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Realities of a just future for the Mayan community in the Guatemalan State: the implications of historically discriminatory rule of law and the possibility for a pluri-ethnic nation through transitional justice and customary law reformation

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Realities of a Just Future for the Mayan Community in the Guatemalan State: the implications of a historically discriminatory rule of law and the possibility for a pluri-ethnic nation through transitional justice and customary law reformation

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By
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**Table of Contents**

Acknowledgements ........................................ iii

Introduction .............................................. iv

1 Review of International Indigenous Rights .......... 1

2 History of Mayas in Guatemala ....................... 15

3 Review of Indigenous Organizations: Mayanism and the Popular Movement .......... 31

4 Mayan Coalitions in the Peace Process and Ratification of ILO Convention 169 .......... 41

5 Transitional Justice and the Truth Commission (CEH) ........ 50

6 Customary Law and Judicial Reform ................. 59

Conclusion ............................................... 74

Bibliography ............................................ 77
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Introduction

For the past 500 years Mayans in Guatemala have lived on the margins of society. Oppressed since the Spanish colonization, the Mayan has been victim to discriminatory treatment and forced integration. Guatemala is composed of two groups of people who are linguistically, culturally, and historically distinct: the pueblo Maya who make up approximately 60 percent and the Pueblo Ladino or 'hispanicized indians' making up the other approximately 39 percent (the Pueblo Garifuna and the Pueblo Xinka make up the other 1 percent).¹ Over the latter half of the twentieth century, the Guatemalan state slaughtered more than two hundred thousand of its Mayans due in part to this discriminatory legacy. Yet even in the wake of this violence and discrimination, Mayans in post-conflict Guatemala are challenging the legacy of oppression and demanding a place in society.

The purpose of this thesis is two-fold. First its intention will be to understand the impact of the discriminatory and oppressive institutions of Guatemala on the lives and communities of the Mayan population. Almost all of the Mayan 'issues' in Guatemala that exist today have its origins in a conflict that existed decades ago. By reviewing the past and more specifically the historically discriminatory rule of law can one begin to critically look at the contemporary reforms, such as the 1996 Peace Accords, that

stipulate building Guatemala into a pluri-cultural society. This will then lead to the second purpose: assessing the possibility of achieving a multi-ethnic state through securing justice for the Mayan population. This will be done first through critically looking at whether transitional justice was achieved for the Mayan population through Guatemala's truth commission and then on the incorporation of Mayan customary law into the design of the state to achieve a legitimate rule of law through justice in their own terms.

This thesis developed from an interest in indigenous movements throughout Latin America. Indigenous people have mobilized in the past two decades as a powerful voice that demands to be listened to. Multiple public events in Latin America that received global attention, including the Chiapas uprising in Mexico protesting the signing of the NAFTA agreement, have caught my attention in its grassroots organization and the message of their cause. While researching Mayan activism in Southern Mexico I came upon the history of the Mayans in Guatemala. What was most intriguing about Guatemala was that a majority of the population identifies themselves as indigenous yet no substantial legislation with enforcement policies has been created to protect their rights. Also, the extreme aggressive and racist natures of the violations that occurred during Guatemala's 30-year civil war make their demands for justice one that cannot be ignored. It seems necessary to explore further the possibilities for the Mayan in Guatemala to have control over their own communities and live a dignified way of life. The research in this thesis will help further inform people of a conflict that affects us as global citizens and also create a base of knowledge about these multi-faceted issues that can be explored more thoroughly in future research.
The first chapter will provide a review of the evolution of indigenous rights and movements throughout the world, focusing on the specific conflicts and demands that define each decade and legislation that has resulted. In the second chapter I will provide historical background on Guatemala's discriminatory and exclusive rule on the Mayan population. This will allow for a better understanding of their struggles and origins of many of the demands that make up current activism. The third chapter describes the evolution of Mayan activism and many of the key organizations and people that are at the forefront of the movement today. The fourth chapter focuses on the two documents that have re-defined Guatemala as a multi-lingual, multi-cultural, and pluri-ethnic nation: The Accord on Indigenous Identity found in the Peace Accords and the International Labor Organization's Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries. The negotiations between Mayan organizations and the Guatemalan elites and the conflicts faced will be described as well as what each document stipulated in terms of achieving a multi-cultural Guatemala. The fifth and sixth chapters will focus on two initiatives that deal with issues of justice to achieve a legitimate rule of law for the Mayan population. Chapter five explains the truth commission that was implemented after the Accords and its ability of achieving 'transitional' justice for the Mayans affected by the violence of the Civil War. The sixth chapter will look at in detail the potential for a return to a legitimate rule of law for the Mayan communities through implementing customary law. Here the information emphasized in the previous chapters will come together in a historical approach to analyzing customary law and its possibility of constructing a more inclusive and participatory rule of law if implemented into the national constitution. The conclusion
will describe the consequences that a lack of legitimate rule has had on Mayan communities today as well as potential topics for continued research to be explored in understanding more comprehensively the use of customary law in Guatemala in achieving a more just future for the Mayans.
Chapter One
Review of International Indigenous Rights

The quest of indigenous peoples to gain leverage and recognition as a collective non-state entity has led them through centuries of struggles in order to assert claims to recognize their self-determination. In order to understand how the status of these Peoples’ rights has changed over the past centuries it is necessary to acknowledge the factors and strategies used that influenced their ability to obtain these rights. By reviewing successes and failures within the nation-state of specific indigenous groups and in the international community the basic issues that still arise today in the pursuit for recognition of their self-determination can be understood.

Indigenous groups began their struggle to retain their rights in response to colonial powers attempts to destroy their cultures and take control of their land. During this time indigenous groups were mostly unsuccessful due to the small populations of people attempting to ward off powerful nations that were many times their size and firepower. The 17th, 18th, and 19th centuries saw the first attempts at formal legislation between the indigenous people and the newly formed ‘nations’ on their lands through
treaties in North America, Australia, and New Zealand.\footnote{Franke Wilmer, \textit{The Indigenous Voice in World Politics} (Newbury Park: California, 1993), 4.} “Treaty-making with indigenous people began, in the first decades of contact, as accords between nations, designed largely to prevent conflict and to solidify alliances.”\footnote{Ibid.} However, over the decades, treaties took on a new role, that of clearing the way for settlements and development and of formalizing the subordination of tribal peoples to the will of the colonial powers or nation-states.\footnote{Ibid.}

Once signed these treaties were typically not honored or implemented. National governments generally felt free to abrogate the terms of the treaty if a broader national or non-indigenous purpose had arisen.\footnote{Ibid.} In the Canadian west, indigenous leaders struggled to get the Canadian government to even acknowledge the existence of promises clearly made during the treaty negotiations.\footnote{Ken S. Coates, \textit{A Global History of Indigenous Peoples: Struggle and Survival} (New York: Palgrave MacMillan, 2004) 178.} The American government also confiscated treaty lands that were granted to Indian nations in an act of Congress in 1870.\footnote{Ibid.} What followed these injustices were relatively short periods of all-out violence by indigenous nations affected by the intrusion of colonial powers and the imposition of these outsiders in their affairs.\footnote{Wilmer, \textit{The Indigenous Voice in World Politics}, 14} These violent conflicts did not have a lasting impact on preventing the national governments from having free range of the land and exploiting the indigenous peoples due the immense numbers and power of the colonizing state. Unaware of the similar struggles being experienced by indigenous communities within miles of their own,
indigenous groups were a very small base unable to fight back successfully during this time.

With the creation of the League of Nations in 1919, indigenous groups hoped to find support for the protection of their rights in an international forum. Several Maori as well as North American Indian leaders appealed to the League in order to obtain recognition of their treaty rights. While the League of Nations did listen to their requests they still placed the ‘protection’ of their rights under the sovereignty of the nation-state. Their complaints were rejected on the grounds that such problems fell within the scope of the domestic jurisdiction of the national governments involved.\(^8\) The failures experienced by petitioning their rights to the League of Nations as individual indigenous communities led to the need to organize indigenous groups at an international and regional level who were experiencing the same discrimination and lack of attention to their causes. The first regional indigenous organization occurred in 1940, as result of the cooperative efforts of the reformist U.S. Indian Commissioner John Collier and Mexican Anthropologist Moises Saenz.\(^9\) In Pascuarro, Mexico, forty-seven representatives of twenty different indigenous nations from the United States, Panama, and Mexico signed a treaty among themselves to create the Inter-American Indian Institute.\(^10\) This institution “was authorized to hold quadrennial conferences on Indian life, initiate scientific research, collect and distribute data designed to solve Indian problems, issue publications,

and establish technical commissions. This alliance was the first time that Indigenous groups from multiple nations got together to enhance their ability to influence reform in both national and international arenas. The Inter-American Indian Institute would become the model for one of the most effective methods used by Indigenous peoples’ to increase their ability to obtain rights.

Following WWII, there was a new direction of world order- one that promoted anti-colonialism, the invalidity of conquest, and the articulation of the principle of self-determination applied to formerly colonial peoples. Global preoccupations with self-determination intensified and set the stage in colonial and post-colonial situations for the balance between the nation-state and the individual. The pressing issues that came from this new direction were organized under the supervision of the newly created international organization, the United Nations. Initially, indigenous peoples hoped to benefit from this new organization; however they continued to be excluded from the decolonization efforts. The lack of representation of indigenous groups in the UN at this time prevented their inclusion in The Declaration on Human Rights and The Declaration on the Granting of Independence to Colonial Peoples. With their exclusion, both documents reaffirmed the territorial rather than ethnic character of self-determination in post-World War II decolonization.

11 La Potin 1987, Native American voluntary organizations, 100.
15 Ibid., 6.
Belgium suggested including indigenous peoples in the Americas in the decolonization program by claiming that Indians had already been assimilated into their respective national populations. It is not by accident that from the beginning of international discussion on indigenous rights that indigenous groups remained at the margins of official debates about self-determination. Most member states felt threatened by this new category of several thousand potential claimants wanting ‘autonomy’ from their respective nation. From their perspective they believed indigenous people desired a separate state as opposed to the self-determination over their own economies, politics, and culture. Even with these setbacks indigenous organizations continued to build alliances in order to enhance their ability to assert influence in the United Nations. Two new organizations, the North American Indian Brotherhood and the Nordic Saami Council, formed and sent delegates to the UN to continue to push for recognition of indigenous peoples within the international community.

The first international recognition of indigenous rights and protection occurred in 1957. The UN-affiliated International Labor Organization developed a draft protocol entitled Convention 107 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. This convention concerned the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries. While it did recognize the existence of indigenous people outside of the nation-state, the fundamental aspiration of the document was

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18 Ibid., 7.
integration into the nation-state and not the establishment of tribal autonomy. The creation of this protocol reflects the general liberal mentality towards indigenous people at this time. The nation-state’s role had turned from one of exploitative to that of paternalistic. Although at first this document seemed like a victory for indigenous rights it in fact was a step back for indigenous self-determination.

Ethnic activism in the 1960s and 1970s reached a new height as the efforts of indigenous organizations came together to aggressively articulate their demands for recognition in the international community and within their nations. During these decades indigenous mobilization was at its height, including almost all indigenous groups, not just those in industrialized nations. Countries all around the world were experiencing regional and national indigenous movements. Dozens of organizations sprung up, some moderate in their approach to government and international agencies and others radical enough to attract attention of police and national security services. Having little or no access to other means of influencing political forces that were oppressing them, Indigenous groups typically used nonviolent tactics to get their voice heard by their governments. Direct action and protests focused on immediate issues: access to traditional lands, harvesting rights, national treaty obligations (or the failure to provide such legal protection), housing, schooling, or economic commitments.

19 Coates, A Global History of Indigenous Peoples, 236.
20 Ibid., 237.
21 Ibid., 240.
In the United States the American Indian Movement (AIM), the most articulate and well-organized of the indigenous movement, led the way of this movement by offering blunt assessments of the impact of European colonialism and cultural genocide. Protesters occupied Alcatraz Island and Ft. Washington as well as Bureau of Indian Affairs Office in order to draw attention to treaty guarantees that lands abandoned by the federal government would revert to Indian ownership. “Fish-ins” were staged in support of treaty-protected fishing rights beginning in 1964 and the Mohawk of Akwesasne blocked a U.S.-Canadian bridge to protest duty charges that violated the Jay Treaty. In 1972 American Indians received international attention for the “Trail of Broken Treaties” march on Washington.

