Race, Citizenship and Violence in Transitioning Societies: A Guatemalan case study

by

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Acknowledgements

Contents:

Agreement on the Identity and Rights of Indigenous Peoples (1995)
The Agreement on Social and Economic Aspects of the Agrarian Situation (1996)
Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society (1996)

- [Transitional Justice in Post-Conflict Guatemala](#)
    Erasing Accountability for the Past – the Law of National Reconciliation
    Guatemala's Truth Commissions: an overview of the REMHI and the CEH
    Impact on Reconciliation
- [South Africa's Transition and the Truth and Reconciliation Commission](#)
    The testimony of survivors
    Limitations of the TRC
    Reparations
    Beneficiaries of the TRC – big business and the white community
- [Guatemala's Transition – Violence, Human Rights and the State](#)
    State of the Accords
    Present day Guatemala – violence in new forms
    Rising crime – The interface of the political and the criminal
    Guarding impunity
    Lynchings
    Social Cleansing and identity-based violence
    Violence against women and children
    The threat to democracy
    Violence and identity
    Shifting representations of violence: nostalgia, politics and crime
    The changing representations of violence – from politics to crime
    Criminal justice today
    Violence as a reaction to crime
- [Consolidating Citizenship in a Post-Peace Accord Guatemala](#)
    Citizens and subjects
    Understandings of citizenship
    Guatemala's transition and the rebuilding of citizenship
    The Indigenous Rights Accord and the consolidation of citizenship
    Reform of the public sector
    Land
    Education
    Judicial system
    Participatory democracy
    Citizenship in a citizen / subject divide
    Civil society
- [Race Relations in Post-Peace Accord Guatemala](#)
- [Conclusion](#)
- [References](#)

The Race and Citizenship in Transition Series[1]

Bronwyn Harris, Nahla Valji, Brandon Hamber and Carnita Ernest

Race and citizenship are extremely complex concepts. In post-apartheid South Africa, they find expression on many different levels, including identity, conflict, nationalism, history, politics and inter-personal relationships. They occupy a spectrum ranging from everyday practices and interactions, to formal political and macro-economic forces. They also overlap with notions of reconciliation, justice and reparation, and, although they are separate notions with different histories, they overlap with each other. This creates an added dimension of complexity. Both race and citizenship can be (and commonly are) articulated and/or silenced to serve particular interests. Both can also feed into certain forms of violence, including xenophobia and racially motivated hate crime. Any analysis of race and citizenship must therefore acknowledge the complexity of their expression, representation and impact. Such complexity in the South African context must be assessed in relation to the country's apartheid history, as well as the processes of reconciliation best captured by the Truth and Reconciliation Commission (TRC).

Apartheid created *race* as a mechanism for violence. Race, in and of itself, was the social and psychological reality through which repression and violence functioned. Racism was institutionalised, legalised and internalised. South Africans saw the world in 'black' and 'white' terms and violence was commonly used to maintain this status quo. However, during the Mandela era (1994-1999), a new vocabulary emerged to describe the social order. This vocabulary spoke of nationhood, unity, racial harmony and reconciliation. South Africa was described as a 'rainbow nation'. Reference to race entered a sensitive and delicate terrain. This was a positive attempt to give South Africans a new language for speaking about – and to - each other. But, at the same time, it rendered the real, often violent, consequences of race invisible. In the Mandela era, there was little national debate on how race had influenced past human rights violations. There was also little recognition that race continues to shape identity and interactions – violent or not – within the present.

By contrast, the Mbeki era (1999-ongoing) has been characterised by a 'return to race'. This is partly a consequence of different presidential styles and roles – while Mandela had to stress forgiveness and underplay racial issues in order to consolidate a peaceful (and at times precarious) transition, Mbeki, as he stated in his 'two nations speech', has had to deal with economic inequality rooted in past racial practices. Additionally, the 'return to race' has been forced upon the society by violence: through the actions of white extremists like the Boeremag, as well as less political cases of racist hatred. Less violent expressions of/about race have also re-entered popular and political discourse: in 2000, the Human Rights Commission held hearings into racism in the media, and, in 2001, South Africa hosted the [World Conference against Racism, Xenophobia and Related Intolerance](#).

Although race can be read across these two discrete eras - 1994-1999 and 1999-ongoing - it is important not to oversimplify or reduce the differences to how race has been articulated. Despite a general 'return to race' post-1999, there have been numerous contradictions and striking silences on the issue; for example, within the realm of violence and conflict, as well as Mbeki's own discourse (in 1996, he gave his inclusive 'I am an African' speech, which contrasted with his 'two nations' speech in 1999, but at the opening of parliament in 2001, he seemed to discard the two nations analogy in favour of a 'united' South Africa,

irrespective of race). Also, while issues of race have partially emerged in the Mbeki era, the notion of reconciliation – particularly racial reconciliation - has become increasing invisible. The TRC finally completed its work in March 2003. Many have interpreted this as the end of South Africa's reconciliation process. However, incidents of racial prejudice, intolerance and violence, both within South Africa and internationally, suggest that the TRC was just the beginning and not the end of a sorely needed social dialogue about racial reconciliation.

The Truth and Reconciliation Commission (TRC)

South Africa did not 'invent' the truth commission. Since 1974 there have been more than twenty-five truth commissions around the world. But it was the South African Truth and Reconciliation Commission (TRC) that captured the world's attention. This is partly due to international interest in the fight against apartheid. Also, the TRC was the largest and best resourced commission, and it was afforded extensive media coverage, both domestically as well as internationally. This ensured that the world was exposed to the Commission, and the openness of the process meant that the violence of the past could no longer be denied. The South African model also attracted scrutiny because it promised an alternative way of peacefully resolving entrenched difference through the unique 'truth for amnesty'[2] deal upon which it was premised. Consequently, the notion of using a truth commission to deal with political conflict has gained momentum and many countries are now holding their own Commissions.

TRC Chairperson Archbishop Desmond Tutu said that without the compromises made during the negotiations to ensure majority rule in South Africa, the country would have gone up in flames. From this perspective it follows that the agreement by the African National Congress (ANC) to grant amnesty to perpetrators of apartheid violence was a pragmatic choice. Amnesty was the price, albeit a costly one for victims, for saving the innumerable lives that would have been lost if the conflict had continued. However, unlike in most transitional countries to date, amnesty in South Africa was neither blanket nor automatic. Conditions applied to the South African amnesty and the TRC was the vehicle for this process.

The TRC process began in December 1995 and finished in March 2003, when the Commission handed over the final 2 volumes of its 7 volume report. 7 116 people applied for amnesty. Almost 22 000 people came forward and told how they were victimised under apartheid. The TRC made a number of recommendations to the South African government regarding financial and symbolic reparations, issues of justice and ways to address relationships between South Africans. It is these issues that still need to be grappled with and addressed.

Evaluating the TRC

The public acknowledgement of past violations was perhaps the TRC's greatest success; as the brutal horrors of apartheid found their way, via the media, into the living rooms of every South African. An undeniable historical record has been created. However, apartheid history still remains contested and fraught with racialised interpretations; for example, many white South Africans continue to deny the impact of apartheid and many dismissed the TRC itself as a 'political witch-hunt' (cf. Thiessen, 1996[3]). The role of the TRC - in both

writing history and as an historical process itself – demands ongoing scrutiny.

At a narrower, more immediate level, a minority of victims did uncover suppressed truths about the past. In some cases, missing bodies have been located, exhumed and respectfully buried. For others, the confessions of perpetrators have brought answers to previously unsolved political crimes – crimes, which the courts, due to expense and inefficiencies, may never have tried. However, for many, the TRC began a process that it was unable to complete. Many of the victims who went before the TRC, with the hope that their case would be investigated, feel let down and no closer to the truth than before they publicly told of their suffering. Irrespective of the feasibility of investigating every case, victims' high expectations of the TRC have been dashed, and in their eyes, this has undermined its credibility.

Justice also remains a burning issue. Politicians may be able to justify the exchange of formal justice for peace, but it was difficult for victims to watch while the perpetrators received amnesty. Not only were many perpetrators 'let off the hook', victims feel let down and disappointed by the government's response to the TRC. Regarding financial reparations, the Commission recommended that the government should pay those victims identified through the TRC process R3 billion, in annual installments over a 6 year period (this total figure represents 0.001% of the country's annual R300 billion budget, which translates into R136 000 per individual). However, the South African government has only agreed to pay R30 000 per individual, in a once off payment. The Commission also recommended that business and other apartheid beneficiaries should pay a once-off wealth tax and that the country's inherited apartheid debt (which accounts for approximately 20% of the government's annual budget) should be restructured in order to free up money for development and redistribution. Again, the government chose to ignore these recommendations. This has left victims feeling betrayed. It also does not bode well for long-term reconciliation. As CSVR researchers, Polly Dewhirst & Nahla Valji (2003) note,

> The 'miracle' of a new SA is hardly sustainable if it is built without restoring the dignity and humanity of the majority of its citizens, nor if it fails to address the economic inequalities which fuel social conflict.[4]

There are also debates about the broader merits of the TRC. At the very least the reconciliation project, with the TRC at the helm, has brought South Africa through the transition period with relative political stability. The humanist approach of Mandela and Tutu brought compassion to a brutalised country. Despite the horrors revealed by the TRC, glimmers of humanity shone through and provided hope for the future.

However for some, despite the merits of the TRC, 'reconciliation' is merely a euphemism for the compromises made during political negotiations - compromises that ensured continued white control of the economy. From this perspective, reconciliation is meaningless without structural change. A related, more cynical view is that the rapprochement between the old and new regimes was a strategy to consolidate a new black elite under the banner of reconciliation.

Many argue that the TRC missed the bigger picture by defining victims only as those who suffered intentional violence. Because the TRC focused on victims of gross human rights

violations, such as torture and murder – it did not include the 'ordinary' victims of apartheid – the millions of South Africans who suffered from land removals, forced displacements, the migrant-labour system, Bantu education etc. As such the TRC did not engage directly with the institutionalised, structured ways in which racist policies affected and victimised people on a daily basis. Those who suffered more broadly from the economic ravages of apartheid and were not victimized directly by political violence were excluded from the TRC. An important question to ask is: what mechanisms do those, excluded from the apartheid state and then from the TRC, have for defining and consolidating a sense of citizenship in the 'new' South Africa?

Similarly, the degree to which the TRC used race as an explanatory variable in its understanding of the abuses it investigated remains questionable. In some cases, 'race' was generally collapsed into 'political motive', as exemplified by the amnesty decisions in the Amy Biehl, Chris Hani and St James' Massacre cases. However, this was done inconsistently and the relationship between race and politics was not clearly defined. Overall, the reconciliation process engaged less with 'black and white' issues then with inconsistent 'political' definitions of perpetrators and victims. This has had the after-effect of divorcing race, and racial identity, from the violence of the past. It similarly keeps race separate from understandings of violence in the present.

A related point is that, as a transitional justice mechanism, the TRC accepted and legitimated certain explanations for the violence of the past. In this way, it has played a key role in influencing the society's moral reactions to violence. This is specifically evident in the area of amnesty. The question needs to be asked, despite the compromises made to set up the TRC, has amnesty undermined South African citizens' sense of morality? Has it contributed to ongoing violence and impunity? Has it impacted upon how different race groups see each other? There have been various evaluations of the TRC, but none have taken into account the ways in which it has explicitly addressed race, morality and citizenship as components of past human rights violations and factors in contemporary social relations. It is precisely these questions that the *Race and Citizenship in Transition Series* has sought to address.

The different perspectives surrounding the TRC demonstrate the complexity of dealing with oppression and violence – and how past events shape the process of reconciliation.

The TRC was not alone in its attempts to build reconciliation in South Africa. A number of other institutions were set up to deal with the legacy of the past. These included for example the Land Claims Court and the Human Rights Commission. Other structures, such as the Independent Complaints Directorate, were set up to monitor ongoing abuses by the police. However the degree to which these institutions, and the TRC can be said to have consolidated reconciliation and effected transformation can, at best, be described as ongoing but desperately incomplete. There are ongoing police abuses, young people still express feelings of marginalisation, racism and racist incidents continue to take place, and the poor have not substantially benefited from the changes in the country.

Levels of Reconciliation

The process of reconciliation can be said to operate on a number of levels, i.e. the political, community and individual levels.

At the political level, reconciliation has been embodied in the compromises that lead to a political peace. This process can be said to be broadly successful, as it has brought political stability to South Africa.

At the community level, despite some successes by the TRC, reconciliation is largely incomplete, with many of the old racial and political divisions remaining in place. This is evidenced through high levels of residential segregation between black and white South Africans residentially. It is also expressed between different groups divided along political affiliation, such as ANC and IFP supporters, and xenophobic hostility between South Africans and foreigners, particularly those from elsewhere in Africa.

At the individual level, the question is far more complex and is bound to how individuals feel in relation to the process of reconciliation. Many individual victims feel that their needs have not been met by the TRC. At the same time, many of those who benefited from apartheid are still denying their complicity status. This is linked to the many who refuse any responsibility for reparations and redressing the past. There is also an expectation that the next generation will somehow begin with a 'clean slate' (Oakley-Smith[5]). The ongoing impact of a racist and violent past continues to play out through incidents of racist hate crimes and expressions of xenophobia. Hostility towards foreigners, particularly black Africans, commonly results in violence and is spurred on by overly zealous views of nationalism in the 'new' South Africa. In addition, many South Africans are finding themselves questioning their role in the country. This could be linked to the many young people who are leaving the country as they feel there is no future for them in South Africa.

A Crisis of Citizenship

We would like to suggest that there is a 'crisis of citizenship' in South Africa at present, which threatens the genuine reconciliation begun through processes such as the TRC. This crisis manifests itself in ordinary people asking where they belong in the new society. This crisis suggests that there is much work that needs to be done to consolidate the process of reconciliation and a sense of inclusive citizenship. The *Race and Citizenship in Transition Series* is a space for exploring this citizenship crisis, along with the related issues of race, reconciliation, violence and identity in South Africa. Key issues to be examined include:

- **Racially motivated violence**. To what extent does race continue to impact on patterns and trends of violence? How relevant is the concept 'hate crime' to the South African context? What challenges does the criminal justice system face in dealing with racially motivated violence?
- **Race and the TRC**. As a key instrument of transition, how did the TRC engage with the racism of South Africa's past? How has this impacted on the telling of history and contemporary understandings of racial relations?
- **Lessons from Guatemala**. There are many parallels between Guatemala and South Africa: historically, both countries were based on racist political systems, which resulted in racialised inequality and conflict. Both countries set up truth commissions to address their pasts and engage with citizenship in the future. Both countries continue to be marred by violence. What lessons can South Africa learn from the Guatemalan transition?
- **Young people and race**. How do young people conceive of citizenship, identity and racial reconciliation? The views expressed by the younger generation provide a

means by which to evaluate the degree to which South African society has, or has not, transformed; as well as the longer-term influences of transitional processes.

