, the Guatemalan army received a request to declassify certain documents. The Army did comply with the request but did not release the entirety of the documents. The still-classified documents presumably contain materials that implicate the Army for some crimes. There is a series of other documents which civil society organizations and judges have requested from the Army to which they have been denied access. Finally, “of grave concern is the notorious absence amongst the documents examined by the Commission of documents from the 1980-1985 period” (Amnesty International, 2012). This time period was the

most violent of the Civil War and therefore the absence of documentation hinders court cases and obstructs full understanding of the consequences of the conflict.

Amnesty provides a degree of legal protection. The 1996 National Reconciliation Law applied an amnesty for those who committed crimes during the Civil War. However, a clause (article eight of the law) declared that amnesty did not apply to the crimes of genocide, torture and enforced disappearances. This clause permitted the justice cases to proceed. However, in 2011, retired army officer, Rios Montt, accused of Genocide, submitted a constitutional appeal asserting the unconstitutionality of article eight. By requesting the repeal of the article, Montt is essentially requesting there be amnesty for genocide, torture and enforced disappearance. The Guatemala Constitutional Court is still considering this petition since Montt's appeal is continuing to the present (Amnesty International, 2012).<sup>127</sup> This petition is indicative of the continued resistance to anti-impunity measures by the Government.

Another obstacle to the pursuit of justice is funding. Like most government institutions, the judicial branch cannot function properly without adequate funding. The Guatemalan justice sector lacks sufficient funding to implement all the reforms, properly address human rights violations, and protect witnesses and judges (Heasley et al., 2001). When creating Guatemala's budget, the state does not prioritize the judiciary branch, potentially out of self-interest. The judicial system needs funding to more adeptly address impunity and the formidable corruption in post-conflict Guatemala.

The final major obstacle to justice in Guatemala is the court's insistence on identifying victims before investigating or prosecuting massacre cases. This focus on identifying means that prosecutors have "not pursued cases in which as many as 1,000 bodies were found in a mass

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<sup>127</sup> This debate regarding the constitutionality of the article is ongoing. In 2013, during the Rios Montt trial, Montt's defense team asserted this argument. As Montt's appeal process continues, the debate remains ongoing.

graves if those bodies could not be positively identified, even when overwhelming evidence from other sources, including eyewitness testimony and forensic evidence supports the murder charge” (Heasley et al., 2001). This insistence on identification means that cases are not being tried to their fullest extent, if they are tried at all.

The pursuit of justice in Guatemala has had a rocky and delayed path. There have been some landmark successes in the post-conflict society. Unfortunately, there are numerous negative aspects and obstacles that are hindering anti-impunity efforts. These mixed results are indicative of the competitive relationship that has formed between the Government and NGOs on justice issues.

### **Why Competition?**

The reason behind this competitive relationship is grounded in the Guatemalan Government’s desire to retain power. In the shift from conflict to democracy, many Guatemalan Government officials retained their positions. Those in power, however, were some of the major violators of human rights during the Civil War. Thus, any attempt at justice was a direct threat to their survival. The Government acted under the motivation of political survival. To retain power, the Guatemalan Government needed for the investigations, indictments, and charges against former and current Government officials to disappear. Their actions reflected this notion. The Government took a passive role in implementation of the Peace Accords and actively sought to impede justice with amnesty laws and threats/ intimidation. The work of Guatemalan NGOs was interpreted as a threat to the Government’s power and therefore the competitive relationship was adopted.

The NGOs eventually did have to work with the Guatemalan Government since court justice comes from the judiciary, a branch of the Government. However, this relationship

between NGOs and the judiciary was slow to form and still faces a myriad of obstacles (ex: threats and attacks, lack of will, a lack of information, certain regulations, and a lack of funding).

The competitive relationship between these two entities has slowed the pursuit of justice drastically. Though some landmark cases have been decided and publicized, many grievances related to human rights violations from the Civil War still persist. The competitive relationship has allowed for impunity to prevail in society.