In Australia, a 1966 cattle worker’s strike at Wave Hill, Northern Territory, awakened Aboriginal peoples and the country to the frustrations of the Aborigine population and started a new debate about indigenous rights in the country. In New Zealand, the Nga Tamatoa (Young Warriors) fought and won a campaign to include Maori language in education. In the early 1960s, the Inupiat from Northern Alaska protested the arrest of several hunters who shot ducks out of season by challenging the authorities to arrest a larger group of hunters. The government subsequently backed down. Hunger striking Saami in Norway protested a hydroelectric project which drew

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22 Coates, A Global History of Indigenous Peoples, 239.
23 Ibid.
24 Ibid., 142.
25 Ibid., 240-241.
international media attention to the Saami issue of indigenous rights and identity.\textsuperscript{26} These protests provided proof of the potential for political organizing to have their demands heard by their governments and the international community.

For the first time indigenous groups took advantage of the media and nightly television coverage that were attracted to their conflicts, “This, in turn, alerted aboriginal leaders and peoples to the reality of shared experiences and made it possible to mobilize protesters beyond the immediate district. Local groups discovered the power that lay in numbers and careful organization, and were soon able to transform largely invisible local disputes into issues of national concern.\textsuperscript{27} While in some of these instances protesting only brought about temporary solutions, what was most influential and strategic for these movements was its ability to attract international attention and sympathy to the injustices that these indigenous groups were experiencing. This in turn created a network of indigenous leaders that were all demanding for their rights to be respected as well as groups of non-indigenous alliances that were sympathetic to their cause. As we will see these networks have been effective means to aiding indigenous groups to achieving national and international influence.

The indigenous movements of the 1960s created a cooperation among indigenous groups that was sufficiently advanced enough to start contemplating the establishment of international indigenous organizations. A turning point occurred in 1971 when after two decades of indigenous activism, it was unquestionable that indigenous issues represented

\textsuperscript{26} Wilmer, \textit{The Indigenous Voice in World Politics}, 143.
\textsuperscript{27} Coates, \textit{A Global History of Indigenous Peoples}, 241.
more than the domestic politics of member states and thus were rightful provenance of international debate. Shushwap leader George Manual leapt at this revival of interest in Indigenous rights by meeting with indigenous leaders from Australia, New Zealand, and Scandinavia with the support of the National Indian Brotherhood and set in motion the events that would lead to the founding of the World Council of Indigenous People. With the help of non-indigenous alliance groups and the North American Indian Brotherhood George Manuel brought local and regional representatives from Australia, New Zealand, Scandinavia, the Arctic Circle, and North, Central, and South America were brought together in a global indigenous people’s organization. Their authority rested on the ability to mobilize indigenous peoples around the world in support of a specific campaign or protest and on the moral power that came from representing indigenous organizations around the world. Their strategy in raising the profile of indigenous issues was to convince national governments that their actions were being watched worldwide and that they would have to answer to a higher authority if they continued with their oppressive trends.

The WCIP used this method to pressure the ILO to reformulate Convention no. 107. In a 1977 International NGO conference on Discrimination towards Indigenous Populations in the Americas the WCIP publicized complaints against the assimilationist nature of the document and demanded for its reformation. Instead of paternalistically advocating conventional models of economic development, integration, and the

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assimilation of indigenous peoples into national life, the new document supported a paradigm of strengthening indigenous cultural rights, language, schools, and autonomy in development priorities. Indigenous groups in the Americas considered the final product of these deliberations, ILO Convention 169 of 1989, as a breakthrough for their claims of greater autonomy in national affairs.

The WCIP also helped facilitate the Russell Tribunal on the Rights of Indians of the Americas. The tribunal received forty-five complaints from indigenous groups and rendered conclusions and findings on fourteen. These findings were effective in the sense that it brought international attention and justice to many well-publicized cases of exploitation of Indians as well as other lesser known ones. Many of the cases were then recommended to the U.N. Commission on Human Rights, the Inter-American Commission on Human Rights and, in cases concerning exploitation of labor, the ILO.

The WCIP also brought together many U.N. groups to discuss the issue of ethnocide and how they can help aid against it. The U.N. Educational, Scientific, and Cultural council sponsored a conference on Ethnic Development and Ethnocide in Latin America and declared ethnocide an offense against international law.

In 1981, at the last WCIP NGO meeting in Geneva on Indigenous Peoples and the Land, a Working Group on Indigenous Peoples was created to provide input in the UN on

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indigenous issues.\textsuperscript{36} This group had two functions: to review developments regarding the protection of indigenous peoples’ rights and to facilitate the development of international standards pursuant to those rights.\textsuperscript{37} The Working Group successfully influenced the World Bank to issue its first set of guidelines for the consideration of indigenous peoples by presenting numerous appeals and complaints by and on behalf of indigenous peoples in areas affected by World Bank-financed development projects. In response the World Bank changed its objective to evaluate projects with respect to “the recuperation or restoration of tribal groups who have been, or are being or may in the future be, affected by Bank-assisted development projects”\textsuperscript{38}. Many projects have been halted because of these guidelines. It is not binding; however, it is probably one of the most important sources of restraint in compelling national governments toward a greater international accountability for their treatment of indigenous peoples.

The U.N. Working Group on Indigenous Population also tackled developing a working definition of “indigenous” so that political lines could be more clearly delineated and developing a summary of legitimate rights and responsibilities of indigenous peoples within the nation-state. Organizations with UN consultative status, indigenous groups from throughout the world, and observers from member states contributed to these deliberations. The draft declaration, first issued in 1989 and amplified in 1990, has raised international consciousness at the same time as it has met serious opposition from

\textsuperscript{36} \textit{Coates, Global History of Indigenous Peoples}, 155.
\textsuperscript{37} \textit{Ibid.}, 55.
\textsuperscript{38} \textit{Wilmer, The Indigenous Voice in World Politics}, 180-181.
member states.\textsuperscript{39} For indigenous people, this commitment has emerged as the cornerstone of indigenous protest and activism and has exemplified the importance that tribal peoples attach to securing state and international recognition of their unique and specific rights.\textsuperscript{40} Along with many other indigenous groups, Mayas have been involved in the process of articulating these issues at the UN conferences. A variety of organizations and alliances have turned to press for these concerns in Guatemala.\textsuperscript{41} The U.N. declared 1993 the “International Year of the World’s Indigenous Peoples”, although mostly symbolic of the commitment of energy and resources that the indigenous groups had exhibited in drafting the Declaration, it did bring international attention to their causes. This declaration was just signed in September 2007 after more than a decade of debate.

Indigenous movements have urged constitutional reforms to expand their recognition, rights, and autonomy at home.\textsuperscript{42} The ability to have their rights recognized within their respective nation-states is one of upmost importance because the law can actually be enforced when problems arise. In Canada, indigenous groups have successfully participated in constitutional negotiations on aboriginal rights. In New Zealand they have incorporated the Treaty of Waitangi into the national constitution. The Norwegian Parliament amended its 1814 constitution in 1988, declaring it obligatory for

\textsuperscript{40} Coates, \textit{A Global History of Indigenous Peoples}, 257.
\textsuperscript{41} Warren, \textit{Indigenous Movements and their Critics}, 7.
\textsuperscript{42} Ibid.
the state to enable the Saami to preserve and develop according to their own culture, including the use of their own language. 43

As mentioned in the creation of the WCIP, the use of non-indigenous alliance groups can also help in correcting certain injustices. The oldest of these groups is the Anti-Slavery Society. 44 The society’s early concern for exploitation of South American Indians as slave labor was a key factor in bringing pressure to the ILO to draft the convention pertaining to conditions of indigenous person. 45 Three other organizations that have played a major role in recent indigenous developments are the International Work Group on Indigenous Affairs (IWGIA), Survival International (SI) and Cultural Survival. Cultural Survival publishes a quarterly journal, books, and working papers, and funds activist’s organizations controlled by indigenous peoples. Survival International has a more internationally based network and is primarily involved in advocacy. Representatives of SI regularly attend the U.N. Working Group’s meetings. 46 The IWGIA has spearheaded a radical departure from and critique of the forced deculturalization and assimilationist policies once rationalized by scholars.

The past decades have brought renewed attention internationally to the issue of indigenous rights, and to political relations between indigenous peoples and the nation-state. Recent indigenous-rights movements, which have sprung up throughout the Americas from Hawaii and Canada to Chile and Brazil, demonstrate this regenerated

43 Wilmer, The Indigenous Voice in World Politics, 147.
44 Ibid.
45 Ibid., 141.
46 Ibid.
Indigenous groups point to incidents of ethnic violence; make political claims for reforms concerning land, schools, and legal systems in the language of universal rights; and work to “revitalize” and to “modernize” their cultures. Even with the success of international pressure influencing national governments to be just towards the indigenous populations and their land, the security of these territories and safety of the culture remain much in doubt in most countries. This section has surveyed the evolution of indigenous rights in organizing and influencing international and national forums to achieve recognition of their rights. The methods used and the successes and failures that have occurred coincide with the history of the Mayan people in Guatemala in their attempts of reaching their goal of a multi-ethnic nation. As will be seen, they not only benefited by the advances in international indigenous organization, but were also at the forefront of influencing many of these changes.

Chapter Two

History of Mayans in Guatemala

Pre-Columbian Mesoamerica was a heterogeneous region of centralized and decentralized states with fluid boundaries that developed in lowland Peten and Yuchatan and highland Guatemala and Chiapas from the beginning of the first millennium. The rise of decentralized states characterized the highlands in the period just before the Spanish invasion of Guatemala. Pre-Columbian highland societies maintained their own specifically regional character while they shared with lowland societies an ancient transcultural Olmec background and later influence from Toltecs and the Nahuatl. Spanish colonialism in the sixteenth century fragmented the highland states, undermined elite control, and resettled Maya populations into discrete county-like units that became municipios. In response to colonial fragmentation, Maya cultural loyalties and languages became profoundly localized. From this 21 municipios developed each with their own languages and cultures.

Guatemala was also marked by an ethnicized and discriminatory rule of law which has its roots in the colonial period. During the colonial period the legal system was characterized by legal pluralism: the colonial Ley de Indios created one law for

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2 Ibid.
3 Ibid.
indigenous people and another for the dominant criollo sector. The colonial power used the different rule of law through the systems of encomiendas and repartamiento. The structure of encomiendas allowed the criollo sector to take the land traditionally used by indigenous populations and enforce the ‘custom’ of repartamientos in order to force labor requirements upon the indigenous communities. These ‘rights’ and obligations of the indigenous people were controlled and restricted by the colonial office of Protector del los Indios.\(^4\) The social and legal inequality that came from these different systems of law was justified on the grounds that people had inherently different natures.

However, indigenous populations affected by these oppressive reforms would not sit and allow their land and freedom be taken from underneath them. In the highlands many villages revolted to these new reforms. Rebellions were recorded in Ixtahuacàn (1748), Santa Lucia de Utatlàn (1760), Tecpàn (1764) and Cobàn (1770 and 1803). As the editors of a compilation of Guatemalan historical documents conclude and allude to indigenous action in the future: “History refutes the notion of fatalistic Indian population: the persistence of Indian uprisings since 1524 demonstrates the existence of a significant number of angry and active Indians in every generation.”\(^5\) However the small communities of Mayans that existed during this time made it impossible to drive back the invading colonial powers. In many instances the communities that did manage to escape the Spanish were pushed into isolated places with populations that remained quick to revolt in order to defend their homes and way of life. The indigenous people that were


not able to flee lost most of their land and distinctiveness to the Spanish colonizers.\textsuperscript{6} The unforgiving oppressive colonial period left the Mayan society with deep fractures between its distinctive ethnic groups and communities whose way of life would be forever-changed.

The beginning of the 19\textsuperscript{th} century marked the independence of Guatemala from Spain. It is also characterized by conflicts between the conservatives and liberals in their "perspectives" on dealing with the indigenous population. Liberals attempted to promote legal equality through assimilation of the indigenous population. The liberal Gálvez administration attempted to replace the Hispanic system of private courts and multiple fueros (indigenous systems of law) with the Livingston Codes which reorganized the legal system in an effort to secure ‘equality before the law’ and introduce modern judicial forms (such as trial by jury) in rural areas. Widespread illiteracy and class divisions meant that the introduction of the new codes would increase the vulnerability of the rural poor and threaten the autonomy of indigenous communities.\textsuperscript{7} The indigenous people did not identify these codes with social justice and thus a selection of communities joined the conservative revolt of Rafael Carrera.