- **Institutional transformation and the legacy of racism**. What recommendations and findings did the TRC make about transformation in the South African Police Services, schools, and efforts to address racism in South African institutions?

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Series Editors

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Executive Summary

Over the past two decades South Africa has experienced the upheaval of a democratic transition that has restructured not only society and its institutions, but core concepts of social organization such as racial identity and citizenship. The CSVR Race and Citizenship in Transition Series has set out to examine the ways in which ordinary citizens engage with issues of race and citizenship in a post-transitional society, ten years into the country's democracy. The goal of the project is to understand the long-term impact of structures, in particular truth commissions, as well as the model or type of transition and democracy, in order to examine the impact these elements have on violence and racial identity during times of transition.

In addition to looking at South Africa's own experience (cf. reports in the Race and Citizenship in Transition Series), the series incorporates an in-depth examination of these same elements during the course of Guatemala's transition to democracy.

The following paper focuses on race, and the nature of negotiated transitions, as well as the thin line between political and social conflict; a line which is often blurred during democratic transitions.

In many ways, Guatemala reflects important similarities with South Africa. These include:

- Similar types of history, including the historical oppression of a racialised majority by a racialised minority which resulted in a system of 'internal colonization';
- Both have been described as a 'pigmentocracy' and both led to conflicts which were at their core about retaining a system of racialised privilege.
- Exclusionary political systems, widespread and institutionalised discrimination leading to the impoverishment of the majority at the expense of an ethnicised minority;
- The creation of an impoverished, racially-defined labor pool through deliberate state policies;
- The treatment of a section of the population as being property and therefore beyond the protection of the law;

- A conflict which took place against the background of the Cold War and was therefore shaped by this larger global context;
- The invocation of the discourse of nationalism from both sides of the conflict;
- A negotiated transition in the immediate aftermath of the Cold War and the involvement of the international community whom (initially at least) hailed both countries as examples of peaceful negotiated transition to democracy;
- High levels of violence in the post-transition era;
- New types of social violence linked to the period of transition itself, as well as to the past;
- A negotiation process and use of truth commissions to address the conflict of the past and create a foundation for a new state and citizenship;
- Strong militarisation of the state (although in South Africa the apartheid regime was a less overtly militarized regime as the government fictionally believed themselves to be democratically elected and did not come to power through overtly violent means). This militarization has left an impact on citizen's relationships with the state, as well as their relationships with each other, thus damaging the social fabric needed to consolidate democracy.

Whilst the parallels between these countries are striking, there are also important limitations to any comparison as each country has a unique history. Key differences between Guatemala and South Africa include:

- In South Africa the previously excluded population gathered their support primarily behind the African National Congress (ANC) and ANC-affiliated organisations which dominated the political landscape and came to power in the first democratic elections of 1994. In Guatemala, the coalition of guerrilla groups - the Guatemalan National Revolutionary Unity of Guatemala (URNG) - has faded into obscurity with only a handful of representatives elected. Guatemala continues to be dominated by the political parties of the past. This means that the structures, representatives, and institutions of the state remain largely untouched despite the negotiated settlement, as those who fought for freedom did not come to power. Although political space is being forced open by the increased mobilization of the indigenous population, they are attempting to create a space for themselves in an infrastructure that is largely unchanged. One observer, in noting the parallels between the two countries, expressed the divergence thus: In South Africa 'the whites essentially gave up – they knew they were going to lose the fight and decided instead to cut a deal.' In Guatemala on the other hand 'the whites won. More importantly, the army won.' (Padilla, in personal communication).

- Whilst in South Africa, the system of racism was formal and legislated, in Guatemala, this was only the case until the 1940s. Thereafter, racism was sustained by socially imposed norms. In South Africa, the apartheid regime legislated the majority population 'apart'. In Guatemala the majority were already concentrated geographically in rural areas, so land and economic policies merely ensured they remained separate. However, in both, there were also pockets of 'beneficiaries' within the oppressed class such as those who collaborated with the Guatemalan military, and the ruling elite in the South African homelands. Some of the more recent conflict has also been about the displacement of power structures at a local level and the attempt by these former beneficiaries to protect their past privileges.

- In South Africa the everyday violence of systemic and institutionalised racism had a devastating impact on the black population, but unlike the Guatemalan military regimes, the apartheid state did not pursue the same kind of deliberate genocidal policy against its indigenous population.

It is in looking at the similarities and, indeed, differences between the countries that lessons can be extracted about the nature of violence and social relationships during periods of political transition. It goes beyond the scope of this report to provide a detailed comparison between these countries and as such it is not a comparative report. Rather this study details the trajectory of Guatemala's history and transition and notes similarities and points for comparison with South Africa to highlight the impact of various elements on a democratic transition, as well as relationships between citizens in a historically divided country. Where similarities with South Africa are specifically noted, summarised information on the South African context is provided in incorporated boxes in the text.

Guatemala: A Brief History

In 1996 Guatemala signed a comprehensive peace accord, which brought to an end 36 years of brutal conflict. It was hoped that the accords would also begin to transform the country - from a deeply divided nation that had denied the rights of a majority of its population for so many years, to a culturally inclusive state. Seven years on, it appears that the opportunity to consolidate democracy has faltered, and that other than initiating new opportunities for social mobilisation Guatemala's transition to a racially inclusive democracy has been incomplete.

Guatemala is a geographically small country on the Central American peninsula, with a population of approximately 11 million. It is racially divided between a 40 percent *ladino* population (a mix of European and Mayan) and the 60 percent indigenous Indian population.[6] From the time of the 'discovery' of the New World some 500 years ago the indigenous population has been subjected to a prolonged history of oppression. The Spanish invasion of Latin America has been described as a 'demographic, social, and cultural "holocaust"' (International Center for Human Rights Research, 1996); and it initiated in Central America a system of racial oppression that has reproduced itself in a variety of forms through the centuries.

Race itself has a complex history in Guatemala, much as it does in Latin America broadly (and indeed, South Africa). Historically, the nation-building project pursued in Guatemala was one of *mestizaje* – the belief that all indigenous persons should become Mestizos.[7] Contrary to Euro-American thought at the time which actively pursued segregation, the *ladino* population did not believe that race mixing would lead to the degeneration of the white race, but rather that the achievement of the *mestizaje* ideal would in fact strengthen the nation by creating a homogenous population and thus the basis for universal citizenship (Hale, 2002).[8] The myth of *mestizaje* held that 'indigenous culture is inevitably, almost naturally, destined to disappear, replaced by a hardy and unique hybrid national culture that draws sustenance from both indigenous and European traditions' (Hale, 2002, p.500). Whilst such a hybrid was propagated as a lofty and charitable goal, its effect was in fact to deny the indigenous population citizenship on the basis of being members of a common nation, and rather to premise it on the condition of assimilation. Hale (2002) notes that this

philosophy of a *mestizaje* ideal was dangerous to the Mayan culture precisely because it 'extended a small but significant promise of redemption to those who would become "Mestizos"' (p.501). The end goal of this nation-building project was to eradicate the Mayan population by replacing its culture, tradition, and community in pursuit of a 'whitened' homogeneous population (Wilson, 1997).

As the state pursued the elimination of the Mayan culture through assimilation it continued with a simultaneous policy of segregation in practice. Indians were kept in separate schools and communities and had separate local political authorities. Laws during colonialism were administered on the basis of race; Indians were regulated by the *Ley de Indios* whilst the dominant population was governed by their own laws: '[s]ocial and legal inequality was justified on the grounds that people had inherently different natures' (Sieder, 1998, p.99). With independence in 1821, power did not shift to the indigenous population, but rather to the minority elite *ladino* population, which continued to exercise a system of internal colonisation similar to that of South Africa. Racial discrimination ceased to be legally institutionalised in the 1930s (Wilson, 1997),[9] however the legacy of exclusion persisted in all sectors of public life. Amongst other means, this exclusion was ensured through language. Guatemala is constituted of over 25 linguistic groups (MINUGUA, 2001), however Spanish is the only official language and is the only language through which the services of the state are provided. This exclusion of those who did not assimilate manifested itself in their isolation from the benefits of citizenship, as well as their political isolation from the process of nation-state construction (Sieder, 1998).

It was during this period that the Maya, as a colonised group, were given the stark choice of assimilation or exploitation – a 'choice' that was to become a key feature of Guatemalan race relations. An early example of this harsh trade-off was the 1894 Decree which allowed Indians to avoid compulsory military service either by having a minimum debt to a coffee plantation (i.e., forced labour), or by learning to read and abandoning their customary dress (Sieder, 1998). Forced labour for the indigenous population as a whole was legally enforced until 1944 (Jonas, 2000) and those that were forced to serve landowners in this capacity were treated harshly. *Latifundistas* (large landowners) were 'effectively a law unto themselves' (Sieder, 1998, p.101): there was no protection in the law against abuse, physical or sexual, and a law passed in 1932 exempted landowners from any measures they may take to safeguard their goods and lands; in effect legalising murder on these holdings (Sieder, 1998).

Mayan land was expropriated and its inhabitants forced to take up small holdings on the harshest and least fertile land. The best land was given over or sold cheaply to large landowners and businesses. The effect of this expropriation was to create a captive labour pool with little option other than to sell their labour cheaply to survive. Through this cycle, the domination of an elite minority was consolidated by both the material benefits of massive land expropriation as well as a farming sector that was fuelled by essentially free labour. This benefit was to serve the elite well during the coffee market boom in later years (Wilson, 1997).

The creation of an oppressed racially defined group coupled with the contradictory pursuit of assimilation by the state has led to a tight interweaving of class and race. Social status has become closely affiliated with race and as such, an individual who pursues a job in the

city, speaks only Spanish and has discarded indigenous dress is considered to be 'ladino' (Gonzalez, in personal communication).[10] This avenue for escaping discrimination has only reinforced the assimilation/exploitation dichotomy.

Internal colonisation has created in Guatemala a situation similar to that of South Africa – where the wealth of the nation is held in the hands of a racially defined few, and where the majority population lives in desperate poverty. In both countries, the gap between the rich and the poor is amongst the worst in the world,[11] and although Guatemala ranks as a middle-income country, only 10 percent of the indigenous population lives above poverty.[12] According to recent government statistics, life expectancy amongst the Mayan population is 17 years lower than it is for ladinos. Levels of education and access to all social services are far lower amongst the Indian population with illiteracy amongst Mayan women estimated at over 90 percent (Sieder, 1997).[13]

Inequalities have been entrenched and aggravated in Guatemala by a historical absence of any social spending. According to the World Bank, Guatemala spends less money on social services for its population than any other Latin American state, in spite of its comparatively high GDP (Jonas, 2000).[14] What little money has been spent on public investment was done in such a way as to perpetuate regional and racial inequalities and discrimination (MINUGUA, 2001). Linked to this are the lowest taxation rates in the region - meaning that the state has little role in the redistribution of citizenship benefits. Jonas argues that poverty in Guatemala has been unique from that of neighbouring Central American countries on three counts: this absence of spending or tax reform; its ranking as last in the region on a number of poverty indexes; and its ethnicisation (and feminisation) of this poverty (Jonas, 2000).[15]

Creating Race in South Africa: Racist Citizens, Racialised Subjects

Background and history

South Africa's racial history can be defined in terms of three phases – colonialism, segregation, and apartheid (Terreblanche, 2002).

- When the Dutch 'discovered' the tip of Africa in the 17th Century, they established a relationship with the indigenous population that although based on exploitation, did not seek to exclude or segregate in the manner that would later develop. In fact, the Europeans mixed freely with the indigenous population, contributing in part to a racial grouping that would come to be known as 'coloured' under apartheid. This intermixing was later rejected and de facto segregation was put in place.
- In the Boer War of 1899 the Afrikaners and the English waged war over control of the country and its inhabitants. In particular, the discovery of diamonds and gold made South Africa a desirable conquest. It was from the roots of this colonial legacy that emerged the indivisibility of political oppression and economic exploitation, as cheap labour was necessary to make the mining of these minerals profitable.
- The system of exploitation and segregation that existed in the early 1900s was partially codified in legislation (eg, the Land Act of 1913 which dispossessed blacks

- of their land in order to give it to white farmers). For the most part however, relationships of exclusion were social practice premised on notions of white superiority.
- In the 1940s, as Guatemala was abolishing legalised racism (and rather just instituting it in practice), South Africa was moving in the opposite direction. With the election of the National Party in 1948 the system of apartheid, or legalised 'separatism', was put in place.
- Apartheid codified four racial categories – whites, Indians, coloureds and Africans. Each was ranked along a hierarchy of privilege. Whilst Indians, coloureds and Africans were collectively considered 'blacks' and thus secondary citizens to the white population, Indians and coloureds did enjoy a handful of petty privileges denied to the African population, thus dividing the population further and ensuring a measure of social control by the white government.
- Under apartheid the organising principle of the state was that of race. Different racial groupings were allocated separate living areas, schools, general amenities etc. Relationships across the colour bar were forbidden and the 'classification' of individuals often took the most absurd forms.[16] This sometimes meant that members of the same family were classified in different racial groupings – forcing them to live in different areas of the country and live very different lives.
- By the end of apartheid there were three hundred apartheid laws on the statute books 'designed to disadvantage black South Africans from the cradle to the grave' (Hausfeld, 2003, p.1). The Truth and Reconciliation Commission summarised the brutal impact of apartheid laws: Laws tore millions of workers from their families, forcing them to work in white areas and live in enclosed compounds to which their families had no access. Laws forced people to work for grossly insufficient remuneration and to endure the indignity of pay scales determined not by competence or experience, but by race. Laws forced people from their homes and communities and from their ancestral lands. Laws dictated with whom one might and might not have sex, marry or even drink. Laws allowed people to die rather than violate 'whites-only' hospital edicts, and then determined in which plot of land they could be buried. (Truth and Reconciliation Commission, 1998, Vol.1, p.41)
- Blacks were denied the most basic rights and freedoms under apartheid, forcing them to live in conditions of poverty and state enforced inequality. Political repression and subjugation was ensured through the use of violence and force on the part of the state.
- In 1976 the apartheid state declared the creation of Bantustans, or homelands: ethnically segregated, territorially separate and nominally independent areas of land just beyond the borders of 'white South Africa', Through the creation of the homelands the apartheid regime completed its project of dividing the country between citizens and subjects. Of the twenty-six million South Africans living in the country in 1976, only the four million considered 'white' had full rights of citizenship. The remaining 'who were born in South Africa, worked in South Africa, and died in South Africa were considered foreigners in their own land' (Hausfeld, 2003, p.1).