## **Chapter 5: Conclusion**

### **Summary of Findings**

This project examined the implementation phase of the 1996 Guatemalan Peace Accords. This project was in response to the following questions: When do the Government and NGOs cooperate on peace accord implementation? When do they compete? And what drives these relationships? These questions have driven an in-depth analysis of three persistent societal issues and how they have been addressed following the creation and signing of the Peace Accords in 1996 in Guatemala. The three post-conflict problems studied were human rights and memorializations, refugees and indigenous rights, and justice issues. The Guatemalan Government formed one of three types of relationships with the NGOs -- cooperative, complementary, or competitive -- depending on whether the issues addressed by the NGOs supported or challenged the Government's political survival.

The Guatemalan Government and the Guatemalan NGOs entered into a cooperative relationship on addressing human rights and memory issues. This relationship was based on the mutual goals of implementing the Comprehensive Agreement on Human Rights, instilling human rights ideals through the country, and addressing memory issues. The strategies of these two entities were similar: the Government created new policies and programs that the NGOs supplemented with their own work. Furthermore, the Government and the NGOs interacted and worked together on dialogues. Guatemalan politicians entered into this type of relationship because they yearned to retain power in the newly democratizing country. Two aspects threatened the Government in the implementation phase: NGOs prior involvement on human rights issues and international presence and pressure. NGOs were engaged in the Peace Accords process through different dialogues and therefore had a higher stake in the implementation phase

and could have become less cooperative had the Government not actively implemented the Comprehensive Agreement. The international community played a role in the decision of the Guatemalan Government to enter into a cooperative relationship with the NGOs. The international community offered funding contingent on actual changes and implementation; this funding acted as motivation for the Government who recognized the need for financial resources in maintaining high public opinion of their work. The Government responded to the pressure and resources contingency and implemented the Accords with all their resources available, including NGOs' help. Furthermore, the international community played a monitoring role. The Guatemalan state wanted to reestablish itself internationally. Therefore, to create a positive reputation, the Government utilized the NGOs to help implement the human rights ideals. I argued that on human rights issues, the Guatemalan Government formed a cooperative relationship with the NGOs as a way to strengthen their power by ensuring that they had funding and a strong reputation.

The Guatemalan Government and Guatemalan NGOs entered into a relationship of complementarity on addressing refugees and indigenous rights. This relationship type focused of the mutual goals but diverging strategies. Chapter three separated the two populations to better demonstrate how the Government and NGOs interacted, however, the two are inherently tied together because many refugees were of indigenous descent and many refugees joined in the plight for indigenous rights upon returning to the country.

While addressing refugees, the goal of both entities was to resettle those uprooted from the Civil War in a way that promoted stability and human rights. The Guatemalan Government created its own repatriation plan. This plan had failings for security and sustainability and was supervised by the still repressive army; therefore, the refugees largely rejected this plan. The

refugees then formed their own association, named the CCPP, to enter into unprecedented negotiations with the Guatemalan Government about their resettlement. The Guatemalan Government agreed to the terms of the CCPP negotiations and the refugees returned under this arrangement. The Guatemalan Government accepted this relationship with the CCPP out of a political survival motivation. The Government was under international pressure from the UNHCR and Menchu's publicity regarding the large refugee crisis. This pressure encouraged the new Government, who was reliant on international support and funding, to act and accept what this large sector of society was demanding. The Government felt threatened by the domestic pressures. The Guatemalan Government was challenged directly by the CCPP. Furthermore, the refugees, while in exile, learned negotiating, organizing, and communication skills that presented a potential future threat to the Government. As a reaction to the real and perceived threats from the refugees, the Government formed a relationship of complementarity regarding the uprooted populations.