The conservatives favored the continuation of segregation to support the existing socioeconomic hierarchy which recreated the colonial ‘Rebública de Indios’.\textsuperscript{8} The reforms by Gálvez were one of the main factors of the revolt so that the rule of law could be returned to the Ley de Indios which offered some minimal, paternalistic protection to

\textsuperscript{7} Warren, \textit{Indigenous Movements and their Critics}, 99.
\textsuperscript{8} Ibid.
the indigenous population. The support of indigenous people and ladino (non-indigenous) peasants for the revolt of Rafael Carrera in 1837 indicated the distance between liberal democratic theories of the rule of law and the reality for most of the population. While both ladinos and indigenous people participated in the successful revolt of Carrera, reforms still did not sufficiently benefit the indigenous communities. Indigenous people did not enjoy full legal rights as citizens (as the peasant ladinos did) and they continued to be subject to repartimientos. While this revolt included both peasant ladinos and indigenous populations to achieve a change in regime in Guatemala, the indigenous people were still excluded from judicial and political process of the nation-state construction.

After the death of Rafael Carrera in 1865 and the victory of Justo Rufino Barrios in 1871 a new generation of Liberals surged to power in Guatemala. The liberal philosophy of equality before the law and positivist doctrine became the ideological apparatus for the exploitation, expropriation and assimilation of the indigenous population. This era was characterized by the increase in wealth for the upper class while compromising the well-being of the poor, particularly the indigenous population which was inextricably bound up with the development of the agro-export coffee economy. At first the government attempted to encourage immigration of white settlers to cultivate the land for coffee purposes but then looked towards the vast number of indigenous people to provide this labor for free when they were unable to attract a white

10 Handy, Gift of the Devil, 57.
labor force. This involved the continuation of forced labor drafts (mandamientos) and legal provisions for the introduction of debt servitude which gave ladinos the right to force indigenous peoples’ to work on their plantations. This led to the break down of the autonomy of many of the highland Indian villages. Under a new law the government was able to take land away if they felt it ‘idle’ or not being used for revenue. It was not uncommon for many Indian villages to be sold out from under them.

Positivist and neo-Darwinist ideas of ‘modernization’ and ‘progress’ meant that the indigenous people were regarded as inferior and government policy actively encouraged their assimilation. This integration was attempted through legislation that either provided the ‘choice’ of indigenous people to avoid military service by having a debt to a coffee plantation or by learning to read and abandoning their indigenous dress. The government of Manuel Estrada Cabrera prohibited the use of indigenous languages in government documents or in any verbal legal transaction. The forced labor and liberal assaults on indigenous communal land was prejudicial to the interests of the indigenous majority. The result of the little land that was left among the indigenous population exacerbated inter-community disputes and even provoked state law to secure their land claims against each other. Not only did the liberal reforms force assimilation but also led to conflict within communities and the demand for state services in solving conflicts that were typically resolved within indigenous communities.

12 Handy, Gift of the Devil: a history of Guatemala, 66
13 Warren, Indigenous Movements and their Critics, 100.
14 Ibid.
15 Warren, Indigenous Movements and their Critics, 100.
16 Ibid.
The first part of the 20th century marked the beginning of the intrusion of U.S. capital into the Central America. In Guatemala this intrusion arrived in the form of the United Fruit Company (UFCo), International Railways of Central America (ICRA) and the United Fruit Steamship Railways of Central America (ICRA). The connection between these forms of U.S. intrusion and the Guatemalan government was most clearly seen in the period where General Jorge Ubico reigned. During this time the U.S. had deep economic ties and interests in the area that were creating considerable profit for the abovementioned companies due to the exploitation of the Guatemalan economy, land, and people. This economic revolution led to an unprecedented expansion of the state and of its control over the countryside, infiltrating areas that were little touched by export agriculture. Ubico belong to the Progressive Party that was built around an organization of student reformers called “the generation of 1920”. These reformers held a traditional view of Indians for this time period. This view of the indigenous population caused Ubico to instate a Vagrancy Law, which effectively gave control over the allocation of forced rural labor. The statute required landless peasants to work for an employer 100 or 150 days a year as agricultural laborers; all those not satisfying these conditions would be classed as ‘vagrants’ and subject to drafts for military service or government labor services. While this law applied to poor indigenous and ladino’s alike, the majority of the poor were indigenous so the weight of forced labor fell disproportionately on the indigenous population and ensured that the vast majority were required to work for over

18 Ibid., 97.
three months a year, enough to ensure laborers for the harvest. One of the leading advocates of this generation, Miguel Angel Asturias, wrote what became the blueprint for a whole generation’s assessment of the Guatemalan Indian. Asturias’ *El problema social del indio* promoted the perception of the “Indian problem” and held that the Indian was “dirty, slow, barbaric and cruel,” and that the mixing of blood with Europeans would result in the decline of the ladino. This positivist thought led to the suggestion that all communal lands be taken from Indians and that they should “transport them in mass to the wilds of Petén.” Ubico’s distorted images of Indians due to positivist thought also led him to believe that they were unsuited to politics. When Indians in the village of Chintaluta desired the formation of the Liberal Progressive Club of Indians to be allied with his Liberal Progressive party, he warned: “It is not yet time for the Indians to consciously poison themselves with politics.” Ubico’s highly centralizing control over all aspects of Guatemalan society lead to many violent student demonstrations and widespread opposition among the middle class and professionals.

Ubico resigned his post and the government was now in the hands of these revolutionaries who had been inspired by democracy and freedom that had entered Guatemala during the Second World War. The next two presidents, Juan José Arévalo and Jacobo Arbenz, headed governments that promulgated many changes that positively affected the indigenous population and promoted a more egalitarian socioeconomic

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20 Ibid.
21 Ibid.
22 Ibid., 99.
23 Ibid., 103.
vision which aimed to modernize capitalism and the state in Guatemala and involved a legal order which did not negatively discriminate on the basis of ethnicity. Forced labor was abolished in 1944 and access to agricultural credit financed indigenous development through the Agrarian Reform Law of 1952 which allowed over 100,000 landless Mayans to receive a valuable farming unit. These advances laid the basis for the growth of Mayan citizenry. Political parties and labor organizations extended their operations to the countryside, stimulating the development of an indigenous ‘civil society’. However, the extension of the revolution’s program of reforms accelerated intra-community conflict and factionalism between different sectors within municipalities, predominately between ladinos and Indians.

Some recognition of differences between the indigenous rule of law and that of the state was acknowledged during this period. Although suggestions of separate rule of law was rejected as ‘reactionary’, special dispensations were provided so that laws and regulations would take into account the needs, conditions, usages and customs of indigenous people. In 1946 the government provided for the legal recognition of comunidades indígenas and comunidades campesinas as separate bodies within the municipalities, with the aim of strengthening the democratic representation of indigenous communities. These and other measures challenged ladino dominance however many of those involved in the revolution still maintained positivist, assimilationist sentiments towards the indigenous population and state policy and still aimed to fix the ‘indigenous

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25 Ibid., 102.
26 Ibid., 50.
27 Ibid., 102.
This period of time which spanned from 1944-1954 is looked back upon by many peasants and Indians as the “Ten Years of Spring”.

The threat posed by the October Revolution to the military’s control over rural Guatemala was a central domestic in the US-backed overthrow of Arbenz in 1954. The United Fruit Company and other foreign investors felt vulnerable to many of Arbenz’s reforms that taxed their products and decreased their influence on Guatemala’s economy. The United States government then labeled Guatemala as a potential country to fall under the Soviet’s communist influence due to their belief that many of the reforms were too socialist in nature. In 1954 the United States organized a CIA led coup with the help of Guatemalan mercenaries and exiles and took down the military and sent Arbenz into exile. The years following the intervention were characterized by failed elections and intense military involvement in the government. After 1954 the judicial system was dominated by an anti-communist logic, and by the late 1970s by a specifically counter-insurgent framework.

The first wave of guerrilla insurgency to counter the military dominance in the country began in the 1960s in the eastern region of Guatemala. During this time the insurgents were mostly ladino peasants. From the military’s point of view, the guerrilla terror needed to be met with counterterror which prompted the ‘professionalizing’ of the Guatemalan military into a brutal counterinsurgency army. This highly powerful military subsequently came to dominate the state directly and marked a new height on the

tightened hold of the military on Guatemalan society. Because the brutal counterinsurgency army now dominated the state directly, unspeakable violence through the use of death squads was being afflicted against traditional areas of popular organization – students, trade unionists, and many peasant farmers.

After a 1968 defeat to the military, the insurgency moved into the western indigenous highlands. This relocation marked an intensification of the situation between the military and insurgents as guerrilla groups mounted attacks on military installations and took over towns which subsequently led to some Mayan communities becoming central participants in the uprising. Between 1978 and 1985, the western highlands of Guatemala were engulfed in intense internal warfare. These years would later be referred to as, *la violencia*, and whose effect in the western highlands included total destruction of towns and mass executions of Mayan communities.

Economic growth followed by economic crisis broke down the objective barriers that had kept the Mayas relatively isolated in the highlands. Different instances during these years radicalized a number of highland Mayas. Contradictory developmental influences that raised hopes in the 1960s as they received land from the government’s colonization programs were dashed only to have it taken away again in the 1970s by powerful army officers. Structural contradictions uprooted and displaced thousands of indigenous peasants, causing them to redefine themselves in both class and cultural

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31 Ibid.,162.
terms. These changes and displacements brought them into increased contact with the ladino, Spanish-speaking world. Rather than ‘ladinizing’ or acculturating them, this experience reinforced their struggle to preserve their indigenous identity, although in new forms- as Guatemalan activist Ricardo Fallo (1978, 546) put it, discover “new ways of being indigenous.” The continued view of the government of indigenous organizations as “subversive” and excluding them from normal political expression only increased their resistance in mobilizing against the government. Also, increased army repression against the indigenous communities in order to terrorize the Mayas into passivity, by the 1970s, only stimulated them to take up arms in self-defense against state violence. Mayas expressed their frustration by becoming one of the powerful social forces during the insurgency of the 1970s and 1980s.

Guerrillas extended and unified their operations through an umbrella movement known as the Guatemalan Revolutionary Unity (URNG). From the guerrillas’ point of view, this was an armed struggle to challenge the legitimacy of the state and exploitation of Guatemalan peasants by wealthy landowners and export-oriented commercial elites. They recruited combatants from the countryside and sought support from peasant populations. In their terms, this was a war of liberation to resolve brutally conflicting class interests in a country with the lowest physical quality-of-life index in Central America. Mayans involved themselves in this movement by joining the peasant activist network Comité de Unidad Campesina in 1976 (CUC) which organized highly successful

33 Jonas, Of Centaurs and Doves: Guatemala’s Peace Process, 22.
34 Ibid., 22-23.
35 Ibid.,
farm-worker strikes. This group gained considerable attention after a major massacre at Panzòs, Alta Verzpaz, in 1978, and the 1980 massacre at the Spanish embassy, in which Guatemalan security forces burned several dozen indigenous protestors. In February 1980, CUC staged a massive strike of workers on the southern coast sugar and cotton plantations. During this time many ladino peasants in the insurgent groups realized their failure to acknowledge the indigenous populations during the 1960s and their originally narrow vision of the revolution. Two insurgent organizations, Ejército Guerrillero de los Pobres (EGP) and Organización del Pueblo en Armas (ORPA), spent several years being educated by the indigenous population and organizing a political support base in the western highlands (and other areas) before renewing armed actions later in the 1970s.

The involvement of the indigenous population in the guerrilla insurgency allowed their issues to surface beyond their own communities and also expose ladinos and those with more political legitimacy to their cultural struggles and demands. This also connected some indigenous communities to the popular movement of the struggle for class equality in all of Guatemala.

The guerrilla military offensive reached its height in 1980-1981, gaining 6,000 to 8,000 armed fighters and 250,000 to 500,000 active collaborators and supporters which operated in most parts of the country. As their unity came together more direct action by the death squads and military was used to discourage local autonomy and the rise of the insurgency. Headed by the president Ríos Mott, the army began an unprecedented

37 Warren, Indigenous Movements and their Critics, 86.
38 Jonas, Of Centaurs and Doves: Guatemala’s Peace Process, 23.
39 Ibid.
40 Ibid.
counteroffensive, titled “Scorched Earth”, in the middle of 1981. In the highlands this strategy was lived out in a world of ethnic difference with the army unleashing a virtual holocaust upon the indigenous communities.