Class/race relationship

State spending in both countries was determined by race. Whilst in South Africa the disparities were codified in law, in Guatemala this was merely reflected in practice.[17] Little was spent on rural areas and as a result there were no public services for the majority indigenous population that resided in these areas. Hierarchical spending in both countries created a clear convergence of race and class, where the impoverished and excluded majority were a racially-defined population. In South Africa:

- World Bank figures estimate that two-thirds of the black population are poor or ultra-poor. On average, whites earn 9.5 times as much as blacks and live 11.5 years longer (Wilson, 1997, p.5).
- By the 1990s approximately seventy percent of SA land was owned by 50,000 whites (Wilson, 1997, p.6).
- The legacy of racial policies in both South Africa and Guatemala has been to create societies that have the highest levels of economic inequality in the world. In South Africa, The standard of living for blacks is comparable to the 124th wealthiest nation in the world, that of whites is comparable to the 24th (Hamber, 1999).
- During the conflict, communism appealed to the poor of both countries (much as it appealed to the poor globally during this time), who, because of structures of discrimination, were a racially-defined group. Hence the Cold War was played out on a domestically racialised terrain in both countries.

Labour, land and access to resources

As noted above, the apartheid system was one of political oppression hand in hand with economic exploitation. The dispossession of land under the 1913 Land Act[18] not only provided land for white farmers, but by placing eighty percent of the population on less than thirteen percent of the land, the government created reserves of desperately poor Africans who were forced to provide cheap labour as miners, farm workers and domestic workers. Dispossession was continued through the practice of forced removals, described by one human rights writer as 'the South African Gulag' (Mamdani, 2000, p.180). It is estimated that between 1960 and 1982 more than three and a half million Africans were forcibly removed from their communities, their houses bulldozed and their possessions dumped in a far off area designated as a 'black spot' (Mamdani, 2000).

There was no legal protection for black labourers and farmers viewed workers and their families as property. This meant that beatings were often used as discipline, murder of labourers went unpunished, and a family who had dedicated their lives to a farm could find themselves evicted and penniless at the discretion of the farmer.

Education

The education system under apartheid was designed to serve the purposes of the white owned economy and as a mechanism of oppressive control. In the infamous words of Hendrik Verwoerd, the father of 'separate development', the inferior system of Bantu education (as the education system for the Africans was known) was justified as serving the purpose of preparing blacks for their place in society - as 'hewers of wood, drawers of water'. To this end the government spent between four and seven times the amount on white

learners as they did on blacks (Khan, 2003).

Prejudice, exclusion and citizenship

If there is one common experience of everybody in the nation that is poor, it is racism. Racism has many facets: social, psychological, cultural and economic. It is about the continuation of colonial and apartheid power relations, the exclusion of ... blacks regardless of class and the virtual conditions of slavery endured by millions of farm workers, domestic workers and miners. (Article in the Sunday Independent, quoted in Terreblanche, 2002, p.39)

As noted above, racism in Guatemala differed in an important respect from the racism experienced in South Africa. Whilst both countries sought to exclude their majority populations, South Africa did so legally and formally, whilst Guatemala did so implicitly and in practice. The end result however was similar – an entrenched ethnicised poor whose relationship to the state was one of captive labour and not as citizens. In both countries racism continues to play a role in depriving the poor of opportunities, further marginalizing and excluding them.

Social fabric, control and violence

Violence has been the single most determining factor in South African political history. The reference, however, is not simply to physical or overt violence – the violence of the gun – but also to the violence of the law or what is often referred to as institutional or structural violence. (Truth and Reconciliation Commission, 1998, Vol.1, p.40)

- The difficulty faced by the minority governments in both South Africa and Guatemala was 'how do a few control the many' (Padilla, in personal communication)? In South Africa segregation was the primary tool to social control and the imposition of apartheid took enormous administrative power and resources. In Guatemala, the majority was controlled purely through terror (Padilla, in personal communication). Both regimes however used violence and the threat of violence to maintain control, and both enforced institutional violence in the form of systematic deprivation.
- Similar to Guatemala, South Africa experienced a long history of armed conflict within the context of the Cold War which gave them the opportunity to define the conflict in relation to anti-communism and thus gain legitimacy and support from the United States for oppression of their population.
- The South African Truth and Reconciliation Commission found that the state security forces:
  'used both overt and clandestine methods to suppress resistance and counter armed actions by opponents of apartheid. Overt methods included bannings and banishment, detention without trial, judicial executions and public order policing. More clandestine and covert forms of control included torture, extra-judicial killings and support for surrogate forces.' (Truth and Reconciliation Commission, 1998, Vol. 2, p.165)

> - Although the systems of both countries translated into conflict that was political and, from a macro-perspective, largely racialised, this was not the only form of violence in each society. It goes beyond the scope of this report to engage with the complex manifestations of violence but it is crucial to note that race was but one site of conflict. In South Africa, for example, the apartheid state maintained some of its control through covert methods (i.e. the Third Force), which resulted in violence that was publicly represented with the reactionary term 'black on black' violence. Ethnicity, rather than race per se, was commonly exploited to reinforce social divisions. Gender, set within a militarised context, was also a space for struggle and violence. Relationships within certain communities similarly suffered from violence linked to local structures of power and privilege: warlord economies in KwaZulu-Natal; gang-based violence in various communities; and violence between rural and urban areas are just a few such examples (cf. http://www.csvr.org.za).

Years of Conflict

From 1870 until the 1940s Guatemala was ruled by dictators, establishing a history of governance 'by the few' that was to have only a brief respite. In October of 1944 a coalition of democratic forces in the military joined with armed students and workers to overthrow the government of General Castañeda in what became known as the October Revolution (Kobrak, 1999). What followed were ten years of the only true democracy in Guatemala's history. Free and democratic elections were called and two successive governments established basic liberties, increased social spending and abolished forced labour (Jonas, 2000). They also embarked on a comprehensive programme of agrarian reform and land redistribution. In 1952 Congress approved the expropriation and redistribution of government-held land, rural communities' common lands, and the unused properties of large landowners (Kobrak, 1999). As the largest landowners in the country were US-based companies, the nationalisation of property raised alarms on the American government's radar. Although the government of Colonel Jacobo Arbenz aspired to a 'nationalist version of capitalist development' (Kobrak, 1999) and followed market-led redistribution (which in the end benefited the upper classes), the challenge to the system of property was unpalatable to the Americans. When the Arbenz government expropriated the unused land of the American-based United Fruit Company (the largest land owner in Guatemala) it was accused by the American government of being a beachhead for Soviet expansion in the hemisphere (Jonas, 2000); thus placing them in direct opposition to American interests at the height of anti-communist hysteria and the Cold War. The CIA began to work with internal opposition groups – largely the elite who opposed the impact that Arbenz's rule was having on their privileges – and in 1954 the elected government of Guatemala was overthrown and a pro-American regime installed. The regime moved quickly to reverse all progressive legislation and establish a repressive counterinsurgency government (Jonas, 2000). Noam Chomsky later summed up this period of Guatemalan history by noting:

> The first democratic government in Guatemala's history, modelled after Roosevelt's New Deal, produced a bitter antagonism with the United States. In 1954, the CIA engineered a coup that transformed Guatemala into a hell on earth. This has remained the case ever since … (International Center for Human Rights Research, 1996)

With the full weight of American support and training behind them, as well as the prevailing anti-communist sentiment of the time, the new political powers instituted a rapid crackdown on any political expression (Commission for Historical Clarification, 1999). Hundreds of peasant and labour activists and intellectuals were detained, tortured, or killed. Many others simply left the country or abandoned their political roles to safeguard their lives (Kobrak, *et al.*, 1999). Anti-communism became the raison d'être of the new regime and all opposition was vilified in this manner (Kobrak, *et al.*, 1999). The reinstatement of conservative policies and the new prominent role of the military brought together the political, economic and military players in the country in a new ruling coalition (Commission for Historical Clarification, 1999). This relationship was contrasted with deteriorating economic conditions for the majority that increasingly polarised society.[19] The illegitimacy of the ruling coalition, and its refusal to consider even modest reforms, closed down all political space within the system and fostered the conditions for the growth of a guerrilla movement (Jonas, 2000). In 1960 when a coup d'état against the unpopular government failed, two of the instigating officers escaped and began a guerrilla movement in the predominantly *ladino* Eastern highlands. This was the start of 36 years of brutal conflict.

The war was not a continuous phenomenon, but rather was sporadic over periods and characterised by differing types of conflict through the 1960s-1980s. The guerrilla movement was in the beginning small and had no base amongst the indigenous population. Its support base was instead the urban areas and the predominantly *ladino* region of the Eastern highlands. In spite of the limited nature of the original insurgency, the state required substantial effort to contain it (Jonas, 2000). It did so only with the backing and technical assistance of the US military who during this time 'professionalised' the Guatemalan military into a 'modern, disciplined, brutal counterinsurgency army' (Jonas, 2000, p.21). So whilst the first few years of the war were fought through limited means and primarily between the urban middle classes (Kobrak, *et al.*, 1999), the transformation of the military led to a brutal crackdown in the late 1960s resulting in the deaths of 8,000 civilians (Jonas, 2000) and the almost complete destruction of the guerrilla forces. The conflict then disappeared for some years, reviving again in an urban context in the late 1970s (Plant, 1999). Reeling from their earlier defeat, by the 1970s the guerrilla groups (of which there were now a number) concluded that their failings had originated from an overemphasis on military means and the absence of a mass support base, in particular the indigenous majority in the rural regions (International Center for Human Rights Research, 1996; Jonas, 2000). To rectify this, the groups shifted focus to the rural areas; and in doing so initiated the most devastating period of the conflict.

As the guerrilla forces moved to the rural areas, the army followed; building military bases in every region of the country, occupying public buildings and churches to house troops and expanding their presence into every town and community (Kobrak, *et al.*, 1999). In the 1980s, this presence allowed the army to transform the previously limited nature of the conflict into one that was massive in scale and combined 'methods of mass extermination with the selective terror already being applied in urban centres' (International Center for Human Rights Research, 1996). State sponsored terrorism became indiscriminate and targeted indigenous communities and civilians with bombings and even the use of napalm (International Center for Human Rights Research, 1996).

The shift in the theatre of conflict from an urban to a rural context changed the dynamics and scale of the war dramatically, launching it into a phase that was to become genocidal. As the guerrilla groups were Marxist in orientation their ideas appealed to the impoverished masses in Guatemala, much as they did globally at that time. However in Guatemala, for reasons noted above, the poor constituted a racially defined grouping. As such, when the military dictators of the 1980s sought to destroy the support base of the guerrillas, the conflation of race and class, exacerbated by historic institutional racism, resulted in a policy of genocide against the indigenous population.[20] What had begun as a selective targeting of guerrillas, escalated into a massacring of entire villages perceived to be supporting the guerrillas and from there to the elimination of villages that could *potentially become* supporters (Kobrak, *et al.*, 1999). This logic reached an apex under the rule of General Rios Montt who seized power in 1982 and proceeded to 'pacify' the countryside in just six months with calculated brutality.[21] Montt's perception of the conflict and the need to target indigenous villages in order to root out guerrilla forces was summed up in his oft-quoted vow to 'dry up the human sea in which the guerrilla fish swim'.

In order to increase the strength and presence of the military throughout the country the army established a structure of forced military service through Civilian Patrols (PACs) – paramilitary structures which co-opted the civilian population into their own repression and control. The Patrols mobilized the services of all Mayan males between the ages of 15 and 60. Whilst some joined voluntarily, many others were forced to join by the threat of violence to themselves or their families. The advantages for the state of such a widespread paramilitary infrastructure was the ability to patrol and establish a visible presence in every corner of the country without the state resources that this would otherwise necessitate. During the worst years of the conflict some 900,000 male peasants – representing nearly 80 percent of the male population in indigenous rural areas - were employed by the army as a source of forced labour and a tool of repression (Recovery of Historical Memory, 1998). Through the PACs, civilians were implicated in the worst atrocities, including torture, rape and killings.

Coupled with this violence, Montt sought to restructure rural life fundamentally, establishing militarised 'model villages' that were portrayed as an alternative for rural community development in conflict zones and were instituted after periods of violence and 'cleansings' (Recovery of Historical Memory, 1998). It is estimated that one million people were displaced during this period of the conflict, and it was primarily this population that the army sought to relocate to its model villages, providing them with food aid under the frijoles y fusiles (beans and rifles) programme.[22] Both 'model villages' as well as PACs were a deliberate attempt to involve the civilian population in the conflict and in their own policing. In response, some Mayan communities established their own villages, termed Communities of Popular Resistance (CPRs), in a bid to resist army relocation and control programmes (Jonas, 2000).

This time of massacres and displacement is referred to by the Mayans as la violencia (1978-1983); a period of history in which racial exploitation gave way to attempted racial extermination (Esparza, 2002). During this period the state issued decrees prohibiting the publication of news related to political violence and the armed conflict. Together with deliberate misinformation and propaganda, the tactic succeeded in cutting off the rural from the urban and isolating districts from each other, leading rural communities to believe that

the violence was happening only to them ([International Center for Human Rights Research, 1996](#)). The deliberate strategy of misinformation and propaganda was facilitated by historically racist attitudes. The isolation of rural communities culturally, geographically and politically from the rest of Guatemalan society meant that: 'even if news of massacres did reach wider society (which it didn't very often), it was greeted with disinterest or disbelief … or simply brushed aside as propaganda on the part of insurgent groups' (Brett, in personal communication). In essence, these attitudes allowed the military to effect their campaign 'without the fear of social upheaval and penal sanction' (Brett, in personal communication).

Through the employment of this brutal strategy, the state was able to contain and then crush the threat of insurgency. By the mid-1980s the guerrilla groupings (who had earlier united into the Unidad Revolucionaria Nacional Guatemalteca (URNG)), were defeated and the state had, in the words of observers, 'created a desolation and called it peace' (Kobrak, *et al*., 1999, p.28).

