

Masters in law (L.L.M.) Peacebuilding after Crisis, A Case Study of Guatemala

by

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the Degree of

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in

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Peacebuilding after Crisis, A Case Study of Guatemala

Koç University

Graduate School of Social Sciences and Humanities

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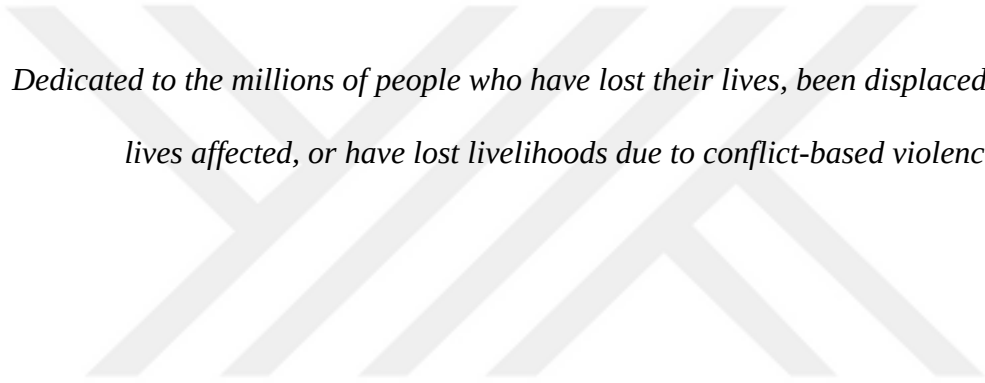
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*Dedicated to the millions of people who have lost their lives, been displaced, had their
lives affected, or have lost livelihoods due to conflict-based violence.*

ABSTRACT

L.L.M Peacebuilding after Crisis, A Case Study of Guatemala

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This thesis examines peacebuilding and reconciliation in with an emphasis on international law in post-war Guatemala. The study is a comprehensive analysis of the 36 year long internal conflict that took place, its peace accords, post-war reconstruction and lessons learned in peacebuilding. It aims to study a comprehensive look into peacebuilding after crisis using Guatemala as a case study.

The thesis begins by looking into its historical background, information on peacebuilding, how Guatemala participated in its peacebuilding process, an interview with a human rights activist, a legal analysis and ending conclusion that includes an analysis based upon finding on research taken within the thesis. The thesis relies upon international law, national law, a social economic analysis and the role of development organizations within its post-war reconstruction.

Lessons learned and general peacebuilding practices are also analysed in detail within this thesis. It proposes recommendations based upon international treaties, comparative analysis, and management of programs that the government and international development organizations have implemented. It uses academic, legal, and other sources that could be useful to peacebuilders, development organizations, or policy makers in a post-conflict reconstruction period after crisis.

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ABBREVIATIONS

CEH	Commission for Historical Clarification
CIA	Central Intelligence Agency
CICIACS	Dynamic Programming
CICIG	International Commission Against Corruption in Guatemala
FAR	Rebel Armed Forces
GAM	Grupo Apoyo Mutuo
GBV	Gender Based Violence
GDP	Gross Domestic Product
ILO	International Labour Organization
INGO	International Non-Governmental Organization
MANO	Mano Blanco
MINIGUA	United Nations Verification Mission in Guatemala
MR-13	Movimiento Revolucionario 13 Noviembre
NCA	National Constituent Assembly
NGO	Non-Governmental Organization
PAC	Patrullas de Autodefensa Civil (Civil Patrols)
PBSUCCESS	Name of the US operation to overthrow Guatemalan State
REMHI	Recuperación de la Memoria Histórica
TOR	Terms of Reference
TRC	South African Truth and Reconciliation Commission
UN	United Nations
URNG	Unidad Revolucionaria Nacional Guatemalteca

USAID	United States Agency for International Development
USD	United States Dollar
WOLA	Washington Office on Latin America
WW2	World War Two



Chapter 1:

INTRODUCTION

Post-war Guatemala had many developments and additions to international law that should be analyzed. Using the law to contribute to peacebuilding and reconciliation are topics discussed in many different texts. While many texts surround the post-war reconstruction reconciliation after WW2, Rwanda, South Africa, and the Western Balkan 6, this text will be focusing on Guatemala as a case example. Guatemala, in general, has many different current events that are still heavily connected to the post-war reconstruction and reconciliation of the country, Similar to other countries that have had truth commissions and reconciliation proceedings, Guatemala was indicated as a post-genocide country. As a country that went through genocide and other crimes against humanity, the international community helped Guatemala in its post-war reconstruction process.

The methodology of the thesis can be analyzed as the following. The start of the thesis began by research design. While doing initial reviews and thinking about questions related to international law and peacebuilding, I came across Guatemala which is a topic that is not heavily covered as others. The following step was literature review, where I reviewed many online articles, journals, books, constitutions, court cases, and a mixture of national and international law. The following two categories included a trip to Guatemala, which led to an interview of a prominent human rights activist/lawyer and a review of an in-person database of missing persons. Using all that

information and research, I disseminate the research into a full thesis and make conclusions based on those findings.

The thesis in general has a lot of quantitative historic and economic data that is used to look at the way international law and human rights mechanisms interact with the country at a grassroots level. Using case law, laws and the way politicians and economics interact with data is used to describe how peace building indicators are achieved or are still need improvement. Many topics are analyzed within the thesis leading to a broad set of many findings as opposed to an analysis upon one law, or one article within the constitution.

The thesis itself has six relevant chapters that will be included. The thesis has the introduction, historical background, a chapter on peacebuilding, Mario Polanco & the GAM, a legal analysis that ties together the previous chapters in a legal perspective, and the conclusion based on all the findings presented. Since this thesis was meant to analyze peace building success and methods for growth, this is research into many different topics, taking looks at even small topics. This is a holistic paper that uses different focal points to inform its findings.

Guatemala, in general, has struggled with its post-war reconstruction. While initially praised for its vast initiatives, such as its truth commission, peace accords, and legal proceedings after the war, Guatemala has not fully implemented its commission and the peace agreements recommendations. It continues to have a large amount of impunity for governmental abuses of power and human rights violations. While having a solid foundation of human rights work to build from, Guatemala, international organizations, and many other post-conflict zones can learn from lessons using Guatemala as a case example.

The missing implementation of peace building mechanisms within the country have had various effects on the nations. Part of these effects start from a continued economic wealth gap, a large percentage of missing people that are still not accounted for, and a country that still struggles with a different form of violence, impunity, and lack of a population that is reconciled. It is worth noting that today there is no current conflict related violence. No members of the military are violating human rights of its population nor of critics to the Guatemalan state, however that does not equate to the country being in peace.

The absence of conflict-related violence itself cannot be considered peace. Signing peace agreements without substantially following through with the agreements, recommendations, development processes, and reconciliation integration will not cause stability. Guatemala is under a new form of gang-related violence that directly results from the lack of reintegration of the survivors of war, lack of land reforms, and economic development. Partly this is due to no follow-up mechanism being assigned after Guatemala's truth commission. Mixed with a law that gave amnesty to most war criminals, little responsibility or accountability has been assigned to the Guatemalan government.

The truth commission noted that the Guatemalan government committed over 95% of human rights violations during the war. This leaves a minimal number of violations assigned to the insurgent groups. The government used communism as a front for a scorched earth policy on the Mayan indigenous groups of the country. The indigenous groups within the Mayan highlands, primarily advocating for more land rights, then resistance militarily, were met with massive crimes against humanity, forced disappearance, gender-based violence, and genocide. With small steps made for

reconciliation in post-war Guatemala, the different stakeholders have essentially blocked reconciliation and post-war reconciliation efforts.

The inability or unwillingness to post-war reform has maintained the same conditions that started the war in the first place. Indigenous Guatemalans mainly live in poverty without sufficient reconciliation on the crimes against their nation and without answers on where the missing parts of the population are. This lack of reconciliation effort between the indigenous groups and lack of economic opportunities still places a large part of the population as vulnerable and landless. This high poverty level, lack of opportunities for economic development, and lack of reconciliation have led to high crime rates within the country.

Since this topic is not covered in depth on an academic level from various points of view, this thesis is intended to look at all sides in order to learn. The thesis is intended for readers that are working in peace building. This could be recommendations to NGOs, governmental officials, workers in international development, academics, or anyone interested in peace building or a look within conflict and peace within Guatemala. Due to this, a large part of the academic research is done on history and uses a deep look into all aspects that can be covered within the war, and development of peace within the country.

Following recommendations of a truth commission, post-war development, and peacebuilding, using international law to enhance human rights, ending impunity, systems building, and following peace agreements meant to solve structural issues should be considered best practices. Without holistic and restorative peacebuilding and reconciliation effort, the absence of conflict-related violence will not create a form of true peace. Systems building, development, and institution building should be critical in

a post-conflict country. Using Guatemala as a case study, this thesis will demonstrate the importance of these essential parts of peacebuilding and reconciliation.



Chapter 2:

HISTORICAL BACKGROUND

2.1 Guatemala

Guatemala is a country located in the northern most part of Central America. It is a country situated between Mexico, Honduras, and El Salvador. Guatemala is also a post-colonial country that was under Spanish rule for nearly 330 years¹. During the first years of independence, the country experienced many different changes. Guatemala gained from Spain in 1821, however, it went through many changes to become the state we know today. Guatemala was part of Mexico for a few years before joining the United Provinces of Central America in 1823². The country was in this union for 16 years until becoming the fully independent modern state of Guatemala³.

Guatemala has a deep and rich history, having one of the world's oldest civilizations. About half of the Mayan Empire was in modern-day Guatemala⁴. The rest of the empire was in modern day Southern Mexico and part of Belize, El Salvador, and Honduras⁵. Mayan history is usually placed into three different time periods, pre-classic

¹ Christopher Minster, The Colonization of Guatemala ThoughtCo (2019), <https://www.thoughtco.com/the-colonization-of-guatemala-2136330> (last visited Feb 24, 2023).

² Christopher Minster, The Federal Republic of Central America (1823-1840) ThoughtCo (2018), <https://www.thoughtco.com/the-federal-republic-of-central-america-2136340> (last visited Feb 24, 2023).

³ BBC, Guatemala profile - timeline BBC News (2019), <https://www.bbc.com/news/world-latin-america-19636725> (last visited Feb 24, 2023).

⁴ Mayan civilization: Calendar, Pyramids & Ruins- History - History, History (2009), <https://www.history.com/topics/ancient-americas/maya> (last visited Feb 24, 2023).

⁵ Ibid

(2000 B.C. to A.D. 250), the classic era (A.D. 250 to 900), and the post-classic era (900 to 1519).⁶ During the classic period, the Mayan empire had many different societal advances. One of the many impressive achievements of the Mayan civilization was to create one of the first written languages as well as create calendars to measure time long before any other civilization.⁷ Without a doubt, this was one of the most advanced societies during its classic period. The Mayan empire also managed to develop 40 cities⁸, with its biggest capital city being Tikal⁹. This is also the site where pyramids are built that are comparable with the Aztec and ancient Egyptian Pyramids.

Spanish colonization in Guatemala began in the early 16th century.¹⁰ Even with Spanish colonization, the country had a strong indigenous resistance to the colonial power. The Spanish established a system where they claimed that natives could work in return for education on Christianity, but in return, they were exploited and enslaved.¹¹ Colonization had many effects for the indigenous community. The Spaniards would burn and destroy Mayan history records while torturing Mayan intellectuals and

⁶ Rise and fall of maya civilization over 3,000 years, History on the Net (2022), <https://www.historyonthenet.com/rise-and-fall-of-maya-civilization-over-3000-years> (last visited Feb 20, 2023).

⁷ History, Mayan scientific achievements - Science, Technology & Religion - History HISTORY (2010), <https://www.history.com/topics/ancient-americas/mayan-scientific-achievements> (last visited Feb 21, 2023).

⁸ Mayan civilization: Calendar, Pyramids & Ruins- History - History, , <https://www.history.com/topics/ancient-americas/maya> (last visited Feb 21, 2023).

⁹ Leah Dewey, Guide to the pyramids of Tikal: The largest Mayan City TheTravel (2022), <https://www.thetravel.com/guide-to-pyramids-of-tikal-largest-mayan-city/> (last visited Feb 20, 2023).

¹⁰ Christopher Minster, How the Spanish colonized Guatemala ThoughtCo (2019), <https://www.thoughtco.com/the-colonization-of-guatemala-2136330> (last visited Feb 20, 2023).

¹¹ Ibid

religious leaders.¹² Mayan civilizations were forced to adapt to the Spanish ways of life. This included abandoning traditions, languages, religions, and beliefs¹³. Colonization led to an erosion of culture, traditions, and social constructs.

The Spanish were known for having a caste system within Latin America¹⁴. This system was implemented, uplifting the Spanish to be at the top of all forms of society. At the top of the caste system were people directly from the Iberian Peninsula followed by the heirs (creoles) of Spanish bloodlines living in Latin America¹⁵. These were followed by mixes between Spanish blood and indigenous or African people, while pure indigenous or African people were at the bottom of this system¹⁶. This system managed everyday life. It controlled race in ways that prevented certain mixes of people from having fewer legal rights than others. The caste system also dictated who could and could not work specific jobs¹⁷.

Colonization left marks on Latin America that exist and have an effect today. One could argue that colonization's results led to significant generational wealth differences between modern-day indigenous communities and mestizos throughout Latin America. Approximately 79% of indigenous people in Guatemala live in

¹² Billie M. Turner & Sandra Elizabeth Luna Sánchez, *The legacy of colonialism in Guatemala and its impact on the psychological and mental health of indigenous Mayan communities*, 32 *International Review of Psychiatry* 313–319 (2020).

¹³ Ibid

¹⁴ Isabel Camacho, Spanish caste system Nuestra Verdad (2020), <https://www.nuestraverdad.com/post/spanish-caste-system> (last visited Feb 24, 2023).

¹⁵ Ibid

¹⁶ Ibid

¹⁷ COW, the casta system COW Latin America (2020), <https://cowlatinamerica.voices.wooster.edu/2020/05/04/the-casta-system/> (last visited Feb 20, 2023).

poverty¹⁸. This number is not unique to Guatemala but can also be seen as a trend throughout almost all-American countries. Out of the indigenous population in Colombia, an estimated 64.2% are in poverty, and in Ecuador, 59.7% remain in poverty¹⁹. Even in Mexico, which has a massive GDP globally, has 46.4% of its indigenous population is in poverty²⁰. This trend has much to do with generational wealth gaps combined with discrimination that have affected the region for centuries.

Even with these marks of colonialism, Mayan culture is very much alive today. The Mayan empire dissolved *before* Spanish colonization started, but the culture and its people still lived and inhabited the land²¹. Numbers and estimations vary, but an estimated 4 to 6 million people still speak one of the 30 Mayan languages alive today²². While those are the number of native speakers, there is an even larger amount of the Mayan population. It is estimated that there are seven million Mayan indigenous people living today²³.

The rest of the population of Guatemala is mostly Ladino²⁴. A Ladino is a concept that is closely related to a Mestizo. Ladino is a term that is only used within

¹⁸ Simona Beltrami, In Guatemala, indigenous is ingenious when it comes to climate change: World food programme UN World Food Programme (2022), <https://www.wfp.org/stories/guatemala-indigenous-ingenious-when-it-comes-climate-change#:~:text=With%20poverty%20averaging%20at%2079,the%20most%20of%20traditional%20practices>. (last visited Feb 20, 2023).

¹⁹ Statista, Indigenous people living in poverty by country LATAM 2020 Statista (2022), <https://www.statista.com/statistics/1287593/indigenous-population-living-poverty-latin-american-countries/> (last visited Feb 20, 2023).

²⁰ Ibid

²¹ Owen Jarus, Why did the maya civilization collapse? LiveScience (2021), <https://www.livescience.com/why-maya-civilization-collapsed.html> (last visited Feb 24, 2023).

²² Ibid

²³ The maya, - Sun, Corn and the Calendar, <https://maya.nmai.si.edu/maya> (last visited Feb 24, 2023).

²⁴ Guatemala, Central Intelligence Agency, <https://www.cia.gov/the-world-factbook/countries/guatemala/> (last visited Feb 24, 2023).

Guatemala. It means someone who does not have whole or purely indigenous roots or whole roots from Spain²⁵. This term is akin to the term Mestizo. Most people identify this way in Latin America, and Guatemala is no exception. Someone can be from purely indigenous roots and still identify as Ladino/Mestizo²⁶. This is because the term only signifies a mix between the two. Someone can be from an indigenous background but has grown up in a Ladino/Hispanized area and might not speak indigenous languages nor be familiar with the customs or traditions. They might choose to identify as indigenous or as Mestizo/Ladino.

2.1.1 1940-1996

The roots of the Guatemalan civil war can be traced back to the Cold War. The Cold War was when the two leading world superpowers (The United States and the Soviet Union) were battling for global influence and advancement without entering a direct war²⁷. This battle was for economic, technological, social, and political power. The United States maintained a policy of containment, which meant to prevent other countries from becoming communist and keeping communism in communist countries²⁸. Part of this battle was to influence other countries to have the same economic system. The United States was urging the use of capitalism, while the Soviet

²⁵ **【Ladino in Guatemala】** history, customs and traditions, Guatemalan cultures (2022), <https://en.culturasdeguatemala.top/ladino/> (last visited Feb 24, 2023).

²⁶ MHIRCH, “Mestizo,” vs “Indígena” Center for Worldwide Indigenous Studies (2007), <https://www.cwis.org/2007/10/mestizo-vs-indigena/> (last visited Feb 24, 2023).

²⁷ Cold War: Summary, combatants, Start & End - History, History (2009), <https://www.history.com/topics/cold-war/cold-war-history> (last visited Feb 24, 2023).

²⁸ Ibid

Union wanted friendly communist states²⁹. Many of these wars were fought as proxy wars with other countries. Guatemala is no exception to being caught in the battle between the two world's superpowers.

During the 1940s, a leftist government came into power in Guatemala³⁰. The government began making several changes with the intent to benefit the average citizen of Guatemala. Fast forward to 1951, when a new and significant president came to power. Jacob Arbenz Guzman was elected as president of the Guatemala in 1951³¹. He made many changes to the country's social and economic laws. Guatemala had a significant unequal landowning population that the president wanted to reform³². One of these land reforms was made by confiscating and redistributing unused and undeveloped land from large landowners³³. Furthermore, there were plans to break up monopolies to give fair competition to Guatemalan business owners. These plans were not traditional communist policies, but rather moderate economic enhancements to the country³⁴.

²⁹ What was the Cold War? - CBBC newsround, BBC News (2019), <https://www.bbc.co.uk/newsround/47122488> (last visited Feb 24, 2023).

³⁰ Rebecca Bodenheimer, The Guatemalan Civil War: History and Impact ThoughtCo (2020), <https://www.thoughtco.com/guatemalan-civil-war-history-and-impact-4800364#:~:text=During%20the%201940s%2C%20a%20leftist%20government%20came%20into,United%20Fruit%20Company%2C%20the%20largest%20landowner%20in%20Guatemala.> (last visited Feb 24, 2023).

³¹ Vishul Malik, List of presidents of guatemala: Presidents of Guatemala MapsofWorld.com (2022), <https://www.mapsofworld.com/list-of/presidents-guatemala/> (last visited Feb 24, 2023).

³² Laura Moye, *The United States Intervention in Guatemala*, 73 International Social Science Review 44–52 (1998).

³³ Ibid

³⁴ Robert Longley, What is communism? definition and example ThoughtCo (2021), <https://www.thoughtco.com/what-is-communism-1779968#:~:text=Communism%20is%20a%20political%2C%20social%2C%20and%20economic%20ideology,either%20prohibited%20or%20severely%20limited%20by%20the%20state.> (last visited Feb 24, 2023).

Some of these enhancements added a further layer of competition to United States businesses. At the time, United Fruit Company owned most methods of transport within the country³⁵. For example, the United Fruit Company owned the only railway across the country³⁶. The business further controlled all imports and exports out of the country³⁷. In order to give competition to that railway, the president built new highways and a new port within the country to counter this³⁸. This would have given competition to the methods of transport and the only other port within Guatemala, which the US monopoly United Fruit Company owned. This opportunity was also designed to create more jobs within the country. These changes are not always uncommon within a functioning capitalist system. The changes would have given a level of competition that is included within a diverse economy³⁹.

United Fruit Company was against the changes the country wanted to make as the most prominent landowner within the country. The government wanted to implement changes and redistribute unused land from the United Fruit Company to the Guatemalan people⁴⁰. In the context of the Cold War, this was interpreted as policies that were socialist and not capitalist. This caught the attention of the United States

³⁵ Dani, Guatemala and the United Fruit Company Progressive Student Alliance | PSA UTK (2021), <https://psa-utk.org/guatemala-and-the-united-fruit-company/> (last visited Feb 24, 2023).

³⁶ History in Charts, THE INFLUENCE OF THE UNITED FRUIT COMPANY IN GUATEMALA HISTORY IN CHARTS (2022), <https://historyincharts.com/the-influence-of-the-united-fruit-company-in-guatemala/> (last visited Apr 26, 2023).

³⁷ Laura Moye, *The United States Intervention in Guatemala*, 73 International Social Science Review 44–52 (1998).

³⁸ Ibid

³⁹ Why competition matters, The Economist (2018), <https://www.economist.com/open-future/2018/08/07/why-competition-matters> (last visited Feb 24, 2023).

⁴⁰ Laura Moye, *The United States Intervention in Guatemala*, 73 International Social Science Review 44–52 (1998).

government. Even through these changes were not typical communist policy, the United States used this opportunity to claim it needed to protect its citizens and companies abroad while promoting the free world⁴¹. The government began to call these behaviors as communism during the Cold War to gain more internal support to an intervention⁴². The United States government began to look at its options to prevent any further changes and challenges to its business and global interests.

The United States started by filing a complaint to the government of Guatemala on these legal changes⁴³. These land reforms were modest and did not get rid of anywhere close to the entirety of the land. The president intended to demonstrate that his policies were not a communist, but a were working to reform the lives of the average Guatemalan citizen. Arbenz had no interest in connections with the Soviet Union⁴⁴. He was solely focused on creating reforms and new laws for Guatemala. The president went as far as condemning communism, calling it a threat to the well-being of most citizens⁴⁵. The United States, while knowing this was not communism, stated that this could be the precedent that would fuel communism from taking over within Guatemala⁴⁶.

Due to the internal desire to control global situations before it became too late, the United States decided that it needed to implement action. The policy of the US was

⁴¹ Laura Moya, *The United States Intervention in Guatemala*, 73 International Social Science Review 44–52 (1998).

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

focused more on end “potential problems” rather than waiting before it was too late. While the United Fruit Company played a significant role in adding to pressure the US government intervention, the United States made its decision based on the fear of Guatemala turning communist and losing its overall sphere of influence within the Americas. While acknowledging that it was not a complete communist country, the United States labeled Guatemala as vulnerable to soviet influence and a country turned communist⁴⁷. The US began planning serious intervention plans that changed the history of Guatemala.

The Central Intelligence Agency (CIA) created an entire plan to work with exiles of Guatemala to overthrow the government⁴⁸. The organization started by going to Honduras to speak with population in exile⁴⁹. The person they wanted was a pro-American leader that was friendly to the United States and their overseas interests. This covert operation was approved by the highest officials of the US government. What was called PBSUCCESS was approved by President Dwight D Eisenhower⁵⁰. They aimed to stop agrarian reform, install a right-wing capitalist, and support US companies and businesses.

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Rebecca Bodenheimer, The Guatemalan Civil War: History and Impact ThoughtCo (2020), [https://www.thoughtco.com/guatemalan-civil-war-history-and-impact-4800364#:~:text=During%20the%201940s%2C%20a%20leftist%20government%20came%20into,United%20Fruit%20Company%2C%20the%20largest%20landowner%20in%20Guatemala.\(last%20visited%20Feb%2024,%202023\).](https://www.thoughtco.com/guatemalan-civil-war-history-and-impact-4800364#:~:text=During%20the%201940s%2C%20a%20leftist%20government%20came%20into,United%20Fruit%20Company%2C%20the%20largest%20landowner%20in%20Guatemala.(last%20visited%20Feb%2024,%202023).)

⁵⁰ Cleaning up America's backyard: The overthrow of Guatemala's Arbenz, Association for Diplomatic Studies and Training (2018), <https://adst.org/2016/06/cleaning-americas-backyard-overthrow-guatemalas-arbenz/> (last visited Feb 24, 2023).

The US government created multiple forms of convincing the Guatemalan people that a massive revolution was coming⁵¹. Many of these forms of convincing were by using false statements to intimidate the government and its population. The actual number of resistance fighters were within the hundreds; however, with propaganda via the radio and US pilots bombing Guatemala City⁵², the state's soldiers refused to fight⁵³. This resulted in the left-wing government being taken out of power and right-wing exiles from controlled the new government of Guatemala.

The president that the US government installed was Carlos Castillo Armas. The new leader was politically on the right wing and considerably authoritarian. Instant changes were made to Guatemala to reverse the left-wing policies enacted before him. The land that the previous president distributed had been given back to large landowners such as United Fruit Company, hundreds of suspected communists were incarcerated, and many prisoners were executed⁵⁴. Major land reforms such as Decree 900 were reversed⁵⁵. The Guatemalan people did not seem to favor this type of harsh

⁵¹ Laura Moye, *The United States Intervention in Guatemala*, 73 International Social Science Review 44–52 (1998).

⁵² Rs#01: Background on the Guatemalan Coup of 1954 - UMBC, , https://www2.umbc.edu/che/tahlessons/pdf/historylabs/Guatemalan_Coup_student:RS01.pdf (last visited Apr 27, 2023).

⁵³ Laura Moye, *The United States Intervention in Guatemala*, 73 International Social Science Review 44–52 (1998).

⁵⁴ Ibid

⁵⁵ Jaclyn Anglis, Inside Operation PBSuccess, The Mission That Saw The CIA And A Banana Company Destroy Guatemalan Democracy All That's Interesting (2021), <https://allthatsinteresting.com/operation-pbsuccess> (last visited Feb 24, 2023).

rule, and the new president was assassinated less than three years after taking office⁵⁶.

2.1.2 Background of the Conflict

After the assassination of Armas occurred, the new president general Miguel Ydigoras Fuentes from the right-wing party preluded the civil war⁵⁷. As an even further right wing president, he allowed for the United States to train a group of exiled Cubans to invade Cuba within Guatemalan territory⁵⁸. The United States was operating the invasion “The Bay of Pigs” which was a plan to overthrow Fidel Castro’s government. The aid to overthrow Cuba angered a large portion of the Guatemalan military and other governmental members of the country⁵⁹.

The event that marked the start of the Guatemalan Civil War occurred when members of the National Military Academy and about 1/3 of the country’s army separated from and revolted against the government⁶⁰. The two leaders of this insurgency were lieutenant Marco Antonio Yon Sosa and lieutenant Luis Turcios Lima⁶¹. The insurgency war began in 1960, and this event marked the beginning of a

⁵⁶ Laura Moye, *The United States Intervention in Guatemala*, 73 *International Social Science Review* 44–52 (1998).

⁵⁷ Luis Rodriguez, *Presidente Miguel Ydígoras Fuentes 1958-1963* Aprende Guatemala.com (2016), <https://aprende.guatemala.com/historia/personajes/presidente-miguel-ydigoras-fuentes-1958-1963/> (last visited Feb 24, 2023).

⁵⁸ Miguel Ydígoras Fuentes, *Biografías y Vidas*, <https://www.biografiasyvidas.com/biografia/y/ydigoras.htm> (last visited Feb 24, 2023).

⁵⁹ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win*, in *Paths to Victory: Detailed Insurgency Case Studies Guatemala, 1960–1996: Case Outcome: COIN Win* 134–146 (2013).

⁶⁰ Ibid

⁶¹ Ibid

conflict that lasted more than 30 years⁶². This attempted overthrow of the state failed, and the revolting leftist military and police did not take over the government.

Shortly after, the military members that strayed away from the government went to the towns and highlands to gather supporters to fight against the government. The first counter-insurgent group was named MR-13⁶³. The group began military operations in Izabal, Puerto Barrios, and Zacapa⁶⁴. Soon, there were several resistance groups that were forming all over the country. While resistance was happening everywhere, there was an emphasis in the Mayan highlands of the country⁶⁵. Some resistance groups were gathered quickly and executed, while other groups began to make progress on gaining supporters⁶⁶. In December of 1962, most insurgent groups banded together against the common cause to liberate themselves from the right-wing Guatemalan government in a group called the Rebel Armed Forces (FAR)⁶⁷.

At this time, two main groups were working together to lead operations. Fuerzas Armadas Rebeldes (FAR) resisted politically while MR-13 was leading the armed fight against the Guatemalan state⁶⁸. In general, during the war, the different rebel groups

⁶² Timeline: Guatemala's Brutal Civil War, PBS (2011), https://www.pbs.org/newshour/health/latin_america-jan-june11-timeline_03-07 (last visited Feb 24, 2023).

⁶³ Gabriel Aguilera Peralta & John Beverly, *Terror and violence as weapons of counterinsurgency in Guatemala*, 7 Latin American Perspectives 91–113 (1980).

⁶⁴ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win*, in *Paths to Victory: Detailed Insurgency Case Studies Guatemala, 1960–1996: Case Outcome: COIN Win* 134–146 (2013).

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Patrick Costello, *Guatemala Historical background: Accord Guatemala | Conciliation Resources* (1997), <https://www.c-r.org/accord/guatemala/historical-background-accord-guatemala> (last visited Feb 24, 2023).

⁶⁸ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win*, in *Paths to Victory: Detailed Insurgency Case Studies Guatemala, 1960–1996: Case Outcome: COIN Win* 134–146 (2013).

always worked together. During the first years, the government armed forces only made small attacks and focused their time on training⁶⁹. Some insurgents even went abroad to enhance their military power and training⁷⁰. In 1966, a large military operation in Zacapa started against the insurgent groups. This operation was massive, successful, and damaged the insurgent groups. The rebels in the region were severely hurt and dispersed. The government considered these groups as eliminated from the region⁷¹.

Shortly after, the resistance and war intensified. Rebel occasionally resorted to acts of terrorism as military tactic⁷². The kidnapping of high and low-level political figures was held for ransom⁷³. This in part funded insurgent groups' operation, which continued with more political attacks⁷⁴. Many different resistance organizations formed and were not always working together during this time. Resistance groups did not just include opposition to the government. Right-wing pro-government groups formed bands that responded to opposition groups by use of terrorism tactics against labor unions, activists, and people friendly to the resistance⁷⁵.

The opposition was disorganized and was a series of small attacks up to this point. The disorganization seemed to worsen with lieutenant Sosa being shot by

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Brian Jenkins & Caesar D. Sereseres, *U.S. military assistance and the Guatemalan Armed Forces*, 3 *Armed Forces & Society* 575–594 (1977).

⁷² Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win*, in *Paths to Victory: Detailed Insurgency Case Studies Guatemala, 1960–1996: Case Outcome: COIN Win* 134–146 (2013).

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Ibid

Mexican forces while trying to run out of the country⁷⁶. The widespread violence and disorganization led to right-wing fascism increasing politically in Guatemala. In 1974 Carlos Arana Osorio was elected as president of the country, and as pressure rose, he promised his constituents to quell the resistance and end the war⁷⁷. The government began series of massive human rights abuses began to occur against mainly indigenous highland Mayan Guatemalan citizens. The United States, changed politically as well by a new left-wing administration at home. The government was emphasizing human rights globally. Because of the change in policy and interests, the US President Jimmy Carter began to worry about the abuses and cut off aid to Guatemala⁷⁸.

Attacks on the Mayan highlands were extensive, and the government took the approach to arrest most people that were protesting or advocating for human rights⁷⁹. Osorio wanted to take a hardline approach, but due to a natural disaster, his priorities changed. During his term, a massive earthquake hit Guatemala, leaving over 1,000,000 people homeless and killing a striking 25,000 people⁸⁰. As his administration needed to reserve funds to help its citizens, and as a result he needed to allocate less money to conflict and war⁸¹. Even with this being true, he did not prioritize peace either. As the

⁷⁶ Ribot Toussaint Mónica & Garzón Marisol, Dynamics and conflicts in a cross-border region: Mexico, Guatemala and Belize (2023).

⁷⁷ Hemeroteca PL, Arana Osorio y el poder de las municipalidades Prensa Libre (2016), <https://www.prensalibre.com/hemeroteca/arana-osorio-y-el-poder-de-las-municipalidades/> (last visited Feb 24, 2023).

⁷⁸ U.S. expected to end long freeze on military aid for Guatemalans, The New York Times (1983), <https://www.nytimes.com/1983/01/03/world/us-expected-to-end-long-freeze-on-military-aid-for-guatemalans.html> (last visited Feb 24, 2023).

⁷⁹ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win*, in *Paths to Victory: Detailed Insurgency Case Studies* Guatemala, 1960–1996: Case Outcome: COIN Win 134–146 (2013).

⁸⁰ Ibid

⁸¹ Ibid

government was distracted from the reconstruction, rebel groups used this time to connect, grow, and strike while the government focused on aiding the people⁸². With time, the rebel groups began to ramp up bombing, and attacks.

The war and fight began to intensify and escalate as the 1980s approached. The Nicaraguan government began funding the rebel Guatemalan insurgents in the late 1970s⁸³. The resistance began growing more local support and power by a new political and military partnership with Nicaragua⁸⁴. The overall resistance was gaining stronger economically and within Guatemalan society. Right-wing paramilitary groups began responding with excessive use of force as a response to the growing resistance. The groups and army attacked journalists, teachers, students, indigenous campesinos, political figures, and even religious clergy members⁸⁵.