The goal of the scorched-earth warfare was to annihilate the Maya support base for the guerrillas as well as destroy the culture, identity, and communal structures of the indigenous populations. The next stage that carried out what was essentially the ultimate objective of ethnocide of the Mayan culture (after 1983) occurred through the imposition of coercive institutions throughout the countryside, designed to consolidate military control over the population. These institutions took the form of mandatory paramilitary “civilian self-defense patrols” or PACs; “development poles,” rural forced resettlement camps where every aspect of people’s lives was subject to direct army control; and militarization of the entire administrative apparatus of the country.41

The military practiced forced recruitment of indigenous boys in order to, as General Otzoy admitted, “...get Indians out of their communities, so they understand they are part of Guatemala.” Brutal barracks training attempted to break the boys down so they could be remade as soldiers and promising them marks of the ladino.42

Anthropologist Diane Nelson found in her fieldwork in 1985 and 1986 that the army had bombed sacred sites in the mountains and bull-dozed pre-Conquest ruins in building the resettlement areas known as model villages43. These model villages, built for the resettlement of displaced war survivors on the ashes of villages destroyed by the army,

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43 Ibid.
were organized into six Development Poles in the northern departments of Huehuetenango, El Quichè, Alta Verapaz, and Petén. The next phase involved the establishment of obligatory civilian patrols (Civilian self-defense patrols or PACs), directly controlled by the army and involved turning surrendered civilians into the first line of defense against guerrilla intruders, and in the process served to oblige the community to discipline itself. In the development poles, the army controlled every aspect of life and all forms of political expression were prohibited.

The defeat of the guerrillas and the suffering inflicted on its supporters was due to the failure of anticipating the scorched-earth; genocidal war unleashed by the Guatemalan security forces. The statistics of the bloodiest years of the war renders staggering numbers: From mid-1981 to 1983 alone, 440 villages were entirely wiped off the face of the map; up to 150,000 civilians were killed or “disappeared.” There were over one million displaced persons (one million internal refugees, up to 200,000 in Mexico). Along with these massive population displacements was the deliberate destruction of huge areas of the highlands by the burning of forests causing irreversible environmental devastation.

What were the implications of ethnic difference of this war of liberation and counterinsurgency? First, during la violencia, unresolved tensions in Guatemalan racism were inflamed and manipulated. Colonial and modern plantation economies were built on social ideologies and national development strategies and national development

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44 Charles Hale, Más que un Indio, (Santa Fe: School of American Research, 2006) 67.
strategies that harnessed the labor of impoverished Mayas and kept them poor.\textsuperscript{46} As seen in the history of Guatemala, philosophies of racial inferiority, which justified an ethnic division of labor delegating manual labor to Mayas and non-manual labor to Spaniards lies at the heart of the 470-year history of plantation economics.\textsuperscript{47} The guerrillas sought to radicalize the poor in class terms, while the army decided to punish them so they would not collaborate with or join the opposition.

Second, la violencia was understood by all sides as a conflict with strong ethnic overtones. Many Mayas felt that the government used the counterinsurgency war as an excuse to destroy Maya populations.\textsuperscript{48} Both their desire for wider political participation and their distinctiveness in language and community were seen as political threats by rightist political groups and the military.\textsuperscript{49} Third, \textit{la violencia} was to have a great impact on interethnic relations in many communities. The war served as a vehicle for the expression and intensification of ethnic distrust. Wealthy ladino landowners became targets for assassination by guerrilla groups. Mayas feared the connections local ladinos had with military authorities and assumed that military officers would automatically side with those who were identified as members of national culture.\textsuperscript{50} Finally, rather than leading to a suppression of ethnicity, \textit{la violencia} sparked a wave of cultural resurgence

\textsuperscript{46} Warren, \textit{Indigenous Movements and their Critics}, 87.
\textsuperscript{47} Ibid.
\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid.
in communities and provoked wider concerns with cultural identity among university students.\textsuperscript{51}

In the following chapter this cultural resurgence will be explored in the different movements that developed from Mayan organization for their cultural rights and protection in the Guatemalan state. This chapter has explored the history of an oppressive and ethnically-discriminatory state on the Mayan community and its implications on their respective customs and ways of life. The upcoming sections will focus on the movements and reforms to recognize Mayan rights that have developed in the final years of the civil war its progress up until present day. While the historically prejudicial relationship between Mayas and the state continues to marginalize the indigenous population in post-conflict Guatemala, their resolve for self-determination remains constant, as described by a Mayan leader, "(the Mayan people are) a smoldering element and they will determine absolutely how it comes out in the end."\textsuperscript{52}

And they are doing so through the organizations we’ll look at in the next section.

\textsuperscript{52} Handy, \textit{Gift of the Devil: a history of Guatemala}, 237.
Chapter Three

Review of Indigenous Organizations: Mayanism and the Popular Movement

The recognition of the indigenous voice in the negotiations for the Peace Accords marked one of the top achievements for indigenous rights in Guatemala. It symbolized a success in uniting the different issues and methods utilized by Mayan organizations in order to have their needs heard and respected. While the Accords, treaties, and conventions set the stage for change it is the organizations that created the possibility for it to become a reality. By tracing the resurgence of the indigenous voice in Guatemala in the 1970s up until the accords it can be better understood the successes and failures in how these organizations attempt to create change. An understanding of these methods can then begin to explain why certain initiatives were priority during the negotiations and which still remain the top causes of the Mayan movement. They can also help shed light as to why rifts still exist between not only ladino institutions, but also the Mayan groups themselves and the setbacks these create.

The 1970s saw the ethnic revitalization of indigenous groups. This era was marked by the indigenous groups beginning to articulate issues that affected their own communities and how the Guatemalan state has oppressed their ways of life. From these dialogues indigenous communities began to mobilize and in 1972 the initiative was taken
to organize “Seminarios Indígenas”.¹ These seminars were attended by teachers, social and health activists, students, and religious leaders. They discussed “el pueblo indígena” in terms of the cultural, economic, and political situation that each experienced in their own communities. They found that each community had their own distinct problems that affected them which made it impossible to come to consensus about these issues at a community level. They instead looked at the situation regarding human rights and the origins of the persecution and repression at a national level and how they could come up with an ideology that all groups could mobilize under.² While the topics were political in nature the issues of autonomy and self-determination were not discussed due to a polarization of beliefs on this subject.

The ideologies of Mayan organizations had taken two broad types during this time: those termed ‘popular’, which concentrate on denouncing state violence; and those termed ‘mayista’ (or pan-mayanism), which give priority to cultural demands.³ The popular movement was based upon the grassroots left and the class-based struggle experienced by all those oppressed by the Guatemalan government and military. After the failure of the URNG to topple the state in the 1980s, grassroots organizations with strong ties to the Left – among them the Committee for Campesino Unity (CUC), National Coordinator for Guatemalan Widows (CONAVIGUA), Mutual Support Group (GAM), Council of Ethnic Communities Runujel Junam (CERJ), Highland Campesino Committee (CCDA), and National Council for Guatemala’s Displaced (CONDEG)-

² Ibid., 25.
³ Ibid., 27-30
rededicated themselves to pressing for influential roles in national politics. They demanded social rights, especially fundamental ones such as right to life and physical integrity. These organizations had been embroiled in a fight against the government and army and allied with groups that organized against repression and impunity.

Mayans who identify as populares generally have chosen to emphasize the demands that unify them with subordinate ladinos. This does not imply a “loss” of indigenous identity but it does tend to involve either a shift in priorities away from demands specific to Maya cultural roots, or to a difficult commitment to struggle for those demands from within a predominately non-indigenous political movement. It was questioned whether the popular movement’s concern with indigenous issues was designed largely for external consumption, and, consequently whether international supporters might fail to understand differences between class-based and national or ethnic movements. Many Mayans have found personal and political dilemmas in the popular agenda and also found other elements of the popular movement as unresponsive to their needs.

The Pan-Maya Movement gained prominence in the 1980s as educated Mayas worked to create a social movement focused on the cultural revitalization and unification across language divides of indigenous Guatemalans. The movement seeks recognition of cultural diversity within the nation-state, a greater role for indigenous politics in national culture, a reassessment of economic inequities, and a wider distribution of cultural

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5 Ibid., 36.
resources such as education and literacy in indigenous languages. With the democratic opening in 1985 and the concurrent scaling down of the violent counterinsurgency campaigns, Pan-Maya cultural activists began to pursue their agendas with renewed vigor. The Segundo Congreso Lingüístico Nacional held in 1984 was a watershed event in orienting postwar Maya activism toward the nonviolent pursuit of linguistic recognition and rights. One issue in particular galvanized participant’s opinions and was to provide the rallying point for the pan-Maya movement’s first lobbying offensive: the call for the creation of a unified alphabet for writing Mayan languages. To focus on such an issue in a country with myriad pressing social and economic problems might, at first, seem misguided. Yet it is precisely this quality of innocuousness that made linguistic activism a subtly brilliant tactical move on the part of pan-Maya leaders. To begin the movement by demanding, say, massive land reform, would certainly have doomed its success in the charged political atmosphere of the mid-1980s: not only would individuals have been reluctant to offer support for such a potentially subversive cause, there can be little doubt that state and private paramilitary security forces would have methodically assassinated the movement’s leaders. Thus, concentrating on linguistic issues was partially a politically tactical move on the part of Maya leaders, a path of least resistance in instigating institutional reforms. And it worked.

In October of 1986, a meeting of all the groups working on Maya linguistics in the country was held. At this meeting, the Academia de las Lenguas Mayas de Guatemala

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(ALMG) was founded to promote a new unified alphabet for Mayan languages. The ALMG quickly rose to the forefront of the movement, and activists were able, within a span of only a few years, to obtain substantial legislative reform.\(^\text{10}\) The ALMG continued to be at the forefront of the Pan-Maya movement and pushed the ideals of the movement in these early years. The ALMG’s important early role in loosely coordinating the efforts of many other national and regional Maya organizations has been taken over by the Consejo de Organizaciones Mayas de Guatemala (COMG), formed in 1989. COMG’s membership is composed of fifteen independent Maya groups working throughout the country. Its stated purpose is to unite the many Maya organizations, relating their often disparate projects to a common set of goals as outlined in Rujunamilri Mayab’ Amaq’ (Specific Rights of the Maya People; COMG 1991). COMG also acts as the Guatemalan liaison with the Coordinadora de Organizaciones y Naciones Indígena del Continente (CONIC), a group with strong ties to popular peasant organizations.\(^\text{11}\)

For some, the Second Continental Meeting for Indigenous, Black, and Popular Resistance in 1991 marked an emergence of a new organization and coordination in the Guatemalan indigenous movement. For example, newly founded Mayan organizations, such as Majawil Q’ij, CONIC, and COMG, proclaimed the centrality of indigenous identity for their political work. They challenged the predominantly class-based discourse and goals of Guatemala’s popular movements and sought to create organizations more responsive to indigenous communities and concerns.\(^\text{12}\) However many nationally prominent Mayanist leaders shared complaints in conversations between

\(^{10}\) Fisher, *Cultural Logics and Global Economies: Maya Identity in Thought and Practice*, 98.

\(^{11}\) Ibid., 99.

sessions. While the popular left movement stressed a language of cultural respect and autonomy for indigenous peoples, the idea of regionalization in Guatemala to achieve this was troubling. Mayanists held that the popular perspective called for their assimilation into national society. They also felt they had been invited as observers and found themselves marginalized in the structure of the meetings, which in their view allowed only two official representatives of Pan-Mayan organizations in the national delegation. This was due in part to the popular Left being well represented at the congress, with thirty delegates in the national delegation of thirty-five. The remaining spots were filled by hurried invitations of “independent” Mayas. Many saw these problems as indicative of larger differences between the popular and Pan-Mayan movements.