Causes of the conflict

The Guatemalan truth commission, brought into existence post-conflict, concluded that the roots of the 36-year conflict lay in racial and economic inequalities, the antidemocratic nature of the state, a corrupt judicial system, and the Cold War context of the time (Commission for Historical Clarification, 1999).[23] An important indicator of the depth of inequality that characterises the Guatemalan nation can be witnessed in its distribution of land. Although the majority of the Mayan population lives off subsistence agriculture, racist policies both before and after 'independence' have resulted in a situation where the majority of the population have had their land taken from them. What was permitted to them were small enclaves of the least fertile soil in areas further afield; in effect instituting 'de facto apartheid' (Jonas, 2000, p.19). The policies during the ten years of democracy (1944-1954) had attempted to address these inequalities through a conservative programme of redistribution, but following the overthrow of the Arbenz government these efforts were reversed and land that had been given to peasants was savagely returned to wealthy landowners. By the 1960s, 2 percent of the population in Guatemala owned 67 percent of all arable land - contributing to a system of land tenure that is still the most unequal in Latin America today (Jonas, 2000). This inequality was compounded during the conflict as army officials used their new status to expropriate peasant land for themselves.[24]

Graph 1: Distribution of land in Guatemala
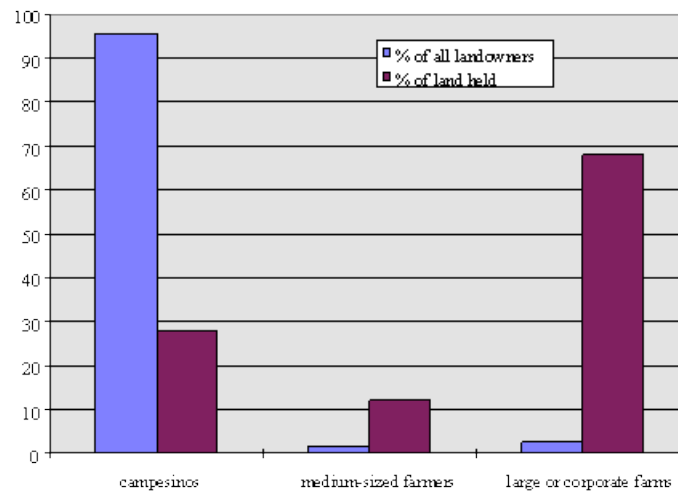
(International Center for Human Rights Research, 1996)

Land theft was closely related to the system of racist oppression. In 1978 one hundred peasants were massacred in Alta Verapaz for protesting when their communal land was taken by army officers for their own use (Hunt, 2002). Land and access to land was a causal factor in the conflict due to the integral importance it held for the indigenous communities:

> Land is the key to power in Guatemala. By not allowing the Mayan people the means to feed themselves or providing them with work, little by little you destroy their culture … In the long term, this constitutes ethnocide. (Juan Tiney, Co-ordinator of National Indigenous and Campesino Co-ordination (CONIC) quoted in Sieder, 1997)

Inequalities in land tenancy and wealth distribution fuelled opposition to the government in power. Prevailing authoritarian rule however provided no legitimate political avenue in which to voice dissent, and instead the state used every means in its power to crush it. The judicial system was corrupted to its own ends by laws that required it to disband with every new government in order to allow the entire bench to be reappointed by the incoming leader. Not only did this compromise the independence of the judiciary by tying them inextricably to the whims of those in political power, but it also ensured that they were indebted to the new President for their appointments (Pásara, 2001). In this way the institutions of the state no longer served the people, but were instead used by the state against the people: 'tolerating, and even facilitating, the violence' (Commission for Historical Clarification, 1999, p.18).

The lack of a legitimate judiciary to mediate citizens' concerns coupled with the crackdown on political expression closed al11 peaceful avenues for voicing opposition. The result was a cycle of violence, where:

> social injustice led to protest and subsequently political instability, to which there were always only two responses: repression or military coups. Faced with movements proposing economic, political, social or cultural change, the State

increasingly resorted to violence in order to maintain social control. Political violence was thus a direct expression of structural violence. (Commission for Historical Clarification, 1999, p.18)

Propelled by a desire to form a more equitable society, opposition groups turned to Marxism, an ideology that appealed in a climate of economic exploitation and exclusion. This ideological orientation did not however always reflect accurately the desires of those who aligned themselves against the state. Whilst many may have been Marxists seeking to create a socialist state, many more were simply looking for a vehicle through which to establish a more just society. Nevertheless, the ability to label the guerrilla groups as Marxist or Communist provided powerful ammunition to the state in the form of American support.

Occurring as it did at the height of the Cold War, the conflict in Guatemala became 'a Cold War civil war'; in that it took place ideologically, culturally and politically, against the backdrop of wider global divisions (Jonas, 2000). In Guatemala, the United States found a willing partner for its 'National Security Doctrine' and its theories of the 'internal enemy'. Domestic racist attitudes were fuelled by the imported security doctrine, and the threat of an internal enemy was expanded until it encompassed the majority of its population as a threat to the state.[25]

The CEH reflected upon this racially targeted nature of the conflict and concluded that:

> … the structure and nature of economic, cultural and social relations in Guatemala are marked by profound exclusion, antagonism and conflict – a reflection of its colonial history. The proclamation of independence in 1821, an event prompted by the country's elite, saw the creation of an authoritarian State which excluded the majority of the population, was racist in its precepts and practices, and served to protect the economic interests of the privileged minority. The evidence for this, throughout Guatemala's history, but particularly so during the armed confrontation, lies in the fact *that the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people*, as well as against those who fought for justice and greater social equality. (emphasis added, Commission for Historical Clarification, 1999, p. 17)

The Nature of the Violence

The historical racism noted above was not merely a contributing factor to the violence in Guatemala. It was, more importantly, a determining factor in the nature and brutality of the violence during the conflict. Guatemala has been referred to as 'the Rwanda of the Western hemisphere' (Farer, 2000, p.14); an allusion to the genocidal consequences the conflict had on the Mayan people and their culture.

It is estimated that 200,000 people were killed during the three decades of civil war, a further 40,000 disappeared.[26] The overwhelming majority of the victims – 83 percent - were Mayan. Of these, most were unarmed civilians (Commission for Historical Clarification, 1999). In seeking to crush the insurgency, the Guatemalan military did not

differentiate between the guerrilla fighters and the rural Mayan population that was sometimes used as their base. Instead; 'the identification of Mayan communities with the insurgency was intentionally exaggerated by the state, which, based on traditional racist prejudices, used this identification to eliminate any present or future possibilities of the people providing help for, or joining, an insurgent project' (Commission for Historical Clarification, 1999, p.23). This logic led to the wholesale massacring of villages and the displacement of large sections of the population. The scorched earth policy pursued by the military in the early 1980s left up to eighty percent of the population in regions of the highlands displaced at times (Recovery of Historical Memory, 1998). By the end of the conflict, one million people were displaced, and a further 400,000 in exile in neighbouring countries and the United States (Recovery of Historical Memory, 1998).

As noted above, the affiliation of the entire indigenous population with communism allowed the authoritarian government to place the conflict within the ambit of broader Cold War politics, and therefore earned successive military dictators the support and assistance of the United States.[27] This justification often took a crude form, betraying the racist motivations that underpinned the violence. General Montt during his reign noted that: 'The Army does not kill the indigenous people, rather it massacres demons, because the Indians are possessed by evil spirits, they are communists' (International Center for Human Rights Research, 1996).

Within the military, internal competition amongst soldiers contributed to the brutality of the violence, as those who took initiative in massacres and exhibited 'particularly violent zeal' were given promotions (Recovery of Historical Memory, 1998). In this manner, women and children were specifically targeted for brutality (Recovery of Historical Memory, 1998). By an extension of the logic that all indigenous persons were Marxist guerrillas, all indigenous children were viewed as future or potential guerrillas, and their death was therefore necessary in order to 'kill the seed' of future insurgencies (Recovery of Historical Memory, 1998).[28] Of the bodies exhumed in the three years following the cessation of violence, one-third of the remains found were those of children (Amnesty International, 2002).

Women and girls of targeted communities were particularly victimised by the army as they were viewed by soldiers as 'the spoils of war' (Commission for Historical Clarification, 1999). Rape, sexual assault and the torture of women were part of soldiers' orders (Jonas, 2000), and gang rape was 'the Guatemalan Army's routine reward for soldiers about to massacre women' (Robert McCormak quoted in Rich, 1996). Sexual violence during the conflict became so prevalent and officially sanctioned that one study conducted in 1982 amongst women refugees found that the overwhelming fear expressed was the fear of being raped.[29] A town official commented at the time that with all the soldiers raping Mayan girls 'it would be difficult to find a girl of 11 to 15 [in the combat zones of the highlands], who has not been raped. Even seven-year-old girls have been raped' (Rich, 1996).

The brutal nature of this violence served the intention of the army to move beyond the mere elimination of the enemy to the targeted elimination of Mayan culture and community life. To this end, violence was employed in a psychologically and culturally devastating manner. Massacres often took place on days that held significance for the targeted community, whether they be market days, or days of religious significance (Recovery of Historical Memory, 1998). The social fabric of communities was militarised, their leaders were

targeted for assassination and replaced by military leaders or those that allied themselves with the state. The primary importance of the relationship between the living and the dead in Mayan culture was deliberately destroyed through the desecration of burial rites. The dead were often left out in the open by state forces and attempted burial in these cases would be met by the punishment of more deaths. Only half of those who gave testimony to the NGO-led truth commission[30] knew where their relatives were buried. Communities that were displaced during the fighting were forced to leave their loved ones without burying them, as well as leave behind sacred burial sites.

Fire was used to kill because of its symbolic nature in Mayan spiritualism, mutilations were conducted with cultural overtones (Recovery of Historical Memory, 1998), and names and symbols with cultural significance were used to name the instruments of repression – military structures and groups (Commission for Historical Clarification, 1999). This was evidenced in the naming of one of the most brutal counter insurgency forces, named Kaibiles (Esparza, in personal communication). The name was taken from Kaibil Balam, a Mam indigenous leader who evaded capture by the Spanish conquistadors (Reding, 2000) and therefore had value as a symbol of liberation to the indigenous communities. The Commission for Historical Clarification drew particular attention to the brutal nature of the *Kaibiles* both in terms of their training as well as the massacres they perpetrated:

> This training included killing animals and then eating them raw and drinking their blood in order to demonstrate courage. The extreme cruelty of these training methods … was then put into practice in a range of operations carried out by these troops, confirming one point of their decalogue [sic]: "The Kaibil is a killing machine". (Reding, 2000)

Forced participation of community members in PACs and their atrocities ensured complicity and the entrenchment of guilt as a control mechanism. Violence became the norm and was internalised in these communities as their traditional community relationships fell away. The Commission for Historical Clarification described the deliberate psychological nature of the violence and its devastating impact by concluding:

> That which was sacred was profaned. They took away the land, slashed and burned the crops, the hills, nature in general; they destroyed and burned down houses with the family alters inside, they poisoned the water, burned the church, killed love ones in places where ancestral rites were observed. They desecrated burial sites and trampled dignity … (Recovery of Historical Memory, 1998, p. 42).

The embroilment and targeting of the Mayan population in the civil war has raised questions regarding the nature of their relationship to the guerrilla groups. There has been some debate amongst historians as to the extent of the indigenous population's support for the guerrilla movement, with some concluding that the Mayan people were in large part subjects of the war in the same manner that they were subjects of the state – they were used as soldiers on both sides of the conflict, however were given little choice in their participation.[31] Some have openly criticised the guerrillas for using the indigenous population as a support base and exposing them to massive violence when they lacked the resources to protect or defend them (Brett, in personal communication; Salveson, 2002).

Guerrilla responsibility for direct abuses however pales in comparison to the levels of violence the state unleashed on Mayan civilian populations; in some municipalities such as Nebaj, El Quiché, military actions took the lives of almost thirty percent of the population. In the course of its investigations, the CEH found insurgent actions accounted for 3 percent of the violations registered by the Commission. *State actions accounted for 93 percent of the cases*. The limitations of the military power of the guerrillas and their inability to pose a threat to the state were well known by military intelligence. The Commission found that the state, nevertheless, pursued policies that were disproportionate to the threat posed. The CEH concluded that the state intentionally exaggerated the extent of cooperation between the guerrilla groups and the Mayan population in a thinly veiled attempt to act out traditional prejudices, and to eliminate the possibility of any future cooperation:

> The consequence of this manipulation, extensively documented by the CEH, was massive and indiscriminate aggression directed against communities independent of their actual involvement in the guerrilla movement and with a clear indifference to their status as a non-combatant civilian population. The massacres, scorched earth operations, forced disappearances and executions of Mayan authorities, leaders and spiritual guides, were not only an attempt to destroy the social base of the guerrillas, but above all, to destroy the cultural values that ensured cohesion and collective action in Mayan communities. (Commission for Historical Clarification, 1999, p. 23)

The conflict was fuelled and aggravated by those who used it to amass personal benefits. The military itself became a key economic player and used its political power to ensure continued benefits.[32] During the 1980s, the military owned the national telecommunications system, a television channel, a major bank and huge quantities of valuable land in the north of the country (Wilson, 1997). It also had a very close relationship with the Coordinating Committee of Farming, Commercial and Financial Associations (CACIF) – the representative body of big business.[33] The war became increasingly about the perpetuation of these privileges by the army (Padilla, in personal communication), and where the conflict was used to obscure other motives the number of killings was compounded. As with many other violent contexts, it appears that this conflict was ultimately less about 'winning' per se than creating and sustaining an atmosphere in which to profit.[34]

A key example of the conflict being used to hide personal gains is the building of the Chixoy Dam – a dam project pursued in the community of Rio Negro in the 1980s. Although the relationship between the dam and the violence in the area is unresolved, there is a wealth of evidence from NGOs and human rights groups that the community was subjected to violence because of their resistance to the construction of a dam that would flood 50kms of land and result in their own displacement. Military massacres in this area conveniently coincided with this resistance to the project and resulted in the deaths of between four and eight hundred residents. The US-based organisation Witness for Peace in their report 'A People Damned' concluded that the violence in this community was disproportionately horrific because of their resistance to the dam; and that, 'although the massacres were attributed to the counterinsurgency war, a careful analysis of the Rio Negro events leads to the conclusion that the local residents were killed because they blocked the progress of the Chixoy project' (cited in Goldman, *et al.*, 2000, p.16).

The economic consequence of a war fought to protect the wealth of the few was the devastation of the lives of the many. Land was lost, the ability to farm for subsistence devastated, and much of the human infrastructure of the rural areas was wiped out. By the end of the 1980s the number of Guatemalans living in poverty had risen to 83 percent from 63 percent at the start of the decade (Wilson, 1997).[35] Rebuilding the country would require a wholesale transformation of the structures and character of the state, massive redistribution, and a concerted effort to address the legacy of three decades of brutal and racist violence.

The Negotiated Settlement and the End of Conflict

The 'desolation called peace' enforced by the state in the 1980s was illusory, and the URNG, though fundamentally setback and weakened, still existed. By the 1990s, the lack of a complete military victory, a slight shift in the balance of domestic power, and social and economic crises at home coupled with regional and international pressures forced both sides to the negotiating table.