During this part of the war, opinions and speech against the government led to violent responses by the government and paramilitary groups. Unassociated non-combatants who lived in the same town as a protest for land rights were often victims to being kidnapped, killed, or arrested by the government of Guatemala⁸⁶. These violations happened in the vast majority of the indigenous Mayan highlands. Rebel groups and government forces began to equate being indigenous with being the internal enemy⁸⁷. Due to extreme levels conflict related violence and human rights abuses from

⁸² Ibid

⁸³ NICARAGUAN SUPPORT FOR CENTRAL AMERICAN REVOLUTIONARIES, Central Intelligence Agency (CIA)(1981).

⁸⁴ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win, in Paths to Victory: Detailed Insurgency Case Studies* Guatemala, 1960–1996: Case Outcome: COIN Win 134–146 (2013).

⁸⁵ Ibid

⁸⁶ Ibid

⁸⁷ Ibid

governmental forces, many people all over the country went missing⁸⁸. The military and civil government were not protecting its citizens, their rights, nor explaining what happened with the missing civilians. Due to the sharp increase of murdered and missing community members, many people began to fear of disappearing as well.

One day on January 31st, 1980, a group of campesinos farmers and students went into the Spanish embassy to protest against the Guatemalan government that disappeared their family, friends, and community members⁸⁹. With the army trying to prevent international attention, the army acted in a way that caused even more attention. Guatemalan forces cut the electricity off the building and raided the embassy. The protesters and Spanish embassy workers were warning the forces to respect the Spanish sovereignty over the building⁹⁰. Regardless of the warnings and sovereignty, Guatemalan army members entered to stop the protest. A fire started, which killed 37 protesters within the Embassy. This number of deaths were preventable because the Guatemalan police refused firefighters to enter the building to extinguish the fires⁹¹. In response to this violation of the right to life and lack of respect for international sovereignty, Spain cut off diplomatic relations with Guatemala for four years⁹².

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ Emi MacLean & Sophie Beaudoin, More than 30 years later, Guatemala's deadly Spanish embassy siege is on trial in a Guatemalan courtroom International Justice Monitor (2020), <https://www.ijmonitor.org/2014/11/more-than-thirty-years-later-guatemalas-deadly-spanish-embassy-siege-is-on-trial-in-a-guatemalan-courtroom/> (last visited Feb 12, 2023).

⁹¹ Fire at the Spanish Embassy in Guatemala historical marker, Historical Marker (2020), <https://www.hmdb.org/m.asp?m=80258> (last visited Feb 24, 2023).

⁹² Stephen Kinzer, Spain blames Guatemalan police in embassy deaths The Washington Post (1980), <https://www.washingtonpost.com/archive/politics/1980/02/02/spain-blames-guatemalan-police-in-embassy-deaths/d9465114-657a-43a4-a8c8-5c3aa646eaaf/> (last visited Feb 24, 2023).

Many Guatemalan citizens began to lose faith in their government. The military was affecting all parts of society. Embassy staff with diplomats were not safe from the human rights violations by the government. Oppressive and aggressive tactics on ordinary populations, directly resulted in an increase of people that joined the resistance⁹³. Different rebel groups started to join the fight against the government. While the fighting was mainly in the Mayan highlands, other fronts existed throughout the country. Government violations of human rights continued, and overuse of force became the norm during these escalated times.

2.1.3 *General Rios Montt and Genocide*

Most deaths and human rights violations happened under General Rios Montt⁹⁴. General Montt took power via a coup and was ironically taken out of power due to another coup against him⁹⁵. General Montt had a short term as de-facto president of Guatemala from 1982 to 1983; however, his effects on Guatemalan history were immense⁹⁶.

General Rios Montt was no stranger to Guatemalan politics. Montt was an elite military leader. He had studied military operations in Italy, and the United States made military and diplomatic missions in Spain and was consistently promoted during his

⁹³ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win*, in *Paths to Victory: Detailed Insurgency Case Studies* Guatemala, 1960–1996: Case Outcome: COIN Win 134–146 (2013).

⁹⁴ Stephen Kinzer, Efraín Ríos Montt, Guatemalan dictator convicted of genocide, dies at 91 *The New York Times* (2018), <https://www.nytimes.com/2018/04/01/obituaries/efrain-rios-montt-guatemala-dead.html#:~:text=General%20R%C3%ADos%20Montt's%20trial%20opened,then%2086%2C%20protested%20his%20innocence.> (last visited Feb 24, 2023).

⁹⁵ Jo-Marie Burt and Paulo Estrada & Paulo Estrada, *Legacy of Guatemala dictator Ríos Montt shows justice is possible* WOLA (2018), <https://www.wola.org/analysis/legacy-guatemala-dictator-rios-montt-shows-justice-possible/> (last visited Feb 24, 2023).

⁹⁶ *Ibid*

time in the military⁹⁷. In the 1970's he was director of the National Military Academy of Guatemala⁹⁸. He used his experience as to his advantage to be president of the country. He even unsuccessfully ran for president during the 1974 elections, but he did not give up his role in politics and military goals. The general continued his military leadership and had his eyes on the control of the country.

In 1982 the government claimed that there was massive election fraud⁹⁹. The military responded by taking over the government and creating a military junta¹⁰⁰. General Rios Montt assumed full power over the country within the military junta¹⁰¹. With this dictatorial leadership style, he changed many parts of Guatemalan politics. The general suspended the Guatemalan constitution and started a massive campaign against all political opponents¹⁰². Rios started making target raids against the poorest indigenous towns and villages within the country¹⁰³. His siege took place in the highly

⁹⁷ Victoria Sanford, *Command responsibility and the Guatemalan Genocide: Genocide as a military plan of the Guatemalan army under the dictatorships of generals Lucas Garcia, Rios Montt, and Mejia Victores*, 8 *Genocide Studies International* 86–101 (2014).

⁹⁸ Efraín Ríos Montt. toda la información sobre Efraín Ríos Montt actualizada 2023., lahistoria.net, [https://lahistoria.net/biografia/efrain-rios-montt#:~:text=Vida%20y%20Biograf%C3%ADa%20de%20Efra%C3%ADn%20R%C3%ADos%20Montt%20%28Huehuetenango%2C,selecciones%20de%20presidentes%20de%201974%20y%20fue%20derrotado.\(last%20visited%20Feb%2012,%202023\).](https://lahistoria.net/biografia/efrain-rios-montt#:~:text=Vida%20y%20Biograf%C3%ADa%20de%20Efra%C3%ADn%20R%C3%ADos%20Montt%20%28Huehuetenango%2C,selecciones%20de%20presidentes%20de%201974%20y%20fue%20derrotado.(last%20visited%20Feb%2012,%202023).) (last visited Feb 12, 2023).

⁹⁹ Raymond Bonner, Guatemala regime claims victory in election *The New York Times* (1982), <https://www.nytimes.com/1982/03/10/world/guatemala-regime-claims-victory-in-election.html> (last visited Feb 24, 2023).

¹⁰⁰ Ibid

¹⁰¹ Victoria Sanford, *Command responsibility and the Guatemalan Genocide: Genocide as a military plan of the Guatemalan army under the dictatorships of generals Lucas Garcia, Rios Montt, and Mejia Victores*, 8 *Genocide Studies International* 86–101 (2014).

¹⁰² Patricia Rey Mallén, Guatemala's Efraín Ríos Montt: Genocidal dictator or not? *International Business Times* (2013), <https://www.ibtimes.com/who-efrain-rios-montt-how-guatemalan-ex-military-ruler-became-first-latin-american-dictator-1273407> (last visited Feb 12, 2023).

¹⁰³ Victoria Sanford, *Command responsibility and the Guatemalan Genocide: Genocide as a military plan of the Guatemalan army under the dictatorships of generals Lucas Garcia, Rios Montt, and Mejia Victores*, 8 *Genocide Studies International* 86–101 (2014).

indigenous and poor rural Mayan highlands. The main locations of his raids were Huehuetenango, San Marcos, Chimaltenango, and notably in Quiche¹⁰⁴.

This leader began a scorched earth policy to eliminate the resistance¹⁰⁵. He not only wanted to win the war, but he wanted to eliminate all cities and villages of the resistance. Montt was open about his scorched earth policies. Once when asked about his policies, he stated: “We don’t have a scorched earth policy; we have a policy of scorched communists (Montt,1982).” Rios Montt was serious about this kind of military engagement. Within his year-half rule, he destroyed an estimated 600 villages¹⁰⁶. Almost all these villages were Mayan, showing a systematic discriminatory target of the most vulnerable Guatemalans¹⁰⁷. Montt showed no distinction between civilians and combatants, his army went into villages kill everyone, torture many, and hope to possibly kill combatants in the process¹⁰⁸. People who lived in the Mayan highlands were all suspects of “communism”. The military administration was targeting people from the Ixil region, calling them a department with a culture of communism¹⁰⁹. By doing this, he was mixing cultural, ethnic, and political assumptions of the people that lived there, which happened to be indigenous Mayans.

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ John Otis, Efraín Ríos Montt, former Guatemalan military dictator charged with genocide, dies at 91 Washington Post (2018), https://www.washingtonpost.com/local/obituaries/efrain-rios-montt-former-guatemalan-military-dictator-charged-with-genocide-dies-at-91/2018/04/01/545c9770-35d2-11e8-acd5-35eac230e514_story.html (last visited Feb 12, 2023).

¹⁰⁷ Ibid

¹⁰⁸ Victoria Sanford, *Command responsibility and the Guatemalan Genocide: Genocide as a military plan of the Guatemalan army under the dictatorships of generals Lucas García, Ríos Montt, and Mejía Victores*, 8 Genocide Studies International 86–101 (2014).

¹⁰⁹ Ibid

The ongoing crimes against humanity, torture, and killings of innocent indigenous were no secret to the world. Reports were coming out, even reaching the New York Times. As new year's started, so did another United States government. Ronald Reagan was elected president of the United States in the year 1981¹¹⁰. Ronald Reagan was on the far-right wing of the United States and held a stringent stance against communism¹¹¹. United States President Ronald Reagan was friendly to General Rios Montt. While it is true that The United States cut off military aid a few years back, the right-wing administration had a warm relationship with General Rios Montt. President Reagan described the leader as;

"a man of great personal integrity and commitment," according to the president. When Reagan was asked about human rights violations in Guatemala he said, "I am inclined to believe they've been getting a bum rap." (Reagan, 1982)¹¹²

However, this does not mean the entire United States supported the backing of the Guatemalan president. Secretary William Schneider said, "I know no redeeming features in Guatemala to justify our putting money in to continue the murder and torture, the burning of villages of poor, pathetic Indians."¹¹³ Even though this quote

¹¹⁰ Ronald Reagan, The White House (2022), <https://www.whitehouse.gov/about-the-white-house/presidents/ronald-reagan/> (last visited Feb 24, 2023).

¹¹¹ Reagan, Hollywood, and the Red Scare, The Ronald Reagan Presidential Foundation & Institute, <https://www.reaganfoundation.org/education/curriculum-and-resources/resources/reagan-hollywood-and-the-red-scare/> (last visited Feb 24, 2023).

¹¹² SANTIAGO WILLS, Did Reagan Finance Genocide in Guatemala? ABC News (2013), https://abcnews.go.com/ABC_Univision/News/ronald-reagan-finance-genocide-guatemala/story?id=19179627 (last visited Feb 12, 2023).

¹¹³ Foreign assistance and related programs appropriations for 1984: Hearings before a subcommittee of the Committee on Appropriations, House of Representatives, Ninety-eighth Congress, First Session, (1983).

shows elements of racism, calling the indigenous Mayan community as poor and pathetic, he was arguing against the military support of operations against the community. The world was seeing the events happening within Guatemala.

Even with the pleas against supporting war criminals, the United States government continued to support these wars as a statement against the Soviet Union. General Rios Montt had a large green flag from the world's biggest superpower to continue its indiscriminate killings, kidnappings, raps, and decimating all forms of Mayan life. While the United States gave the green flag to support these war crimes, ultimately, the responsibility for these attacks fell on Montt's shoulders.

It is worth noting that The United States created the conditions that started the war and gave military training and funds to the Guatemalan government during the years of the genocide¹¹⁴. This was with the informed knowledge of what the Guatemalan government was doing. Countless CIA reports acknowledged the killings that were happening against civilians¹¹⁵. The government of Guatemala justified these killings by stating that within the highlands, it is difficult to spot who is a combatant and who is a civilian because they all wear civilian-like clothing¹¹⁶. This can easily be negated by the fact that refugees were even killed by military helicopters while seeking refuge within Chiapas in Mexico and the sheer quantity of civilians and villages

¹¹⁴ SANTIAGO WILLS, Did Reagan Finance Genocide in Guatemala? ABC News (2013), https://abcnews.go.com/ABC_Univision/News/ronald-reagan-finance-genocide-guatemala/story?id=19179627 (last visited Feb 12, 2023).

¹¹⁵ Ibid

¹¹⁶ Victoria Sanford, *Command responsibility and the Guatemalan Genocide: Genocide as a military plan of the Guatemalan army under the dictatorships of generals Lucas Garcia, Rios Montt, and Mejia Victores*, 8 Genocide Studies International 86–101 (2014).

burned¹¹⁷. Ultimately it is the responsibility of governmental forces to determine who is a combatant and who is a civilian.

There is a difference in the killings of woman non-combatants as well during the Montt administration. Before Rios Montt took power, there was a rate of 14% of women killed¹¹⁸. During Rios Montt's ruling, this number sharply increased to over 50% the killings¹¹⁹. The army was going to villages and killing everyone - women, children, and even the dogs of the villages¹²⁰. There was a significant increase in sexual based crimes as well;

We found a woman. I called a soldier and I told him, "Take charge of this woman. She's a gift from the sub-lieutenant." "I understand, my corporal," he told me and he called the boys and said, "There's meat here, guys." Then they came and grabbed the girl. They took her little boy away from her and they all raped her.... Later I told them to kill the woman before killing her son so she wouldn't feel so bad about his death (Ogle,1998)¹²¹.

This quote shows the disregard for human rights and a woman's right to bodily autonomy. This also shows the blatant normalization of disregard for human rights. This

¹¹⁷Ibid

¹¹⁸ Ibid

¹¹⁹ Ibid

¹²⁰ Ibid

¹²¹ Kathy Ogle, *Guatemala's REMHI project memory from below*, 32 NACLA Report on the Americas 33-34 (1998).

violates civilians' right to life and the right to exist without being used as a weapon of war. This is also added with an extreme dehumanization of women, being used as spoils of war and not being treated as civilians during a civil conflict.

Sepur Zarco: Sexual Based Crimes Case Study

There are few crimes against humanity during a genocide that stand out as even more extreme cases. By no mistake, the case study of Sepur Zarco stands out as one of the more extreme examples. Sepur Zarco is an indigenous community of Q'eqchi' natives located in Izabal¹²². The army ended up building a military base there for recreation and relaxation¹²³. Inside of the base, military from all different sectors of the army would come to rest from the war. The area's military commissioner was Heriberto Valdez Asig, known for disappearing people in other provinces organizing land rights¹²⁴. In the area, there was a debate on landownership between rich owners of land and natives claiming historical connections to the land¹²⁵. The natives requested to obtain legal deeds, and the landowners requested military support¹²⁶.

In 1982 the military came to take the men of the villages¹²⁷. The army stated that the men of this small community were responsible for the communist movements in the area. Some of the men were taken away into detention, where they disappeared, were

¹²² GHRC, Guatemala Human Rights Commission/ USA (2023), <https://www.ghrc-usa.org/our-work/2014-annual-report/sepur-zarco/> (last visited Feb 12, 2023).

¹²³ ALICIA LEDUC, *Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala*, 25 Willamette Journal of International Law and Dispute Resolution 150–233 (2018).

¹²⁴ Ibid

¹²⁵ Ibid

¹²⁶ Ibid

¹²⁷ Ibid

tortured, or killed¹²⁸. Some men were killed and tortured in front of their wives and kids¹²⁹. Most of the victims followed a similar pattern of crime happening to them. Whether they were part of organizing for land rights or not, the men had their houses raided, were tortured on the spot, taken to the nearby military base, and never seen again¹³⁰. These acts of the military created hardship for many families that were burdened economically and emotionally. Families wanted to know where the father/husband was or why they were killed. This led to the complete erosion of family units that had nothing to do with the war. While this would be enough to be considered a crime of war, the violations went deeper than this.

After the disappearance of the men, women were often violated¹³¹. They were raped in front of their children, sometimes by multiple men at once¹³². Women from the village were forced to move onto the military base to “serve the army”¹³³. What this service was, was human trafficking and domestic servitude. Other women attempted to escape by fleeing in the wilderness, but eventually came back to the community because they needed food and other resources to survive¹³⁴. They were also transported to the

¹²⁸ Ibid

¹²⁹ Ibid

¹³⁰ Ibid

¹³¹ Documenting good practice on accountability for conflict-related sexual violence: The Sepur Zarco Case - guatemala, ReliefWeb (2022), <https://reliefweb.int/report/guatemala/documenting-good-practice-accountability-conflict-related-sexual-violence-sepur-zarco-case> (last visited Feb 24, 2023).

¹³² ALICIA LEDUC, *Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala*, 25 Willamette Journal of International Law and Dispute Resolution 150–233 (2018).

¹³³ Ibid

¹³⁴ Ibid

military base to serve the army afterward¹³⁵. Women that were not forced onto the military base were given encampments to live on near the military base;

The women were secluded and forced to provide domestic and sexual services to the army, regardless of their conditions or whether it meant abandoning the care of their children. This happened over a period of 6 months to 6 years. They had to pay for the food that they cooked for the army and the soap that they used to wash their uniforms; this meant that they had to sell the few material belongings that they had left, thus exacerbating their poverty. The Sepur Zarco base served as a center for rest and a center for raping women, as the soldiers constantly rotated in and out. However, rapes were not confined to that space but also occurred on the banks of the Roquepur River where women washed the soldiers' clothing. Moreover, women were forced to take pills and were given birth control shots whenever it was their turn to serve. The Victory 82 military campaign plan stipulated that after completing certain tasks, soldiers were allowed access or exchanges with members of the opposite sex. The practice of bringing prostitutes to military bases was common, yet was never done in Sepur Zarco.^{136 137}

It is important to note that some women were trapped on this military base for six years¹³⁸. Women needed to pay for the food they would use to cook the men and the soap they would use to wash their clothes¹³⁹. Women, at any moment, were violated and used sexually at the will of the army. Women were forced as physical and sexual slaves

¹³⁵ Ibid

¹³⁶ IMPUNITY WATCH, note 5, at 9-10.

¹³⁷ ALICIA LEDUC, *Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala*, 25 Willamette Journal of International Law and Dispute Resolution 150–233 (2018).

¹³⁸ Ibid

¹³⁹ Jo-Marie Burt, Human remains presented as evidence in Sepur Zarco trial International Justice Monitor (2020), <https://www.ijmonitor.org/2016/02/human-remains-presented-as-evidence-in-sepur-zarco-trial/> (last visited Feb 24, 2023).

at the same base that was responsible for the murder their husbands and were required to sell their possessions to fund the army's food at a center for their relaxation.

Other grave crimes were also committed against the women of this camp. It was a common theme for military members to cut out babies from a pregnant woman's womb with a knife¹⁴⁰. One of the survivors had a soldier cut open her stomach and rip the fetus out to have the fetus die while she was awake¹⁴¹. This is a very extreme crime against humanity that violates body autonomy and the right to life and was designed to crush the spirit of the indigenous community. This was the destruction of the spirit of people. A family was living its life and had the father figure killed or disappeared; the women were raped and enslaved while the children were left to fend for themselves, and the fetuses were ripped out of the woman's body.

The amount of trauma and loss of life that these victims encountered is immense. Some women even died of starvation or different forms of disses in the process¹⁴². These types of crimes are called human trafficking, slavery, theft, kidnapping, rape, and torture. These are among the worst forms of crimes against humanity that can be committed during an armed conflict. These types of crimes destroy forms of society, and family units, destroy lives, cause mental and physical distress, and cause long lasting trauma.

¹⁴⁰ ALICIA LEDUC, *Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala*, 25 Willamette Journal of International Law and Dispute Resolution 150–233 (2018).

¹⁴¹ Ibid

¹⁴² Ibid

Years later, these women took the Guatemalan state to court, where it was the first case to be tried for sexual-based conflict violence under the penal code¹⁴³. The outcomes of this court case and the courage of these women to take the government to court are impressive. After the war ended, the women within their 60s and older could not speak Spanish and still brought the Guatemalan state to court. This is analyzed in detail under the legal analysis section of this paper.

It is important to note that these crimes did not just occur during the years of Rios Montt. This encampment was open from 1982 until 1989¹⁴⁴. While the genocide and most intense crimes against humanity happened during general Rios Montt's presidency, abuses of power occurred during the entire war. The crimes were consistent and were able to show a pattern of crimes against humanity instead of individual crimes, which will be talked about deeper in the legal analysis.

2.1.4 *General Rios Montt and Genocide Continued*

Crimes within this genocide do not differ much from other genocides. While historical differences and reasons are essential to note, the crimes of genocide always look similar. In general, crimes of genocide not only intend to destroy a group of people physically but is also intended to break the spirit.

¹⁴³ Women's Link Worldwide, Case of Sepur Zarco | Women's Link (2016), <https://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/sepur-zarco-case> (last visited Feb 24, 2023).

¹⁴⁴ ALICIA LEDUC, *Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala*, 25 Willamette Journal of International Law and Dispute Resolution 150–233 (2018).

Acts such as the killing of defenseless children, often by beating them against walls or throwing them alive into pits where the corpses of adults were later thrown; the amputation of limbs; the impaling of victims; the killing of persons by covering them in petrol and burning them alive; the extraction, in the presence of others, of the viscera of victims who were still alive; the confinement of people who had been mortally tortured, in agony for days; the opening of the wombs of pregnant women, and other similarly atrocious acts (CEH, 1999)

These crimes are not unlike other world genocides that have occurred, but they are nevertheless difficult to read. Crimes such as beating a child against a wall until their death are graphic and unthinkable, but they happen. Children have no cause nor part in the war. Guatemalan's excuse for the fight against communism does not justify the use of genocide, and children are especially not at fault. Such a crime against an innocent population is illegal under various international legal bodies. The use of burning people alive and throwing them in pits was often used in the Holocaust against Jews as well¹⁴⁵.

The levels of violence and indiscriminate attacks on the civilian population had a variety of side effects. It is estimated that 500,000 to 1,500,000 people were displaced between 1981 to 1983 (CEH, 199). This might seem like a high number, but a number that is normal in war; however, Guatemala in 1983 had an estimated population of 7,512,048¹⁴⁶. This is at its lowest, a striking almost 7% of the population, and at its

¹⁴⁵ [Www.auschwitz.org](https://www.auschwitz.org/en/history/auschwitz-and-shoah/the-extermination-procedure-in-the-gas-chambers/), The extermination procedure in the gas chambers The extermination procedure in the gas chambers / Auschwitz and Shoah / History / Auschwitz-Birkenau (2023), <https://www.auschwitz.org/en/history/auschwitz-and-shoah/the-extermination-procedure-in-the-gas-chambers/> (last visited Feb 13, 2023).

¹⁴⁶ MacroTrends, Guatemala population 1950-2023 MacroTrends (2023), <https://www.macrotrends.net/countries/GTM/guatemala/population#:~:text=Guatemala%20->

highest, 20% of the entire population within two years. Furthermore, the war and drastic economic effects on the country. Between 1980 to 1989, the CEH estimates that the cost of conflict equated to zero production for 15 months. This powerful economic effect shows the life and flow of commerce affected.

With the Guatemalan rebel groups suffering big losses, the many different rebel groups stuck to the rural mountain areas¹⁴⁷. The groups took large casualties and mostly focused on small attacks¹⁴⁸. The fact is, into the late 1980's, peace became more desirable within Guatemalan society. With this in mind, there was a breakdown of the junta, and a civilian government took over Guatemala with a new president Vinicio Cerezo¹⁴⁹.

2.2 The Guatemalan Peace Process

Into the late 1980s, both sides had a stronger desire for peace and negotiation. This could be analyzed as a desire due to the long period of conflict, and recent years of intensity that was yet to be seen. The entire country had been affected by conflict. Even though peace was not officially achieved until 1996, the new president went to a conference of Central American countries to talk about peace¹⁵⁰. Within that

%20Historical%20Population%20Data%20%20%20,%20%202.54%25%20%2070%20more%20rows%200 (last visited Feb 13, 2023).

¹⁴⁷ Christopher Paul et al., *Guatemala, 1960–1996: Case Outcome: COIN Win, in Paths to Victory: Detailed Insurgency Case Studies* Guatemala, 1960–1996: Case Outcome: COIN Win 134–146 (2013).

¹⁴⁸ Ibid

¹⁴⁹ Vinicio Cerezo, prabook.com, <https://prabook.com/web/vinicio.cerezo/1345724> (last visited Feb 24, 2023).

¹⁵⁰ Organization of American States (OAS), *Acta de Contadora Para La Paz Y La Cooperación En Centroamérica*, 6 June 1986, available at: <https://www.refworld.org/docid/4f3e0b702.html> [accessed 18 February 2023]

conference, Guatemala signed a document called *Acta de Contadora Para La Paz Y La Cooperacion en Centroamerica*, designed to bring higher stability and peace within the region¹⁵¹. This convention took place in Panama City on June 6th of 1986 and included the countries of Costa Rica, El Salvador, Honduras, and Guatemala¹⁵². The convention calls on multiple countries to have a higher respect for human rights and even calls upon the nations to sign other international agreements¹⁵³.

Out of this process, came a National Reconciliation Commission that was held in Norway¹⁵⁴. This process came directly out of Esquipulas II Agreement from the Central American convention. March 29th, 1990 the URNG (unified rebel groups in Guatemala) signed a document which agreed to good offices, and general activities that would lead to peace and to coming to an agreement with the Republic of Guatemala to ensure that there is a lasting peace agreement that will enhance the government in a favorable manner for both parties¹⁵⁵. This was a huge step to have a national conciliation effort to bring together two parties to make peace. This was known as the Oslo Accord, which should not be mistaken with the Oslo Accords which was an agreement between the Palestinian Authority and the Israeli government¹⁵⁶.

¹⁵¹ Ibid

¹⁵² Ibid

¹⁵³ Ibid

¹⁵⁴ Catherine Barnes & Enrique Alvarez, Public participation The Grand National Dialogue and the Oslo consultations: Creating a peace agenda | Conciliation Resources (2002), <https://www.c-r.org/accord/public-participation/grand-national-dialogue-and-oslo-consultations-creating-peace-agenda> (last visited Feb 24, 2023).

¹⁵⁵ Oslo Agreement, 1990, Annex 3, NRC

¹⁵⁶ Oslo Accords, Just Vision, [https://justvision.org/glossary/oslo-accords#:~:text=Also%20referred%20to%20as%20the,Palestine%20Liberation%20Organization%20\(PLO\)](https://justvision.org/glossary/oslo-accords#:~:text=Also%20referred%20to%20as%20the,Palestine%20Liberation%20Organization%20(PLO).). (last visited Feb 24, 2023).

In 1993, another failed coup attempt led to a faster peace process¹⁵⁷. Jorge Serrano Elias suspended the constitution, dissolved congress, and maintained power with the support of the military¹⁵⁸. This support was very short lasting, due to certain changes, the president could not maintain stability and support. The president ended up turned on and was ousted¹⁵⁹. The military then decided to put him as interim president, the public defender of human rights. As a human rights defender, the new president Ramiro de Leon Carpio was interested in making peace and ending the war¹⁶⁰. He was in power from 1993-1996. He essentially made sure the peace process advanced faster than before¹⁶¹.

Between 1994 and 1996, 12 additional agreements were signed as a peaceful resolution between the Government of Guatemala and united rebel groups¹⁶². These peace agreements were meant to solve the core issues that caused conflict. The agreements had a total of commitments reaching almost 200 points of action between the government and rebel groups to have peace¹⁶³. These points to achieve peace are grouped into categories such as human rights, starting a commission to clarify the truth,

¹⁵⁷ Susan Berger, Guatemala: Coup and counter-coup NACLA, <https://nacla.org/article/guatemala-coup-and-counter-coup> (last visited Feb 24, 2023).

¹⁵⁸ Tim Golden, Guatemala's counter-coup: A military about-face The New York Times (1993), <https://www.nytimes.com/1993/06/03/world/guatemala-s-counter-coup-a-military-about-face.html> (last visited Feb 24, 2023).

¹⁵⁹ Dirk Kruijt, *Guatemala's political transitions, 1960s–1990s*, 30 International Journal of Political Economy 9–35 (2000).

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Gert Rosenthal, *The peace process in Guatemala and the role of third parties*, 8 International Journal on Minority and Group Rights 55–59 (2001).

¹⁶³ Enrique Alvarez & Tania Palencia Prado, Guatemala's peace process: Context, analysis and evaluation Guatemala's peace process: Context, analysis and evaluation | Conciliation Resources (2002), <https://www.c-r.org/accord/public-participation/guatemalas-peace-process-context-analysis-and-evaluation> (last visited Feb 19, 2023).

rights of indigenous people, land reform, refugees, enhancing civilian control in the government, military reforms, and constitutional reforms.¹⁶⁴

The core document that caused a ceasefire is simple and direct. The agreement calls for all parts of the rebel groups and government forces to stop all insurgent and counter-insurgent actions¹⁶⁵. It calls for security zones and zones where no government army soldiers nor insurgent members can be¹⁶⁶. The United Nations would facilitate this peacekeeping process while requiring unarmed permission for groups of each party to enter the other territory temporarily¹⁶⁷. The agreement also requires the rebel group leaders to enter Guatemalan political life¹⁶⁸. This agreement is not the most complicated peacekeeping agreement that is out there. It is worth noting that the rebel groups did agree to be disarmed¹⁶⁹.

One of the most influential of these peace agreements was the agreement that required forming a truth commission. Within this agreement, there were three objectives designed to begin the commission¹⁷⁰.

¹⁶⁴ Ibid

¹⁶⁵ Agreement On The Definitive Ceasefire, GoG & URNG, 4 December 1996, United States Institute of Peace, https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/guat_961204.pdf

¹⁶⁶ Ibid

¹⁶⁷ Ibid

¹⁶⁸ Ibid

¹⁶⁹ Ibid

¹⁷⁰ 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, GoG & URNG, 23 June 1994, United States Institute of Peace, https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/guat_940623.pdf

I. To clarify with all objectivity, equity and impartiality the human rights violations and acts of violence that have caused the Guatemalan population to suffer, connected with the armed conflict.

II. To prepare a report that will contain the findings of the investigations carried out and provide objective information regarding events during this period covering all factors, internal as well as external.

III. Formulate specific recommendations to encourage peace and national harmony in Guatemala. The Commission shall recommend, in particular, measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process¹⁷¹.

Even further, it states all the information and requirements that would be needed to be included within the peace commission¹⁷². The duration of commission needed to investigate all the conflicts from the start to the last signature of the final peace agreement¹⁷³. The commission would not be allowed to use people's names in the report and the work was to be confidential to help its protection of people being interviewed¹⁷⁴.

¹⁷¹ Ibid

¹⁷² Ibid

¹⁷³ Ibid

¹⁷⁴ Ibid

The commission itself needed to have a United Nations appointee included. Furthermore, while the commission was independent, the United Nations would publish the report¹⁷⁵. This peace agreement is what moved Guatemalan history. Almost every single article about the Guatemalan Civil War, cites this truth commission. The commission led the way for Guatemalan facts and history about the war to be written. This commission is also arguably the strongest form of reconciliation that the country has done.

A topic that is discussed within the legal analysis of this thesis is constitutional reforms. However, some things should be noted here as well. The peace agreements first state that indigenous culture needs to be respected¹⁷⁶. The agreement states that within the constitution, cultures, traditions, and practices must be recognized and respected. This also included the number of different languages included within the country. The changes to the constitution further go into civilian governments and their ability to restrict government¹⁷⁷. These restrictions include term limits, administration of justice, police that work for the people, reforms to the military to work for territorial integrity, election reform, and changes to the presidency.

These massive changes to a country's constitution will be discussed in detail in the legal analysis of this thesis. Both parties signing and recognizing

¹⁷⁵ UN Commission for Historical Clarification, Document: Un Guatemala recommendations NACLA, <https://nacla.org/article/document-un-guatemala-recommendations> (last visited Feb 24, 2023).

¹⁷⁶ Agreement on Constitutional Reforms and the Electoral Regime, GoG & URNG, 7 December 1996, United States Institute of Peace, https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/guat_961207.pdf

¹⁷⁷ Ibid

that these things must be changed to prevent conflict in the future was enormous. These agreements are geared toward respecting human rights and regular participation within the government. The goal of many of these peace agreements is not only to prevent conflict but to enhance the government itself. This in theory would have prevented the roots of conflict from happening again. The modifications are not just boundlessly listed either; they give the government 60 days to introduce these changes to congress¹⁷⁸. These items are highly action based and require quick action to draw up and propose changes to the government.

The final peace agreement that will be touched on within this paper is the document respecting human rights¹⁷⁹. The beginning of the document makes very broad statements of what certain respect for human rights should be. The document goes into the country's need to fight against impunity and should make no law to prevent the prosecution of individuals. While this is important, it does not take down any actual laws or policies that began impunity, to begin with. Both parties agree to freedom of association and movement within the country and call for further investigations into human rights abuses.