Even with this perceived divide in the movements the 1990s still saw an increase in strength and unity in other aspects of the Mayan organization. The continental campaign for ‘500 Years of Resistance’, in protest at the official celebrations of the quincentenary of the ‘discovery’ of the American 1992, and the award of the Nobel peace prize in the same year to an indigenous Guatemalan woman, Rigoberta Menchú Tum, focused national attention on the issues of indigenous rights. Subsequently, popular organization in repudiation of the attempted ‘auto-golpe’ by President Jorge Serrano in May 1993 provided an increased presence for Mayan organizations in the national political sphere: in June 1993 the Asamblea del Pueblo Maya (APM) was formed to ensure and promote Mayan participation in ongoing political discussions to ensure the

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14 Ibid., 35.
15 Ibid., 34.
transition to democratic rule. The presence of a number of Mayans in the government of Ramiro de León Carpio (1993-96), such as Alfredo Tay Coyoy as education minister (the first indigenous person to hold such an important cabinet post) also had an effect of furthering indigenous demands, particularly with the area of bilingual educational provision. Official human rights bodies have also begun to indigenous demands. In 1994, the Procuraduría de Derechos Humanos (PDH) announced the creation of a program to provide attention to indigenous people. This aims to promote, publicize and protect indigenous rights, basing itself around the provisions contained in the 1985 Constitution and international legal conventions to which Guatemala is a party.

However, it was perhaps the demands of civil society for inclusion in the peace talks between the URNG and the Guatemalan government that provided the means to articulate Mayan demands for increased rights and political autonomy in the broader process of national, political, and institutional reform. New organizations were formed during this time to create a common position between the popular and Pan-Maya organizations. The most important was COPMAGUA (Coordinación de Organizaciones del Pueblo Maya de Guatemala) which worked within the consultative body, the Asamblea de Sociedad Civil (ASC) to develop a shared platform for the organizations. The next section will explore further into how the organizations represented their demands in the negotiations.

By 1994 Mayan organizations were also demanding participation in political developments. A number of factors have contributed to this increased involvement. The

17 Ibid., 5.
18 Ibid.
first is the return of over 30,000 indigenous refuges from Mexico since 1993. The active stance of refugee organizations within the national political sphere and their fight for full citizenship has been a feature of Guatemalan politics since the first return to the Ixché region in January 1993. Attention to the inadequacies of the judicial system have gained the attention of both refugee organizations and the Nobel laureate Rigoberta Menchú after the massacre of eleven indigenous campesinos by an army patrol at Xamán, Alta Verapaz in September 1995. This has become one of the most controversial legal cases in the country. Judicial reformation will also be focused on later in the paper.

The negotiations during 1996 on the two final accords in the peace process—on the socio-economic and land situation, and on the role of the military in a democratic society—has put Mayan demands at the top of the national political agenda. Insufficient land resources and militarization continue to constitute the two principal problems affecting indigenous rural communities. Mayan campesino organizations, such as CONIC have been active in organizing progress on the land question while numerous Mayan human rights organization—such as CONAVISUA and CERJ—have stepped up demands for an end to forced conscription, participation in the civil defense patrols (PACs), and the withdrawal of military bases from areas of refugee return.

Mayan involvement in electoral politics helps to progress the voice of the movement. Since 1993 the increased participation of numerous indigenous civic communities, independent from the political parties, in municipal elections has been an

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19 Bastos and Camus, Quebrando El Silencio, 25
20 Sieder, Customary Law and Democratic Transition in Guatemala, 5.
21 Ibid.
22 Ibid., 6.
important development in this area.\footnote{23} Organizations have utilized campaigns and new NGOs and political parties to increase their involvement. In the run-up to the November 1995 national elections, Rigoberta Menchú headed an extensive campaign to promote electoral registration in indigenous communities, organized by the non-governmental organization, the Fundación Rigoberta Menchú Tum. In the same year, a new left-wing political party, the Frente Democrático Nueva Guatemala (FDNG), fielded a number of prominent Mayan human rights activists as congressional candidates and subsequently became the third largest party in the new Congress.\footnote{24}

While the Peace Accords did successfully bring together Mayanists and Maya activists form the LAC through the ASC and the COPMAGUA forums, the process was highly charged. Cojti Cuxil and other leaders will continue to work toward an image of Guatemala as a federation of nations, each with its own government, territory, laws, and means or cultural development.\footnote{25} While the 1996 Peace Accords brought recognition of Maya culture, so far the issue of alternative state structures has fallen outside the scope of actual reforms. Cojti Cuxil believes a pluri-ethnic society involves conceiving a formula “to federate diverse nationalities [and] articulate diverse national identities democratically”.\footnote{26} In his view, to govern without wider legitimacy is to risk cycles of violence, as those who govern seek to impose their system and those who want to evade domination push for a more radical decentralization.\footnote{27}

\footnote{23 Sieder, Customary Law and Democratic Transition in Guatemala, 6.}
\footnote{24 Ibid.}
\footnote{25 Warren, Indigenous Movements and their Critics, 199.}
\footnote{26 Ibid.}
\footnote{27 Ibid.}
How does one measure the success of influence of the Mayan movements in Guatemala? They have organized all sorts of conferences, meetings, workshops, educational programs, and editorial campaigns. The goal of these efforts has been to incorporate new generations of Maya professionals, elementary school teachers, council of elders, and working adults into their discursive community. Institutionally, Mayanists have founded a vast array of research and educational organizations, linked by national networks, such as COMG and its successors, which keep groups in touch with each other. Many of these organizations have local representatives and agents, some have community committees throughout the highlands. They have had successes with its network of private Mayan schools and centers for research and cultural programming. Pan-Mayanism has promulgated new languages to personalize identity politics, understand inequality, and organize across communities. Cultural innovations have had a diffuse yet striking effect on the terms of debate in national and local politics.28

28 Warren, Indigenous Movements and their Critics, 199.
Chapter 4

Mayan Coalitions in the Peace Process and Ratification of ILO Convention 169

The inclusion of the 1995 Agreement on Identity and Rights of Indigenous Peoples in the Peace Accords and the ratification of ILO’s Convention 169 on the Rights of Indigenous and Tribal Peoples in Independent Countries marks the strongest commitment to this day of the Guatemalan government to create a genuinely multi-ethnic country through respect for, and reinforcement of, the culture and institutions of its Mayan peoples.¹ This section will look at the methods used by Mayan organizations to include their platforms in these documents and the resistance that existed in their ratification. The two documents will then be looked at for their successes and failures in articulating the rights of different Mayan advocacy groups and in their ability to “set the stage” for Guatemala to reach a multi-ethnic state.

By the early 1990s Mayan activism in Guatemala had gained the visibility and high moral ground to effectively push for national and international legislation to change the deep-rooted discriminatory institutions of Guatemala and recognize the multi-ethnicity of the country. From the factors discussed in the previous chapter attention had

turned toward the plight of the indigenous communities in regards to the historically oppressive nature of the state and the human rights abuses that occurred during the Civil War providing a voice with an opportunity to create change. The potential peace agreement and ratification of ILO Convention 169 was viewed by indigenous activist groups as a chance for them to gain recognition of cultural and collective rights and to argue for a state in which Maya communities would have “decision-making power over their own destiny”.

The Accord and Convention 169 both attempt to tackle deep-rooted legacies of discrimination and help promote the creation of a multi-ethnic state. The legal framework of Convention 169 radically challenges ideas of a homogenous nation through its emphasis on indigenous rights to territory, to self-determination through educational, legal, and cultural institutions, and to full representation in state decision-making that affects indigenous people. Convention 169 constitutes a powerful tool in international law for indigenous people because, unlike a declaration, the ILO views non-ratification as a potential human rights violation and member countries are closely monitored on their ratification status. The indigenous agreement is a complex document that gives strong emphasis to cultural rights, measures to combat discrimination, and promotes genuine equality of opportunity. It was also influenced to a large extent by ILO Convention 169 in issues of local and regional autonomy and in its recognition of customary law and

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6 Ibid., 294.
indigenous land rights. By following analysis of the ratification process of the convention and the accord many of the same issues that are at stake in each can be better understood.

Convention 169 was approved by the ILO in 1989 and was subsequently introduced to all sovereign nations to be ratified into law. Through the ratification process, ILO member states were required to engage in dialogue with the populations affected. In February 1991 the Labor Ministry, through Gloria Tujab, a Maya-Q’eqhchi’ woman, began to organize the National Consultation on the Convention. To coordinate the work, the ministry hired a Mayan activist who has worked with ALMG. Four regional workshops were held in Quetzaltenango, Tecpan Chimaltenango, Chajul Quiché and Tactic Alta Verapaz. Ninety-six Mayan organizations participated and for three days they discussed and explained the Convention. From this, fifteen representatives were elected to write up final conclusions and twenty representatives were elected to become the National Delegation. While these workshops brought together different Mayan organizations they also revealed local rivalries and mistrust of others due to the effects of the violence they had experienced during the Civil War. While this made it hard to do work the meetings were still productive. Several people and organizations never thought about their position in terms of such rights before these meetings and were excited to distribute this information to their communities. The documents and conclusions from these workshops were then presented by the National Delegation at a national forum attended by the government and popular sectors.

The relations between the Mayan organizations and the state in ratifying the Convention closely parallel Maya participation in the Assembly of Civil Society (ASC) towards implementing the peace treaty.\textsuperscript{9} The ASC was established as the forum for indirect civilian input in the peace negotiations between the URNG and the Guatemalan government. This organization included popular and indigenous forces, women’s organizations, and other sectors including small and medium businesses.\textsuperscript{10} Popular and Mayan groups also worked through another forum, COPMAGUA, which worked toward consensus on key issues due the differing perspectives from the multitude of Mayan organizations. They did this by commissioning position papers from the different groups and creating a common platform to be presented to the ASC. By participating in this way, popular and Maya groups gained institutionalized representation and the opportunity to organize their own parallel meetings in a process that might otherwise have thoroughly marginalized civilian input.\textsuperscript{11} The addition of cultural rights and self-determination was advocated through the COMG.

Both the Indigenous Accord and Convention 169 proposed the ultimate goal of realizing Guatemala as a multicultural nation. At the national forum the Delegation for the Ratification of Convention 169 summarized what the Convention stipulates for Guatemala. The document requires indigenous participation in the development and implementation of laws that will affect them and promulgates more general participation in national life, whereas the state must actively promote the maintenance and development of their difference. The national government must respect derecho

\textsuperscript{9} Nelson, \textit{A Finger in the Wound}, 317.
\textsuperscript{11} Warren, \textit{Indigenous Movements and their Critics}, 53
consuetudinario (customary law) and take indigenous culture into account in seeking alternative punishment for infractions of national law. It also calls for recognition of the spiritual relationship between indigenous peoples and the land and should ensure the right to land traditionally occupied by indigenous peoples. Additionally it calls for protection against discrimination in labor, sanctions against sexual harassment, protection of religious freedom, equality in education, and access to health services and the mass media.

The accord provides a vision of a just society and a measure of the substantial structural and cultural changes necessary to achieve this vision. The indigenous accord was divided into four parts. The first part calls for the formal recognition of Guatemala’s indigenous people. Non-Maya mestizos historically denied indigenous people’s place in civil society considering themselves to be the standard of citizenship. It then went on to establish indigenous identity of that of the Xinca, Garifuna and Maya and that Maya identity is conceived of as having a plurality of sociocultural and linguistic expressions. The second part focuses on the struggle against discrimination. It was recognized that in order to achieve peaceful coexistence of all ethnic groups it must be sought out by legislation to make discrimination a crime, root out discriminatory laws, promote public education, and secure the active defense of rights by providing legal aid for the poor. The third section identifies key cultural rights for indigenous communities. It called for the recognition and support of indigenous people as the authors of their own cultural development through distinctive institutions. This included efforts to constitutional

12 Warren, Indigenous Movements and their Critics, 211
13 Ibid.
14 Ibid.
recognition of indigenous languages in schools, social services, and court proceedings as well as spiritual recognition. It also advocated for intercultural education and a Maya University as well as wider access to mass media. The fourth section deals with constitutional reforms in civil, political, social, and economic rights to make possible a multi-ethnic, pluricultural, and multilingual vision of national society. This would involve governmentally promoted decentralization of municipal autonomy that would involve the recognition of customary law and community decision-making powers in issues of education, health, culture, and community development. The last part of the accord argued for the recognition of communal and individual land holdings, the right of communities to administer communal lands according to local norms, and rights to natural resources in benefit of local communities. Finally, the accord provided for the creation of several joint commissions (comisiones paritarias), composed of an equal number of governmental representatives and representatives of indigenous organizations, to guide the implementation of educational reforms, other state reforms (including the judiciary), and land tenure agreements.