While addressing indigenous rights, the two entities entered into a relationship of complementarity because of their mutual goal (of promoting indigenous rights across the country) but acted through different strategies. The Agreement on Indigenous Rights was a major document that promised improvements for indigenous rights in almost all sectors of society. The Agreement also attempted to address root causes of the war: discrimination and stereotyping. The Guatemalan Government implemented the Agreement through a top down approach including policy changes, new programs, and development projects. The NGOs approached indigenous rights largely from a grass roots strategy, working mainly outside of governmental policies. The Indigenous Rights NGOs used their large numbers to develop activists, to educate indigenous communities and the general public, to develop projects to improve standards of life,



and to disseminate their plight. The large numbers of activists was the major reason that the Government formed this type of relationship. The Indigenous rights movement had been growing and gaining momentum through the Peace Accords process, so by the time of the implementation stage, the movement was vocal and large. This sizeable group could pose a real threat to the Government's political survival if their interests were not appeased and grievances not addressed. The relationship of complementarity mollified the group and allowed for the mutual goal of improving indigenous rights to become the focus.

While addressing justice issues, the Guatemalan Government and the Guatemalan NGOs entered into a competitive relationship. The Guatemalan Civil War left a plethora of human rights violations in its wake. These lingering grievances led to calls of justice and a goal to end impunity. Some in the coalition Government did not want to pursue justice for crimes committed during the Civil War because the Guatemalan Government and army were largely responsible for these crimes. Additionally, the newly democratic Government did not sweep out old government positions when the Civil War ended; rather, many perpetrators from the conflict retained their powerful positions. It was in the Government's best interest to avoid justice and anti-impunity actions. NGOs, largely composed of victims from the Civil War, wanted justice for the crimes committed against them, their relatives, and their communities. These diverging goals led to two different approaches in the post-conflict phase. The Guatemalan Government did apply the judicial reforms as called for in the Peace Accords, however, they hindered calls for justice through a variety of mechanisms and obstacles including withholding information, amnesty laws, and intimidation of judges and witnesses. NGOs have been very active in pursuing justice. NGOs have been presenting cases to Guatemalan courts since the Peace Accords. They have used the principle of universal jurisdiction and utilized the Inter American Human Rights system and

Spain's National Court in hopes of pursuing justice. The diverging goals and strategies are clear because any attempt at justice was a direct threat to those in power. To retain power, the Guatemalan Government needed for investigations, indictments and charges against former and current government officials to disappear.

The three relationship types -cooperation, complementarity, and competition- have played an important and influential role in the post-conflict phase in Guatemala. The relationships between the Government and the NGOs have led to real successes in the implementation of the Peace Accords. However, many obstacles and problems persist in the country. The two entities hold power in shaping how post-conflict Guatemala does and could look.

### **Implications of Findings**

This project applied relationship theory and political motivation theory to the case study of Guatemala. This thesis has implications for both Guatemala and other nations facing challenges related to peace accord implementation.

This project will supplement the available literature on the Peace Accords by providing an overarching perspective of the implementation stage through the analysis of the consequences of the three relationship types in the post-conflict society. The relationships have shaped Guatemala into the country it is today. It is a country that was reeling from a devastatingly long conflict, went through a lengthy peace accords process, and underwent a series of changes to improve the country. On a surface level, the changes in Guatemala have been extensive. The Guatemalan Government implemented a series of reforms throughout the branches of the Government, they created new programs and positions, and they allowed for international

organizations (the UN, MINUGUA, and the UNHCR) to enter and work in the country. These changes reduced the de jure obstacles in the laws and policing in the country. The relationships have resulted in: the resettlement of uprooted populations, memorializations and acknowledgment of responsibility, an Agreement on Indigenous Rights as an effort to reduce discrimination, and a number of landmark anti-impunity cases. The three relationship types between the Government and the Guatemalan NGOs have resulted in some achievements in post-conflict society. However, there are a number of issues hindering progress in society. These obstacles are a result of the relationships due to lack of political impetus and direct thwarting actions. The obstacles have also impeded the effectiveness of the relationships' actions. The largest issues stem from the impunity that reigned, and continues to reign, for the last 20 years in the country. This impunity has led to a new round of human rights violations to occur: the rampant attacks on human rights workers. It has also led to the development of new criminal networks that threaten to destabilize the country. The impunity-based issues are partially a result of the relationships during the Peace Accord implementation phase. The Government, in some instances, was unwilling to aid in the pursuit of justice and has taken a fairly neutral stance towards the attacks on human rights defenders. The relationships between the two entities have also failed in addressing all aspects of the Peace Accords, on instilling human rights ideals throughout the country, and on eliminating the root causes of the war, specifically racism and inequality. The Government and the NGOs have created successes in post-conflict Guatemala, but there are a multitude of persistent problems. The relationship types have impacted how the Government has acted, how civil society has reacted, and how post-conflict society has improved and regressed from 1996 to the present. Since there are lingering problems, the relationships will also continue to affect future Guatemala.