It has been noted that in Guatemala, peace came about by a process that ran contrary to the experiences of most nations. International experience of countries seeking peace has been that the process begins with a negotiated minimalist cease-fire which then paves the way for democratisation (Azpuru, 1999). In Guatemala, a minimal democratisation led the way to a comprehensive cease-fire and peace. Having taken complete power over the state, the military had established its hold over all aspects of civil and political life in a bid to militarise the country from the smallest town structures to the national government. The attempt to control both the political as well as military structures of the state spread the army thin however - an overextension that was more acute because of the ongoing war being waged with the guerrilla forces. By the mid-1980s the army began to face opposition from its traditional support base – the elite and middle class. The increase in corruption and mismanagement under the military authorities led to a decrease in services such as lights and water to all Guatemalans, including the minority elite (Farer, 2000). Poor economic management at home was exacerbated by the international isolation the country faced as a result of its human rights record. President Carter's human rights policies during the first half of the decade, and the wave of democratisation sweeping through Latin America in the latter half put vast pressure on the ruling powers (Azpuru, 1999). In 1985 the military conceded some of its power in the political arena and permitted the first civilian government since the start of the conflict. They did so however only under the belief that they could continue to exert considerable influence and de facto control over the levers of power. Jennifer Schirmer argues from her years of research on the military in Guatemala that the High Command perceived the democratic transition merely as a continuation of their politico-military project (Schirmer, in Esparza, 2002), and that for the army, the Peace Accords represented 'the final institutionalisation of their strategic project to win the war militarily and politically by "neutralising" and reinserting the guerrilla into political life' (Schirmer, quoted in Preti, 2002, p.111). The military retained a power of veto over any decisions of importance, and the civilian President during this period later noted that he exercised perhaps only 30 percent of actual political power (León, 2002).

Weak as this initial democratisation may have been, it did open up a small political space in which to initiate dialogue with the opposition. The initiation of talks between government

and the URNG, and the concession by the army to permit such talks (although they refused to participate), was influenced by both internal as well as external events. Domestically the traditional beneficiaries of the old regimes were seeking a way to inculcate a culture of accountability in the state to counter widespread corruption, normalise national politics and reintegrate Guatemala into the international community – and more importantly the international economy. Regionally, neighbouring states in conflict were similarly seeking a path to peace. In 1987 Guatemala hosted a regional forum that concluded with the adoption of the Esquipulas II Accords (popularly known as the Arias Plan). The Plan called for dialogue between government and opposition groups, amnesty for political prisoners, cease-fires in ongoing insurgent conflicts, democratisation, and free elections in all five of the regional states. It also called for renewed negotiations in arms reductions and an end to outside aid to guerrilla forces (Library of Congress Country Studies, 2002).

Guatemala's Defence Minister at the time dismissed the applicability of the Plan to Guatemala, stating that it did not apply to the 'defeated' guerrilla forces and that the army saw absolutely no reason to negotiate (Jonas, 2000). The new government however saw differently, and convened the Commission of National Reconciliation (CNR) as an initial forum for dialogue between key stakeholders. The various parties met in Oslo in 1990 to establish the Oslo Process: a framework for a series of accords which would eventually culminate in the final Peace Accords in 1996. In Mexico a year later, the parties set the agenda for the rest of the peace talks and established a role for the United Nations as an international observer (and later, as both mediator and verifiers of the Accord) (Alvarez and Prado, 2002). During this period the parties also established the Grand National Dialogue (GND)[36] – a forum of sectors of civil society that were to dialogue on the various aspects of a peace agreement.

The military boycotted these exploratory negotiations, and later agreed to participate only in the confident belief that the guerrillas had been so defeated that talks 'were really a matter of the guerrillas surrendering' (Wilson, 1997, p.15). Along with the military, business represented the staunchest peace resisters throughout the process, a role that was to have an impact on the process, the commitments agreed to as well as their later implementation. In particular, business actively opposed the discussions under the government of President Serrano in 1993 as they were fearful that any agreement would erode their long held privileges.[37] As Serrano's power declined, he attempted to seize absolute power through a 'self-coup'; suspending the constitution and dissolving the Congress. The attempt was blocked however by a temporary coalition across all sectors; business, military and civil society who for the first time came together to defend 'a visible national consensus on the fundamental value of a democratic system of government' (Alvarez and Prado, 2002).

Despite this consensus and Serrano's overthrow, the peace talks were disrupted, resuming only a year later in 1994 when it was agreed that the UN would establish a verification mission in Guatemala by the end of the year.[38] The United Nations Mission in Guatemala (MINUGUA) lent international credibility to the peace process and provided security for those members of civil society participating in the negotiations.[39]

Impact of the Negotiations Process

The process of negotiating a peaceful transition in Guatemala contributed in itself to the

deepening of democratisation. The very introduction of the concepts of citizen participation and consultation (embodied in the institutions of the GND and later the ASC) were themselves so contrary to the authoritarianism of the past that they opened political spaces that had previously not existed. Alvarez observes that the process of negotiating the Accords has itself:

> laid the groundwork for potential change to a more inclusive society, both by providing an opportunity for those outside the established elite to voice their opinion in the policy arena for the first time and by raising expectations for a more participatory democratic state and society. (Alvarez and Prado, 2002)

This opening of spaces however occurred in an overall context of human rights violations and continued security threats. As civil society mobilised for an increase in still limited spaces for expression, they were met at each point by consistent state violence. In 1991 popular organisations protesting their exclusion from the talks were put down with violent repression. Despite this response new organisations representing previously marginalized populations, such as women and Mayan groups, began to lobby for a place at the negotiations table, and to voice a position ideologically independent of the traditional left (Alvarez, 2002).

The transformation of the political arena and the inclusion of previously unheard voices can be seen visibly as a progression through the negotiations process, particularly in the institutions for civil participation. When the Grand National Dialogue was convened there was no representation of the indigenous population, reflecting their historic exclusion from political participation. With the replacement of the GND with the Assembly for Civil Society, it was decided to include Mayan organisations, NGOs and women's groups.[40] Civil society input was also prioritised with their inclusion at the negotiations table. Although the ASC had no vote and their recommendations were non-binding, it was recognised by all that any process that excluded this group would reach an agreement that lacked legitimacy.

The Assembly was a forum for dialogue and negotiation. As it represented a broad-spectrum of political views and positions (Alvarez, 2002), the ASC's recommendations reflected an already negotiated compromise. This mobilisation of a previously weakened and undeveloped civil society had lasting impacts particularly for Mayan groupings, for whom it led to a 'carving out [of] a political space for themselves which would last beyond the transition itself (Wilson, 1997, p.17). The Assembly itself was unable to sustain its own impact, and its role became diminished towards the end of the negotiations. Civil society's lack of foresight in ensuring that it transitioned from a negotiations role to an effective monitoring role weakened both their potential impact as well as the eventual implementation of the Accords.

Negotiated Citizens

In both Guatemala and South Africa, negotiated transitions were embarked upon in the early 1990s, precipitated by the end of the Cold War and a changing global situation, as well as through international pressure and a realisation in both contexts that neither side to

the conflict could win militarily.

Both countries were perceived during these initial negotiations as being potential models not only for their respective regions but for transitional societies in general. Both were seen as reflecting a success story of peace processes where negotiations led to the conclusion of progressive agreements, and where neither side was defeated and had a peace imposed on them. As such, both countries received considerable support and interest from the international community.

In South Africa, which has a history of a vibrant and dynamic civil society sector, the involvement of civil society during the negotiations was strong. This was in large part due to the international support given to the struggle against apartheid which resulted in states and international institutions channelling money to civil society that would otherwise have been earmarked for assistance to the government.

Negotiations were neither easy nor smooth and South Africa is far from being the 'miracle' transition it is often heralded to be. From the start of negotiations and the unbanning of the ANC in 1990 to the first democratic elections in 1994, more people died as a result of political violence than in the worst years of apartheid. The state fomented violence by supplying arms to groups opposed to the ANC in a bid to destabilise the liberation movement. Massacres precipitated a breakdown in talks at some points and the country teetered at the point of civil war on more than one occasion. The Afrikaner right-wing vehemently opposed the negotiations and attempted to initiate a military takeover to reinstate apartheid. In spite of these pressures, key role players were able to carefully craft a path to a democratic transition.

Constitution making

With the return of the ANC from exile, South Africa began negotiations which were open to all political parties, no matter how small their representative constituency. Through these negotiations an interim Constitution was agreed upon. After the 1994 elections, a Constitutional Assembly, representing those parties that had received a share of the vote, was formed to draft a final Constitution.

The drafting process for the final Constitution took place after the first democratic elections and sought to follow three fundamental principles: inclusivity, accessibility, and transparency. As such meetings of all the structures were open to the public and all materials relating to the Assembly were available over the internet (Barnes, 2002). Submissions were invited widely but, acknowledging the low levels of literacy in the country, the Assembly also took their work to communities where they organised workshops and solicited input. The new Constitution was then drafted in plain language, translated into the 11 official languages, and distributed widely through a national education programme. At the end of the process a national survey found that efforts at inclusivity had been successful, and there was a strong sense of ownership of the new Constitution amongst citizens because of these initiatives (Barnes, 2002).

Defining the New South Africa – the impact of the negotiations process

Simpson (2002) notes that the 'most important aspect of the country's transformation from authoritarianism and racism into a constitutional democracy was that it happened not by revolution or force of arms, but through the compromises of dialogue and political negotiation.' (p.221) This resulted in a negotiated settlement in which there were no clear 'winners' or 'losers', a situation that impacted directly on the shape of South Africa's transition, including the Truth and Reconciliation Commission (TRC) itself (see section on TRC below):

'If post-war Germany represents one extreme of the justice policies pursued in transitional societies, namely prosecution, then Chile represents the other, namely, blanket amnesty for those who committed gross violations of human rights. South Africa, in establishing the TRC, took a position somewhere between these two extremes, in which amnesty was not unconditional, but was rather a quid pro quo for full disclosure. At the heart of this hybrid approach was the reliance on a notion of 'truth recovery' as a restorative alternative to punitive justice – through full disclosure by perpetrators (and their supposed shaming) in exchange for amnesty, as well as through voluntary testimony about apartheid's gross human rights violations given by victims (and their supposed healing). Thus, although amnesty for perpetrators was a precondition for the success of the negotiated settlement from the outset, the TRC nonetheless resulted from a last-minute compromise, struck so late in the negotiation process that it had to be tacked onto the end of the interim Constitution, under the heading 'National Unity and Reconciliation', almost as an afterthought' (Simpson, 2002, p.221).

The character of the negotiations process was thus to have a direct influence on the character of the 'new South Africa'.

Economic Citizens

While citizens expressed a sense of inclusion and ownership in relation to the Constitution process, South Africa's process of transition (much like Guatemala's), did not ensure inclusion within the socio-economic sphere. Instead, the economic character of the new democracy was the subject of closed door talks between a few select individuals on both sides and representatives of the business community (cf. Bond, 2000). Everingham (2002) argues that in a context of past racism and inequality, the goal of deepening democracy and promoting socio-economic justice requires that all citizens have access to the means necessary to live a decent quality of life. As such, 'property rights constitute an important institutional tool to eradicate the vestiges of discrimination' (Everingham, 2002, p.2). However, despite dispossession being a key feature of both conflicts, property rights were enshrined in both settlements. Everingham (2002) concludes that the role of the international community, the impact of current global trends, as well as the need to sacrifice socio-economic issues for the sake of securing a political transition meant that in both countries land redistribution has been largely forsaken.

The exclusion of the voices of the people from decisions affecting the socio-economic composition of the new dispensation in both countries has had harsh consequences. Both Guatemala and South Africa have been reintegrated into a globalised economy in the wake of their conflicts and have chosen to take on the economic prescriptions of the international

financial institutions such as the World Bank and the IMF. The acceptance of a neo-liberal agenda as part of the respective peace agreements demanded that 'land restitution and redistribution [be treated] as technical problems and market distortions, rather than as the consequences of racism and inequality suffered by poor indigenous communities' (Everingham, 2002, p.6). In the South African context the character of the negotiations, and the resultant agreement, has been termed by some observers as a process of 'elitepacting' (see for example Bond, 2000; Saul, 2001) that traded the continual domination of whites over the economy (and a system that would assure them of such domination well into the future) in return for political rule by the majority (cf. Marais 1998; Bond 2000; Saul 2001; Terreblanche 2002). Far from engendering the redistribution needed to integrate a previously marginalised population, the neo-liberal economic policies of today represent a retreat from such principles, and as such generate further marginalisation rather than inclusion (Simpson, 2000).

The resultant increase in unemployment and poverty from an entrenchment of neo-liberal agendas poses a very real threat to the consolidation of the transition. In a context of already high levels of inequality, the continued deprivation of the majority of the population threatens to undermine whatever gains have been made. Torres Rivaz argues with reference to Guatemala that it is contradictory to seek to deepen democracy and citizenship within the context of neo-liberal economic policies. The logic of a free market demands a weak state; 'limiting political participation to the economic elite'. What is required to entrench democracy is precisely a strong state – 'one that is free to act independently of private military and economic interests' (in Marsh, 2002, p.448).

An Overview of the Peace Accords

In December 1996 the URNG and the government of President Arzú signed the last in a series of twelve Peace Accords; bringing into force all of the agreements and definitively ending the 36 year conflict. The agreement was not the minimalist cease-fire often negotiated in such circumstances, but rather a comprehensive blueprint for the transformation of state and society. Wide-ranging in their scope, the Accords covered both operative as well as substantive reforms (Salveson, 2002),[41] seeking to address root-causes and structurally reform society and the nation as a whole. The wording of the agreements places an emphasis on national unity, reconciliation, representation, inclusion and human rights – both political as well as socio-economic. Because of their relevance to this report, the Agreements on the Commission for Historical Clarification (CEH), the rights of Indigenous peoples, socio-economic reform, and the role of the military are covered briefly below.

The Twelve Substantive Guatemalan Peace Accords

- Comprehensive Agreement on Human Rights (March 1994)
- Agreement on the Resettlement of Population Groups Uprooted by the Armed Conflict (June 1994)
- Agreement for the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to

- Agreement on the Identity and Rights of Indigenous Peoples (March 1995)
- Agreement on Socio-Economic Aspects and the Agrarian Situation (May 1996)
- Agreement on the Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society (September 1996)
- Agreement on a Definitive Ceasefire (December 1996)
- Agreement on Constitutional Reforms and the Electoral Regime (December 1996)
- Agreement on the Basis for the Legal Integration of the URNG (December 1996)
- Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (December 1996)
- Agreement on a Firm and Lasting Peace (December 1996)[42]

Agreement for the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer (1994)

The Agreement on the Commission for Historical Clarification (CEH) established a UN-sponsored truth commission in Guatemala to investigate the gross human rights violations and overall context of the 36-year civil war. It was - similar to the Socio-Economic Accord which followed - one of the most contested and controversial Agreements.

A transitional justice institution was clearly necessitated in Guatemala given the history of entanglement between the judiciary and the past military governments and the silence and secrecy which surrounded state crimes. Comparable to the South African judicial sector during apartheid, Guatemala's courts were compromised by their close links with those in power, as well as the prevailing environment of impunity, corruption and racism. It was clearly recognised by all parties that a weak judiciary would never be able to deliver justice against former perpetrators. As such, justice through the courts was not an option in Guatemala and the need for a 'truth commission' - one that would distribute a measure of justice (in the form of truth and acknowledgement) and write an inclusive history of the nation - was pushed by both civil society as well as international mediators. Such a mechanism was deeply opposed by the Army and government for obvious reasons (it was later established by the Commission that the Army was responsible for over 90 percent of the gross human rights violations); rendering the negotiations over this Accord protracted and bitter.