The agreement and convention aroused sensitivities and adverse reactions from different groups in Guatemalan society. They claimed that both would have negative implications for national unity and would promote fragmentation, separatism and reverse racism. When the ILO delegation presented their information from the workshops, as noted earlier, all members there supported ratification except for the CACIF (the major business chamber). The delegation was still able to pass through the first three phases of

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16 Ibid., 213.
17 Jonas, *Of Centaurs and Doves*, 77.
ratification (due to indigenous awareness in the Quincentennial year of 1992) however in the final state of its ratification the CACIF began a negative publicity campaign claiming that the Convention would destroy state sovereignty. The paranoia of a portion of Guatemala’s non-indigenous belief that the Mayan majority would attempt to make their own autonomous state blocked initial ratification of the convention. The strength of this fear prevented its implementation even after its planned finalization in October 1992 to commemorate the 1944 Democratic spring, the Quincentennial, first massive refugee return, peace talks with the guerrillas, and the Nobel Peace Prize award given to Rigoberta Menchú.

The most difficult issues in the Indigenous agreement arise in Chapter four, concerning the entire gamut of civil, political, economic and social rights. With regard to civil and political rights, the tension is evident between the concept of separate rights and structures for indigenous peoples and the new structures needed to guarantee effective participation by indigenous peoples at all levels. With regard to local indigenous communities and authorities, participation at all levels and customary law, many of the concepts are derived from Convention 169 and follow the same criticisms. It is the hint of separate financial mechanisms and procedures at the community level that set off alarm bells among those concerned to promote harmonious inter-ethnic relationships at all levels of society.19

Members of indigenous organizations defended their argument for Maya recognition and self-determination through the rights given to all Human beings as laid out by the Universal Declaration of Human Rights:

All people have the right to take part freely in the cultural life of the community, to enjoy the arts and participate in scientific progress and its benefits. The dignity and rights recognized by the Universal Declaration of Human Rights imply the recognition of the person as a social being, affiliated with a community, ethnic group, nation, or state at the same time as a distinctive social being in terms of language, religion, culture, or other pluralizing or diversifying conditions. (ALMG 1997)\textsuperscript{20}

After a lengthy nine months of negotiation the Accord on Identity and the Rights of Indigenous Peoples was signed on March 31, 1995 by the government, military, and URNG high command and put into force at the conclusion of the peace process a year later.\textsuperscript{21} The viewed success of the document by the indigenous organizations involved is mixed. Critics assert that the Accord only veiled reference to the issue of autonomy and that it contained no specific commitments in terms of timeframes or even identification of the government agency responsible for implementation. The Agreement places more emphasis on cultural rights and issues which can be attributed to the Mayan movement of intellectuals and activists grouped in the COMG and CECMA. Some Mayanists also hold that the accord had limited Maya input and disregard of indigenous norms or consultation with communities and elders.\textsuperscript{22} One issue that the ILO avoided was political relations between indigenous peoples and states, leaving it up to the state to implement any of the reforms.

\textsuperscript{20} Warren, \textit{Indigenous Movements and their Critics}, 54.
\textsuperscript{21} Ibid., 56.
\textsuperscript{22} Ibid.
What the Accord and ILO Convention 169 did was to identify the main issues of indigenous identity and rights that henceforth need to be addressed through future law and administrative reforms. To accomplish this, emphasis was placed on the joint commissions in enabling indigenous organizations to participate with the government in the preparation of the legal and constitutional reforms in the areas of education, political participation, customary law and indigenous land rights. In this process many conflicts have arisen from discrepancies between the broader indigenous interpretation of the accord and the narrower ones taken by the government. The challenge remains to examine the extent to which the institutions of the state and society need to be adapted in order to give concrete effect to the principles of multiethnicity and multiculturalism as laid out in the accords and Convention. Whether political, legislative, judicial, professional or academic, all of these institutions will have to face these issues.

The following two chapters will explore the issues involved with justice in reaching a multi-ethnic nation for the Mayan population. The Commission for truth will analyzed in its effectiveness in achieving transitional justice for those terrorized by the violence of the civil war and whether the Mayans are ready to trust the government in creating effective reforms. Then the importance of implementing customary law as stipulated by the accord and the Convention will be looked in rebuilding justice and legitimate rule of law in Mayan communities.

23 Jonas, Of Centaurs and Doves, 19.
Chapter Five

Transitional Justice and the Truth Commission (CEH)

To build a just future for the Mayans in Guatemala the discriminatory past must be re-visited and its injustices acknowledged. In 1994 the Guatemalan government and the URNG established the Commission for Historical Clarification (CEH- formally, the Commission to Clarify Past Human Rights Violations and Acts of Violence That Have Caused the Guatemalan Population to Suffer)—a Truth Commission—during negotiations of the Peace Accords. The commission was composed of three members, one being the UN moderator of peace negotiations, the other two being distinguished Guatemalan citizens. The Truth Commission’s work would last an initial six months, with a possible six-month renewal. At the end of that time, it was mandated to issue a report containing the results of its investigations and its recommendations for national reconciliation and promotion of a culture of tolerance.¹ This agreement provided for the Commission to clarify the human rights violations and acts of violence committed during the armed confrontation that affected Guatemala for thirty five years.²

The purpose of the Commission was to tackle the difficult task of achieving transitional justice for its population after decades of injustices in order to ‘unburden’ the

past and create a just future. Transitional justice can be defined as the way in which “societies ‘transitioning’ from repressive rule or armed conflict deal with past atrocities, how they overcome social divisions or seek ‘reconciliation,’ and how they create justice systems so as to prevent human rights atrocities”. It is also meant to serve as a bridge between the past and future, reflecting the recognition that members of deeply divided societies must acknowledge and come to terms with the forces that have historically divided them in order to build a new, more unified and just society.

Truth commissions are also important for enabling society to look at its broader illnesses by highlighting roles that state and social institutions played in past abuses and the ways in which the political, economic, and social structures made the abuses possible. The challenge for Guatemala is to respond appropriately to past evils without jeopardizing prospects for future developments. The element of “emotional truth” – knowledge concerning the psychological and physical impact on victims and their loved ones or rights abuses and the threat of such abuses which need to be addressed in order for society to begin anew again.

In the context of Guatemala, the use of a truth commission was necessary in order to achieve transitional justice. The guerrilla movements were not defeated, yet neither were the armed forces and both were at the forefront of the negotiated peace agreements. It was therefore clear from the outset that judicial proceedings would not be a very

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4 Ibid.
5 Ibid., 7
effective tool in terms of sanctioning grave human rights violations.\textsuperscript{7} When a nation tumbles into the depths of a vicious criminal regime, such as Guatemala, rejecting the principles of human rights and rule of law, the normal processes cease to operate.\textsuperscript{8} The decades of injustices that occurred constitute a huge burden on Guatemala for any fresh start, so the question arises – what can be done to tackle the past? This chapter will explore the effectiveness of the CEH in recognizing and rehabilitating the ethnic discrimination and violence experienced by the Mayans during the Civil War in order to begin a fresh start in realizing the goals set forth in the Peace Accords.

In order to begin to expose the truths of the past the CEH made it its central idea that, “at a minimum, victims are entitled to full information about the general developments underlying the violations that they suffered.”\textsuperscript{9} It then speaks of the right of the people of Guatemala “to fully know the truth” about the events of the civil war. What this asserts is that no government is entitled to hide the truth about its own involvement in a conflict, or the involvement of a predecessor regime. Only on the basis of the full truth can a people learn from the past and immunize itself against the danger of falling into the same trap as before.\textsuperscript{10} The Commission’s mandate was threefold: to clarify human rights violations and acts of violence, collect findings on the sources and effects of the civil war in a report, and make recommendations for promoting justice and reconciliation in the future.\textsuperscript{11}

\textsuperscript{7} Toumschat, “Clarification Commission in Guatemala,” 234.
\textsuperscript{8} Ibid.
\textsuperscript{9} Ibid.
\textsuperscript{10} Ibid.
One of the most controversial features of the CEH was its prohibition against assignment of individual responsibility. Human rights organizations originally felt that this provision would emasculate any results that the CEH might produce. It held that the official report of the CEH would, according to all probability, be so timid that it could not make any meaningful contribution to laying the groundwork for a better Guatemala.\(^{13}\) In response to this perceived setback an alternative truth commission was established, the REMHI, to cover the inadequacies of the CEH and provided another perspective of the past. This organization will be looked at later. The CEH report could not convict anyone, not even in an indirect fashion, and its findings could not be taken as constituting the last word on any specific issue. The CEH hoped that by guaranteeing perpetrators that they would remain anonymous they would be more willing to expose their crimes. However, this was not the case. Even while the number of victims submitting their testimony to the CEH was impressively high, the number of perpetrators prepared to speak about their involvement was just as impressively low.\(^{15}\)

The CEH started a campaign to invite many of the military and police officers who held high posts during the dictatorial regimes to testify but this was met with a lack of cooperation by the Ministry of Defense. From this reaction the CEH had to assume that inside the Armed Forces there existed at least an informal consensus that its work should not be supported.\(^{16}\) In these circumstances, it might have been helpful for the CEH to enjoy subpoena powers. However, it held no such powers. Nor could the CEH search any premises which relevant archives were kept. The Ministry of Defense also

\(^{13}\) Toumschat, “Clarification Commission in Guatemala,” 243.
\(^{15}\) Ibid., 245.
\(^{16}\) Ibid., 246.
denied the CEH information on the conduct of operations during the worst years of the armed confrontation, when tens of thousands of Mayans lost their lives. On the whole, therefore, one may characterize the contribution made by the Government of Guatemala to the process of clarification as next to nothing. In particular, the armed forces pursued a deliberate strategy of obstruction without admitting to this.17 Guerrilla forces cooperated in a far more productive way with the CEH. Whereas the CEH could hold only formal meetings with the armed forces, at which normally a liaison officer listened politely to questions put to him without giving any answers, it was able to organize a considerable number of working meetings with the commanders of the URNG. The guerrilla organization openly acknowledged its responsibility in some massacres but it should also be noted that many questions put to the guerrillas received no answer.18

Based on the collection of over eight thousand testimonies from victims and their relatives, the CEH concluded that the state was responsible for 93 percent of the violations and that the military committed 629 massacres. The guerrillas were assigned responsibility for 3 percent of the violations and thirty-two collective killings.21 The CEH also concluded that during the course of the conflict over two hundred thousand Guatemalans disappeared or were killed. The CEH also identified three interrelated historical causes of the war: economic exploitation, racism, and political exclusion.

The government’s response to the report has so far been disappointing. The Guatemalan government has not claimed the CEH report as its own. The CEH had recommended, in particular, that the President, in the name of the state of Guatemala,

18 Ibid.
21 Jonas, Of Centaurs and Doves, 161.
express public apologies to the people of Guatemala for the acts described in the report, and assume responsibility for the human rights violations connected with the armed confrontation. The suggestion was rejected. Likewise, the government contended that there was no need to purge the armed forces and the government also declined to establish a follow-up mechanism as recommended by the CEH. Guatemala’s minister of defense, General Héctor Barrios, remarked that the report was “a partial truth, since its version of history is nothing more than the point of view of the commission.” (El Periódico, 26 February 1999).

Not surprisingly, what has been refuted the most by government and military officials are the findings that the violence during la violencia was genocidal toward the indigenous population. When the issue of genocide was raised in the Commission it was met with great debate. Despite the massive violence visited upon Maya communities recorded by the CEH, the question remained: Was the violence genocidal? In other words, the CEH set out to find if the Maya were being killed because they were Maya or because they represented the real or perceived support base of the insurgency?

The CEH resolved this question by adhering to the definition set out by the United Nations’ Convention on the Prevention and Punishment of the Crime of Genocide. The convention defines genocide as the “intent to destroy, in whole or in part, a national ethnic, racial, or religious”. This separation of intent from motive is a key distinction, for it permitted the CEH to focus on the acts of ethnic violence themselves rather than

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24 Ibid., 254.
26 Ibid.
historical or social explanations (or rationalizations) given for those acts. In other words, it allowed the CEH to explain, historically and socially, Guatemala’s legacy of political repression without abdicating the moral authority to judge those directly responsible for individual acts of repression.\textsuperscript{27}

The CEH used historical analysis to understand the motive that informed the military’s actions. The commission concluded that military officials drew on deep-seated assumptions regarding Maya culture to “single out [Maya] as the internal enemy...both a real and potential support base for the guerrillas”.\textsuperscript{28} The military’s scorched-earth campaign, therefore, was designed to brutally cut off the indigenous population from the insurgency and break down the communal structures which analysts identified as seedbeds of guerrilla support, “The military destroyed ceremonial sites, sacred places, and cultural symbols. Indigenous language and dress were repressed...Legitimate authority of the communities were destroyed.” Maya were identified as the enemy and killed, even if the motivation was to beat the insurgency.