The agreement goes into other regulations that will have overall changes to the human rights situation in Guatemala. The agreement stops forced military service. This forced service was used during the war to get indigenous people to

¹⁷⁸ Ibid

¹⁷⁹ Comprehensive Agreement Human Rights, GoG & URNG, 29 March 1994, United States Institute of Peace, https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/guat_hr_940329.pdf

serve the Guatemalan army¹⁸⁰. The document also calls on the government to respect organizations that work within human rights¹⁸¹. The government often targeted NGOs and different groups working together to enhance human rights within Guatemala. This is a big step toward respecting the freedoms of Guatemalans. The agreement states that there is a need to compensate the victims of the war and adds a United Nations verification mission MINUGUA.

After the accord was signed, the country was ready to start its post war reconstruction process. Part of the reconstruction process was named to be peacebuilding and reconciliation. Peacebuilding, while looking different in every country had its beginning process outlined in the peace accords. With a start outlined and with support with the United Nations, other governments, and international organization support, the peacebuilding process began.

¹⁸⁰ Jennifer G. Schirmer, *The Guatemalan Military Project: A Violence Called Democracy* (2000).

¹⁸¹ Comprehensive Agreement Human Rights, GoG & URNG, 29 March 1994, United States Institute of Peace,

Chapter 3:

WHAT IS PEACEBUILDING?

While there are many definitions of peacebuilding, the Kroc Institute for International Peace provides an excellent definition that we will use;

Peacebuilding is the development of constructive personal, group, and political relationships across ethnic, religious, class, national, and racial boundaries. It aims to resolve injustice in nonviolent ways and to transform the structural conditions that generate deadly conflict. Peacebuilding can include conflict prevention; conflict management; conflict resolution and transformation, and post-conflict reconciliation (Kroc Institute, 2023)¹⁸².

Given the nature of peacebuilding, it is shown by the previous definition as holistic. A holistic and full approach to peacebuilding is needed in order to create a non-violent environment. Transformation of systems, management, development, and promotion of interpersonal relationships is needed under this definition.

According to the United Nations agency of peacebuilding, peacebuilding needs to be “Comprehensive, Coordinated and Coherent” and included six approaches: Political processes, safety and security, rule of law and human rights,

¹⁸² Marketing Communications: Web // University of Notre Dame, What is strategic peacebuilding? // Kroc Institute for International Peace Studies // university of Notre Dame Kroc Institute for International Peace Studies, <https://kroc.nd.edu/about-us/what-is-peace-studies/what-is-strategic-peacebuilding/> (last visited Feb 9, 2023).

social services, core government functions, and economic revitalization and livelihoods¹⁸³. With a comprehensive process that includes all aspects of needed reforms will be the only solution to sustaining peace. If there are some positive reforms, but the end result is not a holistic and complete comprehensive approach, a country might not be able to have a full and sustained peace. A plan that includes taking care of the safety, the political process, social services, economic livelihoods, and services provided are the only ways that a true peace can be achieved.

Peacebuilding may also include reconciliation within the process. Reconciliation is recognizing and acting to compensate for a country's wrongdoings in a group of residents¹⁸⁴. Peacebuilding and reconciliation need to work together to create lasting and sustainable peace. Peace, in general, should confront the root causes of the conflict in the first place and not just be the absence of violence. This ensures that peace is long lasting and sustainable.

For example, let us say that an international conflict broke out along the border of two countries that share a lake. The conflict started because one country did not allow the second country to access the water. The problem was that this source of water was the only source of freshwater the second country had. A lasting peace deal would be to

¹⁸³ United Nations Peacebuilding, SUSTAINING PEACE (2023).

¹⁸⁴ Bob Joseph, What reconciliation is and what it is not Indigenous Corporate Training Inc. (2022), <https://www.ictinc.ca/blog/what-reconciliation-is-and-what-it-is-not> (last visited Feb 9, 2023).

include a way for all parties to have the ability to have fresh drinking water or access to the lake.

Another example would be an internal conflict. Let us say that one ethnic group had access to the majority of the country's resources and was the minority group of that country. 78% of the country's wealth belonged to 13% of the population, while the other 87% lived in poverty or extreme poverty. The majority started protesting for civil rights, access to opportunities, economic well-being, and development. A violent conflict ended up erupting and leaving the whole country in chaos. A sustainable solution would not just be to stop violence. A sustainable option, no matter who wins that war, would be addressing the root cause of the violence in the first place. If root causes can be solved, the conflict is more likely not to repeat .

Peacebuilding is not only stopping violence but is a comprehensive strategy to prevent future conflict. Peacebuilding should also not be mistaken for peacekeeping. Peacekeeping is when a governmental body, organization, or United Nations attempts to keep peace and prevent violence in de-escalating conflict. Peacekeepers can do multiple actions in order to keep the peace. One of the most common forms of peacekeeping operations is enforcing ceasefire lines¹⁸⁵. Peacekeepers usually no weapons but can carry moderate weapons depending upon the context¹⁸⁶. Rarely, they can sometimes use force to keep the peace, but this is generally not a practice any organization likes to pursue¹⁸⁷. Peacekeeping often involves eliminating conflict, while peacebuilding is changing the conditions that started the conflict. It can also be a type of mediation and coming to a

¹⁸⁵ (Caplan, *Peacekeeping / Peace Enforcement* 2023)

¹⁸⁶ Ibid

¹⁸⁷ Ibid

settlement. . Both countries need to agree on peacekeepers to stop the violence, much like peacebuilding, this involves participation from both parties in the conflict.

Peacebuilding typically happens a conflict has ended. Peacebuilding involves several action items including reforms and can change policies in a post-conflict setting. Peacebuilding usually involves international organizations that are big and small. It includes reforms, strengthening human rights and governmental systems, conflict resolution, and reconciliation¹⁸⁸. Peacebuilders can have multiple different roles. These roles can come from international development organizations, community-based organizations, United Nations agencies, and governmental organizations. It is a broad term that could mean different things in different contexts due to the variety of different situations that can occur.

“The Security Council recognizes that peace-building is aimed at preventing the outbreak, the recurrence or continuation of armed conflict and therefore encompasses a wide range of political, developmental, humanitarian and human rights programmes and mechanisms. This requires short and long-term actions tailored to address the particular needs of societies sliding into conflict or emerging from it. These actions should focus on fostering sustainable institutions and processes in areas such as sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law and the promotion of a culture of peace and non-violence. (United Nations, 2001)”

¹⁸⁸ Gabriela Monica Lucuta , Peacemaking, peacekeeping, peacebuilding and peace enforcement in the 21st Century Peace Insight (25AD), <https://www.peaceinsight.org/en/articles/peacemaking-peacekeeping-peacebuilding-peace-enforcement-21st-century/?location=&theme=> Feb 3, 2014).

The above quote from the United Nations sums up peacebuilding clearly and understandably. Peacebuilding is much more than just the absence of armed conflict. For peacebuilding to be successful, many different actors will need to be involved. In order to have a full and sustainable peace, there will need to be many root issues addressed that may have been part of the conflict, to begin with. One function of peacebuilding is promoting systems that will work for the citizens of a given country. Systems that work should include working social, legal, and economic bodies. A government will need to be transparent and functional for all its citizens for there to be continued peace. This includes aspects of economic development and inclusion that might have been left out beforehand. Peacebuilding also needs to include a democratic system that respects all its systems' human rights and promotes peace.

A peacebuilding attempt that does not address all or most of the categories listed in the previous paragraph will be incomplete. There can be no proper amount of peace if there is systematic violence and discrimination within a given country. Peace must be inclusive of legal, social, and economic systems that promote inclusion and work for all its citizens. A common theme of peacebuilding is building trust between groups of people from different backgrounds or with the government¹⁸⁹. When there are significant forms of exclusion within the country, it cannot be considered to have a holistic peace. This can be seen within several different countries around the globe.

An ideal form of peacebuilding is not only shown by a ceasefire of armed conflict, but by the promotion of reforms, development, and peace. Peacebuilding should confront

¹⁸⁹ Wendy Lambourne & Annie Herro, *Peacebuilding theory and the United Nations Peacebuilding Commission: Implications for non-UN interventions*, 20 *Global Change, Peace & Security* 275–289 (2008).

the very roots of a conflict to ensure it does not happen again. Sources of conflict vary widely for each country. Each country and even parts of a country have drastic differences in history, politics, collective memory, culture, resources, and backgrounds. For this reason, peacebuilding can look very different in other countries.

In Guatemala's context the concept of working to solve the structural issues that created the war, were developed within the peace accords. The root cause of the war was economic inequality. This was seen in the large difference of land-owning individuals, lack of economic opportunities, development, and indigenous rights. For these reasons, peace building in Guatemala would need to be able guarantee these concepts that were built into the peace agreements into peace building. A further respect for human rights and overall supervision to the peace process should also be considered as a best practice.

3.1 *Peacebuilding in Guatemala*

The peacebuilding process within Guatemala was a mix of governmental agencies, NGOs/Civil society organizations, institutions, and populations affected. There were multiple agencies whose intent was to build peace within the country. With multiple stakeholders involved in the process, some of the most significant developments were the Commission for Historical Clarification (CEH), work produced by other NGOs, and legal changes to the constitution as well as to national law by decree were made. These changes are overall significant for understanding peacebuilding in Guatemala.

There were primary outcomes that came out of the peacebuilding effort in Guatemala. One of the most considerable outcomes of peacebuilding and reconciliation was the CEH. This truth commission led to direct outcomes and recommendations that would shape the future of Guatemala. Furthermore, in Guatemala, many organizations

directly added to the peace-building effort. Overall, there were some vast lessons learned within the country that can be used to learn the best lessons learned and practices when doing peacebuilding and reconciliation.

3.1.1 *Truth Commissions*

One of the ways that a country's peace builds and reconciles is by creating a truth commission. A truth commission usually a investigative non-judicial body made up group of stakeholders, government officials, and NGOS meet after a conflict to investigate to write a report that includes a facts, violations, and recommendations after a war¹⁹⁰. This is usually done when there is a massive mistrust after a conflict. While numbers are debated, there have been about 50 truth commissions after conflicts¹⁹¹. Truth commissions began being implemented in the 1980s with the fall of many dictatorships in Latin America and communism falling in Eastern Europe¹⁹². During a conflict, facts can be hard to disseminate. Conflict can bring an influx of propaganda, lack of access to accurate information, rumors, social media posts, high emotions, and the passing away of many community members. Emotions can be running high, and it can be challenging to differentiate the true from the false. A truth commission clears up many unknown facts in a war to add to overall reconciliation through fact finding.

In jurisdictions where atrocities happen during conflict, a government may pick to have a truth commission as a post war action, or to reconcile. This clarifies history and

¹⁹⁰ ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission* (2013).

¹⁹¹ . The Auschwitz Institute for the Prevention of Genocide and and Atrocities , *Truth Commissions and Their Contributions to Atrocity Prevention*, The Auschwitz Institute for the Prevention of Genocide and and Atrocities (2020).

¹⁹² Ibid

can help the peacebuilding and reconciliation process if a country follows the recommendations outlined. A few of the countries that have chosen to use these truth commissions include Guatemala, South Africa, Germany, Argentina, and Nigeria¹⁹³. A truth commission also can lead to legal justice by holding perpetrators accountable. If war crimes, genocide, or a series of wrongdoings take place, a truth commission can lead to validation of facts and reconciliation by keeping responsible actors accountable. A truth commission can also lead a country to make concessions, changes of laws, or reconciliation efforts to make the wrongs of the war into right.

Truth commissions have usually a timeline lasting from six months to 2 years¹⁹⁴. Truth commissions are revisions of the past and are not reports of events that are passing in the present moment¹⁹⁵. This is an important distinction because the commissions are not auditors of the present. Truth commissions are also usually independent bodies authorized by a country or its opposition. The commissions investigating patterns of major human rights abuses that happened over a set period, and not about one singular event¹⁹⁶. Truth commissions also typically end with a final report with recommendations for the state and other institutions based on the information, systems, and historical background that they reported on¹⁹⁷.

¹⁹³ Truth Commission Digital Collection, UNITED STATES INSTITUTE OF PEACE (2021), <https://www.usip.org/publications/2011/03/truth-commission-digital-collection> (last visited Apr 25, 2023).

¹⁹⁴ Eric Brahm, Truth commissions Beyond Intractability (2004), <https://beyondintractability.org/essay/truth-commissions>. (last visited Feb 7, 2023).

¹⁹⁵ Ibid

¹⁹⁶ ICTJ, Truth Seeking: Elements of Creating an Effective Truth Commission (2013).

¹⁹⁷ Ibid

For various reasons, a country may choose a truth commission as a form of reconciliation. One of the reasons that a country may pick to do this is to build back trust and unify the country. After a war, a country may be more split and disconnected than others. Also, it is worth noting that just because a country ends a war does not mean that the structural causes of the conflict have been taken care of. A truth commission can go back into history to tell a story of what caused the war. Having a detailed description of the root causes of war and the violations will cause the ability to enhance the conditions of citizens. This overall has a theory that will lead to more stability and trust between the two groups.

A truth commission is also helpful for legal measures. In a context where convictions are not guaranteed, a truth commission could at least create historic ground and truth for a population. If a conviction is not possible, having a report of responsible parties to human rights violations can lead to a sense of validation over facts. This truth can be considered as a first step to reconciliation. Even with that being true, a report from a truth commission may help directly with the prosecution of certain crimes against humanity. A truth commission sets the historical stage of truth that can be used to achieve justice for victims of crimes.

Furthermore, people from the majority ethnic group of a country might have never heard the stories of the minority group. The two different groups might be geographically, economically, or socially separated. This can lead to a lack of knowledge of events or different realities in other parts of any country. Stereotypes and conflict can start when a large portion does not understand or know the other portion of the country. A truth commission usually takes testimony from people of different backgrounds within a country. If anyone reads the report at the end, they will get to hear the stories of different

people within the country. Being able to hear voices from separated groups can lead to empathy and more understanding between two sets of groups.

A truth commission is occasionally a legal obligation that is included in terms/conditions of a peace agreement. This is true in the Guatemalan context because the truth commission was created from a direct agreement to keep the peace¹⁹⁸. This commission was designed to spot human rights violations, add a collective memory, write history, and reconcile victims by creating a list of recommendations at the end of the report¹⁹⁹.

Reports concluded from a truth and reconciliation commission can lead to systematic and legal reforms. Reports from some commissions may be legally binding depending on the granted powers of the commission. Reports that have recommendations can include changes that are systematic, social, economic, constitutional, and legal. Many reports have been included to make changes to the constitution, decrees, and development laws that systematical confronts issues that a country faces, laws, institutions, land ownership, and can lead to social justice.

3.1.2 *Guatemala's Truth Commissions*

The Guatemalan war ended in 1996 with the final signatures of the peace agreements²⁰⁰.

At the war's end, the country completed a truth commission. This commission was named

¹⁹⁸ 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, GoG & URNG, 23 June 1994, United States Institute of Peace

¹⁹⁹ Ibid

²⁰⁰ Rebecca Bodenheimer, *The Guatemalan Civil War: History and Impact* ThoughtCo (2020), <https://www.thoughtco.com/guatemalan-civil-war-history-and-impact-4800364> (last visited Jan 21, 2023).

the Historical Clarification Committee, or CEH for short²⁰¹. This commission was tasked with the ability to seek the truth about what happened during the war, recording human rights violations, and creating recommendations²⁰². This was for reconciliation and collecting a historical truth for the collective memory of all. The commission was approved for six months but had an opportunity to be expanded for another six months²⁰³. The commission itself was made up of different representatives of the international community and Guatemala. The committee commissioner was appointed by the UN Secretary-General and had a staff that fluctuated from less than 100 staff members to over 100²⁰⁴. The committee had a budget of 11 million dollars, visited over 2,000 communities, and received 7,338 testimonies²⁰⁵.

Each truth commission is structured differently and has different rules and regulations that the commission follows. While Guatemala will be the focus of this paper, it is also important to note some of the differences with other truth commissions. The layout of each commission severely affects the outcomes and format of each country's final report. The structure of a committee and the powers given to it will change the final report because each committee has a given justification that is agreed upon ahead of time.

²⁰¹ Ibid

²⁰² Joanna R Quinn & Mark Freeman, *Lessons learned: Practical lessons gleaned from inside the truth commissions of Guatemala and South Africa*, 25 Human Rights Quarterly 1117–1149 (2003).

²⁰³ Tamara Hinan, *To remember, or to forget? collective memory and reconciliation in Guatemala and Rwanda*, 18 The University of Western Ontario Journal of Anthropology (2011).

²⁰⁴ Joanna R Quinn & Mark Freeman, *Lessons learned: Practical lessons gleaned from inside the truth commissions of Guatemala and South Africa*, 25 Human Rights Quarterly 1117–1149 (2003).

²⁰⁵ Ibid

This can be an agreement between parties to include how to investigate, what to investigate, over which years, and if the committee has powers beyond investigation.

While the CEH had different employees and consultants, it had three main commissioners. The first commissioner was a law professor from Germany Christian Tomuschat, followed by two Guatemalans Dr. Otilia Lux de Coti who was a Mayan human rights activist/educator and Professor Alferdo Balsells Tojo who was a Guatemalan jurist²⁰⁶. While this team was majority led by Guatemalan nationals, it is worth noting that the leader was a UN appointed foreign national. This commission was fully independent and was not administrated by the United Nations or any other entity, but it was created by the United Nations as a result of the peace agreements.

To put the CEH in context, it will be helpful to compare the CEH to another peace commission. The committee based in South Africa after apartheid (The TRC) had significantly more powers than the committee within Guatemala. Due to the differences, the structure of the South African committee was quite different. The South African truth commission committee had three parts: the human rights violations committee, the amnesty committee, and the reparations & rehabilitation committee²⁰⁷. The TRC could grant amnesties, had search and seizure powers, and a witness protection program²⁰⁸. The South African commission had a significant budget of 18 million US dollars each year to

²⁰⁶ Truth commission: Guatemala, UNITED STATES INSTITUTE OF PEACE (2021), <https://www.usip.org/publications/1997/02/truth-commission-guatemala> (last visited Aug 12, 2023).

²⁰⁷ Ibid

²⁰⁸ Ibid

use as funding²⁰⁹. Some of these funds were used to provide urgent relief and grants to survivors of the violence. Another difference was that the TRC also held public hearings during their investigation process, while the CEH did not²¹⁰.

The CEH is different from the TRC in quite a few ways. The CEH did not have any seizure abilities or abilities to grant amnesty, nor did it give out grants²¹¹. The CEH also had a shorter time to investigate. The war in Guatemala was 30 years long, and having 30 years' worth of facts, events, and items to disseminate within one year is difficult at best. Furthermore, with the time limit, access to victims was limited²¹². This was due to a variety of different reasons. Many of the victims within the country were in geographically isolated regions and did not often feel open to sharing traumatic experiences with outsiders²¹³. Some victims did not trust the truth seekers and imagined that opening to these outsiders would cause retaliation of some sort.

There were also other significant differences between the two committees. As stated earlier, the TRC held public hearings. The CEH was held as private meetings until the final report's release²¹⁴. For this reason, there was much more attention from national and international media within the South African commission. The TRC could list

²⁰⁹ South African Truth Commission, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/south_african_truth_commission#:~:text=Nelson%20appointed%20Archbishop%20Desmond%20Tutu%2C%20a%20Nobel%20Peace,by%20South%20African%20taxpayers%20and%20international%20donors.%20 (last visited Apr 26, 2023).

²¹⁰ Joanna R Quinn & Mark Freeman, *Lessons learned: Practical lessons gleaned from inside the truth commissions of Guatemala and South Africa*, 25 Human Rights Quarterly 1117–1149 (2003).

²¹¹ Ibid

²¹² Ibid

²¹³ Ibid

²¹⁴ Ibid

people's first and last names within the report. The CEH was not allowed to name anyone's names within report²¹⁵. The TRC had a total operating period of seven years²¹⁶, while the CEH only operated for 1.5 years. While the CEH took thousands of testimonies, it only investigated 100 cases while TRC investigated thousands of cases²¹⁷. This can be pointed to the fact that the CEH only had a limited time to cover so many years of war. Another major difference is that the TRC worked with the justice system of South Africa while the CEH was completely independent²¹⁸.

In terms of reference of the TRC, reconciliation was a specific goal of the commission, while the CEH did not have this included within its TOR. This is important because it also explains some of the powers the TRC had that the CEH did not have. The purpose of the CEH was to clarify the history of the country to move forward;

The Commission for Historical Clarification (CEH) was established through the Accord of Oslo on 23 June 1994 in order to clarify with objectivity, equity, and impartiality, the human rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people. The Commission was not established to judge - that is the function of the courts of law - but rather to clarify the history of the events of more than three decades of fratricidal war (CEH, 1999).

²¹⁵ Truth commission: Guatemala, United States Institute of Peace (1999), <https://www.usip.org/publications/1997/02/truth-commission-guatemala> (last visited Feb 7, 2023).

²¹⁶ How did the truth and reconciliation commission start?, Caniry (2022), <https://www.caniry.com/how-did-the-truth-and-reconciliation-commission-start/#:~:text=How%20long%20did%20the%20TRC%20last%3F%20Dates%20of,1998%20but%20was%20extended.%29%20Why%20was%20TRC%20criticized%3F> (last visited Feb 7, 2023).

²¹⁷ Joanna R Quinn & Mark Freeman, *Lessons learned: Practical lessons gleaned from inside the truth commissions of Guatemala and South Africa*, 25 Human Rights Quarterly 1117–1149 (2003).

²¹⁸ Ibid

This commission caused a form of reconciliation by providing tremendous truths for the country; however, that was a secondary result of the commission and not the actual goal. As noted earlier, the TRC could grant amnesties for reasons of truth. People who came forward with the truth could get an amnesty if they could connect their crimes to political motivation. Some could argue that this did not cause reconciliation because it let many war criminals walk free without consequences; however, it created a much more accurate final report. People did feel more at ease coming forward with the truth if there was an amnesty attached to it.

However, Guatemala attempted to have the same effect by not naming names within its report. The final report was not allowed to name anyone's personal name²¹⁹. This has its pros and cons. While not being able to name anyone's names might make people feel more open to telling stories, it does not guarantee any protection. More importantly, not allowing anyone's names does not allow for accountability. The positive outcome about not focusing on names with a final report, is that it focuses much more on institutions. Institution accountability is crucial in a final report to create systematic changes and structures that will work for the people. The CEH also focuses on the types of crimes committed by which institutions instead of focusing to one person. This also puts a higher emphasis on general patterns of abuse that happened instead of individual crimes.

One of the recommendations of the CEH was to create a comprehensive education revolving around its past. It was not only part of the CEH recommendation but also

²¹⁹ 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, GoG & URNG, 23 June 1994, United States Institute of Peace

included in the peace accords. It seems that Guatemala had difficulties implementing this for a variety of reasons. Education and changing educational books have not been a post-war priority for Guatemala. This can be seen by in Guatemala's the lowest spending on education than any other Central American country²²⁰. A large part of the population remains without the ability to read, and the country has a high dropout rate from educational institutions²²¹.

In 2002, the country hired consultants to work on a history of Guatemala textbook that worked on including issues mentioned in the CEH²²². The book mentioned root causes of the newly ended conflict. One of the root causes it listed was social inclusion; the following chapter discussed racism against the Mayan population. Many congress members were unhappy about the book's contents due to its mention and use of CEH principles and ultimately prohibited the use of these books within schools²²³.

The CEH was the biggest, but not the only group committed to releasing information to the public. There was an effort from the Catholic Church of Guatemala meant to expose the human rights violations of the war. The church called this effort "Recuperación de la Memoria Histórica" or REMHI, while their final report was called "Nunca Mas." Since it was not a faction of the government nor created out of the result of peace accords, it had its own rules and abilities that the CEH could not have. Due to the independence from governmental employees, people less likely to trust the

²²⁰ Elizabeth Oglesby, *Teaching the violent past: History education and reconciliation* (2007).

²²¹ Ibid

²²² Ibid

²²³ Ibid

government could be more open to communicating with the church about some of the violations that might have happened.

The REMHI differed from the CEH in quite a few ways. For starters, since they were not working nor funded by any form of government, they could do things the CEH was not allowed to do. One of these actions was to name the names of people that committed human rights violations²²⁴. Furthermore, “Nunca Mas” had a higher rate of guerrilla violations. “Nunca Mas” lists the amount of human rights violations that the army committed as 85% while the guerrillas committed 9% of the violations²²⁵. This has the opposing group listed as committing almost 10% of the violations, which is a large difference from the governmental estimation of 3%.

The biggest difference between the REMHI and the CEH is the use of the word genocide. The REMHI does not call the atrocity a genocide (REMHI). The report ended up saying that it had parts of genocide, but the topic would need to be looked into more. The CEH, a direct report for the government, labeled the acts genocide. This is important for a variety of reasons. The community needs to be able to agree on what happened. Saying that an event could be a genocide but would need to be looked at more is a disappointing conclusion to a 4-volume report. As the one of the only official searches for clarification of violations, a more decisive over the call of genocide might have been more helpful. To give the report credit, it goes to great lengths to show that the army wanted to destroy the local populations within the area. The report includes many

²²⁴ Ambrose Mong, *nunca más*, 110 INTERNATIONAL REVIEW OF MISSION 100–114 (2011).

²²⁵ Ibid

interviews with locals as well as recordings of some of the most intense war crimes that did happen.

The REMHI was able to be a good complimentary work to the CEH. The fact that there was a secondary truth commission that was not state sponsored, could show that there was a lack of trust on the clarity and details that were to be included in the UN and state sponsored CEH. While the findings were equally rejected by the government as the CEH was, it was able to provide an insight and grassroots study into violations with different survivors of violence than the CEH. Due to the grassroots nature of the report, the report added to a validation of the facts and findings of the CEH and survivors of the war. The report could be seen as a threat to the Guatemalan state, which is the most likely reason on why the bishop was killed shortly after publishing the report.

3.1.3 Dissemination of the CEH

As the most influential document of the post-war reconstruction and reconciliation of Guatemala, dissemination and interpretation of this document will need to be made. As stated earlier, this commission could not list people's names or have special powers. The committee only had six months, with a possibility of 1 extension, to investigate the war and the violations of human rights that it caused:

The Commission for Historical Clarification (CEH) was established through the Accord of Oslo on 23 June 1994 in order to clarify with objectivity, equity and impartiality, the human rights violations and acts of violence connected with the armed confrontation that caused suffering among the Guatemalan people. The Commission was not established to judge - that is the function of the courts of law - but rather to clarify the history of the events of more than three decades of fratricidal war (CEH,1999).

As discussed earlier, there are many reasons that a country might choose to have a truth commission rather than trials or ignore the conflict. A war that lasted thirty years and had massive casualties and conflicting information, caused many people interested in a commission of truth. The indigenous population said that many crimes against humanity occurred and had many people missing. The CEH was created to clear up different events connected to the armed conflict that the Guatemalan people suffered. This commission, under no basis, was created as a legal document meant to be used to prosecute, this document was to clarify history and events²²⁶.

The CEH was broken into three parts, the introduction, 152 conclusions, 84 recommendations, a small request to United Nations, and annexes. These all make a document less than 100 pages for over 30 years of war. This report makes some of the most comprehensive statements based on the committee's investigations. The most significant conclusion that this commission came to was even heavier than the world's worst crimes against humanity: Genocide. The CEH concludes that the army and the Guatemalan government willingly committed Genocide against the Mayan Quiche population between 1981-1983 under president General Rios Montt.

Conclusions of the CEH

Even though the report does state that genocide did occur, the report starts by laying down simple facts. The report states that they registered 42,275 victims . 83% were

²²⁶ 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, GoG & URNG, 23 June 1994, United States Institute of Peace

identified as indigenous Guatemalans, while the Ladino population comprised 17%. The Ladino (or Mestizo) is an ethnic group that mixes European roots with indigenous roots. It is the dominant ethnic group within Latin America, minus Guatemala and Bolivia²²⁷. The Ladino minority population still ruled Guatemala's majority indigenous population. The CEH also estimates that at least 200,000 people were murdered or disappeared due to internal conflict.

The report states that the roots of this conflict are rooted in the history of colonialism and inequality. The state had what the report calls a “profound exclusion” and continues to state that the government became a tool to protect the elite minority that rules over the country. The government protected the wealth and status of this minority, leading the excursion of the vast indigenous majority. The report calls the entire system a systematically racist and dehumanizing social system. According to the CEH, the state would also frequently use tactics of injustice to maintain control and power over its population.

The report further goes into the government's use of the legal system. The report states that the system that was supposedly meant to protect the people was used as a means and an end to take away the rights of its citizens and take down political opponents. This as a practice would need to be addressed in ensuring the safety of Guatemalans in the future. Legal changes as a crucial part of the peace building process are to ensure that impunity, corruption, and other legal challenges would be addressed.

²²⁷ Frontline/world . Bolivia - leasing the rain . facts and stats about Bolivia, PBS,
<https://www.pbs.org/frontlineworld/stories/bolivia/didyouknow.html> (last visited Apr 26, 2023).

The report discusses the history of the conflict, which is also discussed in depth within this thesis. Some highlights of this history are the cold war and the effects of the fight against communism, foreign influence, coups that happened, the civil war, the genocide, and what followed. The CEH states that the government constantly searched for an “internal enemy” and used excessive force within the civil war. The story of the internal enemy and the fight against communism was used to justify the horrendous genocide of the Mayan population. Furthermore, the constant talk of the “internal enemy” can be shown by the abnormally high death of the civilian population of Guatemala. The government also has intel on the number of organizational threats and army weapons. The government knew that the indigenous population made no real threat to the government or the country's stability.

That part of the CEH is vital because it shows that the government knew that many villages posed no immediate threat. Many of the government's actions were either fear-driven that they would be a threat or meant to discourage an entire population using collective punishment with a scorched earth policy. Not knowing that a population is an immediate threat and still using force on non-combatants is a clear violation of human rights law. This is important because it intends to harm a group of civilian non-combatants for other uses.

The report states that the primary victims were Mayans and puts emphasis on the suffering of women and children. Children were often killed by being beaten against the wall or being thrown into pits alive with amputated limbs, with their parents having the same fate shortly after. Women were often subject to sexual crimes, murder, rape, and the destruction of their family units. Targeted and non-targeted executions would happen in front of the victim's family, friends, or neighbors many times. The army made no

distinction between combatants and non-combatants with its scorched earth policy. This policy led to the pure destruction of many villages and communities within the Mayan countryside. The army kept secret detention centers where prisoners would be forced to work, tortured, and executed. Many of the victims that were executed are missing, with no record of their bodies.

The Army also created another faction called the Civil Patrols (PAC). There were paramilitary groups that would cause terror within the communities and other populations. They would force rape and violate women at gunpoint, torture other people, and mutilate alive and already dead bodies. This was intended to create a culture of fear and a community of fear over the army to create a group of obedient and non-threatening enemies of the state. This is a form of collective punishment and often affects the most vulnerable. The army would force children and members of the indigenous community to join this group of patrol to inflict genocide within their community.

The report states that the state also did multiple things to weaken all other systems to support the ongoing process. The courts and judicial system were essentially used as tools by the state and had no independence to function on their own. The courts were used as oppressive systems to continue the state's terror. The state also eliminated, disappeared, or forced into exile many members of civil society. The report stated that this forced many NGOs and academics to be killed, work clandestine, or be banished from the country. Most news agencies also needed to censor their news. Journalists that reported the war accurately were often killed, tortured, intimidated, or censored.

Since the justice system was used as a tool for the state and not for the people, there were many people wrongfully imprisoned. The running list of the types of people that were punished most were journalists, students, and members of not-for-profit

organizations. This started to make for a crumble and breakdown of society. No truth about what was happening was coming out, and people were being wrongfully convicted for voicing their opinion.

The report states that between 1981-1983 between 500,000 to 1,000,000 people were displaced due to the intensification of violence. One-third of the displaced people stayed in or depended on the refugee camps that the United Nations set up, 150,000 people sought refuge in Mexico, and others fled to Belize, Honduras, and the United States. This was because and/or led to the destruction of property and livelihoods and the end of many people's natural lives that they worked for and were living.

The last and most important conclusion was the claim of genocide. The CEH uses the UN definition of genocide that is found in the Convention on the Prevention and Punishment of the Crime of Genocide;

" ... 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."*

This definition is dissected in detail on why the CEH defined this as genocide and why it is essential in the section that analyzes the legal side of the war in Guatemala. Nevertheless, the CEH uses this legal definition to stick the term “genocide” against the Mayan Quiche community during the years of the war.

Recommendations of the CEH

The CEH does a great job of giving a general overview of many of the crimes that happened during the war. The report further goes into recommendations on how to move forward. The report thoroughly reviews some causes of the war and events, but it also gives detailed recommendations on building peace and reconciling the state's wrongdoings.

The recommendations are in six parts;

1. *Measures for the preservation of the memory of the victims;*
2. *Measures for the compensation of the victims;*
3. *Measures to foster a culture of mutual respect and observance of human rights;*
4. *Measures for strengthening the democratic process;*
5. *Other recommendations to favour peace and national harmony; and,*
6. *Body responsible for promoting and monitoring the fulfilment of the recommendations.*

The first recommendations all have to do with the dignity of the victims of the war. The CEH recommends that the ex-command of the Guatemalan army apologize for the acts against the Guatemalan population. The CEH strongly recommends that the state do multiple ways to remember the victims of the war. This includes using public holidays and parks and renaming specific federal properties to remember the victims.

The following recommendations are about reparations as a form of reconciliation. The government of Guatemala is recommended to make a program for the victims and survivors of the war. The government should create a bill that would list the beneficiaries included with financial compensation for human rights violations and violations of humanitarian law, restoration of property with an emphasis on land ownership, and rehabilitation that includes medical, mental, social, and legal services. The reparations also include measures that give dignity to each individual and have symbolic value.