The prevailing weakness of the URNG as well as domestic civil society meant that they could bring little pressure to bear on government to sign into force a strong and legally effective Commission.[43] It is perhaps only as a result of direct and substantial international pressure that the CEH came about at all (Jonas, 2000).[44] The consequence of a weak domestic lobby ensured that the Accord itself was a watered down version; one that some observers criticised at the time as 'feeble' (Wilson, 1998, p.188).[45]

According to its mandate, the CEH was to have no judicial effect – meaning that any findings could not be used to establish a criminal case. It was to have no powers of search, seizure or subpoena; its recommendations were to be non-binding; its working time was limited to a brief 6 months with a possible 6-month renewal; and perhaps most damning, it was forbidden from naming the names of perpetrators.[46] Given such severe limitations,

many disappointed human rights bodies and activists questioned the utility of such an exercise: '[g]iven that the Accord creates a truth commission with no legal powers to investigate, which cannot name names and which will produce recommendations which can be utterly ignored, then what is the point of having one at all?" (Wilson, 1998, p.185).

There was also conflict over the time period that the Commission's investigations would cover. Human rights groups advocated for the mandate to cover the period of 1980 onwards; in effect limiting the focus of the investigations to the most violent years of the conflict and hopefully maximising the Commission's efficacy (Wilson, 1997). Government on the other hand, argued for the time frame to cover from 1960 onwards judging that a commission with a limited working time of under a year would be diluted in its investigative capacity if overwhelmed by a time span of 36 years of conflict. (Wilson, 1997). As with so much else in this Accord, government prevailed and the Commission was mandated to cover the entire 36 years of the armed conflict.

Civil society's deep opposition to such a weak Accord translated into a strained relationship with the URNG for agreeing to it; and the signing of this Accord marked a pivotal point in the deterioration of the relationship between these two groups (Vinegrad, 1998). Motivated by this outrage, the Church decided to circumvent the weaknesses of the official Commission by establishing its own Commission which would permit it to 'name names'. The Recovery of Historical Memory Project (REMHI) was undertaken before the CEH and both are covered briefly in the section on transitional justice.[47]

Agreement on the Identity and Rights of Indigenous Peoples (1995)

The Indigenous Rights Accord was perhaps the most surprising, far reaching and progressive of the series of Accords. Through it, the issues of racism and exclusionary citizenship, with all their crippling consequences, are addressed. The final text took nine months to negotiate, and although there was little direct Mayan input, it was influenced by the growing number of indigenous- based organisations who were mobilising during the negotiations, as well as the recently declared 1989 ILO Indigenous and Tribal People's Convention (Plant, 1999). The Accord proposed that ethnic discrimination be declared a crime, set out required legislative reforms and a plan for the right of the indigenous population to be protected through the education system, mass media and legal aid. Emphasis was placed on indigenous women and their empowerment, noting that poverty in Guatemala reflects poverty trends internationally in that it is both ethnicised as well as feminised.

The Accord offers the following context to its content:

> That the indigenous peoples have been particularly subject to de facto levels of discrimination, exploitation and injustice, on account of their origin, culture and language and that, like many other sectors of the national community, they have to endure unequal and unjust treatment and conditions on account of their economic and social status; That this historical reality has affected and continues to affect these peoples profoundly, denying them the full exercise of their rights and political participation … . That the indigenous peoples have been excluded from the decision-making process in the country's political life, so that it is extremely difficult, if not impossible, for them freely and fully to

express their demands and defend their rights

The Accord goes on to encourage all citizens to acknowledge this divisive past, and calls for 'a clear recognition by all Guatemalans of the reality of racial discrimination and of the compelling need to overcome it and achieve true peaceful coexistence'.[48]

With regards to the identity of the nation, it was agreed that Congress would pass a Constitutional reform in order to redefine the Guatemalan nation as 'being of national unity, multiethnic, multicultural, and multilingual'. With this simple addition, it was hoped that the character of the nation would be transformed and an inclusive nation-building process embarked upon; 'hence ending five hundred years of a monolithic *ladino*-based notion of the "Guatemalan nation" that had been imposed on the indigenous peoples' (Jonas, 2000, p. 76).

The institutional racism of the past was to be addressed through an audit of all existing legislation and the repealing of any that were found to be discriminatory in intent or consequence. In the judicial sector, it was agreed to recognise and promote organisations based on customary law and to incorporate customary law into national legislation; to make available translators in the various districts; and to provide legal aid to those unable to afford legal services.

Provisions were made for cultural protection and promotion, in particular addressing language, sacred places, and the use of native dress. Constitutional recognition of indigenous languages was to be reflected in key areas such as government services, the media, and access to health and education. Commitments to educational reform were numerous, including the creation of a Mayan university; the reform of educational syllabuses to include 'programmes that strengthen national unity through respect for cultural diversity' and the promotion of multilingual and multicultural education.

On the issue of land reform, the Accord proposes its most far-reaching reforms, including a comprehensive process of redistribution. Acknowledging the cultural, spiritual, and life-sustaining importance of land to the indigenous community, the Accord agrees to recognise individual, communal and collective title to land; to compensate for lands seized; to require the state to acquire land for the development of indigenous communities; and to allow communities to distinguish their own development priorities on their land. Core issues of land access and distribution were approached with an emphasis on non-market mechanisms (Jonas, 2000) in order to speed up and facilitate reform. In direct contradiction, the later Socio-Economic Accord reversed this emphasis, focusing solely on market driven redistribution.

Implementation of the Indigenous Rights Agreement was to be overseen by five joint commissions comprised of representatives from both government as well as indigenous communities.[49] This was perhaps the first attempt at creating a forum of dialogue between government and the indigenous population.

The Agreement on Social and Economic Aspects and the Agrarian Situation (1996)

A firm and lasting peace must be consolidated on the basis of social and

economic development directed towards the common good, meeting the needs
of the whole population,
This is necessary in order to overcome the poverty, extreme poverty,
discrimination and social and political marginalization which have impeded
and distorted the country's social, economic, cultural and political development
and have represented a source of conflict and instability,
Socio-economic development requires social justice, as one of the building
blocks of unity and national solidarity, together with sustainable economic
growth as a condition for meeting the people's social needs.
Extract from the Agreement on Social and Economic Aspects and the Agrarian
Situation

Given the nexus between race and poverty, the legacy of limited and uneven social
spending and the role of land in Guatemala's conflict, any peace agreement signed needed
to address this history of inequality in order to ensure a consolidated democracy. The Social
and Economic Accord was meant to be just such an instrument.[50]

In reality however it has been cited as the weakest and most problematic of the Accords; an
agreement where the 'statements of intention were stronger than the actual mechanisms laid
out' (Jonas, 2000, p.78). Only minimal reforms are proposed and even these limited goals
have no concrete mechanisms to ensure their implementation. There is no scheme for job
creation in spite of levels of unemployment that are estimated at close to two-thirds of the
population.

The weaknesses of this Agreement are rooted primarily in the strength of CACIF,
international capital, and the prevailing neo-liberal standpoint of those in government. The
resulting Agreement was satisfactory to CACIF and the large international financial
institutions such as the IMF and World Bank.[51] Domestically however, widespread anger
and dissatisfaction with limited economic reforms caused a backlash against the URNG for
signing the Accord, and broke the already strained relationship between civil society and
the former guerrillas.

The need to redress the historic dispossession of indigenous land, and the cycle of poverty
and dependency this instituted is left without resolution in the Agreement. The Social and
Economic Accord established a national land registry and spelled out the necessity of a full-
scale survey that would determine all ownership of land as well as identify unused or
underused land for targeted redistribution. However, given CACIF's opposition to any
comprehensive reforms, the Agreement took the route of market-assisted land redistribution
and failed to limit the absolute right of private property (Jonas, 2000), weakening any
possibility of real land reform.

Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society (1996)

Democratisation of the Guatemalan state rested on the role and powers of the armed forces
being drastically cut. Throughout the civil war, the military's authority had grown, as did
the number of illegal institutions it employed to unleash terror on its own population. The
Civil-Military Agreement was written with the intention of separating the functions of the
military from those of civilian institutions (Salveson, 2002) and severely curtailing the

army's role in governance.

The Accord establishes a new understanding of security, one which links the term 'security' to the individual citizen's exercise of political, economic, social, and cultural rights and duties (Jonas, 2000). In this vein, it required the passing of a Law of Public Order that would protect the rights of all citizens even in the pursuit of public order and security. The budget of the army as well as the number of its troops was to be slashed by a third, and their functions limited to the assurance of territorial integrity and the guarding of borders. Provision was made for the establishment of an autonomous and civilian-controlled national police force (PNC) whose members would reflect the makeup of the general population. All illegal security organisations were to be dismantled, and the civilian patrols demobilised. The Accord also addresses the need for constitutional reform of the judicial sector in order to combat impunity.

Whilst the reforms spelled out in the Accord exceeded expectations (Jonas, 2000), there was no mention of any mechanism to investigate and purge the armed forces of those officials primarily responsible for the worst excesses of the past (Farer, 2000). This weakness ensured that an untransformed army would continue to wield its powers to undermine the path of democratisation.

In all, the twelve Accords established almost two hundred substantive commitments (Alvarez, 2002), constituting a peace agreement that went far beyond the minimalist cease-fire that has characterised Latin American transitions to date and laying the framework for the restructuring of Guatemalan society as a whole. As one observer notes, 'the Accords would have been remarkable in many Latin American countries; in Guatemala they seemed almost to imply some behind-the-scenes Divine Intervention' (Farer, 2000, p.21). The very fact that such an agreement was reached in Guatemala, given the history of the country and the outcome of the civil war, was beyond the expectations of even those participating in the negotiations (Pásara, 2001). The asymmetrical balance of power that existed when the negotiations were embarked upon made it unlikely that the government would concede more than was necessary. In fact, given the almost complete defeat of the URNG prior to the negotiations, the rebels found themselves bargaining from 'an unsalvageable political position' (Wilson, 1997, p.11), lacking the force and power to make demands credibly.

It is widely believed therefore that the Peace Accords were the result of pressure and intervention from the international community.[52] Whilst this may have assisted in establishing theoretical commitments to wide ranging reform, it did little to inculcate a sense of domestic ownership over the Accords or to improve internal capacity for implementation and monitoring. Salveson (2002) notes that in an environment of consolidated power in the hands of one party, implementation rests almost entirely on political will. Some have even gone so far as to argue that it is possible that in agreeing to substantive accords, the state never had any intention of implementing them (argued by Edelberto Torres-Rívas at a conference in Guatemala in 2001, in Salveson, 2002). This perspective appeared prevalent amongst the Guatemalan population itself who remained sceptical about their government's commitment to the Accords even after their signing. In a public opinion poll shortly after the Agreements entered into force, only 38 percent believed that they would be respected (Reding, 1997).

It is possible that the state also gambled that any agreement it signed would fail to survive ratification by domestic processes.[53] None of the provisions were binding on the state without first being approved by Congress, then by the nation in a referendum. Given prevailing patterns of voter exclusion, it was predictable what a national vote would determine. Farer (2000) locates the paradox of the Accords in that their primary intention was to incorporate the previously excluded masses into the state and meaningful citizenship. However, until the masses are incorporated, it is difficult to get the Accords implemented, as those currently wielding power are unlikely to voluntarily concede their long-held privileges (Farer, 2000).

Transitional Justice in Post-Conflict Guatemala

> *Knowing the truth of what happened will make it easier to achieve national reconciliation, so that in the future Guatemalans may live in an authentic democracy, without forgetting that the rule of justice as the means for creating a new State has been and remains the general objective of all.*
> Prologue from "Memory of Silence", Report of the Commission for Historical Clarification

Erasing Accountability for the Past – the Law of National Reconciliation

In 1996 the Law of National Reconciliation was adopted by the Guatemalan government, providing what amounted to a de facto blanket amnesty for political crimes of the past. The Law was agreed to by both sides of the conflict as the guerrillas required a vehicle for reintegrating their forces back into society and allowing their exiles to return without threat of prosecution. In order to achieve this they agreed to a deal that also allowed the military to seek amnesty for its own actions during the conflict. As a result, applications received under the Act were overwhelmingly from military officers seeking to evade responsibility for the atrocities committed during the conflict. Although the LNR was not technically a blanket amnesty as it did establish a legal mechanism, this mechanism was weak and ineffectual: applicants could choose compliant judges; there was no leave for appealing these judges' decisions; families could only oppose the amnesty if they could prove that the act was criminal in nature and not political; and the burden of proof for opposing the amnesty rested with the victim (or family) (cf. Wilson, 1997; Jonas, 2000). The Act did however allow for the prosecution of crimes of genocide, torture and forced disappearance – leaving a window of opportunity in an overall climate of impunity.

Guatemala's Truth Commissions: an overview of REMHI and the CEH

As mentioned above, Guatemala had not one but two truth commissions; the first agreed to by the state and the opposition and codified in the Peace Accords, the other a non-governmental initiative undertaken by the Catholic Church.[54]

Although the focus for the purposes of this report will remain on the UN-sponsored and state run Commission entitled the Commission for Historical Clarification (CEH),[55] it is worth noting broadly the contributions of the Recovery of Historical Memory Project (REMHI) and their report *Guatelama: Nunca Más (Never Again)*. Both Commissions were of particular importance in the context of a country where levels of denial, silence and

isolation posed serious impediments to healing and reconciliation.

REMHI was undertaken before the official Commission began its own investigations. As stipulated, it was initiated in part by a concern over the weaknesses and limitations of the CEH, in particular the inability to name perpetrators during the course of its investigations. It became evident however during the course of REMHI's testimony gathering that the environment of human rights abuses and security threats that still existed meant that revealing identities could expose witnesses and survivors to further violence. In particular, many testified that the perpetrators to whom they referred still lived in the same community and still held positions of power.[56] This security consideration was to impact on the CEH's work as well.