This project also has broader implications. There is a dearth of research on the implementation phase of the peace accords. Scholars have noted the volatility of the implementation stage and that effective implementation often stems from quick actions. There is an absence of information about how to effectively implement the accords and how the implementation phase can best proceed. This study contributes to existing literature on peace accord implementation by applying relationship theory and political motivation theory to the case of Guatemala, demonstrating that implementation and the type of relationships the government adopts is drastically affected by a Government's desire to retain power

In peace accord research, the importance of including certain aspects in the content of the accords is well documented. However, this thesis can supplement the current literature with the application of political motivation into the literature on the content of peace accords. The case study of Guatemala illuminated the role of political motivation on the content of the accords. The Guatemalan Government wanted to retain international funding and support, to create a positive international reputation in the new democratizing state, and to subdue and contain the large population groups from becoming threats during the implementation phase. The Guatemalan Peace accords did contain funding contingencies that helped the implementation process. However, the Accords also contained ideas that did not increase the Government's willingness to act, namely the provisions in the Accords for justice. The Guatemalan Government may have been more willing to form cooperative and complementary relationships with NGOs had the content of the Guatemala Peace Accords been more amenable to their political desires.

The Guatemalan case study can be used to extrapolate on political motivation's power within the content of the accords. As peace accords traditionally proceed, the multiple groups/sides/entities will negotiate and agree on the content of the accords. The Accords hypothetically

should lead to an easy implementation phase because the content was created out of compromises. However, as evidenced by Guatemala, this is not so simple. Political motivation of the government, the entity primarily responsible for implementation, can play a significant role in the implementation of peace accords. The accords need to be implemented by a willing government. How, then, can peace negotiators ensure government willingness? The theory of political motivation can enlighten this. There are two avenues to apply this theory.

The first way would be to make the content of the accords, and their subsequent actions, something that would strengthen the government's position, thus playing into the political motivation of the government. A government will implement peace accords more efficiently and effectively if the content of the accords will strengthen or better its position in the eyes of its citizens and the world. So to improve the implementation phase, the contents of the peace accords should be amenable to the desires of the implementing government.

The other avenue in which political motivation can be applied through peace accord content is based on contingency. A government may be forced to implement accords if the content of the peace accords creates contingencies. These contingencies could be funding and/or support (both internationally and within the civilian population). Funding keeps governmental institutions and programs running (a key indicator to civilians about the effectiveness of the state) thereby incentivizing the government to react to the contingencies to maintain power and support among their civilians. Furthermore, the contingencies would ensure others had a stake in the process. The 'others', entailing both international actors and civil society, could become a threat to the government (through reputation judgments, shaming, and actual protests) if their goals were not met. By making the content of the peace accords reflect contingencies, a government may act out of political motivation and implement the accords.

The case study can serve as an advisory to NGOs on the way they could best become included in a post-conflict society. Relationship theory examines how a government and NGOs interact. This project can demonstrate the numerous ways that NGOs could become involved with the government. Each relationship type illustrated NGO engagement. The easiest way to become actively involved for NGOs is through cooperation since it is a relationship out of amiability. This relationship type, however, requires the NGOs to subscribe to the strategy and goals of the government, and, therefore, limits their autonomy. Relationships of complementarity create good conditions for NGOs to pursue their goals because they can adopt a strategy that their organization is better prepared to use, rather than a strategy the government decides to pursue. For NGOs the relationship that makes their work most difficult is one of competition because the force of the state will be working against the work of the organization. However, as evidenced by Guatemala, even relationships of competition can lead to progress despite opposition (for example, the recent anti-impunity and genocide cases). The relationships formed in Guatemala illustrate potential avenues for NGOs to pursue in other post-conflict societies.