Government officials refused to accept the CEH’s conclusion that the state committed genocide against Mayan, instead arguing that the military acted in defense of national security. Guatemalan president Alvaro Arzú Irigoyen dismissed the CEH’s ruling, stating that “genocide is the desire to exterminate an ethnic group, and this was not the cause of the conflict.” The CEH’s turn to history allowed it to reject such a defense as explained above. More effective than all the proceedings before the judicial institutions of Guatemala may turn out to be a proceeding initiated by the Spanish Audiencia

\textsuperscript{27} Kauffman, “Transitional Justice in Guatemala: Linking the Past and the Future.”
Nacional on 27 March 2000 against former head of State Efraín Ríos Montt in particular, during whose time in office the worse massacres were committed by the armed forces and the security forces in the Mayan regions of the country. 29 The Spanish judge pointed out that facts submitted to him by Nobel prize winner Rigoberta Menchú, showing the passivity of the competent judicial authorities of Guatemala who were not fulfilling their duties, motivated him to start an investigation. Menchú believes that it is necessary to "fully identify those responsible for genocide" and to bring them to justice. 30

Probably the most profound failure of the CEH in reaching justice for the Mayans affected by the violence was that no consequences resulted from the findings of the CEH that genocide had been committed during la violencia. The implications are two-fold. First, the move to hold that the violence that occurred during the war was genocidal served specifically to bring justice to the Mayan population. If the government was to follow the guidelines set up by the genocide convention, then those who employed violence towards the indigenous people, such as Ríos Mott, could be brought to justice. For many Mayas this would help bring closure to the last 50 years of terror and permit transitional justice to have a steady base for the future. Secondly, if the government and those involved are not taking responsibility for the discriminatory crimes they committed in the past, how can they keep from occurring again? In other words, it will be much more difficult for those responsible for the violence to leap outside their ambiguous

30 Ibid.
relation with death, decipher the repression, read its causes, and work to make sure that the next hundred years do not repeat themselves.\textsuperscript{31}

While the CEH’s success was mixed it did manage to establish that facts cannot be hidden for the most part. No one may contend that the accounts of untold death and suffering in the highlands are just figments of imagination. It would now seem that the true challenge to the Ladino group of the population is to acknowledge that the racist ideology that has pervaded Guatemala for centuries has been one of the main reasons for the ruthless treatment of the Mayan communities.\textsuperscript{32} It is a bold assumption that peace and national harmony may ensue from the revelation of the truth without action. Human dignity must be restored to the victims in the form of the reforms and demands most desired by the Maya population. The next chapter will explore the possible reforms to return the rule of law back into the hands of the Mayan communities through customary law in order to restore justice in their terms since the national government has made little to no effort of doing this themselves.

\textsuperscript{32} Toumschat, “Clarification Commission in Guatemala,” 257.
Chapter 6

Customary Law and Judicial Reform

The Agreement on the Rights and Identity of Indigenous Peoples commits the government to reform the legal system to encompass a plurality of legal orders: specifically, to developing the legal mechanisms necessary to afford greater recognition to customary law (derecho consuetudinario) and traditional community authorities. Recognition of this right is laid out in ILO Convention 169:

"In applying with national laws and regulations to the peoples concerned, due regard shall be paid to their customs or customary laws. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights...The methods customarily practiced by the peoples concerned shall be respected."^2

Indigenous customary law in pluri-ethnic societies is argued as necessary in order to reverse historical legacies of discrimination and racism and the first step in the

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construction of citizenship. Advocates and proponents of customary law in Guatemala also agree in its implementation in order to reach the ultimate goal of a multi-ethnic state as laid out in the accords. However this goal has yet to be reached with its most recent attempt of making customary law a part of the Guatemalan constitution being voted down in 1999. This section will cover the importance of customary law in making the reality of a just future for the Maya population. In order to understand how the recognition of customary law mandated in the peace accords will open up the prospect of achieving a multi-ethnic state for Guatemala it is important to understand fundamentally what customary law means for indigenous populations and then specifically what Maya rule of law means for the Maya people.

Customary law can be defined in many ways depending on the context in which it is being utilized. ASIES provides a working definition of customary law at its most basic level as ‘the concepts, beliefs and norms which in the given culture of a community denote or define…harmful or unlawful actions; how and before whom the injured party should seek satisfaction or reparation; the sanctions for these harmful or unlawful actions; how and by whom these sanctions shall be applied.”³ Other interpretations of customary law maintain that its norms and practices be widely recognized as obligatory by the community in question; and that they have been practiced for various generations.⁴ It can also be defined in terms of its legitimacy- that is, the extent to which it is accepted as valid, culturally appropriate mechanism by the group in question, and its effectiveness at regulating social action and resolving conflict for that generation. This view holds that

even if certain norms and practices have not been in evidence for generations, or if their effectiveness is limited, it does not necessarily exclude them from the sphere of ‘customary law’. By defining customary law in terms of the above definitions it stipulates a return to a rule of law under the terms of the Maya community. In Guatemala this will entail norms and practices that vary both between and within different communities of the same ethno-linguistic group.

A general overview of Mayan customary law in terms of the organization of their communities, methods of conflict resolution and definitions of justice can further demonstrate the importance of implementing this institution into Guatemalan society. The structure of customary law that will be analyzed for the purpose of this chapter is based on a field study conducted by Rachel Sieder in the Q'eqchi’ community. While many of the practices in this town are similar to those of other Mayan communities of Guatemala, for the most part the customs and traditions differ between each ethno-linguistic group. Also, the organization of this community is one that reflects centuries of change mostly influenced negatively by discriminatory ladino rule. The specific changes that occurred in the community due to past discrimination will be analyzed further on in the paper. This is just a general representation of the current state of customary law in the Q'eqchi community.

Civilian authority for the most part in the Q'eqchi community is gaining ground against rule of the military that was present during the Civil War. Auxiliary mayors represent the highest legitimacy in the community and are central figures in community

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conflict resolution. Other areas of judicial authority come from improvement communities, and other sub-committees which are responsible for such things as education, potable water and roads. Where they are elected, these committees appear to have acquired considerable authority and are recognized as an appropriate mechanism for the resolution of various conflicts, often constituting- together with the auxiliary mayor- a forum for community negotiation.  

The opinion of the elders has a particular resonance for the Q'eqchi'; they are the guardians of history and ritual specialists. The authority of the elders among the Q'eqchi' has generally not existed as a formal structure, such as the council of principales or the auxiliary mayor. However, many of those interviewed agreed that in previous years people had tended to seek out the advice of elders in cases of intra-familial or neighborhood disputes. Traditional religious authorities are also regaining their place within the communities in Cofadíás and mayordomos. The leadership role taken by religious groups vary within the community and depend on the homogeneity of religion with traditional Mayan custom.

Community conflict resolution generally emphasizes the reestablishment of good relations between villagers and the search for means of resolution acceptable to both parties. This is necessary since the people live side by side with each other and have to continue to live side by side even after the conflict has subsided. Extended discussion is used in Q'eqchi communities as the main form of conflict resolution. The dialogue is fluid; at times it takes place only between the parties to a dispute or within the family, in

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7 Sieder, Customary Law and Democratic Transition, 38
8 Ibid., 39.
9 Ibid., 40.
10 Ibid., 41
other instances with the additional presence of community representatives (auxiliary mayors, improvement committees, catechists, etc.). Sometimes when the dispute affects everyone, it is discussed among the entire community. In most of the cases the auxiliary mayor held the most legitimacy in determining the outcomes.

Conflict resolution is also characterized by a relative absence of punitive sanctions. Many communities are attempting to construct more consensual modes of conflict resolution. Flexible solutions to various kinds of disputes are developed through dialogue and each conflict can be resolved in a different manner. The concept of pardon, like that of acknowledgement of error is particularly important in customary conflict resolution. In the event that the offending party fails to correct their behavior or heed advice, one sanction frequently used was exclusion from community life. All those interviewed by Sieder concurred that community means of conflict resolution were voluntary in nature; local authorities had few coercive resources except the threat to take the offending party to official state justice. ‘Respect’ constitutes the moral ‘glue’ binding the normative order and implies that every person in the community knows their role and the way in which they should behave. Community identity and responsibility are just as important as the individual.

However, the abovementioned organization and norms of Maya customary law are not as cohesive and harmonious in practice as described. Conflicts throughout Guatemala’s past in excluding Mayans have led to many changes in the Mayan community. Since the Spanish colonization of Guatemala, the Maya population has

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11 Sieder, Customary Law and Democratic Transition, 45
12 Ibid., 46.
struggled with living under a rule of law that is discriminatory and fundamentally
different from their own. The legacy of ladino rule has drastically changed the Maya
community by altering traditional judicial customs and powers of command. The late
1970s and most of the 1980s saw violence against indigenous communities at its peak.
State law in the form of organized terror- penetrated and shaped many spheres of
indigenous life, challenging customs and imposing limits on customary practices,
destroying much of what previously constituted ‘customary law’. The civil war not
only shattered communities but also deeply ingrained a sense of fear and distrust of
authority caused by the abusive power used by counter-insurgent forces against the
Mayas. In understanding the practices of customary law in Mayan communities today it
is necessary to understand the effects of violence and civil war that was imparted on the
Maya populations. It has been noted that, “repression and resistance generated at the
national level are often inserted into the local reality in culturally specific ways.”

Civil patrols (PACs) have greatly influenced the organization and dynamics of
power in the Maya community. Before 1985, local justice was officially administered by
the municipal mayors, who functioned as justices of peace. The 1985 Constitution
removed this statutory function from the mayors and created a series of district courts,
each to cover two or more municipalities. Due to lack of resources, a majority of
municipalities had no justices of peace that resulted in domination in power by military
and paramilitary structures. Counterinsurgency mechanisms gave considerable power to

13 Sieder, Democratic Transition and Customary Law, 21.
to Domination, Resistance And Terror, eds. Nordstrom and Martin (Los Angeles and Oxford: University of
certain individuals within rural communities who were named PACs or military commissioners. These authorities were not selected by the communities themselves but imposed from outside.\textsuperscript{16} The military commissioners were widely feared within the communities and intervened in local conflicts even though their power derived directly from their military connections rather than any consensus on behalf of the community. During the most acute period of militarization the authority of auxiliary mayors was weakened (many direct victims of the violence) and the center of local power was located in the military rather than the community. Even after the conflict, in a number of instances the ex-chief of the civil patrol had been elected as auxiliary mayor and in others ex-military commissioners continue to exercise considerable authority over the mayor or within the local improvement committees.\textsuperscript{17}

The elders’ authority was considerably reduced during the civil war when their influence was supplanted by the military commissioners and civil patrol chiefs. Many elders died during the violence of the early 1980s and traditional ritual observances were severely disrupted. As one elder put it: “With the war, we lost our memory.”\textsuperscript{18} Within the military camps and the controlled territories, the counter-insurgency strategy was to destroy elders’ authority within the community. By breaking the hierarchy of power, they were able to dissolve traditional ties of authority and rule of law.