The abridged version of the REMHI report focused on three substantive issues: the suffering of the people; how repression functioned; and the consequences of repression and demands for the future (Recovery of Historical Memory, 1998). The process as well as the final report it generated had a more qualitative focus than the database driven approach of most state-led truth commissions (Hayner, 1999). As such, it focused on telling the stories of the victims, and recording the testimony of over 55,000 accounts of human rights violations.[57] The Foreword to the report describes it as 'a book of martyrs, a martyrology … of the preponderantly Mayan victims of nearly four decades of civil conflict in Guatemala' (Recovery of Historical Memory, 1998)

The Commission for Historical Clarification was at that time the second of two UN-sponsored truth commissions.[58] The legal mandate for the CEH was agreed upon in 1994, but did not take effect until the last of the Peace Accords was signed at the end of 1996, and the Commission was only created in 1997. The three-person body was headed by a foreigner appointed by the United Nations Secretary-General. The other two commissioners were Guatemalans and were appointed one each from the *ladino* and Mayan communities. [59]

The Commission registered more than 42,000 victims.[60] The Final Report was based on investigations into more than 7,500 cases derived from interviewing over 11,000 deponents (Chapman and Ball, 2000). From these cases, the Commission then chose 85 cases judged to be 'illustrative cases'; stories which were representative of various time periods of the violence as well as the various actors, and were described in some detail in the report (European Centre for the Search For Common Ground and Harvard University Program on Negotiation, 2002). The Commission found that of those victims fully identified, 83 percent were Mayan, 17 percent *ladino*. It further concluded that the state and its structures had been responsible for over 93 percent of the atrocities committed during the conflict.

The Guatemalan Truth Commission was impeded from the start by the weaknesses and limitations of its legal mandate, in particular the inability to single out perpetrators and the lack of any strong investigative powers. Perceiving these weaknesses, the military sought to capitalise on them; attempting to 'manage the truth' that the report could produce (a former peace negotiator and close military ally, quoted in Wilson, 1998, p.188). The inability to attribute individual responsibility for the past opened up a space for a struggle over the repoliticisation of the past. Wilson notes that to the extent that the army cooperated with the Commission, they submitted a report entitled *Something of the Truth in 33 years of the*

Violation of Human Rights of the People of Guatemala on the Part of the URNG. The document attempted to place primary responsibility for the atrocities of the past squarely on the soldiers of the guerrillas, despite widespread evidence to the contrary (Wilson, 1998).

The Commission's legal limitations were further aggravated by practical impediments. Despite being one of the largest truth commissions to date, second only to the South African Truth and Reconciliation Commission, overall the Commission appeared to function in a context of limitations; time,[61] resource, capacity and security-wise.

As noted in the case of the NGO-led truth commission, the CEH carried out its work in an environment of ongoing intimidation for victims and impunity for perpetrators. Although investigators went to great lengths to ensure the confidentiality of the witnesses, the Commission did not offer a witness protection programme, a serious impediment to their truth-seeking capacity given the circumstances. Perhaps most significantly, because of the need to maintain anonymity as well as resource limitations, the Guatemalan Commission did not conduct any public hearings.[62] The experience of the South African Truth and Reconciliation Commission (covered below) demonstrated the important role such hearings can play in making the history of a conflict widely known and encouraging a national dialogue which can foster reconciliation.[63]

The limitations faced by the CEH were by no means unique. In their endeavour to record history all truth commissions are restricted in their analysis by the sheer enormity of this mandate. Recording the complexities of history is a difficult task under any circumstances, but when that history is of a time of intense conflict previously shrouded in silence and denial, the task at hand is enormous.[64] As such, the history that is recorded is one that is necessarily simplified in many respects; and in the case of Guatemala this history focused predominantly on a state-level analysis. Some have criticised the CEH for precisely this reason: that the Commission failed to understand local dynamics and history and as such its analysis was narrow and incomplete (Gonzalez, in personal communication). Others have noted similarly that in seeking to attribute institutional responsibility, the Commission missed variations in this responsibility – individuals on both sides (or neither 'political' side) who used the context of war to settle personal grievances or acquire personal benefits;[65] as well as the complexities of community level experiences of the conflict (Stoll, 1998).[66] Critiques of this nature are understandable and in the wake of repression and tyranny, a participative rewriting of history is an important vehicle for healing. But to expect this history to be written entirely through a truth commission is to overburden with unrealistic expectations an already ambitious project.[67]

Alternatively, truth commission observers have noted that this macro-level analysis was in fact the most important success of the Commission. In particular, that the legal mandate which prohibited the CEH from identifying individual perpetrators forced the Commission to look more broadly; it 'widened the CEH's scope, encouraging it to examine the roles of institutions and the social structure that produced the violence, instead of identifying individual perpetrators' (Chapman and Ball, 2000, p.9). According to Chapman and Ball the most important function of a truth commission is to provide this larger context of violations, particularly in an environment such as Guatemala where isolationist tactics were pursued by the repressive regimes of the past. Those in impacted communities were well

aware of the atrocities taking place around them, but healing and understanding is assisted by understanding that they were not alone, and that a broader political, socio-economic, and military structure was responsible.

Amongst the Commission's most important findings, was the conclusion by the Commission that the victims of over three decades of civil war had predominantly been civilians, and more specifically Mayan civilians. Graphic representations (see below) of the corollary between social and economic exclusion, poverty and victims of massacres were illustrated throughout the report, clearly demonstrating the nexus between race, class, and political victimisation. The overwhelming responsibility of the state for the horrors of the war was well known by all in Guatemala, however having it confirmed and endorsed by a UN-appointed body was a meaningful acknowledgement. Equally, the Commission's conclusion that during the worst years of the conflict (1981-1983) the 'scorched earth' initiative pursued by the state against the Maya in the indigenous highlands *constituted a deliberate policy of genocide against the indigenous population*, was an extraordinary condemnation of the state (Commission for Historical Clarification, 1999). The finding of genocide was of particular importance as it provided an avenue for circumventing the earlier adopted amnesty law and opened up the possibility of prosecution for at least some of the crimes of the past.

Map 10:

Documented massacres during civil war
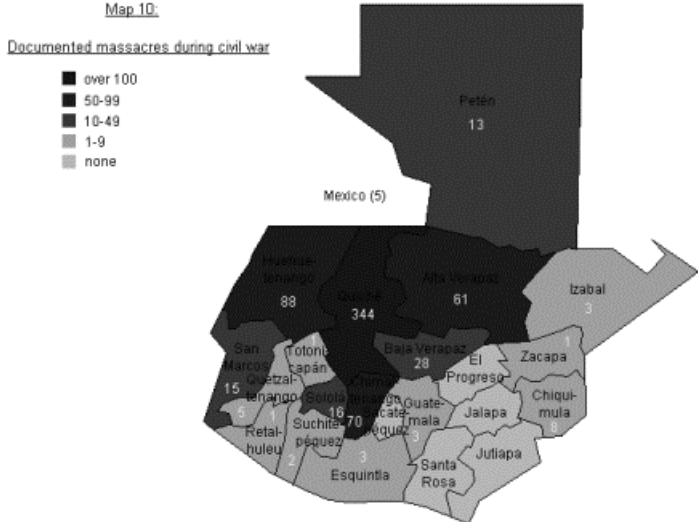
source: Commission for Historical Clarification, *Guatemala: Memory of Silence*, February 1999

Map 4:

Index of social exclusion 1994-1995

- 40-50
- 30-40
- 20-30
- 10-20
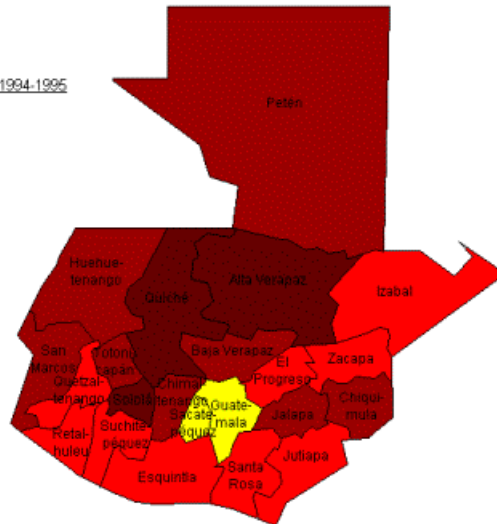
data source: UNDP, Guatemala: *los contrastes del desarrollo humano*, 1998, p.200.

Having been born into controversy and disappointment, expectations of the CEH were understandably low throughout much of the process. However the findings and recommendations went far beyond expectations in the scope of their analysis as well as their indictment of the state. The public presentation of the final report, entitled *Memory of Silence*, was attended by over 10,000 people in February 1999. Representatives of the government and the former guerrilla forces both made speeches in which they assured the audience of their commitment to the recommendations in the report. Those who attended the handing over ceremony described it as 'an emotionally electrifying experience for thousands of victims in the hall, who felt vindicated by this formal indictment of what everyone already knew intuitively' (Jonas, 2000, p.154).

Given the context of the ceremony, hope was running high, and it was expected, as the UN Secretary-General commented that: 'this [would] serve as an example to the whole world … authentic national reconciliation should be constructed on three pillars: truth about conflict, justice for the most grave crimes and reparations for the victims' (UNOPS, 2000, p.23). These expectations were quickly dashed however when the government of President Arzú refused to take ownership of the report or accept its findings, particularly those of genocide, insisting instead that the CEH's interpretation of history was simply one amongst a number of possible interpretations (cf. UNOPS, 2000; Jonas, 2000).[68]

This refusal to take responsibility for the Commission's report has had consequences in the implementation of its recommendations which are non-binding and as such depend entirely on political will.[69] In addition to the implementation of the provisions of the Peace Accords, the CEH recommended that:

- both sides in the conflict accept responsibility for the atrocities outlined in the report.
- a National Reparations Programme be established for both individual and communal reparations. The Programme should include financial compensation, restoration of land, programmes of rehabilitation, and symbolic reparations.
- truth-seeking be continued to establish the fate of the 40,000 'disappeared'.

- a Presidential Commission be established to examine the conduct of individual army officers in order to purge those responsible for human rights violations.
- those responsible for crimes not covered by the amnesty laws should be brought to justice.
- measures be adopted to combat the racism that contributed to the genocide.[70]
- the work of the CEH be continued by another body entitled the Foundation for Peace and Harmony, charged with following up the implementation of the above-mentioned recommendations (extracted from Jonas, 2000, p.156).

The recommendations with regards to reparations have been particularly problematic in Guatemala, as they have become politicised and entangled in the demands of former civil patrollers, as well as the complexities of who should be defined a victim and who a perpetrator. In August 2000 former PAC members staged mass protests demanding payment for the services rendered during the conflict. Interestingly, until that time, demands for financial compensation from the state were framed in the language of 'labour rights', i.e., the demand for compensation was a demand for payment for labour performed. However as the reparations debate became increasingly politicised, civil patrollers adopted the discourse of the victims, voicing their demands in the form of 'human rights' – that they were used as forced labour and had their rights violated and should therefore be considered *victims* of the conflict and compensated accordingly (Laur de Pérez, 2002).

The PACs have the ear of the current government.[71] In 1999 whilst campaigning for office, President Portillo promised redress for PAC members. Although he was slow to move on this promise and this culminated in the protests noted above, Portillo during this time continually assured PAC members that he will 'never abandon them' and that the former paramilitary patrollers were 'bastions of democracy' and peace; a vital resource needed during the 'important changes' in Guatemala (Laur de Pérez, 2002, p.34). The government has refused to acknowledge the role that the paramilitary units played in the atrocities of the past and has equally refused to denounce the practice of establishing such patrols.

Despite the findings of the Commission for Historical Clarification, the Guatemalan government has chosen to glorify the perpetrators of the past, placing them blatantly before the genuine victims. It is true that the complexities of the historical situation in Guatemala make it difficult to delineate clearly between victims and perpetrators as many PAC members served only under threat of violence to themselves and their families. However the state's unwillingness to engage with the unambiguous victims of the past, or to discuss a reparations programme until very recently, has sent a clear message about who it is the government represents.[72] MINUGUA reports that whilst reparations for victims was spelled out in the Peace Accords, that of PACs was not – only their demobilisation was agreed to. A National Reparations Program was finally signed into effect in April 2003, seven years after the conclusion of the Peace Accords, but there have been no steps as yet to institute it. The state has, by contrast, begun to make payments to former patrollers.[73] Julio Arango Escobar, Human Rights Ombudsman, has denounced government for this perversion of priorities, and notes that 'economic compensation [for ex-PACs] encourages contempt for victims of the horrendous dirty war and strengthens impunity for the largest genocide in the modern history of Latin America' (Laur de Pérez, 2002, p.32).

It is likely that government's pandering to civilian patrollers is at least in part motivated by

their own election considerations. Former patrollers comprise a large constituency of eligible voters and are considered to be a key support base of the FRG: the party of the former dictator Rios Montt and of the current President (Gonzalez, in personal communication; Padilla, in personal communication). With 2003 an election year, it can be expected that government will place its own re-election agenda above the needs and demands of victims of the past.

Impact on Reconciliation

The impact of the Commission for Historical Clarification has been difficult to assess. Dissemination of the report and its findings have been quite extensive. Both the English summary as well as the full report in Spanish have been posted to the Internet, increasing international access. 42,000 copies of the shortened 'Conclusions and Recommendations' volume were printed in both English and Spanish and copies were distributed to the media, libraries, and universities. Much of the text of this volume was also reprinted by the media in the weeks following the release of the report (Chapman and Ball, 2000).[74] Unfortunately, dissemination was much less successful to the constituency most in need of the report – the indigenous populated rural areas. Although the CEH recommended that the report be translated into at least 5 indigenous languages this did not happen due to funding constraints. As a result those primarily impacted by the conflict benefited the least from their incorporation into national history.

The notion of reconciliation has not been very widely discussed in Guatemala, in stark contrast to the public debate and ongoing discourse of reconciliation during the South African transition (Buvollen, 2001). There appears to be little understanding of what the term means, and this was aggravated by the word's application in the Law of National Reconciliation – what was in essence an amnesty law for the military. Throughout the negotiation process there were the requisite gestures of 'reconciliation' from both sides, through public hugs and handshakes, but to date no assessment has been made of the impact of the mass violence on the civilian population (Buvollen, 2001), or the need for concerted efforts at reconciliation and nation-building.

The UN assessment of the truth commission's impact on reconciliation reached a mixed conclusion, noting that the Guatemalan population appeared divided between those who felt that the Commission had contributed to reconciliation and those who felt it had divided the country even further. Others argued realistically that the report's contribution was simply one of a number of long-term processes. More broadly, an understanding of reconciliation has varied across the sectors of Guatemalan society. Government offered a somewhat unenthusiastic apology to victims, yet refused to accept the CEH's findings, in particular those of genocide. The Ministry of Defense has argued that there is 'nothing to reconcile' as the armed forces only followed orders in a time of war. Business has refused to be held responsible despite being the primary beneficiaries of the old system, and has instead continued to pursue its own interests to the detriment of the majority population. The church has emphasised pardon and forgiveness as the path to reconciliation, a perspective that without acknowledgement or contrition on the part of former beneficiaries is unlikely to resonate with former victims. Mayan organisations in particular have expressed discontent with the very notion of 'reconciliation'; arguing that there is no pre-existing relationship between Maya and *ladino* to return to, and that the damage inflicted on their community was not solely a result of the 36 year war, but rather of five centuries of

systematic racial oppression (Buvollen, 2001).