This project, by applying relationship and political motivation theory to Guatemala, has illuminated a variety of implications for both Guatemala and the broader study of peace accords and civil society activism.

### **Possible Future Points of Interest**

This project's case study of the implementation phase of the Guatemalan Peace Accords is focused on the specific interactions between the Guatemalan Government and an assortment of Guatemalan NGOs. This case study looked at political motivation as the reason for the relationship type assumed on each major grievance. There are future points of interest within Guatemala and on a broader scale.

In Guatemala, three main issues could be analyzed further: the continuing implementation phase, the international players, and the genocide case. The implementation of the Guatemalan Peace Accords is ongoing, begging the question of whether the remaining grievances will be addressed. In the last decade there have been significant victories on the justice front. Accordingly, how will these landmark cases influence Guatemalan society and will anti-impunity actions extend to cover the attacks on human rights defenders and the new criminal networks? Furthermore, the project points out persistent negative aspects and obstacles to the implementation of the Accords analyzed on all three sub-cases (human rights, refugees/indigenous rights, and justice). How will these aspects and obstacles be addressed in the upcoming years? This thesis mentioned international players in all the chapters, specifically the UN and UN missions. Another potential avenue for research would be to better understand the role of international players in the post-conflict phase, particularly their role in funding, their influence on reputation of the country, and their monitoring role. Additionally, during the Peace Accords process Guatemala signed and ratified a series of international treaties which played a role on the actions of the Government since the country was now bound to international standards and also subjected to international reports and monitoring. The role of these international laws on the implementation phase could be another opportunity for research. Finally, in Guatemala, the genocide could be further studied. Within the genocide are a few lingering questions: when does international jurisdiction apply? And why did the International Criminal Court (ICC) not take the genocide case and how did that decision influence the national genocide case?

On a broader scale there are two aspects that this research illuminates for further study. First, are there other cases that are similar to Guatemala in terms of relationships and political

survival motivations? To best explore this potential pattern it would be best to begin with similar situations: other Latin American countries that faced civil wars, genocides, and/ or dictators during this period. Then if a pattern is discovered, research can be done exploring whether it can be applied to other cases globally that have similar conflicts. These bridges in conflict and post-conflict studies could help academics understand the phases better but also could benefit governments and large intergovernmental bodies like the UN to best create peace and progress. The second aspect is whether one relationship type leads to more successful implementation of peace accords than the others. Each of the three relationships studied reaped benefits and successes but also suffered from negative aspects and obstacles. Though cooperation logically would yield the most effective implementation, this case study has demonstrated that even in a relationship of cooperation problems persist. Therefore, another researcher could establish a scale of effectiveness to evaluate the relationships during the Guatemalan implementation phase.



## Appendix

**Table 6: Timeline of Major Political Events from the Civil War -the Present**<sup>128</sup>

<u>Date</u>	<u>Event</u>
1954	Overthrow of President Arbenz
1960	Failed nationalistic uprising, Violence began in Guatemala
1981-1983	Government's use of the Scorched Earth Policy
1982	URNG Formed
1978-1985	Bloodiest period of Civil War, Genocide
1980s	Creation of Civil Defense Patrols
1983	Creation of Development Pole Villages
1985	New Guatemalan Constitution
1986	1 <sup>st</sup> democratically elected president, Vinicio Cerezo, took office
1990	Beginning of formal peace negotiation process
1993	Ramiro de Leon Carpio assumed the presidency
1996	National Reconciliation Law
1996	Alvaro Arzu was elected president
1997	Deployment of MINUGUA
1999	Failed Voter Referendum
1999	The Commission to Clarify Past Human Rights Violations released report
2000	Alfonso Portillo was elected president
2004	Oscar Berger was elected president
2008	Alvaro Colom was elected President
2012	Otto Perez Molina was elected President
2015	Otto Perez Molina resigned amid corruption scandal

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<sup>128</sup> Information from Agency and Department, 2012 and Costello et al., 1997

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