Work needs to be done to reconcile in a way that promotes peace. This reconciliation effort should be made in the name of doing a wrong into a right. The goods and deeds should be offered to the community as a collective, not as individuals. This is to promote a collective amount of reconciliation. This point really does show emphasis on the country. Doing actions and legal changes are great, but also promoting change as a community helps promote a culture of peace.

In order to finance the reconciliation programs, some shifting of finances can be done. First and foremost, the CEH states that progressive new tax reform is needed to fund these programs and enhance reconciliation. The programs can also be funded by defunding the military and using some of those freed-up funds to pay for reparations and reconciliation to the beneficiary victims of the war. The time of these programs is listed as should be at least ten years. Tax reforms, in theory, should be made to fund the survivors and victims of the war and not fund the military that caused the genocide.

The report states the need for a culture of mutual respect. This is part of a best reconciliation practice that was discussed earlier in this thesis. After a civil war, two or multiple groups need to learn how to live with each other once again. The CEH states that the state needs to make a bigger effort to reverse the historical racism and exclusion that has come with dealing with its Mayan population. Part of doing this is working with civil society organizations to teach the findings of this report. The entire report should be fully translated into k'iche, kaqchikel, mam, q'eqchi', and ixil, while the recommendations and conclusions should be translated into 21 different indigenous languages.

The report also has many different legal reform suggestions. The report lists different international conventions that should be ratified to include the state in more international law-based conventions. The report also recommends passing different

national legal reforms that would be meant to assist Guatemala's justice system rights system and make the country more equal to all Citizens. These laws and conventions are analyzed in detail in the chapter on the legal analysis of Guatemala and peacebuilding.

The final recommendations of the CEH have multiple different significant meanings. The report suggests multiple reforms to the military, including a completely new doctrine of the army. The army should have respect and dignity in accordance with human rights and the Guatemalan people. One of the recommendations is that the army be subordinate to political power. This means that the control of the army will change each time an election happens. The reforms state that the army is to be used in an apolitical way. The army should not be used in order to make political gains. The report also recommends that the CEHs content should be taught to all active military members.

The report's final recommendations include some suggestions written in less detail. Some of these items include the elimination of racism, investigations of the past, and further indigenous participation within all systems of the government and society. Overall, the report wants to see the inclusion of its indigenous people rather than exclusion. This is overall crucial to peacebuilding within Guatemala. As a post-colonial country that has had a history of inequality and exclusion, inclusion would ensure that the majority of its population is able to thrive within its socio-economic system.

Other recommendations are directly connected to the kind of violations that occurred. In order to reconcile, the government must search for the disappeared. Not only should all available resources and legal ways be used to search for the bodies of the disappeared, but the government should also be responsible for identifying the bodies and returning them back to their families. The report recommends using the International Red Cross for technical guidance in completing this task. This includes a wide and far-

reaching effort of exhumation. This exhumation is listed to be of supreme importance to the idea of collective reconciliation.

The report also goes into another special section on searching for disappeared children. Children were illegally sold, adopted, kidnapped, and disappeared during the war. A special committee should be made specifically to look for these kids. Unlike the previous recommendation on disappeared adults, this recommendation is stated to be needed to be done across the entire state in multiple languages and refugee sites in other countries.

3.2 *USAID, and Peacebuilding in Guatemala*

USAID is the United States international developmental organization. It is part of the US government and describes itself as a promotor of peace, democracy, and trade and seeks to establish self-sufficiency²²⁸. USAID has missions and projects all over the world that are intended to help countries develop and prosper, and it could be argued has been used as a form of soft power to implement US interests abroad. In terms of this essay, I will define soft power as the services and investments that a country makes in a foreign country to maintain power and influence without the use of force.

The idea of international development in the United States started in 1949 with the Marshall Plan²²⁹. This international development was meant to protect US interests during that time. The plan was to develop new markets for the United States by creating

²²⁸ What we do, U.S. Agency for International Development (2022), <https://www.usaid.gov/what-we-do> (last visited Jan 26, 2023).

²²⁹ Ibid

more production in these countries and to stop the threat of communism. The organizations created from this plan eventually formed what is now called USAID by John F Kennedy. USAID, from then out, was implementing and funding projects across the globe in the name of development²³⁰. This increased the US amount of foreign aid and assistance.

By the time the war ended in Guatemala, USAID had created a plan to assist in peace and reconciliation in Guatemala. Ironically, the US government was also responsible for fueling the flames of the Guatemalan civil war. One notes that the USAID logo strikes in the memory of many Guatemalans whose US food bags went to help feed the counterinsurgents. Furthermore, USAID was also taking part in the racism and dehumanization of the indigenous population;

Diplomats constantly spoke of Guatemala as a 'backward' country that needed to be uplifted into the modern age. The US Agency for International Development (USAID) designed its development assistance programmes to capture the 'hearts and minds' of Guatemalan workers and peasants in order to steer them away from the guerrillas. According to USAID officials, 'primitive' Mayan Indians, who comprised half the population, needed to be 'integrated' into the national fabric lest they fall prey to communism. The ironic truth is that the US government intended to create conflict was next delivering programs for peace and development.(Streeter, 2006²³¹)

While this quote demonstrates the context of USAID during the war, it raises quotes on how an instigator of the conflict could then turn around and promote peace. I think that it is an important question for reconciliation and

²³⁰ Ibid

²³¹ Stephen M. Streeter, *Nation-building in the land of eternal counter-insurgency: Guatemala and the contradictions of the Alliance for Progress*, 27 Third World Quarterly 57–68 (2006).

peacebuilding to put an emphasis on perceptions. Nevertheless, it also can be noted that USAID did make a partial genuine effort to promote peace in the region after the war.

USAID started its work in Guatemala after the war by creating radio stations within target areas in Guatemala. The purpose of these stations was to tell stories of the war and encourage people to read the CEH²³². During these broadcasts, different items were discussed to help promote peace. USAID also created a textbook that reviewed the war's history and root causes²³³. The was over 100 pages and included documentation about land ownership, authoritarian governments, racism, and history. The textbook even goes over the revolution but leaves out any mention of the US-backed revolution that caused the civil war in the first place²³⁴. Overall, this was a questionable decision for the US government if it truly wanted to promote historical clarification.

The U.S. government should not have been an instigator of war and the voice of peace. Furthermore, an outside power causing an internal conflict should not be able to be in the same country to suggest structural changes. As a power that has already lost credibility with half the population, it is interesting to question why USAID was a vital priority to peacebuilding. Much of the topics that peacebuilding needed to do to achieve its goals were directly against US foreign policy. While US policy has changed throughout the years, it is essential to recognize its powerful impact on present-day

²³² Elizabeth Oglesby, *Educating citizens in postwar Guatemala: Historical memory, genocide, and the culture of peace*, 2007 RADICAL HISTORY REVIEW 77–98 (2007).

²³³ Ibid

²³⁴ Ibid

Guatemala. While promoting clear and working systems, the US government should have been honest.

It is important to note that USAID is still functioning within Guatemala. While many of the projects are not related to peacebuilding, they are still to implement US policy. A quick search of USAID projects within Guatemala, shows that the majority of the development projects within Guatemala are directly related to the prevention of migration to the United States. Since years have past since the war, the US government has implemented development aid related to its desires to limit migration and asylum seekers from entering US territory.

3.3 *Peacebuilding in Guatemala Continued*

One thing to note is the level of actual organizations that came together after the war to create peace. By 2003 about 344 self-help organizations were formed²³⁵. This is a tremendous number of organizations for a country the size of Guatemala. With the number of community members helping other community members, genuine peacebuilding is possible. Another aspect of peacebuilding was that 12 organizations were created to help look for mass graves²³⁶. Seeking the missing is very important when it comes to post-war actions. In Guatemala, when the genocide occurred, people needed to find their relatives to move on to the peacebuilding and reconciliation process.

A big success was the CEH and REMHI, which added to a sense of peacebuilding and reconciliation. After so much searching and fact-finding with limited time and power,

²³⁵ Ambrose Mong, *Nunca Más: From oppression to peace and reconciliation in Guatemala*, 110 International Review of Mission 100–114 (2021).

²³⁶ Ibid

the CEH did an excellent job. The CEH was able to find and come to an extraordinary number of facts and conclusions with its limited powers. The CEH dissected international law accurately, suggest different international conventions to be part of, and list crimes within Guatemalan law. This overall approach was coupled with lists of recommendations of different approaches to reform.

While many different politicians are currently denying claims of genocide and land distribution requests, the facts are out there. Many different survivors of these crimes against humanity and genocide were able to get their feelings validated from this document. The CEH was able to have a document of crimes, agencies, dates, and locations where events happened. This is important to be able to give and uplift victims' voices to be able to create a document like this. Immediately after a climate where human rights defenders, organizations, or people seeking justice were killed - creating a document like the CEH is impressive.

Multiple documents also enhance the CEH for a good reason. Due to many of the CEH's findings, many people and organizations could look for missing bodies. Academics have used the CEH as a great example of one of the biggest truth commissions that have yet to be done. It could be argued that even the prosecution of Rios General Montt was because of the findings of the CEH. This document will be used for decades to come as a prime example of what a truth commission can accomplish with a limited amount of time.

3.4 *Peacebuilding difficulties in Guatemala*

While there were some great successes within peacebuilding, some things could have been done better. Peacebuilding and reconciliation after war time comes with a

commitment to human rights and reforms. The CEH, while being a great start, had no full follow through. Due to a lack of political interest and overall system of resistance, peacebuilding was not full and holistic. There were many difficulties within implementation, political support, and follow through.

One topic that is not touched upon often, which is fear. After a conflict where an atrocity occurs, the population will need to learn to trust the other or group. This does not always come with success. For example, the Catholic church report on Genocide happening in Guatemala helped the truth be heard that otherwise might not have been listened to. This report can be seen as a huge success; however, one of the authors that released this report, “Bishop Gerardi,” was beaten to death two days after publishing the report²³⁷. With news like this coming out to the world, there must have been many different human rights workers afraid to work for the common good of Guatemalans.

The death of this Bishop shows how quickly someone can act as an act of vengeance for releasing the truth. This death will not add to any feelings of justice for the victims of the war. Furthermore, this death probably gives victims extreme reluctance to speak out against the injustices that happened to them. It was not until 2001 that three killed the bishop were convicted. The murderers were three of the Guatemalan army²³⁸.

One of the most important topics of Guatemala's reconciliation and peacebuilding has to do with the land. One of the original topics that started the civil war was the need for land reform and historical ties/connections to the land. Many groups, UN officials,

²³⁷ GUATEMALA HUMAN RIGHTS COMMISSION/ USA, <https://www.ghrc-usa.org/our-work/2014-annual-report/assassination-of-bishop-gerardi/> (last visited Apr 26, 2023).

²³⁸ Ibid

and even the CEH stated the need for land reform and respect for the indigenous roots of the land. Land conflicts and arguments about who owns which land go back hundreds of years in Guatemala. Claims to land can go as far back as historical land that was taken before Spanish colonization, to land that was seized during the war.

Land conflicts are not only about who owns which land but on how the land is used. Many wealthy landowners have used the lower economic Guatemalans in many exploitative labor situations for many years within Guatemala. This problem was one of the root causes of the civil war that was also a problem within peacebuilding. How the government decided to reform the land has always been contested by Guatemala's elites and governmental officials. The 1996 agreements for peace included many different aspects to have more equal land distributions; however, many of these policies were never implemented in the end or were not ever enforced.

Many aspects were not implemented or respected after the war in terms of land. Only 4.5% of Guatemala's land was redistributed between 1997 and 2005. Furthermore, only 20% of people who applied for credit were granted the ability to have one. In other words, 80% of people who wanted credit to start their farm or business were denied²³⁹. As a large group of people does not have generational wealth in Guatemala, they could not grow economically. 70% of farm workers were not paid minimum wage after the war

²³⁹ [*Third World Quarterly*](#), Vol. 28, No. 8, Market-Led Agrarian Reform: Trajectories and Contestations (2007), pp. 1519-1536 (18 pages)

either²⁴⁰. This continues the perpetual problems and inequalities that started the war in the first place.

There have been other difficulties as well regarding development. Major elements of peace agreements have not been implemented. Many people have cities lacked the political will to implement peace policies, and the international community has had a difficult time enforcing the agreements that they signed. Furthermore, some organizations had difficulty going from pointing out the problems to structural change. When organizations were invited to governmental tables, sometimes they had little to say. This could be seen by many times where NGOs had difficulties working with governments beyond denouncing certain items. NGOs, in turn, became more focused on donor funding than working with the government to achieve lasting reconciliation and peacebuilding.

The most severe fundamental difficulty to peacebuilding in Guatemala is that there were no follow-up tasks nor the ability to enforce recommendations. After other Genocides that occurred within the world, there have been tribunals where prosecution happens with all the perpetrators. This never happened in Guatemala's case. While there were a few landmark court cases, the only responsibility that the government had to do was to review the CEH and make general reparations²⁴¹.

²⁴⁰ Net Oxygen Sàrl (<http://netoxygen.ch>), THE SITUATION OF FARM WORKERS IN GUATEMALA THE SITUATION OF FARM WORKERS IN GUATEMALA |, <https://www.cetim.ch/the-situation-of-farm-workers-in-guatemala/> (last visited Apr 26, 2023).

²⁴¹ Roddy Brett, *In the aftermath of genocide: Guatemala's failed reconciliation*, 10 *Peacebuilding* 382–402 (2022).

3.5 *Post-war Guatemala*

Guatemala has gone through a process that includes different organizations working together for reconciliation, so an inspection of what post-war Guatemala has been like is essential. This is because many of the results that happened from the truth commissions, changes in law, agreements of the peace accords, and NGOs coming together should lead to a country's success. This is the idea of international development and peacebuilding. In Guatemala's case, this is not so true. The government has had a tough time bringing the country to stability, equality, and, finally, equity.

Between 2014-2017 alone, there were 23 forced disappearance filings, consisting of 91 people²⁴². This was one of the most significant problems that happened during the war. Forced disappearance is very serious as it does not allow any type of justice to be served. Furthermore, it does not allow family members to know about their whereabouts. Furthermore, it seems that the justice system within the new post-war Guatemala has been unable to deal with its impunity. Between the same allotted amount of time, there were 244 cases filed in the prosecution unit against human rights; however, only 24 charges were filed²⁴³. Of that small number of charges filed, there were only four convictions²⁴⁴. While these numbers are not connected to the indigenous community of Guatemala, the system of the court should be reliable for the people of Guatemala.

While the topic of impunity is discussed in the chapter about legal topics, it is important to note that people do not have a system where victims get the attention and

²⁴² Human Rights Protections In Guatemala , 1 Advocacy for Human Rights in the Americas (2019).

²⁴³ Ibid

²⁴⁴ Ibid

justice that they deserve. In fact, it is important to note that there were “0” convictions of human rights violations in 2014, 2015, and 2016 in Guatemala. It was only in 2017 that there were four convictions²⁴⁵. This is also important to note because if a population cannot have faith in their own legal system, they will probably be less likely to seek out legal protection in the first place.

So, what does impunity have to do with reconciliation? During the Guatemala war, the legal system oftentimes worked against its own population. The CEH found that the legal system would even be used as a tool against the enemies of the state²⁴⁶. While the legal system might not be used against its enemies like it was previously, it leads to almost no legal protections if a violation occurs. Reconciliation cannot be made if it is still little to no trust between the average Guatemalan citizen and the government.

Furthermore, there seems to be little protection for people who belong to a trade union. This may seem like it should not be connected to the Guatemalan genocide and post-war construction at first, but it is deeply connected. The Guatemalan civil war started as an anti-communist war. The government was seeking an internal enemy to rid communism from the country. The average Guatemalan had very little labor and land rights before and during the war. While monopolies and large US-based organizations controlled much of the land and paid little, workers that protested for their rights disappeared and were stated as combatants of the state²⁴⁷. A trade union is meant to

²⁴⁵ Ibid

²⁴⁶ Historical Clarification Commission (CEH) (1999). *Guatemala: Memory of silence*. Guatemala City: Historical Clarification Commission

²⁴⁷ Guatemala World without genocide, WORLD WITHOUT GENOCIDE - MAKING IT OUR LEGACY, <https://worldwithoutgenocide.org/genocides-and-conflicts/guatemala> (last visited Apr 26, 2023).

protect workers and be able to use leverage to advance more workers' rights. It is often argued that this is anti-capitalist and has been called socialist many times in history.

Between 2014-2017 there was a total of 3,361 cases filed²⁴⁸. Of the number of cases filed, there was only one conviction. This shows a massive discrepancy between labor law and protections against workers. This continued amount of discrimination against non-land-owning non-business workers within Guatemala goes directly against many of the reasons that the war was fought in the first place. Guatemala has a very low conviction rate for different forms of crimes. This is discussed in detail within the section on legal analysis.

Guatemalan society still remains fairly unequal. Guatemala is the richest but most unequal country in Central America. 0.001% have more capital than the rest of the countries' wealth combined²⁴⁹. This can be shown by the fact that 260 Guatemalans own \$30 billion USD. This is the same amount as 56% of the annual economy²⁵⁰. To this day, between 75-79% of Mayan families live in poverty, and roughly 40% of Guatemala does not have food security²⁵¹.

There are also other ways to divide up the economy that shows that present-day Guatemala is still going through the same problems that caused the war. You can divide the numbers that 6% of the population of Guatemala controls 80% of its wealth;

²⁴⁸ Human rights protections in Guatemala - wola, WOLA (2019), <https://www.wola.org/wp-content/uploads/2020/08/Derechos-Humanos-GT-ENG-4.9.pdf> (last visited Apr 27, 2023).

²⁴⁹ Barry Bogin, *Fear, violence, inequality, and stunting in Guatemala*, American Journal of Human Biology (2021).

²⁵⁰ Ibid

²⁵¹ Ibid

furthermore, after the war, many industries did everything they could to stop any distribution of resources²⁵². This shows that the Spanish-speaking wealthy elite still feels threatened by the indigenous majority.

Inequality does not only stop at financial status. In 2006, it was shown that 77% of Ladino women could read, while only 39% of Mayan women could read²⁵³. In Guatemala, children have a high dropout rate from school, especially in rural indigenous areas. By the age of 17, only 26.7% of rural girls are in school compared to the also low (but noticeably higher) 57.1% of urban girls are in school²⁵⁴. While analyzing the exact reasons for high school dropout rates is outside of the scope of this thesis, it is worth mentioning because it shows unequal access to education.

To go beyond economics and education, there is still high violence and instability connected to women, children, and indigenous residents of Guatemala:

“In the first 4 months of 2021, at least 160 women were murdered in Guatemala, more than one per day, and the government received more than 20,000 complaints of violence against women and girls. Only 12% of such complaints are investigated and 99% of murders are unpunished...Low income people, even those in poverty are kidnapped for personal retribution or, more often, for intimidation. The poor may be exploited for their land or because they might testify against the wealthy or military. Low-income kidnap victims are often tortured and murdered. Maya families are regular targets of kidnapping and murder... (Bogin, 2021)”

Furthermore, it is very interesting to note who is responsible for such a large amount of violence and instability within the country. Trained ex-military

²⁵² Roddy Brett, *In the aftermath of genocide: Guatemala's failed reconciliation*, 10 PEACEBUILDING 382–402 (2022).

²⁵³ Population Council, *The adolescent experience in-depth: Using data to identify and reach the most vulnerable young people—Guatemala 2002/2006*, Population Council (2009).

²⁵⁴ Roddy Brett, *In the aftermath of genocide: Guatemala's failed reconciliation*, 10 PEACEBUILDING 382–402 (2022).

members are commonly found in large criminal groups that participate in drug trafficking, kidnapping, and shootings and maintain using their old power status for corruption²⁵⁵. This brings a more substantial question of how to reconcile post-war Guatemala and integrate people into society.

In today's Guatemala, the issues are still connected to post-war reconstruction. There is a high outward migration from Guatemala, violence, income inequality, corruption, and a legal system that does not benefit victims. While the government is not actively seeking out indigenous people, there is a level of fundamental structural violence that is happening within Guatemala.

There are many definitions of structural violence, but it is clear that many forms of structural violence are happening within Guatemala. Dr. Johan Galtung defines structural violence as “a form of violence where social structures or institutions harm people by preventing them from meeting their basic needs. This is achieved with institutional elitism, ethnocentrism, classism, racism, sexism, adultism, nationalism...”²⁵⁶. This definition can describe what is happening within Guatemala. Structural violence can sometimes feel like it is not happening. Many times, victims or minority groups are blamed for the types of poverty or problems that they are facing.

²⁵⁵ Guatemala organized crime news, INSIGHT CRIME (2023), <https://insightcrime.org/guatemala-organized-crime-news/> (last visited Apr 26, 2023).

²⁵⁶ Paul E Farmer et al., STRUCTURAL VIOLENCE AND CLINICAL MEDICINE PLOS MEDICINE (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1621099/> (last visited Apr 26, 2023).

The army itself has not taught any of the historical background documents of the CEH or information about the genocide. One academic took the time to go to the Adolfo Hall Military Institute to interview some directors and students. The army teaches many different parts of the peace accords and the Geneva Conventions, but it does not teach the document that gives responsibility for genocide to the army;

Well, there is the Church's book [the Catholic Church's 1998 multi-volume report], but that is biased (parcializado). The Clarification Commission's report is biased, too. [The CEH report] isn't in the curriculum standards of the Ministry of Education, so we are not reading it. Maybe if there were more books from the right as well as the left to give a balanced view, maybe it would be a good idea to include this, but not now. We need a commission to evaluate this (Oglesby, 2007).

The problem with this line of thinking is that these two documents are the only ones that list the war's historical facts. Different mistakes are bound to repeat without any text or requirement to teach the historical truth that happened within the country. Calling two multi-volume studies that outline crimes against humanity biased and need to have the viewpoint of the other side is harmful. No justification or looking at another side can justify the violations of humanity. There is no other side because there is no justification.

Guatemala has many changes to different to its laws. However, the country's elites have flat-out denied different aspects of the CEH and history itself. President Alvaro Arzu denied the results and findings of the CEH itself. With so many elites denying history and different facts, there could be no governmental feeling of true reconciliation if the government itself does not accept the truth. Most government officials denied their actions and participation in the war for their own benefit. They did not want to be prosecuted, and since the CEH did not

name any names of such sort, many of them could get off free. The most significant example of this is the revered conviction of General Rios Montt.



Chapter 4:

MARIO POLANCO AND THE GAM

During the research process of Guatemalan war, I wanted to contact one of the country's most prominent human rights activists. Mario Polanco, the director of Grupo Apoyo Mutuo (GAM) and university professor at the University of San Carlos fell under my radar²⁵⁷. Mario Polanco has been very active as a human rights leader within the country, particularly in the search for the missing, murdered, and disappeared. The work of GAM demonstrates the commitment to the mission. The organization works solely for the rights of victims who disappeared or went missing through the war during the years 1960-1999²⁵⁸. The organization works on finding missing children, missing citizens, clandestine cemeteries, filing human rights cases against the state or parties that violated the rights of its clients, in exhumation, creating reports on human rights, helping the public access records, and supporting victims of the war in any way possible²⁵⁹. Mario has been awarded for his relentless work supporting human rights by the French Republic and the United States²⁶⁰.

²⁵⁷ Geovin Morales, No más impunidad Gazeta (2021), <https://www.gazeta.gt/no-mas-impunidad/> (last visited Mar 2, 2023).

²⁵⁸ Grupo de Apoyo Mutuo, GAM, <https://grupodeapoyomutuo.org.gt/> (last visited Mar 2, 2023).

²⁵⁹ Ibid

²⁶⁰ Mario Polanco Pérez, The Greater Caribbean For Life (2014), <https://gcforlife.org/about/perez/> (last visited Mar 2, 2023).

One of the reasons why that I picked to contact Mario Polanco and not another activist is because Mario Polanco specifically has been working on accountability and actions that contribute directly to reconciliation. As someone who continues to look for the truth and to hold war criminals accountable, this seemed like someone who would have multiple insights on the insides of peacebuilding and reconciliation. During the war, Mario Polanco had a presence in influencing people and working to find the truth. After the war's end, his continued influence help reunite many family members and bring the truth of what happened to them. He also has one of the only significant databases of missing persons, a great tool for research with the thesis.

It is worth noting that the funding of the GAM is unknown. Upon research on the GAM's website, and other online sources, it is not clear the funding the Mario Polanco's organization. There seems to be an older photo that Mario Polanco had given a speech with a USAID photo in the background, but that does not necessarily mean that the GAM is funded by USAID. Upon contact with the GAM, I was left with no response. There is a part of the GAM website that asks for donations, but it is unclear the GAM is solely funded upon donations either.

Mario Polanco was active during and after the internal conflict. In 1990, the Washington Office of Latin America invited Mario Polanco to Washington, DC, to speak about the war in Guatemala²⁶¹. Flying to Washington as a civil society representative speaking out against the country came with risks. Mr. Polanco spoke about the recurring violence that happened in Guatemala and even states that the

²⁶¹ Human Rights in Guatemala (1980), <https://www.c-span.org/video/?12636-1/human-rights-guatemala> (last visited Mar 2, 2023).

government considered GAM to be part of the insurgent's political body²⁶². Within the speech, Mr. Polanco speaks about how the Vice President of the organization and its Secretary of Public Relations were killed by an unknown person/organization in 1985²⁶³. Furthermore, when the organization marched peacefully, Mario stated that the military patrol was throwing rocks at the organization, labeling them guerillas. A rock hit Mario's head, and he needed 17 stitches in the back of his head²⁶⁴. In the same interview, Mario confirms that anyone fighting for human rights was accused of being a guerrilla or a communist. Human rights was never on the agenda of the government.

Publications were trying to discredit the organization, calling it a clandestine insurgency organization. This activity got him into dangerous situations as an activist. Mario had multiple death threats, attempted assassinations, and he was kidnapped where he was beaten and hit, baseball bats, and guns²⁶⁵. The incident of kidnapping took place on December 10, 1993, where he was forcibly taken to Zone 15 of the city²⁶⁶. The reported kidnappers were wearing military boots and were there to teach the activist a lesson. All witnesses were threatened with death if they spoke up about seeing the crimes they witnessed against Mario²⁶⁷.

The attacks were not only on the director but on the organization. There were times when the GAM offices were broken into and files of missing people were stolen. According to Mario, the office has also been bombed, had grenades thrown into the

²⁶² Ibid

²⁶³ Ibid

²⁶⁴ Ibid

²⁶⁵ International Amnesty, Fear for Safety 16 December 1993 GUATEMALA Mario POLANCO (1993).

²⁶⁶ Ibid

²⁶⁷ Ibid

building, and the workers have been threatened by working for GAM²⁶⁸. Members and leaders of the organization have been killed, with unverified evidence that points to the government itself carrying out the executions of its human rights workers. These incidents have caught the eyes of the international community including Amnesty International, which requested that all interested people send letters to governmental agencies to protect Mario Polanco.

These threats continued to occur even when the war was over. In 2002, a different member of the GAM was threatened with being burned alive in pure gasoline for his work²⁶⁹. Dionisio Camajá Sánchez was given this note, and she reported it to the police. The same perpetrators sent letters to the GAM's office telling them to warn Dionisio not to return to his town. Around the same time, Mr. Polanco had his car stolen in the capital and was slipped a note that stated that he was being watched. These forms of intimidation, most likely by ex-military groups and ex-government officials, did not stop the work of GAM. This organization has constantly worked on finding the truth, the remains of victims, and reunification tirelessly, starting after the genocide in the 1980s to the present day.

Reading about all of this, I decided to visit the office of the GAM in Guatemala and interview Mario Polanco about his thoughts and feelings on reconciliation after the war. When arriving at the GAM office, I was surprised to see it was in Zona 1 of Guatemala City, where all the governmental and central buildings are within the

²⁶⁸ Amnesty International, *Ataque con Bomba y Amenazas/Intimidación* (1993).

²⁶⁹ International Amnesty, *Guatemala: Further information on fear for safety: Mario Polanco (m). Dionisio Camajá Sánchez (m) and members of the human rights organisation GAM* (2000).

country. When entering the building, you see a mural stating, “No one has forgotten us; nothing has been forgotten.” Below the mural was indigenous art. The office has many art pieces of multiple indigenous women. The artwork has gash marks on the indigenous women’s backs, one holds a boulder, and the other is kidnapped and beaten.

I was given a tour of the building to start as an introduction to the GAM. Upstairs I was told, was Guatemala's most extensive archive of missing people from the armed conflict. I was allowed to have access to their database and sifted through this archive and found many different types of cases. Some cases and files had little information, while others were massive. The room of files was massive, containing hundreds of boxes, each containing many files. Department and timeframes of five years separated the boxes. One notable thing was the number of boxes knowing that these were only the boxes of clients that worked with the organization. This signifies the vast amount of cases that exist, but were never brought to the GAM.

One case caught my attention for being complete. Oscar Augusto Miranda was taken from his home on the second of December, 1990²⁷⁰. This case did not have much information on what happened and had a flurry of international support letters. A member of France's parliament, letters from French citizens, citizens from the United States, different offices of Amnesty International, a German federal official, various letters in German, a doctor from Australia, and included photos of the man itself. Most of these letters were marked to the Guatemalan State that GAM was able to get its hands on. Even with this international support and rallying for responses, the case is still open

²⁷⁰ File found in GAM archives on a visit to the organization March 1, 2021

as unresolved. In 1994, the organization even filed a petition to release information on Oscar's whereabouts, but the government took no action.

Some files are complete with various historical backgrounds, documents, and details, including information on the kidnapping of individuals, which location they were taken to, and possible motives why they were taken. However, some files are empty, with very little information. The emptiness is particularly true of files I observed that took place during the years of the genocide. One file is in the electronic database (which only has eight cases online). In 1982, Pedro Osorio Lucas went missing in the district of Quiché²⁷¹. He was married, had one child, and was a journalist. There is a picture of his face, but no further information. The only information on his disappearance was that a soldier took him. There was no further information that I was able to find on the internet on his case.

After reviewing this archive, I was ready to interview Mario Polanco on the topic of victims of the war and reconciliation. As I entered the room, we greeted each other, and I asked for his permission to record our conversation. After consenting, he told me that all information discussed in the interview/meeting is public information that could be used for a thesis or published in any way I would like.

My first question to Mr. Polanco was about how peace and reconciliation have progressed within the country. He responded that peace and reconciliation can be connected but are different²⁷². He further stated that there is technically peace from war

²⁷¹ Polanco, PEDRO OSORIO LUCAS GAM, <https://archivogam.haverford.edu/es/acceso/caso/osorio-lucas-pedro> (last visited Apr 26, 2023).

²⁷² Interview with Mario Polanco. Guatemala City, 2021

within Guatemala, but the country is living in a complete state of continued violence. Even with this violence in mind, there has been what he calls “total peace” because there has not been one recorded incident of military violence against indigenous group or groups working against state interests. He then compared the Guatemala peace accords to the Colombian peace accords. Even after Colombia signed peace accords with the army, there are still incidents of the military killing guerrilla groups or vice-versa²⁷³.

He breaks down reconciliation into three different vital parts. The first part of reconciliation is the truth. In Mr. Polanco’s mind, there needs to be complete transparency of truth for the reconciliation process to begin. The second level of reconciliation is an acknowledgment of an event. This is not to be confused with truth. Acknowledgment is not an apology but a detailed accounting of what happened, how it happened, and where it happened. Acknowledgment for Mario is perpetrators taking ownership and giving detailed descriptions of where each violation occurred. Under this example, descriptions are not just admitting to a violation such as creating mass grave sites, but where the grave sites are, who the victims were, and a total accounting. This is because tactical reconciliation efforts can be made with the information provided. The last part of reconciliation for Mr. Polanco was justice.

Justice, in general, is a complicated topic. Justice can have a different meaning for everyone, so its subjective nature is the most challenging part of reconciliation. Justice for one family might be just the acknowledgment of crimes, while some families

²⁷³ Colombia: Conflict persists five years after peace deal - Colombia, ReliefWeb (2021), <https://reliefweb.int/report/colombia/colombia-conflict-persists-five-years-after-peace-deal> (last visited Mar 2, 2023).

might need heavy prison times and reparations to feel a sense of justice. He stated that other countries had given amnesty for total and complete admissions of truth; however, the same commissions investigated the officer's actions afterwards. If the committee found that an officer did not tell a whole story and omitted evidence to the committee, they would be prosecuted for their crimes. While the trade of crimes admitted for the amnesty of violators might lead to some families feeling justice because bones can be recuperated, other families may feel an extreme injustice having those people walk free.

Mario stated shortly after that if justice is served, then reconciliation has been complete. While he has a point, I think that this is a half-truth. If Mario's context of justice includes giving long-term solutions to the roots of problems that caused conflict, then I fully agree with his statement. If justice is only in criminal prosecution and individual justice of victims, then I believe his argument is a half-truth. In Guatemala, indigenous people rallied for land rights as a US-based fruit company almost owned half their country²⁷⁴. The indigenous groups protested and gathered for the right to have the land back and opportunities for a good life and were responded to by the government with genocide. Justice should be about individual justice over a mass killing and fixing the rallying issue. While criminals should be prosecuted, the indigenous people should also be able to recessive stability, economic opportunities, and the ability to become accessible landowners. Only with investments in true peace can there be reconciliation.

²⁷⁴ History in Charts, The influence of the United Fruit Company in Guatemala History in Charts (2022), <https://historyincharts.com/the-influence-of-the-united-fruit-company-in-guatemala/> (last visited Mar 2, 2023).