The effects of military influence over forms of conflict resolution in the Mayan community have impacted its effective functioning. During the 1980s the role of the military was the decisive body in conflicts within the community. Some members of the

\textsuperscript{16} Sieder, \textit{Customary Law and Democratic Transition}, 37.
\textsuperscript{17} Ibid., 38.
\textsuperscript{18} Ibid., 39.
community who had links to the military would use this 'strategic use of law' to employ this 'strategic resource' and petition the army directly to intervene in their favor.\(^{19}\) The forms in which the military dispensed were in a highly authoritarian fashion. One interviewee from Sajacoc remembered: “the (military) base forced us to go to them if we had a problem, but all they ever did was threaten people so that they would stop making problems...that was the only solution they gave, but that is not the solution.”\(^{20}\)

The tradition of moral sanction was replaced by physical punishment. The hardening of sanctions has been signaled by some authors as a sign of loss of consensus in the community.\(^{21}\) In the region of Alta Verapaz, during a period of acute divisions among community members, the idea of punitive sanctions undoubtedly gained currency, fomented by the military’s counter-insurgency strategy. The concept of respect was also acutely disarticulated by “La Violencia”. Many teachings traditionally passed from one generation to another were no longer transmitted because of displacement, separation or the death of family members.\(^{22}\) Counter-insurgency mechanisms and the experience of living within military camps damaged preexisting behavioral codes. The custom of machismo began to take hold which has led many younger generations to no longer pay attention to the elders because they value western education above traditional oral history.\(^{23}\) In other instances, the experience of military service has radically changed their outlook and behavior.\(^{24}\)

\(^{19}\) Sieder, *Customary Law and Democratic Transition*, 41.
\(^{20}\) Ibid., 42.
\(^{21}\) Ibid.
\(^{22}\) Ibid., 46.
\(^{23}\) Ibid.
\(^{24}\) Ibid.
The decades of violence also has left a mark of fear on the Mayan communities. When ‘justice’ was defined by mass killings and kidnappings, the perceptions of those with judicial power became skewed. The civil war has also affected legal concepts within indigenous communities. The notion of ‘truth’ became a highly contingent one during the periods of acute violence and terror, when ‘not knowing’ became a means of ensuring individual and community survival. For victims, the world has become a more punitive and less predictable place. One of the effects of terror is the destruction of networks of stable expectations concerning what other people will do which lie at the core of any set of organized human relationships.

Discrimination within the state courts has also further excluded the Mayan population from a just rule of law. When conflict cannot be resolved within the community or the resources are not available to do so it is taken to the state level. In many instances of cases that were directed towards the judicial system (homicides, serious physical harm to people or property and land conflicts) many of those interviewed acknowledged that this was not always particularly desirable or efficient, given that externally imposed solutions generally failed to provide restitution or compensation to the offended party. Perceptions of the deficiencies of the national judicial system are widespread. State legal authorities are seen as inefficient or corrupt.

For many, recourse to state justice often meant the complication of a problem rather than its resolution. Solutions administered by the national judicial system—fines or imprisonment—were generally contrasted with more considered and consensual forms of

27 Sieder, Customary Law and Democratic Transition, 29.
resolution within the community. 28 Barriers of illiteracy and monolinguisim also are further disincentives to seeking redress within the national legal system. Many Mayan peoples feel alienated from the state legal system due to experiences of discrimination and racism.

The demand for official constitutional recognition of customary law and reform in the judicial system as laid out by the Peace Accords and ILO Convention 169 implies the state’s acceptance of the indigenous peoples’ right to resolve conflict within their broader framework of a multicultural state. The realization of this goal lays the (groundwork) for huge advancements in the reality for a multi-ethnic state but also presents a multitude of difficult challenges to overcome. The general functions and history of the rule of law in the Mayan community has been looked at to make more understandable the argument from Maya organizations in advocating for its role in the Guatemalan constitution. The rule of law in Guatemala is marked by a powerful military and civilian elite that act with impunity and operate ‘above the law’. This has had a profound effect on the perceptions of justice for those who are at the other end of the spectrum with few rights and multiple obligations to this unjustified rule of law. To the extent that fundamental rights, such as the right to life, are not protected and obligations, such as being sanctioned for a crime, are not enforced, the ‘rule of law’ will remain intangible. 29 A rule of law that is legitimate in the eyes of those most affected by the impunity of the current judicial institutions is central to the success of obtaining a pluri-ethnic and just society for the Mayans.

28 Sieder, Customary Law and Democratic Transition, 30.
29 Ibid., 3.
With this argument advocates contend that an undifferentiated rule of law is insufficient to secure justice. Addressing discrimination within a democratic framework requires special or exceptional rights and mechanisms for group representation. Legal orders are vehicles for the creation, affirmation and contestation of national identities and in changing an exclusionary rule of law to a more inclusive one. Recognition of ethnic legal rights can aid in reversing historical legacies of discrimination and be the first step to a more inclusive and participatory role for Mayans in society. This process excludes strategies of integration of the Mayan majority into traditionally dominant forms of rule of law and involves the construction of institutions which decentralize power and enable different groups to coexist on equal terms while maintaining their own customs.

This will involve a profound process of national reform affecting indigenous and non-indigenous alike. While international jurisprudence increasingly recognizes the right of indigenous people to use their customary law within the framework of a multicultural state (ILO Conv. 169, UN Draft Declaration on the Rights of Indigenous Peoples and the Peace Accords), it remains highly contentious within the Guatemalan national structure. Reform of the current rule of law will involve addressing the deficiencies of the existing judicial system and tackling the problem of impunity in the context of differing cultures. As will be seen in the few successes and continuing failures of implementing reform into the constitution, this task is highly complex with little budging from the Guatemalan elite.

To date, the 1996 Peace Accords and ILO’s Convention No. 169 represent the only recognition of customary law in a legally binding manner. However both cannot be implemented into society until legislation is signed into the Guatemalan constitution. As seen in the previous chapter the convention and accords were extremely controversial and when signed both were a huge step in the direction of creating a multi-ethnic state in Guatemala. On October 12, 1992 Majawil Q’il published demands, calling for “state recognition of our laws, but recognition through respect, not with pity or paternalism.”\(^{32}\)

The juridical section of COMG’s “Specific Rights on the Pueblo Maya,” also demanded legal recognition of Mayan languages, the administration of justice in those languages, and recognition, respect, and promotion of derecho consuetudinario, which “regulates the daily lives of the Maya today.” These supporters admit that attempts to fully assimilate the indigenous population have failed and that attention to and juridical legitimation of “their way of doing things” is merely accepting the reality of the multicultural country.\(^{33}\)

ASIES conducted a study titled, “Basic Investigations of Customary Law in Three Maya-Speaking Communities of Guatemala” and concluded that the systematic study of the legal and protolegal systems of the indigenous cultures and societies and of their knowledge must be understood and coordinated with the ‘national legal system’ in ways that are less ethnocentric and more just.\(^{34}\) The study was presented as vital for all members of the legal, legislative, executive, academic, bureaucratic, and public servant communities as well as the population at large, in order to create “a juridicial system

\(^{32}\text{Nelson,} \textit{Finger in the Wound}, 337.\)
\(^{33}\text{Ibid.,} 338.\)
\(^{34}\text{ASIES,} \textit{Investigación Basica Sobre Derecho Consuetudinario en Tres Comunidades Mayahablantes en Guatemala, Informe Final}, (Guatemala: ASIES, 1993) 3.\)
congruent with the cultural, linguistic, and ethnic diversity of the country and that restores justice to interethnic relations in Guatemala."  

The Peace Accords promised constitutional recognition of indigenous customary law together with the development of a pluri-cultural justice system which would include a greater role for alternative forms of dispute resolution in general. In September 1997 Congress passed a series of amendments to the 1994 Penal Procedures Code which aimed to promote greater use of alternative dispute resolution mechanisms, such as conciliation and mediation. While the original proposal recognized Mayan peoples’ rights to exercise their customary law, as demanded by Maya activists, it was then watered down to affect less change. Congress altered this proposal so that rather than recognizing existing community-level institutions and practices for dispute resolution, it superimposed a new, officially sanctioned form of 'community court' in a few Mayan municipalities with negligible prior consultation with the communities concerned. In 1998 the Commission for Strengthening Justice, created by the Peace Accords, also recommended constitutional recognition of customary law and the elaboration of a law to establish mechanisms of coordination between state law and customary law. Proposals that were put forward by COPMAGUA for constitutional reform to recognize a special jurisdiction for customary law were ignored by the PAN administration of Alvaro Arzú which opposed any reform of Article 203 (stating that only state courts could exercise legal jurisdiction).

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36 Ibid.
38 Ibid.
At a local level, the revival of customary legal practices throughout different parts of the country during the 1990s and the promotion of ‘Mayan law’ by certain Mayan organizations drew on the language of historical continuity and tradition. The attempts by local and national indigenous activists to reconstruct communities and rebuild identities that had been altered drastically due to the decades of violence were most strongly defended in communities that had been affected most by war. Some of these communities have begun to recognize both ‘formal’ (alcaldes auxiliares, comités pro-mejoramiento, alcaldías municipales) and informal (council of elders, etc) to deal with offenses within the community. This reconfiguration recognizes and affirms customary policy. Other advances include the increased number of translators in the court system, allowing greater access to judicial services for indigenous people.

The coordination of customary law and state law is complicated by the fact that state law is dominated by ladinos and customary law by indigenous people. Integrating these two systems, given the history of discrimination, will take great ingenuity and understanding if not to create greater conflict. The conclusion will explore the implications that have come from a lack of effective reform across Guatemala in including institutions to bridge the gap between customary and state law. Since the traditional experience of most indigenous people in the judicial systems is discriminatory and ineffective, they are pushed to resort to increasingly extreme measures of securing justice by any other measures. This paper will conclude by reviewing current issues of

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40 Sieder, “Recognizing Indigenous Law and Politics of State Formation in Mesoamerica”, 195
41 Ibid.
43 Ibid., 112.
violence occurring in indigenous communities due to a lack of legitimacy of law and of potential reforms for a more inclusive and culturally sensitive legal system.
Conclusion

In a recent case in the department of Totonicapan, indigenous inhabitants of the village of Chuanoj formed their own 'popular tribunal' composed of the elders of the village and the auxiliary mayors, basing their claims to exercise jurisdiction on the collective rights of indigenous communities to judge misdemeanors on the basis of their own customs and practices. The tribunal found two young men, one of whom was a minor, guilty of robbery. The youths were forcibly detained and then sentenced by their fellow villagers to pay a substantial fine and be permanently expelled from the community. Following an official complaint by the mother of one of the detainees to the Human Rights office, agents of the state judiciary condemned the act as one of illegal detention and abuse of the youths' individual rights, and mounted a subsequent police operation involving over 200 agents to free them, leading to angry confrontations with the villagers.1 In October of 1997, five people accused of robbery were forcibly taken from a local police station, lynched and burnt to death by a crowd of approximately a thousand villagers in San Idisdro, Comitancillo, department of San Marcos. Press reports stated that the villagers (and their five auxiliary mayors, who allegedly led the attack) had no faith in the ability of the local courts to affect justice.2

2 Sieder, “Customary Law and Local Power, 112.
While both these cases require further investigation into the specific circumstances it can be hypothesized that the lack of a legitimate rule of law is at its roots. Unless effective and culturally sensitive mechanisms to resolve conflicts are found instances like those above may occur more frequently. The increasing violence in Guatemala demands that future research needs to be explored in creating multi-cultural institutions of law. A proposed idea whose effects are worth exploring further is the use of mixed courts (as proposed in Ecuador as jurados escabinados) to hear appeals in cases where parties maintain their human rights have been violated by customary law procedures. These courts could include state judges and either members of the community in question or Mayan legal professionals. The probability for discriminatory rulings will decrease and the legitimacy of the process will be respected by all parties.

In regards to the other issues introduced in this thesis that are barriers to Guatemala achieving a multi-ethnic nation and dignified life for the Mayan people more exploration is needed for specific issues. The effects of the failed CEH commission could be further explored on communities and their ability to come to terms with the violence and how this has affected their ability in rebuilding local ethics and morality. The plethora of negative effects of the counter-insurgency on the Mayan community and its influence in aspects other than judicial institutions would be relevant for understanding the impacts of future reform. Exploring further into the other obligations
of the indigenous accord as well as other accords such as the socio-economic accord would provide further insight into the challenges that lay ahead for Guatemala in reaching a multi-ethnic nation. This thesis has also introduced the conflicts that exist between the indigenous groups of Guatemala. The dynamics of these issues could be further researched in how it has positively and negatively affected current initiatives of reform.

The fundamental conflicts that have arisen in Guatemala over ethnicity and the country's attempts at transforming its institutions to be multi-cultural can frame similar conflicts in other countries. The structure of the multi-ethnic society in Latin America is uncharted terrain. The successes and failures of policies and reforms that result from Guatemala's re-conceptualization of itself as a multi-ethnic society can be used as a template for other nations attempting the same changes. The future of the Mayans in Guatemala will have implications that exceed their own boundaries.

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Cojti Cuxil, Demetrio. *Configuración del Pensamiento Político del Pueblo Maya.*


Indigenous Movements and their Critics: Pan-Maya Activism in Guatemala.