I further asked Mr. Polanco about the agencies the government created to implement reconciliation and peace measures. Mario said that the agencies that the government has created to protect women and children only take active cases. Governmental organizations do not deal with any sexual-based violence that occurred due to conflict. Mario did praise “La Oficina Nacional de la Mujer” (The National Office for Women) and “La Oficina de la Ninez” (The Office for the Children), which do great work, just not for conflict-based violence. This is an important part of reconciliation because these organizations were born out of the peace accords and need to provide services to people that have experienced human rights violations.

He stated that another governmental organization, “La Program Nacional De Resarcimiento,” Guatemala’s recompensation program, is the only organization dealing with past crimes. They send reparations to victims that connect violations to the war. This organization has not been without difficulties. During the interview, Mario stated that President Alvaro Colon put into power someone who was not transparent. The organization ended up robbing and bankrupting the money organization. According to Mario, since this incident, there has been less, and less money put into the organization to give to the victims of the war.

There is another organization that the government founded after the war to increase democracy and transparency and improve elections. The name of this organization was named La COPRE. The organization ended up starting to work and giving suggestions to the country, but due to corruption, the organization closed, and none of the suggestions were implemented. This organization had the potential to enhance democracy and eliminate some of the systems that protect corruption. This type

of organization could still benefit Guatemala as a post-war country that has experienced high levels of corruption and dictatorship-like rule.

Further, an investigative organization was attempted to be formed but never was completed. La Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (The commission of investigation of illegal bodies and Secret tools of Security) (CICIACS) was agreed upon by the United Nations and the government of Guatemala to create in 2004²⁷⁵. The agreement meant this organization to search for the bodies and hidden grave sites created during the war. While this being true, the organization does not exist today. The supreme court found this organization and some of its elements against the constitution, so it was banned due to its investigative powers. Mario says that a similar organization is waiting to be voted on in congress but keeps being delayed. Almost 20 years have passed since the idea of the organization, and to this date, it does not exist. According to Mario Polanco, this is due to the state's unwillingness to find the remains of the victims of the war.

I further asked Mr. Polanco about how the present-day violence of Guatemala is connected to its post-war status. There are numerous journals and articles on this, but Mr. Polanco had fascinating insights. He believes that Guatemala's current violence is the war's aftereffects. He further stated that many ex-military and police were in financial crisis after the war. Ex military members began to kidnap different people in Guatemala for extortion. Due to this, the kidnapping rates increased exponentially after the signing of the peace accords until 2000. Many of the police and military organizations joined together and formed gangs. The ex-police and militarily active in

²⁷⁵ OFICINA EN WASHINGTON PARA ASUNTOS LATINOAMERICANOS, LA COMISIÓN INTERNACIONAL CONTRA LA IMPUNIDAD EN GUATEMALA (2015).

human rights violations began to commit drug, human, gun, and illicit contraband trafficking internationally. This is a fascinating turn of events considering that members of military and police forces globally typically do not resort to joining drug trafficking and international criminal gangs.

An example he uses of an ex-military group member turning into a topic of Narco traffickers worldwide. The Lorenzano family was the biggest drug trafficking family in Guatemala²⁷⁶ and had deep connections with Cartel Sinaloa in Mexico, the world's biggest cartel²⁷⁷. The Lorenzano family started by working with the right-wing armies killing squads. Mario Polanco stated that they created MANO, an anti-communist organization. When the war was over, they started trafficking. This is not an unusual case of ex-military groups after the Guatemalan war. Many people working with Guatemalan forces began to create other forms of violence in the country.

I asked Mario if he sees a day when the government will genuinely reconcile with its indigenous population. Human rights activists generally think the government lacks the political will and interest to create true reconciliation with the indigenous people. Mario Polanco also agrees with this sentiment. He added that new laws and government changes must be made to achieve anything close to an authentic reconciliation. The state would also need to invest in more opportunities, he added. The country's wealth is centered in the south, while the indigenous highlands often lack roads, development, education, and meaningful opportunities to enhance livelihood.

²⁷⁶ María Elena Ortégón, Lorenzanas InSight Crime (2021), <https://insightcrime.org/guatemala-organized-crime-news/lorenzanas/> (last visited Mar 2, 2023).

²⁷⁷ Mexico cartels: Which are the biggest and most powerful?, BBC News (2019), <https://www.bbc.com/news/world-latin-america-40480405> (last visited Mar 2, 2023).

While this was all excellent information, I also wanted to learn more about what GAM and Mario Polanco do on a daily basis. He stated that the organization is always preparing high level cases. He had a program running called “I Believe in Peace” which led to the prosecution of 15 military officers, one general, and eight kernels. He further noted that he sometimes works with the United States government to see if they will extradite war criminals that escaped to the US. He stated that many war criminals that committed genocide and crimes against humanity sought asylum falsifying as victims of the war. The organization also helps in lawsuits against the state and even the Interamerican Court of Human Rights.

While these are all very high-level human rights casework, the organization does not only work on legal cases. The organization also works on the reunification of families nationally and internationally. One of their most significant cases was working with Carlos Hanss. During the years of the war, kidnapping was commonplace. The army would often kidnap the children of the victims. Part of this practice was to sell children in fake adoption markets to western countries. Carlos was sent to Germany, where he was adopted as a baby. In his 40's, he started looking for his biological mother. He used many systems in Guatemala to find her, and GAM was part of the help that connected him to his mother. Carlos Hass found his mother, and there are even many different articles about his journey to find his mother in Guatemala. There were many people like Carlos, who unfortunately could never find their parents or children.

The GAM also works to find clandestine cemeteries and mass grave sites. Since they have the most extensive database of missing and murdered people due to the armed conflict, they work with victims of the war to find their relatives and exhume the bones found in the cemeteries. The organization is connected to various other organizations

and members that help with this logistics. The GAM and Mario Polanco work to reconcile and find the truth of the war. Despite all its threats, obstacles, and other hardships, the organization continued to do what it always did: find answers in a country where impunity is the norm.

The interview ended with me thanking Mario Polanco for his time. This new outlook on the war, its victims, and the overall climate grounded what was learned about Guatemala to this point. Working in human rights in today's climate is not easy either. While there is not the same amount of people being killed or going missing for their work, the country still has a large amount of intimidation against its human rights defenders²⁷⁸. Even through acts of intimidation and other forms of attempts to discredit the organizations, they continue supporting human rights.

²⁷⁸ 2021 country reports on human rights practices - U.S. department of State, U.S. Department of State (2021), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/> (last visited Mar 3, 2023).

Chapter 5:

LEGAL ANALYSIS**5.1 Decree 900: Agrarian Reform, Property and Wealth**

Jacob Arbenz was elected president of Guatemala in the 1950s and was a new leftist president who came to power promising agrarian reform²⁷⁹. With about 2% of the nation owning about 72% of the land in Guatemala, land reform was on the mind of many Guatemalan citizens²⁸⁰. Decree 900 was a reform law enacted by Arbenz that allowed for the distribution of 603,704 hectares of land to about 100,000 Guatemalan families²⁸¹. This was a big problem for the United Fruit Company, which owned about 43% of the land of Guatemala, but only used an estimated 15% of the land²⁸².

Guatemala was a country where a small portion of the population controlled a massive portion of the country. With such a law being passed, the United States rang alarm bells about communism. This was misguided for several reasons; the Decree itself was to support capitalist trade. Article 3 of the Agrarian Reform Law explains how this plan supports capitalism;

²⁷⁹ John Simkin Simkin, Jacobo Arbenz Spartacus Educational, <https://spartacus-educational.com/JFKarbenz.htm> (last visited Mar 5, 2023).

²⁸⁰ Douglas W Trefzger, *Guatemala's 1952 Agrarian Reform Law: A Critical Reassessment*, 77 *International Social Science Review* 32–46 (2002).

²⁸¹ *Ibid*

²⁸² History in Charts, The influence of the United Fruit Company in Guatemala History in Charts (2022), <https://historyincharts.com/the-influence-of-the-united-fruit-company-in-guatemala/> (last visited Mar 5, 2023).

1. *Develop the peasant capitalist economy and the capitalist agricultural economy in general;*
2. *Distribute land to landless peasants and peasants possessing very little land;*
3. *Facilitate new capital investment in agriculture through the rent of nationalized lands;*
4. *Introduce new forms of cultivation, especially endowing upon the least powerful peasants livestock, fertilizers, seeds, and technical assistance; and*
5. *Increase agricultural credit for all peasants and agricultural capitalists in general (Trefzger, 2002)²⁸³*

This decree could be argued to be a plan for economic development within its own borders. This bill was a direct effort for the Guatemalan government to create a capitalist system where lower income Guatemalans can produce for themselves. This reform bill was also constitutional. Under article 90 of the 1945 Guatemalan constitution, the state did have the right to distribute land and property for the benefit of the entire country²⁸⁴.

The bill mentions that the land, ownership, and production would be for only its beneficiaries and not for the state²⁸⁵. This bill was not communism and was more like a state subsidy. Under communism, the state controls property and all wealth²⁸⁶. Under this decree, the state would create eminent domain coupled with a subsidy for its

²⁸³ Douglas W Trefzger, *Guatemala's 1952 Agrarian Reform Law: A Critical Reassessment*, 77 *International Social Science Review* 32–46 (2002).

²⁸⁴ Constitución de la República de Guatemala, decretada por la Asamblea Constituyente en 11 de marzo de 1945., (1945).

²⁸⁵ LEY DE REFORMA AGRARIA , 86 957 (1952).

²⁸⁶ Communism, Education, <https://education.nationalgeographic.org/resource/communism/#:~:text=Communism%20is%20based%20on%20the,controls%20all%20property%20and%20wealth.> (last visited Mar 5, 2023).

citizens to create economic opportunities in a state where monopolies controlled most of its land. This created *private* ownership of lands to generate personal economic income and *not* a state's control over income-generating activities such as production, wealth, and ownership of the land itself.

The bill was constitutional, supported capitalism, and was relatively modest considering it only distributed unused land²⁸⁷. Most large landowners did not use most the amount of land they owned. Furthermore, the government paid the landowners, not just froze the assets itself, but this also caused with problems²⁸⁸. The government only paid the landowners the value of the land that the landowners reported on their taxes²⁸⁹. Landowners severely undervalued their land to the government to pay fewer taxes, and because of this, they were paid significantly less of the value of their land²⁹⁰. It was not long after this law was put into effect that it was implemented. Most of the beneficiaries of this law were peasants. 19% of the eligible people ended up receiving land, and the value of Guatemala's exportations of its cash crops increased from \$96 million to over 109 million between 1951 to 1954²⁹¹.

Even though this bill was also passed by congress on June 17, 1952²⁹², the bill was also challenged legally. In February 1953, the Supreme Court of Guatemala ruled

²⁸⁷ Piero Gleijeses, *The agrarian reform of Jacobo Arbenz*, 21 *Journal of Latin American Studies* 453–480 (1989).

²⁸⁸ Douglas W Trefzger, *Guatemala's 1952 Agrarian Reform Law: A Critical Reassessment*, 77 *International Social Science Review* 32–46 (2002).

²⁸⁹ *Ibid*

²⁹⁰ *Ibid*

²⁹¹ *Ibid*

²⁹² FOREIGN RELATIONS OF THE UNITED STATES, 1952–1954, GUATEMALA, U.S. Department of State, <https://history.state.gov/historicaldocuments/frus1952->

Decree 900 unconstitutional and halted further land distribution²⁹³. The president requested congress to act to help instill these land distributions. Within hours congress voted to eliminate supreme court justices based on ignorance of the law. After installing new judges, the court reversed the decision, and land distribution and Decree 900 were active again²⁹⁴.

The law did not just distribute land; it also provided the opportunities to give credit to lower-class Guatemalans, who usually were given interest rates of up to 98% annually²⁹⁵. Decree 900 lowered this rate to 4% annually and 6% interest rates for longer-term loans²⁹⁶. Before the president's overthrow, the country distributed 9 million dollars in loans; However, more than 11 million dollars were approved by the government²⁹⁷. These reforms did help many people that were previously not eligible for free land, be eligible for the ability to buy land.

These reforms were intended to benefit the average Guatemalan, but even still did benefit more Ladinos than indigenous peoples. Noting that indigenous people made up most of the population Guatemala makes this observation concerning. According to Douglas Trefzger, the departments with Ladino majority populations got 311,399 hectares of land, while the indigenous lands received 292,305 hectares. Trefzger points out eight majority Ladino departments and 14 indigenous majority departments. He

54Guat/intro#:~:text=The%20next%20month%2C%20on%20June,in%20excess%20of%20223%20acres.(last visited Mar 5, 2023).

²⁹³ Piero Gleijeses, *The agrarian reform of Jacobo Arbenz*, 21 *Journal of Latin American Studies* 453–480 (1989).

²⁹⁴ *Ibid*

²⁹⁵ *Ibid*

²⁹⁶ *Ibid*

²⁹⁷ *Ibid*

further cites a survey of jailed activists after the overthrow of the government. Of the jailed activists that received land, 81% were recorded to be Ladino. This overall preference of Ladinos was concerning.

This all lasted until Arbenz was overthrown in 1954 in a CIA-backed coup and was replaced by Carlos Castillo Armas²⁹⁸. Not only did he reverse this policy, but he also took land from the Guatemalan people and gave it back to wealthy landowners. A policy meant to favor big business and against reforms, many small livelihoods were taken away. He gave a total of 1.5 million acres of land back to the United Fruit Company and other landowners²⁹⁹. This in general caused further economic and social instability within the country. He also suspended the constitution arresting thousands of people that protested for their lands calling them communists³⁰⁰. During Castillo's time as president, unemployment rose four times higher than while Arbenz was president by stripping land reforms³⁰¹. Since Decree 900, there has been no substantial land reform since this reform.

²⁹⁸ June 27, 1954: Elected Guatemalan leader overthrown in CIA-backed coup, Zinn Education Project (2023), <https://www.zinnproject.org/news/tdih/jacobo-arbenz-guzman-deposed/#:~:text=On%20June%2027%2C%201954%2C%20democratically,committed%20widespread%20torture%20and%20genocide>. (last visited Mar 5, 2023).

²⁹⁹ Ibid

³⁰⁰ Immerman, Richard H. (1982). *The CIA in Guatemala: The Foreign Policy of Intervention*. University of Texas Press. ISBN 978-0-292-71083-2.

³⁰¹ Streeter, Stephen M. (2000). *Managing the counterrevolution: the United States and Guatemala, 1954–1961*. Ohio University Press. ISBN 978-0-89680-215-5.

5.2 *Constitutional Changes*

Guatemala has had many different changes to its constitution. At the time of this writing, Guatemala has had 12 different constitutions³⁰². Even this last constitution was drastically reformed after the signing of the peace accords. Each constitution had massive effects on Guatemalan society. The constitutions most relevant to the story of peacebuilding and reconciliation in the Guatemalan context will be the constitution of 1985, and the revised constitution of 1993. Each constitution had massive effects on the war, treatment of indigenous peoples, the economy, and human rights situations within these years.

The 1985 constitution has been one of the longest lasting constitutions in Central America. While reformed twice, the almost 40-year-old constitution has shown a general amount of constitutional stability for Guatemala. Even with this being the case, the constitution and reforms of Guatemala have mainly been written behind closed doors. One could argue that the constitutions of Guatemala have lacked social participation that can usually be seen in a democratic reform process.

5.3 *1985 Constitution*

During the years of Rios Montt, war was rampant. In general, the military went from one dictator to the next, often in the form of a violent coup. With the army making almost all the governmental decisions of the state, there was very little power given to

³⁰² Redacción República, Las 12 Constituciones Que Han regido a Guatemala República.gt (2022), <https://republica.gt/guatemala/las-doce-constituciones-que-han-regido-a-guatemala-202253110380> (last visited Mar 5, 2023).

the civilian government. After the overthrow of Rios Montt, General Mejia Victores was posed as the leader that would transition Guatemala to civilian rule and government. During this time, he assembled a convention that would change Guatemala's constitution³⁰³. This constitution was modified later but remains Guatemala's standing constitution.

The National Constituent Assembly was created on June 14, 1984 with cooperation between military officials and civilian government³⁰⁴. This NCA was still reported to be mostly dominated by Guatemalan military officials. This could be shown by the lack of political options, restrictions to of parties to vote from to make up the NCA, and restrictions to overall inclusiveness³⁰⁵. Within a year, the organization finished a new constitution and two laws, habeas corpus & constitutionality, and a law on elections³⁰⁶. The constitution generally paved the way from authoritarianism to a transitional democracy, but it still was not without its issues. The constitution gave way to make many military immunities from prosecution, control of military courts, and a budget for covert operations³⁰⁷. The IDEA report further states that the justice system remained weak and that while indigenous culture was recognized, no languages or tribal laws for protection were identified by this constitution.

³⁰³ Associated Press, GUATEMALAN GEN. MEJIA VICTORES DIES VOA (2016), <https://www.voanews.com/a/guatemalan-gen-mejia-victores-dies-took-power-in-1983-coup/3173393.html> (last visited Mar 7, 2023).

³⁰⁴ RODDY BRET & ANTONIO DELGADO, IDEA: THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION - CASE STUDY GUATEMALA (2005).

³⁰⁵ Ibid

³⁰⁶ Ibid

³⁰⁷ Ibid

The next president Jorge Serrano Elias had the first peaceful civilian transition of power since the 1940s, created a huge constitutional crisis in 1993. On May 25th of 1993, he dissolved congress and fired the supreme court³⁰⁸. He stated that we would only rule by decree, wanted to reform the constitution, and demanded that he takes complete full temporary control of the country for needed reforms³⁰⁹. He did these following accusations of corruption, political mismanagement, and lack of support within congress³¹⁰. While the country had many coup attempts and attempts to keep the dictatorship, this attempt had a strong reaction from the country.

Serrano was followed by a flurry of condemnations, ultimately leading to the country ousting him from power. Organizations, governmental bodies, and stakeholders in the peace of Guatemala stepped in instantly; The UN condemned these actions, the Organization of American States, local civil society organizations, political parties, indigenous organizations, the Center for Defense of the Constitution, the Supreme Court of Justice, Presidential Coordinating Commission of the Policy of Executive in Human Rights, and other state entities condemned these actions as unconstitutional³¹¹.

The event that protected the country from falling into another dictatorship was the Constitutional Court. The Court stated that this action was not constitutional and called for a new president to be installed within 24 hours³¹². While the new leader was

³⁰⁸ Stephen R. Sywulka, *Evangelical President Ousted in Power Struggle*, CHRISTIANITY TODAY, July 19, 1993.

³⁰⁹ Ibid

³¹⁰ RODDY BRET & ANTONIO DELGADO, IDEA: THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION - CASE STUDY GUATEMALA (2005).

³¹¹ Ibid

³¹² Ibid

not established within 24 hours, the ultra-conservative army enforced the Constitutional Court's mandate, and a new president was put into power³¹³. This overall battle that was fought internally showed the new constitution and civil society's strength on the new seven-year-old document. Guatemala maintained its democracy and the rule of law when a dictatorship and corruption were possible.

The protection of democracy was a massive demonstration of how a constitution can protect the state. Historically, Guatemala had experienced systems that could be corrupted by presidents which used dictatorship, which was almost impossible to challenge. During a war, threats of communism as the enemy and using authoritarianism was used to control the country. The civilian government was new for Guatemala, and the military taking part in choosing to support its new civilian government showed a willingness and progress to support the constitution. This not only set the stage for the current state of Guatemala but set the stage for a healthy democracy.

5.4 *Legal Developments Connected to Peace*

The interim president after President Serrano's ousting was Ramiro de Leon Carpio³¹⁴. Leon Carpio was a human rights investigator and was able to pick up the pace of the peace accords and make needed reforms to the government³¹⁵. While the official document leading to peace with URNG was not signed for a few more years, Leon

³¹³ Ibid

³¹⁴ Dirk Kruijt, *Guatemala's political transitions, 1960s–1990s*, 30 *International Journal of Political Economy* 9–35 (2000).

³¹⁵ Ramiro de Leon Carpio, Guatemalan president in mid-1990s, dies, *THE WASHINGTON POST* (2002), <https://www.washingtonpost.com/archive/local/2002/04/17/ramiro-de-leon-carpio-guatemalan-president-in-mid-1990s-dies/47585989-de7c-4ca1-8737-2e96c5384b9c/> (last visited Mar 9, 2023).

signed multiple agreements considered part of the peace accords. Leon's focus on peace helped the country transition to democracy and focus on Guatemala's future.

One of the peace agreements founded a UN Human Rights Verification Mission in Guatemala (Minugua). MINUGUA was installed and began to work with the government and rebel groups. This verification mission started in November of 1994³¹⁶. In response to the agreement, the United Nations General Assembly also voted to start a verification mission in Guatemala³¹⁷. The resolution by the United Nations created the verification mission with a request by the Secretary-General to finish a status-of-mission agreement with Guatemala within 30 days of the resolution³¹⁸.

Alvaro Arzu who finished signing the peace accords was put into power after the next democratic civilian elections. Alvaro Arzu as the new president signed the final peace accords, led to disarmament within Guatemala³¹⁹. An official ceasefire was created and signed in 1996 signed in Oslo³²⁰. This was followed by a lasting peace agreement signed in Guatemala City later in the year. Even with the signing of an official ceasefire, the accords did not stop. The government agreed to multiple different agreements and even banished their civil patrols, which were responsible for many human rights violations caused by the government³²¹.

³¹⁶ Ibid

³¹⁷ GENERAL ASSEMBLY , MISSION FOR THE VERIFICATION OF HUMAN RIGHTS AND OF COMPLIANCE WITH THE COMMITMENTS OF COMPREHENSIVE AGREEMENT ON HUMAN RIGHTS IN GUATEMALA (1994).

³¹⁸ Ibid

³¹⁹ CIDOB,
https://www.cidob.org/biografias_lideres_politicos/america_central_y_caribe/guatemala/alvaro_arzu_yrigoyen (last visited Mar 9, 2023).

³²⁰ Ibid

³²¹ Ibid

With the support of the United Nations, the government signed six substantive and five operative peace accords with the opposition in 1996³²². This was the most significant step to lasting peace and ending the 36-year civil war. These peace accords made significant changes. The first and foremost item that it called for was a reform to the constitution and electoral system, called for an improvement to human rights, a strengthened economic system, and a change in the agricultural system³²³. The accords also called for more rights and recognition for its indigenous communities.

It is worth noting that in June of 1996, Guatemala signed the 1989 ILO Convention 169³²⁴. ILO 169 is a convention drafted to improve indigenous peoples' overall conditions within post-colonial countries. This convention goes into specific important information and protections of indigenous peoples. The article has 44 articles and includes important details that should be analyzed for their effects on modern-day Guatemala. Article 14 goes directly into land ownership and disputes of a country;

Article 14 of ILO 169

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

³²² Enrique Alvarez & Tania Palencia Prado, GUATEMALA'S PEACE PROCESS CONCILIATION RESOURCES (2002), <https://www.c-r.org/accord/public-participation/guatemalas-peace-process-context-analysis-and-evaluation> (last visited Mar 9, 2023).

³²³ Ibid

³²⁴ Chris Swartz, AFTER 30 YEARS, ONLY 23 COUNTRIES HAVE RATIFIED INDIGENOUS AND TRIBAL PEOPLES CONVENTION ILO 169 CULTURAL SURVIVAL (2019), <https://www.culturalsurvival.org/news/after-30-years-only-23-countries-have-ratified-indigenous-and-tribal-peoples-convention-ilo> (last visited Mar 9, 2023).

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned (ILO, 1989)³²⁵.

Article 14 of ILO convention 169 gives specific responsibilities for governments to complete. These duties are seen as being a massive effort and demonstration of willingness to work with the indigenous community in development and protection. This as a form of peace, set the stage for reconciliation and development to take place within Guatemala.

Article 14 can be broken into three parts that are important for Guatemala. The right of ownership and possession of land is given to lands *traditionally occupied* by indigenous peoples. Section one is about occupied lands and *used lands* for activities. These activities presumably can mean rituals but should also be used to include social events, historical activities, and cultural connections. The government would also need to identify land effectively protect that indigenous territory and ensure that ownership goes to indigenous people. While this is an important activity, ILO 169 (14) (2) would be better written if the government was required to collaborate with the indigenous groups to ensure that the land is appropriately given to those groups. The last and most important part is providing a proper legal system for land disputes.

To Guatemala's credit, the government created two agencies to help implement this as it is in ILO 169 and the peace accords. Guatemala created CONTIERRA to resolve land disputes³²⁶. The government also began an agency called FONTIERRA in

³²⁵ C169 - INDIGENOUS AND TRIBAL PEOPLES CONVENTION, (1989).

³²⁶ ACUERDO GUBERNATIVO 452-97, (1997).

2003, a program to enhance accessibility to sustainable land for vulnerable people and Guatemalans that might not have access to owning land³²⁷. The agency aided the purchase of land, credits, and different opportunities for purchase. While CONTIERRA was a big step in the right direction, it has had many land disputes on its agenda. In 2003 alone, more than 2,077 active cases were pending³²⁸. However, due to its underfunding, the agency has not been able to solve many disputes³²⁹. Of the 2,077 active cases in 2005, 67% were about competing claims to the same property (and with many complaints to the government, 16% of the cases were occupied properties by people who did not own the land, while 14% of disputes were between towns and departments³³⁰.

Part of the problem with resolutions to these land disputes was that FONTIERRA was used for land conflict resolution. While this isn't bad, the process led to corruption and other problems. Poor peasants were often mediated by needing to purchase the land from the large, rich landowners by using FONTIERRA for the land they claimed in CONTIERRA³³¹. The referenced report also states that FONTIERRA would overinflate the land's purchase price to gain more money, and in the end, the poor indigenous farmers could not pay off the debt to the governmental organization. This is even more concerning, recognizing that the peace agreements and ILO 169 state

³²⁷ ACUERDO GUBERNATIVO NÚMERO 435-2013, (2013).

³²⁸ MANAGEMENT SYSTEMS INTERNATIONAL, GUATEMALA LAND CONFLICT ASSESSMENT (2005).

³²⁹ Ibid

³³⁰ Ibid

³³¹ Ibid

the need to recognize indigenous *historic and current* land. Even in questionable property disputes, it was the poor indigenous rural Guatemalans that often paid the heavier price.

According to a 2016 ILO report, Guatemala had difficulties implementing ILO 169³³². The report lists many reasons, but these reasons are some of the root causes of the conflict in the first place. According to the report, indigenous groups lacked representation and legitimacy to participate in the ILO implementation phase. The report further states that many political leaders for the implementation met political opposition. Part of this may have been partially prevented if there had been a sufficient representation of indigenous groups. Part of the reason this was the case that Guatemala officially recognized the ability of indigenous leadership; however, they need to be registered at a municipal level. If no such group registered itself, the government would have the authority to govern the implementation.

The report demonstrates that many actors were part of the conflict and war, so there were tense meetings even when groups worked together³³³. These complex feelings took place, and substantial dialogue was difficult to accomplish. This is even true years after the war ended. One could argue this is due to the lack of a population that feels reconciled with the past. The report outlines an apparent lack of trust and an inability to communicate clearly due to language barriers between the government and indigenous groups. Even with all this being true, it is worth noting that this report was written *20 years* after the conflict had ended. The ILO's report concluded with

³³² ILO, CONVENIO NÚM. 169 DE LA OIT SOBRE PUEBLOS INDÍGENAS Y TRIBALES EN PAÍSES INDEPENDIENTES Y LA CONSULTA PREVIA A LOS PUEBLOS INDÍGENAS EN PROYECTOS DE INVERSIÓN (2016).

³³³ Ibid

recommendations for Guatemala to enhance its systems and communications to promote inclusion.

5.4.2 *Social and Economic Aspects of the Agrarian Situation*

The implementation of the Agreement on Social and Economic Aspects of the Agrarian Situation can analyze part of this tension. This peace agreement listed many different agreements and responsibilities of the Guatemalan government to enhance the overall economic and social necessities related to agrarian reform. While some were implemented, some agreements were not implemented fully, and some were never implemented at all. Full implementation or an aspiration to fully implement a peace accord is needed to ensure a reconciled society. This was even recognized within the peace accord itself;

This is necessary in order to overcome the poverty, extreme poverty, discrimination and social and political marginalization which have impeded and distorted the country's social, economic, cultural and political development and have represented a source of conflict and instability (Agreement on Social and Economic Aspects of the Agrarian Situation, 1996)³³⁴

Sections 1, 2, 3, and 8 of the report state that democratization and participation would be key within the process of reform. The agreement focuses on localization and democratic participation in development and reform. While Guatemala did create a policy to work with indigenous leaders, it did not give enough information, time, help, or opportunities for groups to register with the municipality to represent themselves within development and reform

³³⁴ GUATEMALA & URNG, AGREEMENT ON SOCIAL AND ECONOMIC ASPECTS OF THE AGRARIAN SITUATION, UNITED NATIONS (1996).

policies. This is shown in the 2016 ILO report on ILO 169. With such barriers to access entry, the state made the ultimate decisions in many reform parts.

It was also listed within the peace agreement to improve education. Section 16 (22) (C3), the accord stated that 70% of Guatemalans would need to be literate by 2000³³⁵. That year, the number hovered around 65% and did not pass the 70% threshold until 2004³³⁶. As of January 2023, 21% of the population can still not read or write³³⁷. While this is a huge improvement from previous years, the literacy rate is still far below the global average of 13%³³⁸. This could be attributed to the fact that Guatemala only spends about 2.8% of its national GDP on education³³⁹. Furthermore, 41% of teenagers in the country drop out of school, but the number is much higher if you just have statistics with indigenous peoples. In the western highlands of Guatemala, 61% of all teenagers drop out of school³⁴⁰.

The peace accords also state the need for an unused land tax³⁴¹. Section 42 of this agrarian reform is to tax unused/undeveloped land to discourage large landowners from not using the land. This law was aimed at preventing large business owners from being able to own large parts of the country. This law has a historical logic to it. As noted in an earlier section,

³³⁵ Ibid

³³⁶ Guatemala - literacy rate, adult total (% of people ages 15 and above), GUATEMALA - LITERACY RATE, ADULT TOTAL (% OF PEOPLE AGES 15 AND ABOVE) (2019), <https://www.indexmundi.com/facts/guatemala/indicator/SE.ADT.LITR.ZS> (last visited Mar 12, 2023).

³³⁷ Guatemala population, COUNTRYMETERS (2023), <https://countrymeters.info/en/Guatemala#:~:text=According%20to%20our%20estimates%209%2C284%2C216,about%20%2C408%2C904%20adults%20are%20illiterate.> (last visited Mar 12, 2023).

³³⁸ This is how much global literacy has changed over 200 years, WORLD ECONOMIC FORUM (2022), <https://www.weforum.org/agenda/2022/09/reading-writing-global-literacy-rate-changed/> (last visited Mar 12, 2023).

³³⁹ Education: Guatemala, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (2023), <https://www.usaid.gov/guatemala/our-work/education> (last visited Mar 12, 2023).

³⁴⁰ Ibid

³⁴¹ GUATEMALA & URNG, AGREEMENT ON SOCIAL AND ECONOMIC ASPECTS OF THE AGRARIAN SITUATION, UNITED NATIONS (1996).

United Fruit Company owned almost half of the land in the country and only used 15% of the land it owned³⁴². The business had a massive sprawling territory that was never used, and the people of Guatemala were unable to become landowners. The same section states that small farmers would be exempt from any form of taxation on land³⁴³.

While Guatemala has not implemented an unused land tax, it has had some reforms on tax law surrounding land. There are small landowners that are not required to pay taxes³⁴⁴. The current system is tax law based on a sliding scale of the value of the land. The largest scale of land price is anything over Q70,000.01 (USD 8,772) requires an annual tax of Q9 (USD 1.13) per every Q1,000 (USD 125) of value the land has³⁴⁵³⁴⁶. Landowners that do not need to pay taxes must own less than a value of Q2,000 which equates to USD 256. This pricing would mean that a farm that is worth USD 8,772 would pay in today's exchange rate of USD 79.30. This type of calculation would be the same for land that is also worth USD 150,000.

While the sliding scale land tax law attempts to provide a sort of equity between landowners, it has a very low cap limit of tax brackets. In 2009, the least expensive prices of a square meter of land in Guatemala City were between USD 95 to USD 200³⁴⁷. This would make land equating to 70 square meters (About 750 Sqft) priced between USD 6,650 to USD

³⁴² Olúfémi O. Táíwò, WHEN THE UNITED FRUIT COMPANY TRIED TO BUY GUATEMALA THE NATION (2021), <https://www.thenation.com/article/economy/united-fruit-guatemala/> (last visited Mar 13, 2023).

³⁴³ GUATEMALA & URNG, AGREEMENT ON SOCIAL AND ECONOMIC ASPECTS OF THE AGRARIAN SITUATION, UNITED NATIONS (1996).

³⁴⁴ Luis Abundio Maldonado, GLOBAL TAX GUIDE TO DOING BUSINESS IN GUATEMALA DENTONS (2023), <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in-guatemala> (last visited Mar 13, 2023).

³⁴⁵ Ibid

³⁴⁶ Exchange rates on 3/13/2023 taken from Oanda.com

³⁴⁷ Valor de la tierra en la Ciudad de Guatemala, DEGUATE.COM (2015), <https://www.deguate.com/artman/publish/urbanizaciones/valor-del-suelo-en-la-ciudad-de-guatemala.shtml> (last visited Mar 13, 2023).

14,000. In Esquipulas which is near the border with Honduras, land can be more reasonably priced. In 2014, the land was priced at Q600 (USD 75)³⁴⁸. In that context, 70 meters of land would cost \$5,250 which still lands at the country's second highest land tax³⁴⁹. Using this data, this means that someone who bought land on the fringes and least expensive parts of Guatemala City would be paying taxes in the same bracket as a rich business owner who owns hectares of land or just the next tax bracket down for only 70 square meters.

This reform while giving low value landowners a break from taxes, it would only allow for landowners in Guatemala City to not be taxed if they own 2.6 square meters (7.8 Sqft) or less. This is assuming that they purchased the most inexpensive land that there is in Guatemala City. Granted, this is in one of the most expensive cities in Guatemala and prices in the Mayan highlands will be a lot less expensive, but there will also be fewer opportunities for work in the Mayan highlands. Furthermore, these tax laws of current-day Guatemala still does not give much room for poor Guatemalans be coming landowners. The taxes are on the price of the land and not on the income produced by the land³⁵⁰. This is not an abnormal law; however, it is important for this information to be coupled with the fact that in 2020 52.4% of the population was living in poverty³⁵¹. Poverty is defined in Guatemala as making \$5 a day or less³⁵².

³⁴⁸ Manuel Salguero, EL VALOR RAZONABLE DE LA TIERRA PRENSA LIBRE (2014), <https://www.prensalibre.com/economia/valor-tierra-Manuel-Salguero-opinion-0-1244275825/> (last visited Mar 13, 2023).

³⁴⁹ Luis Abundio Maldonado, GLOBAL TAX GUIDE TO DOING BUSINESS IN GUATEMALA DENTONS (2023), <https://www.dentons.com/en/services-and-solutions/global-tax-guide-to-doing-business-in-guatemala> (last visited Mar 13, 2023).

³⁵⁰ Ibid

³⁵¹ The World Bank in Guatemala: Overview , WORLD BANK (2022), <https://www.worldbank.org/en/country/guatemala/overview> (last visited Mar 13, 2023).

³⁵² Jennifer Philipp, POVERTY IN GUATEMALA THE BORGEN PROJECT (2022), <https://borgenproject.org/poverty-in-guatemala-2/#:~:text=Extreme%20socioeconomic%20and%20geographic%20inequality%20largely%20characterize%20the,the%20poorest%20distribution%20of%20health%20and%20educational%20resources.> (last visited Mar 13, 2023).

Assuming that the average Guatemalan works 260 days a year, this would not be enough to afford the annual tax on the land. If someone makes USD 5 a day for 260 days, this will equate to USD 1,300 a year. If someone owned 70 square meters of land in the least expensive part of Guatemala City, they would need to pay between USD 30 to USD 63.28 in land taxes alone. This is about a third to half of a month's monthly poverty salary of a Guatemalan citizen. It would be difficult to be able to pay that tax while living in poverty. These prices do not include the price it would take to build a farm, nor the prices to build a house. These tax laws do not help Guatemalan citizens due to their restrictions and the reality of land prices within Guatemala.

This data could be part of the reason why in Guatemala the rich 2.5% of the farms own $\frac{2}{3}$ of the farmland³⁵³. This number is even more pronounced when the fact is that 33% of Guatemalans work in agriculture³⁵⁴. This points to the realization that meaningful land reforms have not taken place in Guatemala. One third of Guatemalan citizens work in agriculture, yet 2.5% of farms make up two thirds of the land that is used for farming. The organizations such as CONTIERRA and FONTIERRA have not made a big enough impact to change the balance of wealth and land ownership within Guatemala. More systems would need to be put in place to economically develop the other 97.5% of farms. Part of this needs to be a real land reform system put in place, as per the peace accords.

There are multiple legal changes that would need to be made to make this happen. A new law would need to be drafted, but many politicians do not have the political will to make

³⁵³ LAURA HURTADO, LAND REFORM IN GUATEMALA THE NEW YORK TIMES (2017), <https://www.nytimes.com/2017/06/29/opinion/land-reform-in-guatemala.html> (last visited Mar 13, 2023).

³⁵⁴ Ibid

this happen³⁵⁵. While there is a lack of political will, a shocking more than 74% of indigenous people live in poverty³⁵⁶. Many workers in the Mayan highlands are not paid well and are working in conditions that induce poverty. Meaningful reform would need to be inclusive of development, investments, enhanced labor laws, and enforcement of those laws. To this date, land reforms for indigenous peoples have not been implemented as the ILO 169 or peace accords intended.

5.5 *Post-Peace Accords Legal Analysis*

After the peace accords there were various events that happened which changed the legal makeup of Guatemala and even added to international law. The legal developments that happened in postwar Guatemala severely changed the country. Some of these laws added and took away from a sense of peacebuilding and reconciliation. These laws, reforms, amendments, court cases, and decrees are needed to be analyzed to present the current reality of Guatemala.

The legal changes and lack of legal changes that happened in post-war Guatemala had a direct effect on peacebuilding and reconciliation. Overall, the peace accords outline multiple different needs to solve structural and systemic issues that caused the conflict in the first place. Many of these agreements were stopped in their tracks, prevented by elite Guatemalan business owners, or never implemented in a sufficient or effective manner. Furthermore, a lack of political will to reconcile, adhere

³⁵⁵ Camden Eckler, LAND RIGHTS IN GUATEMALA FOR RURAL AND INDIGENOUS POPULATIONS BORDEN (2021), <https://www.borgenmagazine.com/land-rights-in-guatemala/> (last visited Mar 13, 2023).

³⁵⁶ Ibid

to agreements, and develop areas that were harmed during the war within have stunted Guatemala's ability to reconcile and make up for past actions.

5.5.1 *Attempted Constitutional Reform*

As part of the peace agreements, constitutional reform was agreed upon to give more rights and freedoms to Guatemalan citizens. A few years after the war had ended, reforms were rejected that mostly gave more recognition to indigenous peoples and limited the army³⁵⁷. This was even cited by many different right-wing journals as a negation of the peace-building process³⁵⁸. While parts of the population were certainly still not in favor of making these changes, it is hard to truly analyze due to a lack in data. Only 18% of registered voters voted on the reforms³⁵⁹.

These reforms consisted of multiple different rights for indigenous peoples. Some of these reforms included selecting own local governments, having individual indigenous law, being subject to common law, and protecting for communal land³⁶⁰. These are reforms that are not uncommon with indigenous lands within all the American countries. Furthermore, reforms to recognize rights and multi-cultural identities that could include bilingual education was written into the peace accords³⁶¹.

³⁵⁷ Mike Lanchin , AMERICAS | GUATEMALANS REJECT REFORMS BBC NEWS (1999), <http://news.bbc.co.uk/2/hi/americas/345674.stm> (last visited Mar 17, 2023).

³⁵⁸ Immigration and Refugee Board, Canada, *Guatemala: New guerrilla and opposition movements to the 1996 Peace Agreements (1996 to August 1999)*, CANADA: IMMIGRATION AND REFUGEE BOARD OF CANADA (1999).

³⁵⁹ RODDY BRET & ANTONIO DELGADO, IDEA: THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION - CASE STUDY GUATEMALA (2005).

³⁶⁰ Rachel Sieder, 'Emancipation' or 'regulation'? Law, Globalization and indigenous peoples' rights in post-war Guatemala, 40 ECONOMY AND SOCIETY 239–265 (2011).

³⁶¹ Ibid

With such low participation in the elections, it is difficult to say what voters felt about the reforms. Multiple sources cite confusion over the reforms and lack of information as reasons why they did not vote. Business elites and richer citizens voted “no” due to fear of indigenous recognition and jurisdictional issues³⁶². These rights for indigenous people were also controversial among landowners because they feared that these rights would transform into territory and land disputes³⁶³. Even though there was low voter turnout, the reforms were rejected leaving a broken peace accord promise.

5.5.2 Decree 145/96 - The Law of National Reconciliation

In the end of 1996, the congress of Guatemala gave an amnesty to most war criminals³⁶⁴. While this might seem like a step back, the decree made clear exceptions for grave war crimes. Some of these war crimes that would not be covered in the amnesty include forced disappearance, crimes against humanity, genocide, and torture³⁶⁵. Within the Guatemalan war, this still left many people open to prosecution, but the amount of people that were pardoned by this amnesty were massive.

The decree is broad and waves many different crimes that are listed in the penal code. The decree involves amnesties for crimes such as general violations of certain laws, people who carried guns that were not government officials, people who created a

³⁶² Ibid

³⁶³ Ibid

³⁶⁴ Jo-Marie Burt, GUATEMALA CONGRESS CONSIDERS AMNESTY FOR GRAVE HUMAN RIGHTS VIOLATIONS WOLA (2019), [https://www.wola.org/analysis/guatemala-congress-considers-blanket-amnesty-grave-human-rights-violations/#:~:text=145%2D1996%2C%20known%20as%20the,and%20other%20crimes%20against%20humanity.\(last%20visited%20Mar%2016,%202023\).](https://www.wola.org/analysis/guatemala-congress-considers-blanket-amnesty-grave-human-rights-violations/#:~:text=145%2D1996%2C%20known%20as%20the,and%20other%20crimes%20against%20humanity.(last%20visited%20Mar%2016,%202023).)

³⁶⁵ Ibid

fire in other's property, using fake uniforms of the state, and other crimes³⁶⁶. This could be argued to have courts and systems focus on the graver war crimes that happened within the internal conflict.

After the reporting of the CEH came out, it was shown that over 90% of war crimes were committed by the government. For this reason, most prosecutions of governmental officials and army members took place. By 2017, only one ex-revolutionary was arrested, but more than 70 ex-government officials were arrested for their war crimes³⁶⁷. This caused a group of congress to put forward legislation to reform the reconciliation law to include protection for crimes against humanity, genocide and forced disappearance³⁶⁸. While this law never passed, it shows a dangerous level of impunity and political will to excuse some of the world's worst war crimes for political gain.

This law in general does little to reconcile a hurt population. The number of articles in the penal code that are forbidden given amnesty is massive. It gives many crimes that could be argued was part of genocide to be excused. Let's take article 282 of the penal code which gives a punishment of 2-8 years in prison for setting on fire other people's property³⁶⁹. This was not an uncommon tactic that soldiers used against civilian populations. If we recall the historical background section of this thesis, the

³⁶⁶ Decreto numero 145–1996 - Ley de reconciliacion nacional (1996).

³⁶⁷ Jo-Marie Burt, GUATEMALA CONGRESS CONSIDERS AMNESTY FOR GRAVE HUMAN RIGHTS VIOLATIONS WOLA (2019), <https://www.wola.org/analysis/guatemala-congress-considers-blanket-amnesty-grave-human-rights-violations/#:~:text=145%2D1996%2C%20known%20as%20the,and%20other%20crimes%20against%20humanity.> (last visited Mar 16, 2023).

³⁶⁸ Ibid

³⁶⁹ CODIGO PENAL DE GUATEMALA, (1997).

army destroyed multiple houses and villages of many indigenous families. In order to prosecute one of these soldiers, it would then need to be under crimes against humanity, which is a harder crime to prosecute. A crime against humanity also needs to be shown as a crime against an entire community or population, which in effect would be hard if there was only one survivor of an entire village.

This is just one example of how waiving general crimes can hurt the prosecution of war criminals. This type of amnesty was a blanket amnesty and gave amnesty to many different forms of crimes big and small. If a country's plan to reconcile is an amnesty that accepts crimes without recognition of its harm, it will fail. It seems that there can be no real peacebuilding or reconciliation without justice. While justice is subjective and prosecution does not make sense in every case, a blanket amnesty when a genocide has taken place causes harm. The law creates the ability and a concrete path to prosecute some crimes, it will not reconcile victims of lower-level crimes, or crimes that have a higher burden of proof as a result of the conflict.

5.5.3 *The Trial of General Rios Montt*

While the CEH was not a legal document, it created the steps for different prosecutions to be made. The highest profile trial was of former president General Rios Montt. After he was taken out of power, he was no stranger to politics nor was exiled from the political participation even after committing genocide. Rios Montt continued to have significant power within Guatemalan life and politics. He was elected to congress in 1990, and he was not a fringe politician either; he served as president of congress

from 2000 to 2004³⁷⁰. From that date, he left congress only to serve again from 2007 to 2012³⁷¹.

Guatemala signed the Genocide convention, and it was ratified, since 1973 the Guatemalan criminal code included genocide³⁷². For this reason, Guatemala was able to hold charges of genocide against any suspected preparators. The problem was that he could not be convicted while an active member of the government. There were a few attempts to convict the leader using Universal Jurisdiction in the meantime. One of the examples come from a judge in Spain.

It was no secret that the old leader of the state committed genocide. Other than the reporting from CEH, in 1999 a group of Guatemalan activists led by the Nobel Prize Award winner Rigoberta Menchú filed charges against the ex-president in Spain³⁷³. With such strong charges and accusations against Montt, Spain accepted and declared universal jurisdiction over the case³⁷⁴. The judge was able to use the genocide convention in order to convict. According to the Genocide convention there needs to be an “..intent to destroy, in whole or in part, a national, ethnical, racial or religious group.”³⁷⁵ This did not come without its difficulties, because the state of Guatemala

³⁷⁰ The Accused , INTERNATIONAL JUSTICE MONITOR, <https://www.ijmonitor.org/efrain-rios-montt-and-mauricio-rodriguez-sanchez-whos-who/> (last visited Mar 16, 2023).

³⁷¹ Ibid

³⁷² S. Kemp, *Guatemala prosecutes former president Rios Montt: New perspectives on genocide and domestic criminal justice*, 12 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 133–156 (2014).

³⁷³ Ashley Miller & Ted Piccone, RIOS MONTT TRIAL AN EXAMPLE OF NATIONAL, INTERNATIONAL COURTS WORKING TOGETHER BROOKINGS (2013), <https://www.brookings.edu/opinions/rios-montt-trial-an-example-of-national-international-courts-working-together/> (last visited Mar 16, 2023).

³⁷⁴ Ibid

³⁷⁵ UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: <https://www.refworld.org/docid/3ae6b3ac0.html> [accessed 14 August 2023]

denied its legal jurisdiction over the case and did not allow Spain to investigate nor interview witnesses in the country³⁷⁶. Regardless of the hurdles that the government made, in 2006, Spain still issued an asset freeze and warrant for the arrest of Rios Montt and others on the legal basis of genocide, crimes against humanity, torture, massacres, and forced disappearances³⁷⁷.

Spain did not have total cooperation, but Guatemala did comply with two different military leaders at first. Guatemala arrested the two leaders Guevara Rodriguez and Garcia Arredondo³⁷⁸. This was a massive success in cooperation between international bodies and local governments. This is key to how international law and prosecutions work in a universal jurisdiction case. Even with this success, in 2007 the constitutional court of Guatemala reserved the decision claiming that the arrests were invalid, refused to extradite the defendants, and released them back into the public³⁷⁹.

Spain continued to take statements from witnesses and work on further cases. In April 2011, the Spanish court issued a warrant of arrest for Jorge Sosa Orantes who was residing in Canada³⁸⁰. The next year he was extradited to the United States for

³⁷⁶ Tico Times, SPAIN ISSUES ARREST WARRANT FOR FORMER GUATEMALAN PRESIDENT IN GENOCIDE CASE THE TICO TIMES | COSTA RICA NEWS | TRAVEL | REAL ESTATE (2006), <https://ticotimes.net/2006/07/14/spain-issues-arrest-warrant-for-former-guatemalan-president-in-genocide-case> (last visited Mar 16, 2023).

³⁷⁷ Ibid

³⁷⁸ Background, INTERNATIONAL JUSTICE MONITOR, <https://www.ijmonitor.org/efrain-rios-montt-and-mauricio-rodriguez-sanchez-background/#:~:text=The%20Spanish%20Case&text=In%202006%2C%20a%20Judge%20of,Guevara%20Rodriguez%20and%20Garcia%20Arredondo>. (last visited Mar 16, 2023).

³⁷⁹ Ibid

³⁸⁰ Ibid

immigration violations and was set to have a court hearing in California in 2013³⁸¹. Sosa was sentenced to 10 years in prison in the United States for lying about being a refugee, omitting he was an ex-Guatemalan military leader, but they did not charge him for committing crimes against humanity in Guatemala³⁸². Sosa did not finish his entire sentence; he was released from prison but deported back to Canada in 2020³⁸³. To this day, he remains free, and groups have urged Canada to prosecute him for his war crimes in Guatemala³⁸⁴

Keeping in mind that just the fact that General Rios Montt was still playing a role in politics almost 30 years after the genocide is surprising. This is one of the key reasons for the fact that he was not prosecuted. The CEH report was not published until 1999, and Rios Montt was already in congress during that time. The CEH labeled his years of rule as genocide and left direct recommendations to the state³⁸⁵. While there was a large group of people seeking prosecution, Guatemalan law does not allow for the prosecution of active members of congress³⁸⁶. It did not take long for the general to be served for court hearings after losing his immunity. On the 12th day after losing his

³⁸¹ Ibid

³⁸² ICE, FORMER GUATEMALAN SPECIAL FORCES OFFICER SENTENCED FOR COVERING UP INVOLVEMENT IN 1982 MASSACRE ICE (2014), <https://www.ice.gov/news/releases/former-guatemalan-special-forces-officer-sentenced-covering-involvement-1982-massacre> (last visited Mar 16, 2023).

³⁸³ Groups to Canada: Prosecute alleged Guatemalan war criminal, AP NEWS (2021), <https://apnews.com/article/canada-guatemala-immigration-80a6b956363c202d815daafae8d13761> (last visited Mar 16, 2023).

³⁸⁴ Sosa Orantes Case: Canada could end 40 years of impunity, LAWYERS WITHOUT BORDERS CANADA (2022), <https://asfcanada.ca/en/medias/sosa-orantes-case-canada-could-end-40-years-of-impunity/> (last visited Mar 16, 2023).

³⁸⁵ Truth commission: Guatemala, United States Institute of Peace (1999), <https://www.usip.org/publications/1997/02/truth-commission-guatemala> (last visited March 16, 2023).

³⁸⁶ The Accused , INTERNATIONAL JUSTICE MONITOR, <https://www.ijmonitor.org/efrain-rios-montt-and-mauricio-rodriguez-sanchez-whos-who/> (last visited Mar 16, 2023).

immunity from prosecution, he was indicted on charges of crimes against humanity and genocide³⁸⁷.

This case is a significant case not only in Guatemala, but in global international law. General Rios Montt was the first head of state globally who was convicted of genocide in a *national court*³⁸⁸. Prosecuting a head of state for such a serious crime had yet to be successfully done before this in any country's national court system. This as a development of law, showed that impunity and justice can be served in a country where impunity has been the norm.

The court case against Rios Montt and Rodriguez Sanches included charges for genocide, torture, sexual based crimes, direct responsibility for the death of 1,771 Mayan Ixiles including the displacement of 29,000 people³⁸⁹. Rios Montt was given representation by the state due to the fact that he fired his entire legal team hours before the session for an unknown reason³⁹⁰. The session began by hearing testimony by Ixil Mayan survivors of the crimes against humanity.

The soldiers lit a bonfire and began to tear their captives' clothes off. Skirts, embroidered blouses or huipiles, sandals, trousers, and belts were tossed into the flames. Elena was horrified when she saw that a soldier had forced her father to kneel, pointed his shotgun at him and fired. However, the man did not instantly fall to the ground; he writhed around on the ground, obstinately holding on to life. The soldier grabbed a machete and bludgeoned him to death with a single, savage blow. Then the soldiers grabbed the corpses and began to throw them into the river one by one. The

³⁸⁷ Ibid

³⁸⁸ The Ríos Montt trial and genocide accountability, OPEN SOCIETY FOUNDATIONS (2013), <https://www.opensocietyfoundations.org/voices/the-rios-montt-trial-and-genocide-accountability> (last visited Mar 16, 2023).

³⁸⁹ EMI MACLEAN, JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RIOS MONTT (2013).

³⁹⁰ Ibid

*children were tossed from the bridge alive, as the soldiers believed that because of their size they would soon drown*³⁹¹ (Reynolds, 2013).

Testimony of endless stories came out about the scorched earth policies, targeted attacks on Mayan communities, and other war crimes. Mayan survivors courageously testified on forms of sexual-based violence as a result of systematic violations during the war followed by other survivors of forced military labor. Survivors were able to take a role in their own form of prosecution. This was not only a big win for survivors of the Mayan community, but the act led to a sort of reconciliation being able to have the community's experience validated.

The court hearing had many expert witnesses as well which laid out an impressive number of facts. Expert witnesses were able to demonstrate evidence of mass grave sites that were found during the time that General Rios Montt was a congress member³⁹². These grave sites were shown be used and active during his years of direct rule of the state. One expert who founded the Guatemalan Forensic Anthropology Foundation who discovered the remains of 6,500 people testified about the Ixil region during those years³⁹³. Patrick Ball, who is a

³⁹¹ Louisa Reynolds, *The Day Elena Caba Ilom Met Guatemalan Dictator Efraín Ríos Montt*, UNM DIGITAL REPOSITORY (2013).

³⁹² EMI MACLEAN, JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RIOS MONTT (2013).

³⁹³ The task of reading Guatemala's bones, AMNESTY INTERNATIONAL (2021), <https://www.amnesty.org/en/latest/news/2012/11/task-reading-guatemala-s-bones/> (last visited Mar 16, 2023).

statistician, was able to come up with the number that the Guatemalan government killed 5.5% of the indigenous population³⁹⁴.

Rios Montt did not have helpful witnesses. One of his witnesses' who testified for the leader, said material that was later used to confirm that Montt had complete authority to order genocide. A further witness' stated that the general was using supreme authority across all commands and organizations to use his power³⁹⁵. Multiple people testifying both on the witness and defense sides were able to confirm the existence of Victoria Plan 82, which was a plan to destroy all rebel groups by any means necessary³⁹⁶. This program was a brutal military campaign to destroy communism, which ended in the genocide of the Ixil population.

The defense tried relying on tactics other than just denying the genocide to win the case. The defense tried lengthy delay methods and motioned to remove the case because crimes against humanity was not included in Guatemalan law³⁹⁷. Montt's representation filed a total of 120 challenges to the validity of the court case to have it thrown out³⁹⁸. While this did not work, the defense's closing statement relied on stating that testimonies are not effective evidence, that international law is not relevant, and was critical of scientific

³⁹⁴ EMI MACLEAN, JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RIOS MONTT (2013).

³⁹⁵ Ibid

³⁹⁶ The final battle: Ríos Montt's counterinsurgency campaign, THE NATIONAL SECURITY ARCHIVE, <https://nsarchive2.gwu.edu/NSAEBB/NSAEBB425/> (last visited Mar 16, 2023).

³⁹⁷ EMI MACLEAN, JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RIOS MONTT (2013).

³⁹⁸ Ibid

evidence³⁹⁹. A far from effective argument against the prosecution, international law and agreements were signed by the state, and scientific evidence was proven to be accurate.

Regardless of the defense's arguments and attempted delays, General Rios Montt was convicted of crimes against humanity and genocide⁴⁰⁰. He was sentenced to 50 years in jail for committing genocide and 30 years for crimes against humanity⁴⁰¹. This landmark decision reached global news as the first head of a state was convicted of genocide in a national court. The courts were able to confirm that the government determined that anyone living in Ixil villages would be considered an internal enemy and able to be eliminated under Montt's policy⁴⁰². Not only was Rios Montt aware of what was happening and not stop it, he ordered the acts to happen as a direct form of discrimination and as a campaign against the Ixil indigenous communities⁴⁰³.

As big of a win that this was, the constitutional court suspended the proceedings due to a technicality after the 700-page verdict was made⁴⁰⁴. This

³⁹⁹ Ibid

⁴⁰⁰ Jo-Marie Burt and Paulo Estrada, LEGACY OF GUATEMALA DICTATOR RÍOS MONTT SHOWS JUSTICE IS POSSIBLE WOLA (2018), <https://www.wola.org/analysis/legacy-guatemala-dictator-rios-montt-shows-justice-possible/#:~:text=R%C3%ADos%20Montt%20was%20sentenced%20to,against%20the%20Maya%20Ixil%20people>. (last visited Mar 16, 2023).

⁴⁰¹ Guatemala: Rios Montt convicted of genocide, HUMAN RIGHTS WATCH (2020), <https://www.hrw.org/news/2013/05/10/guatemala-rios-montt-convicted-genocide> (last visited Mar 16, 2023).

⁴⁰² EMI MACLEAN, JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RIOS MONTT (2013).

⁴⁰³ Ibid

⁴⁰⁴ Jo-Marie Burt and Paulo Estrada, THE GUATEMALA GENOCIDE TRIAL RESUMES INTERNATIONAL JUSTICE MONITOR (2020), <https://www.ijmonitor.org/2017/10/the-guatemala-genocide-trial-resumes/> (last visited Mar 17, 2023).

meant that even after a lengthy ruling and major success in convicting genocide, no criminal penalty could be put into place. There were multiple attempts to restart another trial of genocide cases, which were vacated for different reasons. In 2015 and 2016 there were a total of three attempts in this two-year period to have court hearings, and the last one was vacated due to an appeal to a decision to have a closed-door hearing⁴⁰⁵. The final trial of Rios Montt occurred in 2017, many years after the original trial began. Even with a court hearing in place, Rios Montt did not need to attend his hearings, and if he was found guilty, no punishment would be forced upon him⁴⁰⁶. This was because in his older age, he was confirmed to have developed dementia and was no longer fit for punishment nor testify under Guatemalan law⁴⁰⁷.

Rios Montt was never allotted time to be convicted in the retrial. At the age of 91, General Montt died in 2018 during the time of his trial due to a heart attack⁴⁰⁸. This death had profound effects within Guatemala. An ex-military leader and de facto president that committed genocide against the Ixil Mayan community was never able to truly be convicted and pay for their crimes. In a country where impunity against cases of justice is frequent, many people were disappointed that justice was truly never served.

⁴⁰⁵ Ibid

⁴⁰⁶ Ibid

⁴⁰⁷ Ibid

⁴⁰⁸ Sofia Menchu, EX-GUATEMALAN DICTATOR RIOS MONTT DIES, LEAVING BITTER LEGACY REUTERS (2018), <https://www.reuters.com/article/us-guatemala-riosmontt-idUSKCN1H81FB> (last visited Mar 17, 2023).

These massive delays impeded justice not only for the victims of war but for the entire country. General Rios Montt was originally convicted and had a sentencing for his crimes against humanity. The legal system that is set up to presumably hold perpetrators of violence accountable, failed to serve justice to the victims of the war. While Guatemala made history as the first president globally to be convicted in a national court for genocide, it also took away the justice associated with it. This was 1 step forward for global progress on human rights, and 2 steps back. There was already the CEH which stated that genocide happened, a Spanish arrest warrant, followed by a conviction from a national court, yet General Rios Montt never had to pay for his crimes. While technicalities and court procedures are in place for protections of the law, they should not halt the process of justice from happening.

5.5.4 *Interamerican Court of Human Rights*

There currently only exists three regional and international courts on human rights⁴⁰⁹. The three courts are the Inter-American Court of Human Rights, the European Court of Human Rights, and the African Court of Human Rights⁴¹⁰. The Interamerican Court is designed to work with local governments to ensure that human rights are adhered to within its member states⁴¹¹. The court takes cases internationally and can make recommendations to member states on how to proceed with the next steps in the case⁴¹². This court has been able to work with many different governments on the bettering of systems and legal frameworks to enhance the human rights of the countries and keep governments accountable.

As big player in ensuring the implementation of rights for indigenous peoples within Guatemala has been the Interamerican Court of Human Rights. Less talked about in international literature on international human rights case law, but equally important is this court. This international court has issued many different decisions that have addressed crimes against humanity, and impunity within Guatemala⁴¹³. The organization created in 1948 was designed with the international to intent to protect and promote human rights within the American Hemisphere⁴¹⁴. The court is a party to 20

⁴⁰⁹ Inter-American Human Rights System, INTER-AMERICAN COURT OF HUMAN RIGHTS (2023), https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en (last visited Mar 21, 2023).

⁴¹⁰ Ibid

⁴¹¹ Oas :: IACHR :: What is the IACHR?, ORGANIZATION OF THE AMERICAN STATES, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp> (last visited Mar 21, 2023).

⁴¹² Ibid

⁴¹³ Claudia Martin & Susana SáCouto, *Access to justice for victims of conflict-related sexual violence*, 18 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 243–270 (2020).

⁴¹⁴ Oas :: IACHR :: What is the IACHR?, INTER-AMERICAN COURT OF HUMAN RIGHTS, <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/what.asp> (last visited Mar 18, 2023).

countries and uses the American Declaration of Rights and Duties of Man⁴¹⁵. It is worth noting that the United States and Canada are not parties to this system⁴¹⁶.

On the Interamerican Court of Human rights website, there is a map that shows there have been 55 judgment decisions in cases involving Guatemala, along with six active cases and 104 provisional measures⁴¹⁷. The Interamerican court of human rights has been able to enforce and lead to equitable law since the war ended. It has provided assistance to the Guatemalan state using both international and national law on the cases presented to it.

One of the most recent landmark cases was delivered at the end of 2021. Guatemalans under the peace accords and constitution are guaranteed the right to their culture. Even with this being the case, 26 years after the war has passed, it was not legal for radio or other forms of telecommunication to be broadcasted in local indigenous languages⁴¹⁸. The way that Guatemala did this was by criminalizing community radio stations and creating a law that requires radio licenses in a discriminatory auction process⁴¹⁹.

⁴¹⁵ IACHR, ABC OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS.

⁴¹⁶ Ibid

⁴¹⁷ Case Map, INTER-AMERICAN COURT OF HUMAN RIGHTS (2023), https://www.corteidh.or.cr/mapa_casos_pais.cfm?lang=en (last visited Mar 17, 2023).

⁴¹⁸ La cidh presenta Caso sobre guatemala ante la corte interamericana, ORGANIZATION OF AMERICAN STATES, <https://www.oas.org/es/cidh/prensa/comunicados/2020/232.asp> (last visited Mar 18, 2023).

⁴¹⁹ Inter-American Court of Human Rights Affirms Indigenous Peoples' right to freedom of expression in Guatemala, CULTURAL SURVIVAL (2021), <https://www.culturalsurvival.org/news/inter-american-court-human-rights-affirms-indigenous-peoples-right-freedom-expression#:~:text=On%20December%2017%2C%202021%2C%20the%20Inter-American%20Court%20of,and%20participation%20in%20cultural%20life%E2%80%9D%20of%20Indigenous%20Peoples.> (last visited Mar 17, 2023).

The actual law already goes against some of the legal documentation that was already discussed within this thesis. ILO 169 outlines rights that exist for indigenous peoples. While ILO 169 was used in terms of land within this paper, ILO also goes over some of the basic rights for indigenous peoples;

Article 2

- 1) *Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.*
- 2) *2. Such action shall include measures for:*
 - a) *(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;*
 - b) *(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions; (ILO 169, 1989)⁴²⁰*

This being against various forms of national and international law, was taken to the Inter-American Court of Human Rights for discrimination, the violation to cultural rights and freedom of speech violations.

It should be no surprise that the Inter-American Court of Human Rights made the decision that the indigenous tribes had their rights violated. While ILO 169 was mentioned, the case made the distinction that articles 1, 2, 13, 24, and 26 of the American Convention of Human Rights were also violated⁴²¹. This would mean the obligation to respect life, freedom of expression, right to equal protection, and progressive development were violated by the state of Guatemala by prohibiting

⁴²⁰ C169 - INDIGENOUS AND TRIBAL PEOPLES CONVENTION, (1989).

⁴²¹ Inter-American Court of Human Rights Affirms Indigenous Peoples' right to freedom of expression in Guatemala, CULTURAL SURVIVAL (2021), [https://www.culturalsurvival.org/news/inter-american-court-human-rights-affirms-indigenous-peoples-right-freedom-expression#:~:text=On%20December%2017%2C%202021%2C%20the%20Inter-American%20Court%20of,and%20participation%20in%20cultural%20life%E2%80%9D%20of%20Indigenous%20Peoples.\(last%20visited%20Mar%2017,%202023\).](https://www.culturalsurvival.org/news/inter-american-court-human-rights-affirms-indigenous-peoples-right-freedom-expression#:~:text=On%20December%2017%2C%202021%2C%20the%20Inter-American%20Court%20of,and%20participation%20in%20cultural%20life%E2%80%9D%20of%20Indigenous%20Peoples.(last%20visited%20Mar%2017,%202023).)

indigenous people access to radio⁴²². The court ordered the government to change its laws on radio licenses, to have an uninhibited radio airway, create a simple way to obtain radio licenses and recognize indigenous radio as a way of communication⁴²³.

While this was a major win in recognizing freedom of expression in Guatemala, it brings to question why a case like this needed to be presented to the international court and decided only in 2021. The war was finished in 1996 and finished in peace agreements and multiple different laws were created to insure the rights of indigenous peoples. This law as a major overreaching law within Guatemala demonstrates some of the struggle that indigenous people have had to endure since signing the peace accords of 1996.

5.5.5 *Sepur Zarco Trial*

The Sepur Zarco Trial was an example where justice and reconciliation efforts were made. As discussed in the historical background section of this thesis, Sepur Zarco was a military base for the relaxation of soldiers. The military members of this base killed the men of the village and enslaved the women of the village while committing sexually based crimes against the remaining women. Years later, multiple women filed a lawsuit against the Guatemalan state for justice to be served. This landmark case led to

⁴²² OAS :: IACHR : Basic documents in the inter-american system, ORGANIZATION OF AMERICAN STATES, <https://www.oas.org/en/iachr/mandate/Basics/declaration.asp> (last visited Mar 18, 2023).

⁴²³ Inter-American Court of Human Rights Affirms Indigenous Peoples' right to freedom of expression in Guatemala, CULTURAL SURVIVAL (2021), <https://www.culturalsurvival.org/news/inter-american-court-human-rights-affirms-indigenous-peoples-right-freedom-expression#:~:text=On%20December%2017%2C%202021%2C%20the%20Inter-American%20Court%20of,and%20participation%20in%20cultural%20life%E2%80%9D%20of%20Indigenous%20Peoples.> (last visited Mar 17, 2023).

the prosecution of two military commanders on counts of sexual violence, domestic and sexual slavery, homicide, and forced disappearance⁴²⁴.

15 women that were survivors of the events that conspired at Sepur Zarco took the Guatemalan state to court⁴²⁵. All 15 women had their spouses murdered by the Guatemalans and were subjugated to similar crimes by the army in a systematic and consistent way⁴²⁶. These women at the time of court proceedings were also all over the age of 60 years old and could not read or speak Spanish⁴²⁷. These impressive amounts of barriers were all overcome within this court case.

The case was filed together instead of 15 individual cases to demonstrate crimes against humanity as opposed to individual crimes⁴²⁸. The case was filed in a circuit court, and passed to Human Rights Office for a special prosecution, but after an exhumation was conducted during the investigation, the case was forwarded to the Supreme Court of Justice⁴²⁹. During the investigation phase, two military officials were indicated as responsible for these crimes, arrested, and placed in the trial proceedings.

⁴²⁴ Jo-Marie Burt, MILITARY OFFICERS CONVICTED IN LANDMARK SEPUR ZARCO SEXUAL VIOLENCE CASE INTERNATIONAL JUSTICE MONITOR (2020), <https://www.ijmonitor.org/2016/03/military-officers-convicted-in-landmark-sepur-zarco-sexual-violence-case/> (last visited Mar 17, 2023).

⁴²⁵ Alicia LeDuc, ARTICLE: Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala, 25 Willamette J. Int'l L. & Dispute Res. 150, (2018), available at <https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5SH4-KJK0-00CV-7294-00000-00&context=1516831>.

⁴²⁶ Ibid

⁴²⁷ Sepur Zarco: In Pursuit of Truth, Justice, and now reparations, UN WOMEN – HEADQUARTERS (2021), <https://www.unwomen.org/en/news/stories/2017/10/feature-guatemala-sepur-zarco-in-pursuit-of-truth-justice-and-now-reparations> (last visited Mar 17, 2023).

⁴²⁸ Alicia LeDuc, ARTICLE: Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala, 25 Willamette J. Int'l L. & Dispute Res. 150, (2018), available at <https://advance.lexis.com/api/document?collection=analytical-materials&id=urn:contentItem:5SH4-KJK0-00CV-7294-00000-00&context=1516831>.

⁴²⁹ Ibid

The names of these two men were Esteelmer Francisco Reyes Giron and Heriberto Valdez⁴³⁰. When the case started in 2016, it caught international attention, and this case can be found in many sources, including UN pages, Amnesty International, and many other sources.

The defendants were charged with violations of sexual violence and sexual and domestic slavery⁴³¹. These charges were processed under Article 378 of the Guatemalan Criminal Code which is *Crimes against the Duties of Humanity*. This case was a major win in the fight against impunity and conflict-based sexual violence. It is worth noting that this case also reinforced that sexual based crimes were systematic and carried out as crimes against humanity within Guatemala. This, while already established by the CEH, was even further cemented by the Guatemalan criminal justice system.

This type of legal battle not only helped the 15 women but also helped other cases come to light. The fact that women in their 60s, 70s, and even reaching into their 80s that did not speak Spanish nor have the resources for expensive lawyers. They came from their villages to Guatemala City won a case against the government, causing other people to seek justice and reparations. *The Emma Molina Theissen case* was started as a result of the inspiration of the Sepur Zarco case⁴³². The case while different includes forced disappearance and rape between brothers and sisters⁴³³. This was not the only

⁴³⁰ Anastasia Moloney, GUATEMALA COURT ORDERS \$1 MILLION IN DAMAGES TO WARTIME SEX SLAVES REUTERS (2016), <https://www.reuters.com/article/us-guatemala-sexual-slavery-idUSKCN0W50BC> (last visited Mar 17, 2023).

⁴³¹ Claudia Martin, Susana SáCouto, Access to Justice for Victims of Conflict-related Sexual Violence: Lessons Learned from the Sepur Zarco Case, *Journal of International Criminal Justice*, Volume 18, Issue 2, May 2020, Pages 243–270, <https://doi.org/10.1093/jicj/mqaa006>

⁴³² Ibid

⁴³³ Ibid

case; The Sepur Zarco case has been used in jurisprudence for many different cases, such as the Maya Achi Women from Baja Verapaz who experienced sexual-based violations at military bases⁴³⁴.

5.6 *The Fight Against Impunity*

Impunity and political will to continue with the status quo have been a constant theme within Guatemalan political history. This has been a strong theme both before and after the signing of the peace accords. Even when laws have been passed or promises have been made by the government, implementation, delays, or changes to implementation have been created in Guatemala. Furthermore, there has been a struggle to hold war criminals accountable for crimes of the war due to its Law of Reconciliation that gave amnesty to anyone who did not commit certain kinds of crimes.

Even when crimes are caught, it has been proven very difficult to enforce the rule of law within Guatemala and hold criminals accountable for their actions. Impunity is shown not only when dealing with governmental officials connected to war crimes. Crimes that experience a high level of impunity are also current violent crimes. While Guatemala is experiencing a new form of violence outside of conflict, the core issues also seem to be the same. This, while observable, is due to several many different factors.

⁴³⁴ Ibid

5.6.1 *International Commission Against Impunity in Guatemala (CICIG)*

In part of the effort against impunity, the United Nations and the Guatemalan state agreed to create an independent body to combat impunity⁴³⁵. This organization lasted 12 years and ultimately ended in 2019⁴³⁶. The organization was tasked to work within Guatemala's national legal system to fight corruption and impunity which led to the prosecution of some of the highest government officials in Guatemala⁴³⁷. The organization ended not due to the fulfillment of its mission, but to the expiration of its mandate and president Jimmy Morales's refusal to extend it, while under investigation⁴³⁸.

The commission as a hybrid commission had different distinct powers. The organization had to power to investigate persons, promote prosecution, sanction government officials, give recommendations of reform, to request documentation, and cooperation from the government⁴³⁹. This ultimately was a system that was meant to create visual structural reform and enhance the country's system to have healthy political systems. While this commission did not have direct prosecution abilities, its system led to the prosecution of different political figures.

⁴³⁵ Andrew Hudson, *The International Commission Against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms*, 8 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 53–74 (2010).

⁴³⁶ Fact sheet: The CICIG's legacy in fighting corruption in Guatemala, WOLA (2019), <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/> (last visited Mar 18, 2023).

⁴³⁷ Ibid

⁴³⁸ Ibid

⁴³⁹ Andrew Hudson, *The International Commission Against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms*, 8 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 53–74 (2010).

The organization was able to build credibility within Guatemala for investigating high level political people. These cases include the son of Rios Montt, ex-president Alfonso Portillo caught for embezzlement, ex-Defense Minister Eduardo Arevalo Lacs, a daughter of a congress representative for human trafficking, national police, and many other prominent politicians⁴⁴⁰. The overall work of the commission has been internationally and nationally recognized and respected for its ability to hold corrupt officials accountable.

Alfonso Portillo who was the ex-president of Guatemala had an interesting outcome as a result of the investigations against him. Accused of embezzling tens of millions of dollars into US bank accounts, fled to Mexico in hopes of evading justice⁴⁴¹. Also wanted in US courts, was extradited to the United States where he was put on trial and prosecuted in New York⁴⁴². He was also accused and prosecuted for accepting over 2 million dollars of bribes by the government of Taiwan and laundering that money into United States bank accounts⁴⁴³. After finishing his jail time, the ex-president returned to Guatemala where he still is now⁴⁴⁴. The events that conspired to his arrest were a strong example of international bodies working together to prosecute and keep officials accountable.

⁴⁴⁰ Ibid

⁴⁴¹ Guatemala ex-president Alfonso Portillo freed from US jail, BBC NEWS (2015), <https://www.bbc.com/news/world-latin-america-31633785> (last visited Mar 18, 2023).

⁴⁴² Ibid

⁴⁴³ Guatemalan ex-president returns home after release from U.S. prison, REUTERS (2015), <https://www.reuters.com/article/us-guatemala-portillo-idUSKBN0LT28F20150226> (last visited Mar 18, 2023).

⁴⁴⁴ Ibid

While the prosecution of governmental officials was key to ensuring less corruption, the organization also encouraged structural reform. The CICIG presented multiple reforms to congress, and in 2009 the reforms were implemented⁴⁴⁵. Reforms included changes to laws related to arms, creating high-impact courts, and reforms to the penal code⁴⁴⁶. Reforms went even deeper than this too, creating a high-profile campaign to change requirements on who can be installed as a member of the Supreme Court⁴⁴⁷. These were all examples of very high-level and structural changes that were made to the government. All considered major successes, the organization made a positive impact on the Guatemalan state.

CICIG continued throughout the years to work to eliminate all forms of governmental corruption. The organization listed 1,700 corrupt police officers that were fired after the list was published⁴⁴⁸. During this time, the organization received pushbacks from the government which included prosecutors and judges. These officials obstructed the work of the organization, which in turn published their efforts to stop the work of the organization. With the information on their actions made public, led to the officials resigning⁴⁴⁹. These actions of an independent organization that was implemented and aided by local actors and the United Nations created large effects and systematic changes.

⁴⁴⁵ Andrew Hudson, *The International Commission Against Impunity in Guatemala: A New Model for International Criminal Justice Mechanisms*, 8 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 53–74 (2010)

⁴⁴⁶ Ibid

⁴⁴⁷ Ibid

⁴⁴⁸ Ibid

⁴⁴⁹ Ibid

The CICIG ended as a result of its investigation of the sitting president Jimmy Morales for illegal campaign financing⁴⁵⁰. Jimmy Morales ran on an anti-corruption campaign while using unethical and illegal sources for funding. While under investigation, Jimmy Morales did not renew the organization and barred the director from entering the country⁴⁵¹. The Constitutional Court declared this move as illegal, but the president ignored the court's decision citing that the organization was a national security threat⁴⁵². This move was largely unpopular since the organization had 70% of the citizen's trust, and after the barring of the organization, the president's trust fell to less than 20%⁴⁵³. The president gave the organization less than 24 hours to leave the country and the organization closed⁴⁵⁴.

The CICIG assisted in filing more than 120 cases in the Guatemalan justice system, implicating more than 1,540 people, with some 660 people currently facing charges or another type of legal process, according to the CICIG. According to the U.S. State Department, some 200 current or former government officials are among those facing charges.

Joint investigations by the Guatemalan Attorney General's Office and the CICIG also resulted in more than 400 convictions (including the former vice president, sentenced last year to 15 years in prison on corruption charges in one of four major CICIG-backed investigations). Overall, this represents an 85 percent success rate in resolving cases, the CICIG has said (WOLA, 2019)⁴⁵⁵.

⁴⁵⁰ Sandra Cuffe, GUATEMALA'S ANTI-CORRUPTION CICIG BODY TO SHUT DOWN: WHAT TO KNOW CORRUPTION NEWS | AL JAZEERA (2019), <https://www.aljazeera.com/news/2019/9/1/guatemalas-anti-corruption-cicig-body-to-shut-down-what-to-know> (last visited Mar 18, 2023).

⁴⁵¹ Ibid

⁴⁵² Ibid

⁴⁵³ Mark L. Schneider, DEMOCRACY IN PERIL: FACTS ON CICIG IN GUATEMALA CSIS (2019), <https://www.csis.org/analysis/democracy-peril-facts-cicig-guatemala> (last visited Mar 18, 2023).

⁴⁵⁴ Ibid

⁴⁵⁵ Fact sheet: The CICIG's legacy in fighting corruption in Guatemala, WOLA (2019), <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/> (last visited Mar 18, 2023).

The organization made massive effects on the government accounting to visual changes to the system, laws, and overall accountability of present and past government officials. It would make sense why a sitting corrupt president would be concerned over investigations over corruption. The organization in general had a massive success rate over effective investigations, prosecutions, and systematic changes. This is an unfortunate example of impunity and corruption holding strong in Guatemala regardless of public support, constitutional standing, and improvements to the development of the country. The loss of the organization is a loss for the democratic health of Guatemala, however, there is hope that its effects will last.

5.6.2 *General Impunity and Corruption*

Even with the attempts to solve Guatemala's impunity and using the jurisprudence of the Sepur Zarco case, impunity still is a massive issue today. Over 20,000 cases were filed under the Law against Femicide and Other Forms of Violence against Women act in 2011, however only 3% of the cases received a judgment⁴⁵⁶. A United Nations report gives a much more updated look into the role of human rights and violence against women. In 2022 the state recorded a total of 60,089 survivors of gender-based violence, 478 femicides, 20,655 calls to the hotline of GBV, 3,203 pregnancies of girls under the age of 14, and insufficient funds to be able to properly manage its governmental offices of assistance to violence against women⁴⁵⁷.

⁴⁵⁶ Musalo, Karen, and Blaine Bookey. "Crimes without Punishment: An Update on Violence against Women and Impunity in Guatemala." *Social Justice*, vol. 40, no. 4 (134), 2013, pp. 106–17. JSTOR, <http://www.jstor.org/stable/24361613>. Accessed 19 Mar. 2023.

⁴⁵⁷ ANNUAL REPORT OF THE UNITED NATIONS , SITUATION OF HUMAN RIGHTS IN GUATEMALA (2022).

These issues continue in other serious manners. According to Human Rights Watch, congress has ignored rulings by the constitutional court to continue with selecting judges. 13 Supreme Court justices and 135 Appellate court seats were left empty due to an investigation showing corruption in the selection of nominees⁴⁵⁸. Congress also did not swear in Gloria Porras who was re-elected to serve on the constitutional court, who frequently investigated and led anti-corruption cases⁴⁵⁹. The report mentioned that in September of 2021, the court also eliminated jail sentences for political figures prosecuted for corruption, allowing politicians to stay home⁴⁶⁰.

These issues climb into further escalation into 2022. President Giammattei appointed Consuelo Porras as attorney general⁴⁶¹. The official has fired and even promoted prosecution of government officials that investigate corruption⁴⁶². She has gotten rid of judges, and prosecutors while advocating for the prosecution of journalists. This can be taken as an example of investigations being opened into a judge that had a high-level case against the president of Guatemala on corruption charges⁴⁶³. The Guatemalan president did not attend the Conference of the Americas in Los Angeles due to condemnation of the appointment of the attorney general⁴⁶⁴. It is also worth

⁴⁵⁸ World Report 2022: Rights trends in Guatemala, HUMAN RIGHTS WATCH (2022), <https://www.hrw.org/world-report/2022/country-chapters/guatemala> (last visited Mar 18, 2023).

⁴⁵⁹ Ibid

⁴⁶⁰ Ibid

⁴⁶¹ World Report 2023: Rights trends in Guatemala, HUMAN RIGHTS WATCH (2023), <https://www.hrw.org/world-report/2023/country-chapters/guatemala> (last visited Mar 21, 2023).

⁴⁶² Ibid

⁴⁶³ Ibid

⁴⁶⁴ Ibid

noting that the United States put sanctions on this individual for involvement in corruption⁴⁶⁵.

The Journalist Association of Guatemala reported 66 events of persecution, criminal charges, and violent attacks within only the first 6 months of 2022⁴⁶⁶. This lack of freedom of speech has led to several journalists having arbitrary criminal cases for reporting on government actions. A 2022 United Nations report states that the attacks on human rights defenders and journalists are a misuse of Guatemalan criminal law and is causing fear of the government and ability to develop the country⁴⁶⁷.

The same United Nations report stated that 33,000 criminal cases were postponed within one year⁴⁶⁸. These delays sometimes caused people to be incarcerated for longer terms without their right to a speedy trial. The UN noted that these policies unjustly affected Indigenous and African Guatemalan Citizens. The report noted bill 5920 which eliminates all criminal responsibilities of government officials that violated the rights of Guatemalan citizens during the war.

In 2022 The United States Government also published an article on corrupt and undemocratic actors in various countries. Listing 16 major actors of undemocratic and corrupt behavior, names are put on the State Department's website⁴⁶⁹. Names of people

⁴⁶⁵ Person, U.S. SANCTIONS GUATEMALA'S ATTORNEY GENERAL OVER ACCUSATIONS OF CORRUPTION REUTERS (2022), <https://www.reuters.com/world/americas/us-sanctions-guatemalas-attorney-general-over-accusations-corruption-2022-05-17/> (last visited Mar 21, 2023).

⁴⁶⁶ World Report 2023: Rights trends in Guatemala, HUMAN RIGHTS WATCH (2023), <https://www.hrw.org/world-report/2023/country-chapters/guatemala> (last visited Mar 21, 2023).

⁴⁶⁷ ANNUAL REPORT OF THE UNITED NATIONS , SITUATION OF HUMAN RIGHTS IN GUATEMALA (2022).

⁴⁶⁸ Ibid

⁴⁶⁹ Section 353 corrupt and undemocratic actors report - United States Department of State, U.S. DEPARTMENT OF STATE (2022), <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/> (last visited Mar 21, 2023).

go from government officials taking bribes from businesses, adding in corrupt judges, to obstructing investigations⁴⁷⁰. These forms of corruption are increasing within Guatemala after the UN-supported CICIG was closed within Guatemala.

These latest legal advancements within human rights in Guatemala reverse and inhibit reconciliation from taking place. Not only are ordinary Guatemalan citizens affected in the process of taking part of their democracy, but advancements have the very little political will. The peace implementations were never implemented in the first place in a full manner, yet a large part of the government wants to stop further peace advancements.

The likelihood of post-war reconciliation with high levels of impunity and corruption is low. The post-war reconstruction and reconciliation are unlikely, while a large amount of the population cannot rely on their legal system for justice related to crimes that do not get solved. Furthermore, multiple government members have attempted at many different points of the peace process to undermine democracy and the law. The legal system has for the most part created a state of systemic violence against a significant part of the population.

⁴⁷⁰ Ibid

Chapter 6:

CONCLUSION

Peacebuilding and reconciliation cannot be successful with the signing of peace accords alone. Peacebuilding and reconciliation must be a joint effort that combines law, policy, development, integration, peace, and justice. Even with well-intentioned peace accords, a holistic follow-through must happen to create sustainable peace. While Guatemala is still in a post-war reconstruction period, multiple obstacles, decisions, and deliberate attempts to block true peace-building operations have prevented a type of stability that one would hope to see in a post-war country. There were many attempts to undermine democracy, the will of the people, and the fight against corruption.

6.1.1 *The CEH and Reconciliation*

Truth commissions, in general, have great advantages and disadvantages. The CEH was a significant success in writing a concrete history within Guatemala. The commission confirmed many realities that the Guatemalan people went through and courageously listed the institutional discrimination and war crimes committed in Guatemala. Labeling a period of the war as genocide,⁴⁷¹ created a sense of justice and reconciliation for some people⁴⁷². Furthermore, this report could be argued as one of the

⁴⁷¹ Truth commission: Guatemala, United States Institute of Peace (1999), <https://www.usip.org/publications/1997/02/truth-commission-guatemala> (last visited March 29, 2023).

⁴⁷² Ictj, CHALLENGING THE CONVENTIONAL: CASE STUDIES - GUATEMALA CHALLENGING THE CONVENTIONAL: CASE STUDIES - GUATEMALA, <https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/guatemala.html> (last visited Mar 29, 2023).

reasons that the Spanish and Guatemalan governments sought prosecution efforts for genocide and crimes against humanity. This is because the CEH sought to provide an accurate accounting of crimes that happened during the war.

There are multiple reasons why one truth commission is structured differently than other truth commissions. Every country has a different context, history, needs, legal system, constitution, and paths in post-war reconstruction. While some truth commissions had a legal arm, most truth commissions, including the CEH did not⁴⁷³. The CEH was only meant to create a historical clarification of events followed by recommendations to the state of Guatemala⁴⁷⁴. This had its benefits, but a large negative of the truth commission in Guatemala is that it provided no guaranteed justice or obligations to the state. This is part of the reason that policies have been slow, never been implemented, or the recommendations been ignored by the Guatemalan government.

The idea of amnesty followed by a truth commission is one tactic to gather facts but can be flawed. While truth can give a feeling of dignity and justice to some survivors of violence, it can provide the opposite effect on others. Some truth commissions can opt to have a prosecution leg to their commissions. In general, this will bring fewer truths to the commission itself. This is because if perpetrators know that they will be convicted by giving information on the crimes they committed, they will be less likely to collaborate with investigations. South Africa found a way to counter this by providing amnesty to people who told in full the crimes that they

⁴⁷³ ICTJ, *Truth Seeking: Elements of Creating an Effective Truth Commission*, (2013).

⁴⁷⁴ Truth commission: Guatemala, United States Institute of Peace (1999), <https://www.usip.org/publications/1997/02/truth-commission-guatemala> (last visited March 29, 2023).

committed⁴⁷⁵. Prosecutions were only given out to people who did not omit their crimes during the investigation period.

Amnesty for truth motivates people who committed crimes to also talk about others who committed crimes. In theory, this will lead to more people telling the truth in the fact-seeking process. While this theory could work generally, it questions where the legal line should be drawn. For many people, it would not be justice for someone who admits to genocide and records every crime against humanity to walk free without punishment. This in fact might reverse trust in a post-war population. It would be important for each commission to be able to draw the line on where amnesty is given. In theory, a commission does not need to have a prosecution arm but can work with the government to refer certain cases for conviction. Amnesty for truth might not always be the best option for a recovering country or for reconciliation.

A balance and distinction would need to be clear on who gets amnesty, for which crimes, who decides to give amnesty, and who can check over the cases to ensure that justice is being served. A careful revision with consultations with populations affected should be coordinated to ensure that justice is being served not only to the perpetrators but to the survivors of the violence as well. The government should use the justice system justly and give criminals an appropriate sentence for the crimes committed. The justice system should not be used in ways that instigate conflict in the first place.

⁴⁷⁵ Truth and reconciliation commission, South Africa, *ENCYCLOPÆDIA BRITANNICA* (2023), <https://www.britannica.com/topic/Truth-and-Reconciliation-Commission-South-Africa> (last visited Mar 29, 2023).

During the war in Guatemala, the government often used the justice system against the selected enemies of the state. During the war, the justice system prosecuted professors, human rights activists, and other people that were advocating for items that could be aligned with the resistance groups⁴⁷⁶. The justice system in a post-war context should be able to reverse these convictions and ensure proper use of the legal system moving forward. A country should not use the justice system after the war to prosecute activists or opposite parties to the war as a form of punishment if the individual committed no crimes. This ensures that no further instigations to conflict rise, and no party is unjustly targeted. Ensuring persons who committed real crimes are prosecuted, and no person is subjected to state punishment for ideological differences will also ensure that a relapsed conflict does not take place.

UN and international efforts have often created different tribunals after conflict. The international community has at times acted without consultation with locals affected by policies or certain legal changes. Throughout history, the UN and different international development organizations aiding reconstruction have been criticized for not properly including enough locals or local organizations to implement changes in their own countries⁴⁷⁷. This is an essential factor to remember when doing post-war reconstruction. While many people from the global north have been trained in international law and development skills, the local population will have a deeper local

⁴⁷⁶ Rebecca Bodenheimer, *THE GUATEMALAN CIVIL WAR: HISTORY AND IMPACT* THOUGHTCO (2020), <https://www.thoughtco.com/guatemalan-civil-war-history-and-impact-4800364> (last visited Mar 29, 2023).

⁴⁷⁷ Patrick Fine, *RETHINKING THE CONSTRAINTS TO LOCALIZATION OF FOREIGN AID* BROOKINGS (2022), <https://www.brookings.edu/blog/future-development/2022/12/01/rethinking-the-constraints-to-localization-of-foreign-aid/> (last visited Mar 29, 2023).

knowledge and ability to cause a substantial lasting effect on peace-building and regional change.

This is also the case with truth commissions. The board of investigators and people implementing the truth commission need to be made up of a sufficient amount of the local members. Only the local population will be able to know their country's systems inside and out⁴⁷⁸. They have local contexts, collective memories, systems-based knowledge, and are affected by the commission itself. Local commission members can also create realistic recommendations in the final report. It is also essential for people being interviewed and investigated not to feel as if a foreign power is taking control of their legal system and country after a very fragile moment in their history. This should especially be looked at by members that had a massive impact on the war itself. The United States was a major instigator in the civil war in Guatemala and a significant player in peacebuilding. This should not be considered a best practice. An outside force that created massive instability within the country, cannot have a meaningful presence as a peacebuilder unless as done as a reconciliatory act for the local population.

The CEH brought to light a serious problem, prompting many national and international discussions. Since the report could not list the names of people who perpetrated crimes, the commission focused more on institutional responsibility. This was not necessarily a negative, but it did come with certain consequences. For example, the CEH could not be used for prosecution methods, but it did call on the government to

⁴⁷⁸Ibid

bring certain crimes to justice⁴⁷⁹. The task of bringing war crimes to justice was difficult due to the Reconciliation Law, which gave a blanket amnesty to most war crimes⁴⁸⁰. Even with this being true, the biggest crimes against humanity, genocide and forced disappearances, were able to be prosecuted⁴⁸¹.

As discussed within this thesis, even cases that were brought to the courts did have extreme difficulty. Levels of impunity are high in Guatemala⁴⁸², and even with the successful UN-backed commission against impunity in effect, programs were always fragile within the country. Programs and democracy were manipulated that the president himself did not renew the contract with the UN based commission when an investigation was opened upon him⁴⁸³. Unfortunately, the checks or balances were ignored or people used loopholes to get around legal accountability. Decisions from the supreme court have been ignored by multiple governmental organizations.

While the CEH made recommendations, there was no legal obligation to follow the guidance nor committee to respond. Since the president claimed that no further action was required, the recommendations of the truth commission mostly were not

⁴⁷⁹ David Stoll, *How the Guatemalan Civil War became a genocide: Revisiting the 2013 trial of general Efraín Ríos Montt*, 27 THE JOURNAL OF LATIN AMERICAN AND CARIBBEAN ANTHROPOLOGY 528–539 (2022).

⁴⁸⁰ Margaret Popkin, *GUATEMALA'S NATIONAL RECONCILIATION LAW: COMBATING IMPUNITY OR CONTINUING IT?*, CORTE INTERAMERICANA DE DERRECHOS HUMANOS (1997).

⁴⁸¹ Ibid

⁴⁸² Parker Asmann, GUATEMALA IMPUNITY REPORT SHOWS LIMITS OF ANTI-GRAFT BODY INSIGHT CRIME (2019), <https://insightcrime.org/news/brief/guatemala-impunity-report-limits-anti-graft-body/#:~:text=The%20rate%20of%20crimes%20that,Internacional%20contra%20la%20Impunidad%20en> (last visited Mar 29, 2023).

⁴⁸³ Sandra Cuffe, GUATEMALA'S ANTI-CORRUPTION CICIG BODY TO SHUT DOWN: WHAT TO KNOW CORRUPTION NEWS | AL JAZEERA (2019), <https://www.aljazeera.com/news/2019/9/1/guatemalas-anti-corruption-cicig-body-to-shut-down-what-to-know> (last visited Mar 29, 2023).

implemented. Using this as an example, it shows the importance of legal obligations to truth commission recommendations. A legal requirement for a country to follow through with a percentage of the recommendations could enhance the peacebuilding and reconciliation process. In the way that the CEH has been implemented, it has only added a historical narrative, which while important, has not been taught in Guatemalan schools or government.

6.1.2 *Reconciliation as a Policy*

While the international community and other NGOs have made great strides in producing a sort of reconciliation, the needs to be holistic with other bodies.

Reconciliation needs to be a multiple-factored collaborative effort. The only law on reconciliation gave forgiveness of many crimes and international criminals. The government, while signing into law multiple improvements that should have impacted the livelihood of indigenous people, never implemented a large portion of them⁴⁸⁴.

Generally, if the perpetrating state does not adhere to the promises it made to its damaged population, the state's reputation will be negative and its ability to reconcile will be ineffective.

A massive part of the population remains in poverty, and little has been done to improve their livelihood. While the one company alone does not control over 40% of the country's land anymore, Guatemala still has some of the highest inequities in land⁴⁸⁵.

⁴⁸⁴ Jeff Abbott, GUATEMALA'S FAILED PROMISE PROGRESSIVE.ORG (2021), <https://progressive.org/magazine/guatemala-failed-promise-abbott/> (last visited Mar 29, 2023).

⁴⁸⁵ Land rights in Guatemala for rural and indigenous populations, BORGEN (2021), <https://www.borgenmagazine.com/land-rights-in-guatemala/#:~:text=The%20inequality%20between%20large%20landowners,%25%20own%20less%20than%201%25.> (last visited Mar 29, 2023).

This was a result of many rich businesses, politicians, and landowners doing everything they could to prevent post-war land reforms from occurring⁴⁸⁶. The most significant example of this was the referendum on the constitution. While the referendum sparked low voting due to confusion and lack of information, people voted against policies that would give indigenous people more rights and access to lands⁴⁸⁷.

As a direct negation of the accords, this was also a direct attack against peace itself. Without significant land reforms, the core issue that sparked the war still exists today. CONTIERRA and FONTIERRA can be argued as tools that were created as a result of the peace accords. Guatemala needed a system that would help vulnerable communities access to land and the ability to have their land disputes in a court of law. While these two organizations were created with the best of intentions, they have not made a just system of land management. As discussed earlier in the thesis, these two organizations have been used together to have indigenous people buy the land that they are disputing from the rich Guatemalan citizens⁴⁸⁸.

The practice of having a lower economic citizen claiming land end up paying for it, brings an incentive for rich Guatemalans to claim more land than is actually theirs. Many indigenous people had a genuine claim to the lands they filed in court, not only based on historical connection. The judges of CONTIERRA might have seen

⁴⁸⁶ Lisa Viscidi, LAND REFORM AND CONFLICT IN GUATEMALA COUNTERPUNCH.ORG (2004), <https://www.counterpunch.org/2004/09/08/land-reform-and-conflict-in-guatemala/> (last visited Mar 29, 2023).

⁴⁸⁷ RODDY BRET & ANTONIO DELGADO, IDEA: THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION - CASE STUDY GUATEMALA (2005).

⁴⁸⁸ Michael J Brown, Jorge Daly & Katie Hamlin, *GUATEMALA LAND CONFLICT ASSESSMENT*, MANAGEMENT SYSTEMS INTERNATIONAL USAID REPORT (2005).

forwarding the case of a purchase with FONTIERRA as an *everybody-wins* kind of arrangement. Under that kind of situation, the Guatemalan government profits, the richer Guatemalan also gets paid, and the indigenous applicant gets the land via credit or loan from the state⁴⁸⁹. In this situation, the poor indigenous landowner ended up getting a unjust and unfair deal.

As discussed earlier, the indigenous landowners were not able to afford the loans presented to them⁴⁹⁰. Furthermore, the state often would overprice the land for purposes of gaining more money and using it in a corrupt manner⁴⁹¹. Many people lost the land they fought for in court and ended up paying for it. The government also knew that many of these aspiring farmers would be unable to pay the land loan. This way of giving loans and setting disputes was predatory and ultimately was a form of systematic violence. By not giving many rightful indigenous owners of the land what theirs was, to begin with, the state ended up ripping it away from them.

The peace accords also talked about a tax to be instated on undeveloped lands. This policy was meant to prevent monopolies such as the United Fruit Company from owning such a large amount of land within the country⁴⁹². Since this was never actually instated, Guatemala remains an unequal land-owning society. In Guatemala, 2.5% of farms own $\frac{2}{3}$ of the agricultural land available while 90% of farms are on $\frac{1}{3}$ of the

⁴⁸⁹ Ibid

⁴⁹⁰ Ibid

⁴⁹¹ Ibid

⁴⁹² GUATEMALA & URNG, AGREEMENT ON SOCIAL AND ECONOMIC ASPECTS OF THE AGRARIAN SITUATION, UNITED NATIONS (1996).

agricultural land available⁴⁹³. Post-war Guatemala has not created a meaningful land reform which was the reason that the war started and a huge factor in the peace accords.

For there to be true reconciliation within Guatemala, a significant effort needs to be made in land reform. Implementing the tax that was agreed upon in the peace accords could be one method to motivate large landowners to either sell off unused parts of their land or develop that land for economic development that could employ large groups of people. Tax law on unused land is not the only way that the government can create reform either. The government in theory, could partition off parts of unused land in the form of emanate domain. By buying the lands of underdeveloped areas, the government could give grants, low purchase prices to qualifying beneficiaries, or low-interest long-term credits to lower-income Guatemalan citizens.

Making a significant change in land reform has proven difficult. Many stakeholders would lose significant titles or money in the process. Businessmen have often given bribes to politicians, been politicians themselves, or had stakes within the land that needed to be reformed⁴⁹⁴. These conflicts of interest and low chances to be convicted for crimes of corruption have proven to be a difficult environment for meaningful reform.

⁴⁹³ Guatemala, LANDLINKS (2018), <https://www.land-links.org/country-profile/guatemala/> (last visited Mar 23, 2023).

⁴⁹⁴ Section 353 corrupt and undemocratic actors report - United States Department of State, U.S. DEPARTMENT OF STATE (2022), <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/> (last visited Mar 21, 2023).

Even furthermore, a law that was drafted and put into congress in 2021 would put an end to convictions of crimes committed during the war⁴⁹⁵. This blanket amnesty would even include crimes against humanity, genocide, and kidnapping. If passed, could be a domino effect. If crimes were considered irrelevant to prosecute, then the government would also have little pressure to reconcile. The already fragile office for reparations could be argued that it is time to be canceled. This in general, would be very harmful to the concept of reconciliation.

Branches of the government need to be the driving force behind reconciliation. While NGOs and INGOs can be part of the assisting process, governments are responsible for keeping peace and implementing sustainable change. A country that agrees to a ceasefire and peace agreement, while not reconciling after massive human rights violations will not be successful in post-war reconstruction either. Maintaining the roots of the conflict after signing peace agreements and having recommendations from an independent investigative body is hardly an effective manner in which peace and development can thrive.

6.1.3 *Mario Polanco*

The interview with Mario Polanco brought a great deal of information on what reconciliation means in its local context. It is worth noting that a striking amount of people are still unaccounted for after the war⁴⁹⁶. Entering the archives of the GAM

⁴⁹⁵ World Report 2023: Rights trends in Guatemala, HUMAN RIGHTS WATCH (2023), <https://www.hrw.org/world-report/2023/country-chapters/guatemala> (last visited Mar 29, 2023).

⁴⁹⁶ Grahame Russell, STILL MISSING: TENS OF THOUSANDS OF DISAPPEARED PEOPLE IN GUATEMALA RIGHTS ACTION (2021), <https://rightsaction.org/emails/still-missing-tens-of-thousands-of-disappeared-people-in-guatemala> (last visited Mar 29, 2023).

office is quite daunting. The government has not made a significant effort to locate the murdered and missing population. This, for the most part, has put the large responsibility of exhumation on private citizens and NGOs. While governments at time cannot provide adequate resources to mobilize this kind of effort, a government can provide funds to organizations to do the work. Guatemala has not provided a holistic effort to search for any more missing more murdered victims to the war.

This is partially due to a government decision to delay a commission on missing and murdered victims of the war, as Mario stated. The government did not take up the responsibility in its post-war period to search for missing and murdered individuals. This searched for missing people largely on local organizations that sometimes lacked the funding. There have been exhumations, but typically when it is prompted by an investigation as seen in the Sepur Zarco case. This is a problem because very few murders led to a full investigation in Guatemala⁴⁹⁷.

Due to the government not leading the effort to recover bodies of murdered victims of the war, there are many clandestine cemeteries that have yet to be discovered⁴⁹⁸. New politicians have other priorities, but the victims and families of survivors are still remaining and looking for answers. Many bodies have yet to be found, and without a large governmental funded search project, it is unlikely that many

⁴⁹⁷ Parker Asmann, GUATEMALA IMPUNITY REPORT SHOWS LIMITS OF ANTI-GRAFT BODY INSIGHT CRIME (2019), <https://insightcrime.org/news/brief/guatemala-impunity-report-limits-anti-graft-body/#:~:text=The%20rate%20of%20crimes%20that,Internacional%20contra%20la%20Impunidad%20en> (last visited Mar 29, 2023).

⁴⁹⁸ Bringing up the bodies in Guatemala, AL JAZEERA AMERICA, <http://america.aljazeera.com/multimedia/2016/2/the-bodies-under-the-base.html#:~:text=Since%201993%20the%20FAFG%20has,victims%2C%20and%20identified%20about%203%2C000>. (last visited Mar 29, 2023).

will be found. With the war ending in 1996, many of these memories are still fresh, and there is time to create a search party. Victims of the war are still alive and remember the actions of the government during the conflict. The government could gain trust and effectively give more reparations to confirmed victims of the war or create a country wide search for the missing.

These searches are relevant, even almost 30 years later. If a young child had their parents killed in the war and grew up without economic support from their family, they lived a vulnerable life. Sometimes government officials put these orphans on illegal adoption markets for personal economic gain. Some other children needed to fend for themselves without any economic support. As a result, such children might have missed their human right to education, security, and still live in vulnerable economic situations. If the government could find the remains of their parents and trace them back to the child, further reparations could be made. This would benefit not only the survivors but the country. Reparations could stimulate the economy by giving people access to more opportunities, which would create more economic output for its citizens.

It is also worth noting that a large part of the military that created human rights violations have formed international criminal gangs⁴⁹⁹. This is a particularly interesting after-effect of the war. Members of the army that committed the genocide started to take part in drug trafficking as well⁵⁰⁰. This could be analyzed from a few different aspects, but ultimately is due to the inability to reintegrate a large portion of the

⁴⁹⁹ Juan Fernando Gutiérrez, GUATEMALA PROFILE INSIGHT CRIME (2021), <https://insightcrime.org/guatemala-organized-crime-news/guatemala/> (last visited Mar 29, 2023).

⁵⁰⁰ Ibid

population back into society. This ultimately goes back to the amnesty bill of Guatemala. While the typical perpetrators of the crime were forgiven with no accountability for their actions, were free with no further up action or reintegration plan. With trauma and an overall abandonment by the government, they did not have the resources to survive on their own.

The criminal group violence that has replaced internal conflict has also massively affected Guatemala. Organized violence is high in Guatemala⁵⁰¹, and multiple routes exist to analyze this. One of the ways to look at organized crime in violence is due to its post-conflict setting, and the other was the change in the power of cartels that shifted from Colombia to Mexico. Guatemala, located on the border with Mexico is used as a strategic point for narco trafficking⁵⁰². I argue that during this time, the failure to reintegrate the armed forces into society without giving proper government resources led to a large group of people unaware of how to survive in a post-war society. Due to this, people used the skills they learned in war, to make money and survive drug trafficking and criminal activity.

The lack of integration of its armed groups led to a new type of violence that still affects the country. Many of the citizens were affected by the violence during the civil war and are now affected by cartels and criminal violence. Violence can no longer be classified as genocide or attack against indigenous peoples by the government, however, violence today is still an undeniable secondary effect of the civil war and is affecting its population. Part of the impunity that still exists today is impunity for violent crimes. A

⁵⁰¹ The global organized crime index, GLOBAL INITIATIVE (2023), <https://globalinitiative.net/analysis/ocindex-2021/> (last visited Mar 29, 2023).

⁵⁰² Ibid

very small portion of murders end up in a court of law, and even fewer in a prosecution. In 2006, 93% of murderers went unsolved⁵⁰³.

Mr. Polanco also stated that the government had created institutions to help survivors of violence during an active period. The negation of past cases also negates the ability of the state to reconcile for certain wrongdoings. This is, of course, with the exclusion of the reparations program. The negation of past cases closes off governmental resources that are needed in order to properly reconcile. This is especially true with survivors of gender-based violence. The women of Sepur Zarco would not be able to qualify for any governmental assistance or reconciliation if it was not for a court hearing on crimes against humanity.

Since the CEH mentioned and recorded a large amount of gender-based violence, a governmental program to address this could be helpful. Not only would it be beneficial, but it should also be seen as crucial for peacebuilding in a post-war country. Sexual based crimes were recorded in an organized manner, demonstrating a policy of war in the government's attempt to destroy Mayan culture. As one of the most severe crimes against humanity, this needs to be addressed. Using sexually based crimes as a form of war is a serious violation that robs the right to life, body autonomy, and women's rights, and is a form of sexism that causes trauma using human beings as weapons of war.

⁵⁰³ Renard Sexton, ANALYSIS | HOW GUATEMALA ACHIEVED WHAT WAS ONCE THOUGHT IMPOSSIBLE: MAJOR REDUCTIONS IN HOMICIDES. THE WASHINGTON POST (2021), <https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/13/central-americans-are-fleeing-violence-guatemalas-judicial-reform-model-could-help/> (last visited Mar 29, 2023).

6.1.4 Constitution

A constitution needs to support a country, give its population undeniable rights, and dictate how government works. Guatemala has struggled to have its systems work together that respect all three of these categories. Guatemala has not had the opportunity to have social, political, or economic stability due to leaders not adhering to constitutional laws and rights or directly going against reforms. This has resulted in a history where instability and core issues have remained. Furthermore, the constitution explicitly states certain protections for indigenous peoples which have not been respected.

Article 67

Protection of the Indigenous Agricultural Lands and Cooperatives The lands of the cooperatives, [the] indigenous communities or any other forms of communal or collective possession of agrarian ownership, as well as the family patrimony and the people's housing, will enjoy special protection of the State, [and] of preferential credit and technical assistance, which may guarantee their possession and development, in order to assure an improved quality of life to all of the inhabitants. The indigenous communities and others that hold lands that historically belong to them and which they have traditionally administered in special form, will maintain that system.

Article 68

Lands for Indigenous Communities Through special programs and adequate legislation, the State will provide state lands to the indigenous communities who may need them for their development (Constitution of Guatemala (1993)⁵⁰⁴.

Specifically relating to peacebuilding, these relevant articles should protect indigenous land and allow the state to provide ground to indigenous peoples. Lands are currently given and protected through CONTIERRA and FONTIERRA, which does little to protect indigenous lands. Furthermore, the idea of collective ownership within Guatemala has met massive resistance in the country by its elite. While two more

⁵⁰⁴ GUATEMALA'S CONSTITUTION OF 1985 WITH AMENDMENTS THROUGH 1993 (1993).

articles relating to indigenous protections, the provisions are small. The two other conditions related to freedom from discrimination and economic wages being fair⁵⁰⁵.

It is important to note that less than 2% of Guatemala's population owns over 70% of the land⁵⁰⁶. While official data put the indigenous people at about 40% of the population, it is generally recognized that the population sits at over 60%⁵⁰⁷. Most Guatemalans are not landowners, and the number is even smaller when looking at numbers in the indigenous departments. With 70% of the indigenous population in poverty⁵⁰⁸, little has been done to implement these protections guaranteed.

Another topic that is listed in the constitution is the right to language, which is reinforced by the municipal code's right to bilingual education⁵⁰⁹. With bilingual education as a right of the people, instruction has only been given in Spanish⁵¹⁰. Hiring only Ladinos, educators and political figures have considered teaching in Mayan dialects a "waste of time and impractical"⁵¹¹. This major violation of law and the right to education might explain the high educational dropout rate in the Mayan departments,

⁵⁰⁵ Ibid

⁵⁰⁶ Nancy Kandutsch, U.S. PAYING FOR PAST DECISIONS IN GUATEMALA THE ELLSWORTH AMERICAN (2019), https://www.ellsworthamerican.com/opinion/commentary/u-s-paying-for-past-decisions-in-guatemala/article_620677ca-7550-5419-96db-b6d269037bf5.html (last visited Mar 25, 2023).

⁵⁰⁷ Guatemala - World Directory of Minorities & Indigenous Peoples, MINORITY RIGHTS GROUP (2021), <https://minorityrights.org/country/guatemala/> (last visited Mar 25, 2023).

⁵⁰⁸ In Guatemala, indigenous is ingenious when it comes to climate change: World food programme, UN World Food Programme, <https://www.wfp.org/stories/guatemala-indigenous-ingenious-when-it-comes-climate-change#:~:text=With%20poverty%20averaging%20at%2079,access%20to%20technology%20and%20resources.> (last visited Mar 25, 2023).

⁵⁰⁹ Reclaiming heritage: Bilingual education in Guatemala, CULTURAL SURVIVAL, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/reclaiming-heritage-bilingual-education-guatemala> (last visited Mar 25, 2023).

⁵¹⁰ Ibid

⁵¹¹ Ibid

where over 97% of the population are Mayan speakers⁵¹². This method can be argued to continue discrimination of pre-war times and colonization. This discrimination leads to an attempted erasure of culture, language, and ethnicity.

The protections of the constitution have done little to protect indigenous peoples. The systems built to give indigenous people land have not been sufficient and the protections guaranteed have not been given. It was not until 2021 that discriminatory law meant to prohibit indigenous peoples from gaining access to create radio transmissions was declared illegal by the Inter-American court of human rights.

In general, a constitution is made to guarantee certain rights and freedoms. The constitution that has been revised, withstood an attempted dictatorship with President Serrano attempting to suspend all rights. This type of strength was a positive mechanism that should also be reflected in other protections guaranteed to its citizens. If the same systems that were used to stop an attempted dictatorship were used to protect the rights of its citizens, it would create an environment for stability and accountability. With freedoms, land rights, and cultural protection and human rights taking an important role in the post war development process, constitutional freedom should be guaranteed in practice and not just paper.

6.1.5 *Moving Forward*

There are quite a few indicators that a country needs to pass to obtain a stable democracy that reconciles with its past. Within the Guatemalan context, there are lessons learned that could be used to enhance reconciliation and post-war

⁵¹² Ibid

reconstruction. A few examples of how to correctly reconcile would be to confront the past, its effects on the present, improve the balance of powers, create land reform, and eradicate impunity coupled with corruption. These changes would need to be systematic and internal reform of the systems that cannot be replaced. These massive systematic changes are required to reconcile.

While some argue that the past must be forgotten to move forward, I argue that this will not cause reconciliation. With large groups within the Guatemalan government actively still denying genocide occurred, one can say that the past has not been dealt with. Forgetting the past in order to move forward does not solve the active vulnerabilities and post-effects of war that the indigenous people have been struggling with in Guatemala. Even with the brief period it was written, the CEH, considered one of the best-written truth commissions, is denied by the military and Guatemalan elite⁵¹³.

If the governmental officials deny that over 97% of the war crimes committed were by the military to protect wealthy landowners, there is no need to reconcile for it. This tactic needs to be stopped as soon as possible. Not only is the rewriting of history harmful, but it is being used in a way that is creating the same conditions that started the war. Furthermore, if Guatemala wants a country where its population be included, it must recognize its history. If history is recognized, the government must take responsibility for further action to build peace and reconciliation. The Guatemalan CEH accurately recorded many violations in the war; the war's history should be used to reconcile its population.

⁵¹³ Rebecca Clouser, *Development and denial: Guatemalan post-genocide development narratives*, 117 GEOFORUM 93–102 (2020).

Progress could advance by a revision of the peace accords. The peace accords include a vital look into the root causes of war that are still unresolved. Land reform is the biggest unaddressed issue that has been similar in pre-war and post-war times. There is a highly unbalanced number of landowners in Guatemala. Even though the government once agreed on the necessity for land reform for the indigenous people, it has not implemented any fair or meaningful reform. FONTIERRA and CONTIERRA have benefited some people, but it has also been used to uphold a norm of oppression that has existed in Guatemala for decades. The policy/pattern of having indigenous people buy the land they claim in a legal battle against large landowners needs to stop. If the indigenous population has a valid enough claim to the land, the courts must properly evaluate who owns which land, and not facilitate payments to the Guatemalan elite and government in return for the land that they claimed.

If credit is given to the indigenous person to have the small land, the credit should be reasonable and affordable. There is no reason indigenous and lower economic applicants should go bankrupt on a government subsidy that was meant to reconcile the population. These systems need to be able to work for the people that they are claiming to serve. If the government cannot give lands without credit, it needs to set reasonable expectation and interest rate for its population that does not have generational wealth or education on finance management. A revision of interest rates and collection of the debt will need reform if the government does not want to reform agencies and make new programs.

The peace agreements discuss an undeveloped land tax⁵¹⁴ to motivate people to use their property. This tax was never implemented due to large battles and a lack of political will to tax the rich landowners in Guatemala. It is not certain that if the government implemented this tax, landowners would be motivated to develop/sell their land. While this would incentivize people not to buy more land than they need, it would bring a legal question on what defines “undeveloped” and “unused”. After defining undeveloped and unused land, it is also important to note how much land needs to be unused/undeveloped for the tax to be implemented. Furthermore, it brings into question how the government will enforce this. Land inspections of an entire country might not be a good use of resources.

Even with all the complications a said tax would bring, an alternative must be implemented. Guatemala remains one of the world’s most unequal countries when it comes to ownership of land. Meaningful reform should be made on land, and while this will be a difficult task, but it is necessary for the economic well-being of the country and to fulfill its requirements by the peace accords. Still today, many landowners have undeveloped land. The government should have consultations on how to distribute this land in a democratic, legal, and restorative way.

Adding on about the CEH, the report recorded many different events of the war. The law of reconciliation did not give amnesty for torture, genocide, or forced disappearances⁵¹⁵. This needs to remain the case. The suggestion to give a blanket amnesty to everyone who ever fought in the war is not acceptable. With such many

⁵¹⁴ GUATEMALA & URNG, AGREEMENT ON SOCIAL AND ECONOMIC ASPECTS OF THE AGRARIAN SITUATION, UNITED NATIONS (1996).

⁵¹⁵ Margaret Popkin, *GUATEMALA'S NATIONAL RECONCILIATION LAW: COMBATING IMPUNITY OR CONTINUING IT?*, CORTE INTERAMERICANA DE DERRECHOS HUMANOS (1997).

Guatemalan citizens still unaware of the location or manner of which their loved ones disappeared, investigations will still need to be permitted. Investigations into severe crimes against humanity are how the site of Sepur Zarco were exhumated. Without the push of prosecution for crimes against humanity, the government would probably not have uncovered the site today.

Giving a blanket amnesty would deny many cases like this to seek justice. Even though time has passed since the war, the need for justice is crucial for the future of Guatemala. People are still alive today who are victims of the most extreme crimes due to armed conflict. With a scored earth policy being instated, especially in the 1980s, people lost generational wealth, their livelihoods, entire communities, and all their loved ones. The work on exhumation cannot be only dependent on NGOs/INGOs. The government, as a form of reconciliation, will need to take part in this process to show credibility to its citizens.

The government could start by implementing the commission for the disappeared. Mario Polanco stated that the needs in the provision written 20 years ago must be edited. The government could make revisions that would be meaningful, consulting indigenous NGOs and including indigenous leaders (As per ILO 169 requires) on the needs of the current search. Seeking the murdered and disappeared that happened as a result of the war should be an obligation of the state. Currently, the entire responsibility of seeking the disappeared falls under local organizations that might not have the funding needed to do a massive project seeking clandestine gravesites and investigations. NGOs also do not have the access to government documentation that state agencies do.

If the government does not want to make those revisions to look for the missing persons from the war, it can fund NGOs that are already doing so. Mario Polanco and his organization (GAM) is a prime example that could be funding to search for missing and murdered people. Using Mario's words, he is only currently investigating high-case profiles. Hundreds if not thousands of archives and records of people went missing during the war. Extra funding to organizations that exist, or grants to organizations that would like to undertake this work, could be implemented. There are still hundreds of thousands of people seeking answers that they do not have. While the CEH was a great document for general information, but it misses the names and history of their missing community members, family, and friends. Without the full truth, or even a large attempt to release information on individuals, community members will probably not feel reconciled.

While not accepting the actions of offenders during the war, restorative justice will also need to be made for the offenders. There was no reintegration of government soldiers after the war. Many people affected by trauma and lack of opportunities after turned to criminal groups and a new form of violence. Restorative justice lets us know that violence is cyclical⁵¹⁶. Realizing that not all former soldiers will go to prison and that the reconciliation law gave amnesty to many offenders, reintegration will need to be made.

Reintegration does not just need to be vocational training and therapy either. Many years have passed since the war, and most ex-soldiers are reaching older years in

⁵¹⁶ JUDAH OUDSHOORN, LORRAINE STUTZMAN AMSTUTZ & MICHELLE JACKETT, RESTORATIVE JUSTICE FOR SEXUAL ABUSE: HOPE THROUGH TRAUMA / JUDAH OUDSHOORN ; WITH LORRAINE STUTZMAN AMSTUTZ, MICHELLE JACKETT TRANSLATED BY HAE HEE KIM, HYUN JI CHO (2016).

their life. However, there were a considerable number of soldiers that were forced into the army⁵¹⁷. Re-compensations for forced labor could be made with subsidies for living, therapeutic services, and retirement could be made. Other subsidies could be made for the children of soldiers that passed away during the war, but especially for the children of soldiers that were forced to fight. Restorative justice can also deal with areas that are currently heavily affected by current crime and drug trafficking.

Restorative justice does not only need to be for the offenders either. Survivors of war and crimes against humanity are crucial for the existence of peace and reconciliation. Subsidies to mental health facilities for survivors of war-destroyed villages and refugees are crucial. While a reparations agency pays survivors and victims of the war, according to Mr. Polanco, it has not been the most effective due to corruption and other mismanagement of services. The war made a difference not just to the direct survivors of violence but also to the indirect survivors of violence. Generational wealth does make a big difference, and reparations could be given to entire sectors instead of to people who self-report as victims of the war.

An emphasis on development should be made on the sectors most affected by the war. According to Mario Polanco, sending products from Guatemala City to Miami is cheaper and faster than Guatemala City and some parts of Guatemala. This overall leads to a lack of incentive to ship, trade products, and provide services to different parts of Guatemala. The economy is blocked due to this systemic form of violence. Enhancements to infrastructure are heavily needed to fully integrate the citizens of

⁵¹⁷ Country report and updates: Guatemala, WAR RESISTERS' INTERNATIONAL (1998), https://wri-irg.org/en/programmes/world_survey/country_report/en/Guatemala (last visited Mar 29, 2023).

Guatemala. The development would not only improve the economic life of the average Guatemalan, but it would also improve the social, legal, and governmental sphere.

One of the most essential details that are needed to ensure reconciliation and post-war reconstruction is the complete elimination of corruption and impunity with working systems and respect for democracy. If the constitution and constitutional court have laws and jurisdiction, this jurisdiction always needs to be respected. Too often in the history of the country, the rule of law and respect for laws has been ignored with little to no consequences. Institutions must be able to function for the population they are working for. This can be achieved with a more robust system of checks and balances.

Guatemala has shown itself to have a system where checks and balances can work, but it needs to be strengthened. Guatemala was able to take Jorge Elias Serrano out of power when he tried eliminating many government members to stay in power⁵¹⁸. This was an excellent show of democratic behavior that should be used as an example for other purposes. For example, a president was able to stop investigations of corruption by eliminating the CICIG⁵¹⁹. This was a direct violation contrary to the commission's very reason in the first place. Even declared illegal by the constitutional court⁵²⁰, the ruling was ignored, and another replaced the organization.

Impunity has not only been applied to politicians but to personal crimes as well. Guatemala has had a very low prosecution rate for murderers and other forms of

⁵¹⁸ RODDY BRET & ANTONIO DELGADO, IDEA: THE ROLE OF CONSTITUTION-BUILDING PROCESSES IN DEMOCRATIZATION - CASE STUDY GUATEMALA (2005).

⁵¹⁹ Fact sheet: The CICIG's legacy in fighting corruption in Guatemala, WOLA (2019), <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/> (last visited Mar 18, 2023).

⁵²⁰ Ibid

violence within the country. According to a 2013 report, 98 percent of crimes do not lead to prosecutions⁵²¹. While these numbers have changed, this large amount of impunity could be changed to enhance personal security. Guatemalan citizens will need to feel a sense of security and protection from their government to have a sense of reconciliation. A government that committed over 95% of human rights violations during the war that does not provide security after its peace accords, is not successful peacebuilding.

According to a 2021 study of opinions in Guatemala, only 37% of Guatemalans trusted judges⁵²². This number is not too different in the trust of thorough investigations, where 38% of Guatemalans believe that police are competent in investigations⁵²³. These numbers are even more dramatic when considering that almost 20% of respondents reported being victims of a crime in the past year, while almost 50% of respondents reported not having reported the crime⁵²⁴. Guatemala making a large effort to improve the ability to investigate and prosecute would enhance personal and community security. With safety and security being a large concern within the country, the state would need to positively impact these numbers to complete and work on the reconciliation and post-war reconstruction process.

⁵²¹ World Report 2013: Rights trends in World Report 2013: Guatemala, HUMAN RIGHTS WATCH (2023), <https://www.hrw.org/world-report/2013/country-chapters/guatemala#:~:text=According%20to%20official%20figures%2C%2098%20percent%20of%20crimes,all%20contribute%20to%20this%20alarmingly%20low%20prosecution%20rate.> (last visited Mar 27, 2023).

⁵²² The Rule of Law in Guatemala, WORLD JUSTICE PROJECT (2021), https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf (last visited Mar 30, 2023).

⁵²³ Ibid

⁵²⁴ Ibid

Part of this process could be mitigated by bringing back the CICIG. This is because the government lacks many accountability mechanisms to eliminate corruption and impunity of government officials. Both types of corruption affect these numbers. If the government made a strong effort to combat high-level and petty-level corruption, systems would work for its nationals. Accountability and system building are essential to the survival of the democratic state of Guatemala.

The government of Guatemala has two massive reports and peace agreements to rely on that outline the systemic challenges that need to be tackled. The CEH and peace accords as core documents with the supporting REMHI report should be used in a full and complete manner. While there have been many efforts to use these reports to improve development, the rule of law, and peacebuilding, the government has also not fully implemented the recommendations and requirements that it is obligated to complete. This, in general, has led to a lack of development, security, and reconciliation.

It is not too late for the government to use these documents for peacebuilding. The government has many legal documents that it can use to implement these recommendations and policies. After the report of the CEH claimed genocide, the president of Guatemala stated that no further action needed to be done nor responsibility to take⁵²⁵. The government also decided not to create a follow-up organization/mechanism to observe the implementation of the CEH⁵²⁶. The

⁵²⁵ Christian Tomuschat, *Clarification commission in Guatemala*, 23 HUMAN RIGHTS QUARTERLY 233–258 (2001).

⁵²⁶ Ibid

government's initiative to ignore the reports of the UN-backed truth commission led to multiple consequences and an overall lack of a reconciliation process.

A truth commission like the CEH can be a great tool in the process of reconciliation, but it comes with its faults. A truth commission can expose great crimes that the public might not have been aware of and can also give answers to the questions millions of citizens in a concerned country are looking for. A truth commission can add to reconciliation but is not the end-all solution to reconciliation and peacebuilding. If a truth commission is established, it should be tied with a legal obligation to have a follow-up mechanism for the recommendations. This is to ensure that governments make use of the information provided. A truth commission should also have some jurisdiction to prosecute. If it does not have direct prosecution capabilities, a truth commission could benefit from a referral mechanism to the prosecutor's office if it does not have direct prosecution capabilities.

Having a detailed report on grave human rights violations is useful when clarifying historical events; however, having no follow-up mechanisms makes reconciliation difficult. Government officials, in general, should take responsibility for the crimes of the past. This is not only to ensure the rule of law survives but that its citizens know that they can trust the government in the future. The actual report should not be where responsibility stops. Peace agreements should also have an independent body or verification organization, such as the UN observe to ensure that agreements are implemented. If founded on fixing deeply rooted systemic issues, peace agreements need to be fully implemented to sustain peace, economic & social development, and ensure human rights for its citizens.

Peacebuilding and reconciliation also need to be a holistic approach that affects all branches of society and government. Peacebuilding without active participation from the governmental branches, civil society, public figures, the international community, development initiatives, and other parts of society will not achieve total peace⁵²⁷. Without all members attempting to reconcile and build peace, there will be resistance. Resistance to peace will only lead to a lack of trust and resentment between groups. Furthermore, if there is no mandated responsibility to the different branches of society, there will also be a lack of motives to complete and initiate peacebuilding.

International law and conventions are great tools that can be used in this process. Countries can take protocols from international conventions on human rights and war crimes and implement them as a policy. This policy should be permanent and not have the ability to change between different political parties by signing a Decree or by a Congress/Parliament. This is to ensure that human rights are taught before the conflict begins. Laws in the national sphere should be clear and connect to international law. Without a clear connection drawn between international laws signed by the government, and national law, there will be officials downplaying the validity of international law. This was seen in General Rios Montt's court proceedings.

International law also seeks to improve conditions for the general population of a given country. A good example of international law that seeks human rights is the less-talked-about International Labour Organization. ILO works to improve the lives and labor conditions of people across the planet. They do this by having countries agree

⁵²⁷ LISA SCHIRCH, *THE LITTLE BOOK OF STRATEGIC PEACEBUILDING* (2004).

to improve their citizens' working conditions/policies and have a monitoring mechanism⁵²⁸. Guatemala, for example, could work with the ILO and other international organizations to help improve their economic systems and labor standard development.

The idea of development is directly tied to peace and reconciliation. Oftentimes, it is the group that suffers the most violations that also is less economically developed. This is also true in Guatemala's case. Since one of the biggest reasons for conflict was a drive for land reform and more economic opportunities for the average Guatemalan, the solution to this would be sustainable development. The indigenous areas of Guatemala would benefit massively from more development opportunities. With such a high rate of indigenous poverty within Guatemala, one can say that the focus in post-war Guatemala was still put on Ladino's wealth⁵²⁹. This has overall led to an unchanged population in the post-war era.

Civil society groups and international organizations should also work together on peacebuilding and reconciliation. International organizations have institutional knowledge and historical experience on peace-building projects abroad, however, they need to be able to work *with* civil society groups and *not above* civil society groups. The way most international development organization work is by granting funding via grants or in-kind grants based on its own internal indicators⁵³⁰. These indicators are written at

⁵²⁸ HOW THE ILO WORKS INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang--en/index.htm> (last visited Mar 29, 2023)

⁵²⁹ In Guatemala, indigenous is ingenious when it comes to climate change: World food programme, UN WORLD FOOD PROGRAMME, [https://www.wfp.org/stories/guatemala-indigenous-ingenious-when-it-comes-climate-change#:~:text=With%20poverty%20averaging%20at%2079,access%20to%20technology%20and%20resources.\(last%20visited%20Mar%2029,%202023\).](https://www.wfp.org/stories/guatemala-indigenous-ingenious-when-it-comes-climate-change#:~:text=With%20poverty%20averaging%20at%2079,access%20to%20technology%20and%20resources.(last%20visited%20Mar%2029,%202023).)

⁵³⁰ Guide to international development bidding - ideacanada.ca, TEAM CANADA INC, http://ideacanada.ca/news/documents/IDPB_Guide.pdf (last visited Mar 30, 2023).

different times depending on where funding comes from. If funding is completely reliant on an outside source, indicators are usually written during the capture and application to funding phase - without sufficiently consulting and working with local groups. This, in fact, also required local groups to adhere to indicators or certain objectives in order to receive funding. This top-to-bottom mechanism is not the most productive.

International organizations are starting to shift towards localization, which means working on more capacity building for local organizations that have the on the ground knowledge and experience⁵³¹. This is necessary when it comes to peacebuilding and reconciliation. A local will have lived experience, collective memories, and an internal perspective on both groups to the conflict. Local groups also have usually worked within the country for a long time and know how to work within the country's systems, while an international development organization usually has projected only for a few years. Localization takes out a large part of learning about the context and lets the locals do the work that will make an actual lasting impact.

Peacebuilding and reconciliation need to be a full effort from many different aspects and members of society. Peacebuilding should not just be for the rich, urban population living in capital cities. Peacebuilding needs to be an effort from all parts of society. The group that caused the harm needs to acknowledge that the wrong took place and make systematic changes to ensure that it does not happen again.

⁵³¹ Danielle Gibbie, LOCALIZATION IN INTERNATIONAL DEVELOPMENT: A GLOBAL TEAM WITH LOCAL IMPACT OPERATION EYESIGHT (2023), <https://operationeyesight.com/blog/2021/02/localization-in-international-development-a-global-team-with-local-impact/#:~:text=What%20does%20localization%20mean%3F,toward%20local%20and%20national%20actors>. (last visited Mar 29, 2023).

Furthermore, the group that caused the harm should offer a type of reparation, symbolic and material. The group that caused the harm should also place mechanisms to ensure the policies are working and moving in progress.

Systems that need to work to ensure that a government can reconcile are working democratic systems free of corruption or impunity. Systems should work towards justice and hold perpetrators of crime responsible for their actions, regardless of who committed the crimes. Even ex-presidents need to be held accountable for crimes against humanity committed. Part of knowing how to prosecute is also knowing the truth, a commission helps clear up facts that can be used as reconciliation.

Systems should work with the international and local communities to ensure that peacebuilding and reconciliation are completed concerning human rights in their policies. Organizations have much institutional knowledge and experience that governments might not have. Governments reconciling can grant NGOs or INGOs to ensure that exhumations or other services that a government might not be experienced in can be completed. Governments should also sign into law all aspects of the international conventions they signed. This ensures that the utmost respect for human rights is in place.

Governments also need to ensure that economic development and other reforms are in place to create equity. Keeping in mind that equity as a fair system is strongly tied to the idea of reconciliation and human rights, governments need to ensure the equity of their citizens. Having services be equitable ensures inclusion with systems that a large part of the population might not have been included in before. This inclusion on any basis or grounds, such as financial, ethnic, political, or locational, will add to

peacebuilding. Different equitable acts such as scholarships, grants, social services for departments, or other factors that help populations develop will add to reconciliation.

Furthermore, development should not just be economical, it should also be social. Governments need to focus on social development as a form of reconciliation. In the Guatemalan context, the Mayan indigenous groups were discriminated against in the heaviest methods. These actions, deeply rooted in colonial ways of thinking, need to be addressed. Colonization is the erasure of culture and land for another's benefit.

Governments can add to the social wealth of their inhabitants by funding social developments such as music, traditional dance, healthcare, language development and protection, art, and community centers/civil society organizations of indigenous groups.

First is always first, and reconciliation starts with truth and acknowledgment. Truth needs to be followed with recommendations for reform, legal changes, and governmental declarations with mechanisms to revise implementation. These changes need to be tactile, visual, realistic, and enforceable. Legal systems and government will need to ensure there are no corruption cases and irradicate corruption in its tracks when it is found. Ensuring justice comes with ensuring that impunity does curb justice being served. Working with survivors of violence and setting up systems meant to support victims and integration after the war is key. International and civil society groups need to be invited to work together with the government to ensure peace and reconciliation are being worked on effectively. All these things tied with economic and social development are key to a country being able to successfully reconcile past crimes.

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