The Commission's broader impact has been equally difficult to ascertain. At an intellectual level, the report has increased the internal debate around the conflict and clarified the role of the guerrillas, the state, and the state's allies in the US government. As Salveson notes, it is today legitimate to 'acknowledge that the state acted wrongly and that the guerrilla could have acted differently in order to prevent exposure of the civilian population to massive violence.' (Salveson, 2002). In other words, "Memory of Silence" has, to paraphrase Michael Ignatieff, 'narrowed the range of permissible lies' that the state can circulate (Ignatieff, 1996). Its impact on day-to-day lives has been criticised however, and as one forensic anthropologist working on exhuming the bodies of the massacred in rural Guatemala notes:

> The Truth Commission produced a fabulous document and much effort has been made to distribute summaries that are accessible to rural communities. It has helped immeasurably in terms of clarifying Guatemalan history. It has given people a tool to use in a variety of ongoing struggles. But changing day to day lives? Its impact is more subtle. (Dill, in personal communication)

One would question whether any truth commission could, or indeed should, be expected to change the day-to-day social and economic conditions of a country over night. The impact of the Commission does not fall short for having failed to achieve this transformation single-handedly, but more devastatingly perhaps, for its failure to transform the attitudes of the beneficiaries of the past who still control the economic, political and social power in Guatemala. More damning to the Commission's success has been the ongoing popularity of ex-dictator General Rios Montt, despite the Commission's finding that he presided over a genocide during his term in office. Within months of the report's release Montt was elected overwhelmingly to President of Congress. In July 2003, the Constitutional Court overturned a ban which had prevented him from standing for the Presidency in the past two elections based on a provision in the Constitution which bars those who came to power by force in the past from running for the highest office. Human rights groups note that the latest ruling contradicts the Court's former rulings, and that this is likely a result of the fact that three of the current seven judges have very close ties to the General. Analysts predict that with Montt's current levels of support, coupled with the political disinterest of the majority of voters, it is possible that the 77 year-old Montt will return to power later this year (cf. http://www.guatemaladaily.com). These continuities with the past demonstrate how little in effect Guatemala has transformed since the Peace Accords, and that such a 'transition-less' transition (Dill, 2002) has the very real potential of catapulting the country back into the violence and brutality of the past.[75]

South Africa's Transition and the Truth and Reconciliation Commission

When negotiations to end apartheid began formally in the early 1990s, an important debate was initiated about the way in which the future South African state would deal with its violent past. The path of full-scale prosecutions for political crimes was never truly an option. At the time, the African National Congress (ANC) was seeking to reform a white minority state into a multiracial democracy. Threatening to prosecute the old guard security

establishment of apartheid presented the very real possibility of unleashing a full-scale civil war. On the other hand, the path of a blanket amnesty – a kind of national amnesia about the past – was similarly unacceptable. Ignoring the violent oppression of the majority of South Africa's citizens and allowing perpetrators of atrocious human rights violations to walk free would not lead to the stability and reconciliation the new government sought. Moreover, such an option would undermine the rule of law upon which the new dispensation needed to be built. What was negotiated was a compromise solution in the form of a truth commission; an institution that, although modelled on similar commissions elsewhere, was unique in its reach and mandate, as well as its impact.

The Truth and Reconciliation Commission (TRC) was established by the Promotion of National Unity and Reconciliation Act of 1995 and was tasked with investigating and recording incidents of gross human rights violations that occurred between 1960 and the first democratic elections in 1994. To this end, the Commission was made up of three separate committees:

- The Human Rights Violations Committee – which recorded the story of (predominantly black) victims whose voices had until then been silenced, and conducted national public hearings to allow these stories to be heard;
- The Amnesty Committee – which decided on the granting of amnesty to those who had committed political crimes under apartheid;[76]
- The Reparations and Rehabilitation Committee - which made recommendations on reparations, both symbolic and monetary, for those identified as victims.

The testimony of survivors

The Human Rights Violations Committee was the most visible arm of the TRC. Its function was to solicit and record statements from victims of gross human rights violations; defined narrowly as acts resulting in death, torture, or other severe mistreatment. Approximately ten percent of the victims who came forward testified in public hearings which were broadcast nationally over television, the radio and in the press. It is this public recounting of the gruesome acts of primarily state-sponsored violence that has had the most forceful impact on the nation. Each day, the stories of those who had lost loved ones, been tortured, detained, and suffered the most brutal excesses of the apartheid system related their stories to the nation, rewriting the fractured and segregated history that had until then been told.

The very public nature of the TRC drew in citizens from all walks of life, engaging them in the nation-building objectives of the Commission as well as serving as a public education tool. No other truth commission to date has succeeded in involving the population to the extent South Africa was able to. Hayner (1999) notes that it was precisely this process of the Commission that has had far more impact on society than any product it produced (i.e. the Final Report). The Report itself, although important as a historical document and resource, is both priced as well as written beyond the access of most South Africans.

In Guatemala public hearings were not possible due to limited resources and more importantly the need to ensure the anonymity of witnesses in an environment of ongoing security concerns. The absence of public engagement limited the impact the CEH was able

to have on Guatemalans as it restricted the products of the commission to its final report.

Limitations of the TRC

The TRC was tasked with uncovering and recording instances of 'gross human rights violations' – defined narrowly as killings, torture, and severe mistreatment. This exclusive focus on individual crimes and the 'excesses' of the apartheid regime came at the cost of largely ignoring the institutional violence that characterised National Party rule for over four decades (cf. Mamdani, 1998 for an elaboration of this critique). Left out was the story of the victimisation of the majority; 'mass forced removals, pass laws, the bantustans, the whole apparatus of decades-long territorial "ethnic-cleansing", resulting in mass malnutrition, high levels of infant mortality, abysmal levels of life expectancy' all of this was characterised as very serious but not gross human rights abuses (Cronin, 1999). In essence, very few South Africans felt their own experiences of oppression were represented or reflected in the work of the Commission (cf. Fullard, 2004; Mamdani, 1996).

This has been one of the chief criticisms of the South African TRC – that by focusing on individual crimes the TRC neglected to provide an analysis of the broader history of racism and segregation. In particular, that by focusing on the individual excesses of apartheid, the everyday violence of the system escaped scrutiny and only those who perpetrated the worst excesses were portrayed as culpable. Contrary to civil society in Guatemala who lobbied to limit the historical period the CEH investigated in order to ensure a more focused investigation, human rights advocates in South Africa have criticised the TRC for taking on a historical period that was too limited, missing the continuities of violence and racism through colonialism and de facto segregation that culminated in the worst years of apartheid.[77]

Mahmood Mamdani, perhaps the most vocal critic of this aspect of the TRC, writes that: 'the violence of apartheid was aimed less at individuals than at entire communities, and entire population groups. And this violence was not just political. It was not just about defending power by denying people rights. The point of torture, terror, death, was even more far-reaching: its aim was to dispossess people of means of livelihood … [The TRC model] obscured the colonial nature of the South African context: the link between conquest and dispossession, between racialized power and racialized privilege. In a word, it obscured the link between perpetrator and beneficiary.' (Mamdani, 2000, p.179)

It has been argued that the obscuring of this relationship between perpetrator and beneficiary, and between exploited and beneficiary, allowed those who had benefited from apartheid to express shock and outrage alongside the victims of the past; denying their own responsibility and more importantly, denying the economic legacy apartheid has bequeathed the new nation:
'The approach of the TRC resulted in the individualization of the gross abuses of the past. Gross violations of human rights were treated more as the product of individuals' decisions and actions than the outcome of the dynamics of the apartheid system. This enabled white South Africans who were the supporters and beneficiaries of apartheid to escape from acknowledging their complicity in the system's abuses. As one analyst points out, "The increasingly familiar refrain within white South African communities, that apartheid was

merely a 'mistake' for which no-one was responsible, that somehow the system propelled itself impersonally, may be one of the more ironic, unintended consequences of the TRC's rendition of the past.'" (Chapman and Ball, 2000, np)

In South Africa one would believe that with the widespread coverage of the public hearings, the TRC would have at a minimum established a universal acknowledgement that apartheid caused harm. Surveys conducted by the Centre for the Study of Violence and Reconciliation however demonstrate that this is not the case, and that white denial of the injustices of the past still exists (Theissen and Hamber, 1998). A telephonic survey conducted amongst white South Africans shortly after the start of the TRC's public hearings revealed that 44 percent did not feel that the former political system was unjust. An equal number thought that apartheid was a good idea badly carried out. Only one in three held the view that apartheid had done more harm than good (Theissen and Hamber, 1998). Denial of responsibility leads inevitably to a denial of the need for socio-economic redress. When asked for their views on redress, few whites expressed support: with only a quarter supporting affirmative action and considerably fewer supporting the return of some farmland to the black majority (Theissen and Hamber, 1998).[78]

In contrast to the individualised responsibility pursued by the TRC, the CEH provided a comprehensive historical analysis which condemned both a historically racist system as well as those who continue to benefit from it. As comparative truth commission researchers have noted:
'the CEH model proved to produce a more complete, consistent, and coherent report than any other commission to date. The report's greatest achievement is not the balance of evidence, the use of data, or its legal sophistication. The report's tremendous strength comes from its simple unity of premise: that the origin of the conflict and the overwhelming majority of violent acts were the responsibility of the Guatemalan state. At the end of the day, it is far easier to clarify history than to find truth and promote reconciliation through public hearings.' (Chapman and Ball, 2000, p.25)

Assumption of responsibility by all parties and the acknowledgement of injustice is a core foundation for reconciliation. If one follows the argument made by Mamdani, the denial by former beneficiaries of the historical injustice of apartheid is attributable in large part to the route of individualised responsibility taken by the South African TRC. It would appear however that even a systematic historic documentation of a racist history does not necessarily produce the acknowledgement desired from beneficiaries. As detailed in following sections, there has been little acknowledgement or redistribution in Guatemala, and privileges are guarded with violence by those who enjoy them.

Reparations

The stories revealed through the public hearings of both the Human Rights Violations Committee as well as the Amnesty Committee, were horrific. For many South Africans it was unacceptable that men who came forward and visually demonstrated how they had used a 'wet bag' to suffocate and torture anti-apartheid activists, or told stories of the children they had detained, tortured and disappeared; were permitted to walk free. The nature of the Truth Commission demanded a tremendous sacrifice from victims who had

already given so much for this new democracy. Some did not believe that this sacrifice was justified, and in one of a number of court cases involving the TRC, a group of high profile victims' families took the government to the Constitutional Court arguing that the amnesty agreement abrogated their constitutional rights to seek civil and criminal justice (Azanian Peoples Organization (AZAPO) and others v President of the Republic of South Africa and others).

The Constitutional Court ruled that the exception was permitted, due to the overall objectives of the transition and because the TRC Act required the State to balance the withholding of the right to justice by guaranteeing a right to reparations.[79] The task of recommending suitable reparations was reflected in the TRC's third committee - the Reparations and Rehabilitation Committee. This committee was mandated with assessing the documentation gained by the Commission and preparing a comprehensive list of recommendations to the government. The final recommendations covered a range of factors including individual monetary payments, community reparations, symbolic reparations, and recommendations for institutional transformation to ensure that the atrocities of the past would never again occur.

Whilst acknowledging that no amount of money could ever repair the damage of the past, nor bring back lost family members, it was hoped that the implementation of financial reparations would begin to restore the dignity of victims and redress the legacy of the policies of the past. Unfortunately, the provision of reparations by the state has been slow. Moreover, there has to date been little atonement from either businesses that profited from the discriminatory policies of the past such as job reservation, wage discrimination and forced labour; or from individuals who benefited from the policies of apartheid merely by virtue of the shade of their skin. As noted above, this denial of responsibility was permitted and facilitated by the very way in which the Truth Commission engaged with its task of uncovering the past. It has been strengthened by Government's unwillingness to support a reparations scheme that extends beyond merely contributions by the State.

Beneficiaries and the TRC – big business and the white community

The TRC Final Report outlined the role international business had played in financing the apartheid state and ensuring its prolonged life. In just one example cited, the report found that during the most violent years of apartheid – the late 1980s - Swiss banks bailed the Botha government out of its financial crisis, offering to defer repayments of its loans and buying more than half of the gold the country produced. This was in spite of the international sanctions then in place, and the declaration of apartheid as an international 'crime against humanity'. These financial institutions continued to benefit from the violent oppression and economic desperation of the majority population (Truth and Reconciliation Commission, 1998, Vol.6, Chapter 5).

Noting the two-sided coin of political oppression and economic exploitation that was the apartheid system, the TRC recommended that business pay towards a reparations fund, elaborating on numerous ways in which this could be structured. It also requested that the debt incurred by the apartheid regime in order to maintain a police state (termed 'odious debt') be restructured to free up money in the short term for much needed development and

redistribution schemes. This too was seen to be a conservative move by civil society who had long argued that this debt should be scrapped entirely: it is unjust that the victims of the past should now pay back loans incurred in the course of their oppression (cf. CSVR submission to the Ad Hoc Parliamentary Committee on Reparations; Jubilee 2000 Campaign for Debt Cancellation).

The Commission further recommended that a once off wealth tax be collected from former beneficiaries (i.e., whites). In this regard, the Commission noted that it was unfortunate that whites in South Africa had so far refused to accept responsibility for the legacy of apartheid, and had contributed little materially towards reconciliation. It was hoped that the tax would have both a symbolic as well as material impact.

The voluntary nature of reparations was a particular blow to victim communities. Experience over the past decade had demonstrated that the unwillingness of former beneficiaries to acknowledge their own gains from apartheid also meant that they did not see any duty to make material reparations. The unwillingness to even discuss reparations amongst former beneficiaries – both individuals as well as domestic and international business – has been facilitated by the attitudes of the new ANC government towards the issue.[80] This has left the voices of the survivors of the past silenced once more. For many, the 'new South Africa' looks little different from the South Africa of old – land and wealth remain in the hands of the wealthiest 20 percent of the country, inequality between the rich and poor is still the largest in the world (Terreblanche, 2002), and despite the social development programmes of the current government, many still do not have access to the basic necessities of water, electricity and housing. Whilst it was not the job of the TRC to address these socio-economic concerns (these were intended to be dealt with through other means, in particular the Reconstruction and Development Programme, the initial economic strategy of the first democratic government) anger has been expressed by the previously disadvantaged who continue to live in squalor whilst those who benefited from the past have evaded responsibility and continue to benefit today. The TRC has been singled out as epitomizing this injustice – perpetrators were granted immediate amnesty and have returned to lives of comfort whilst victims are still waiting for reparations five years after giving testimony. One Truth Commissioner summed up the anger of those who exist in a socio-economic structure that is little changed from the past: 'What is tragic is that the new government, who inherited a bankrupt structure, has to bankroll reparations for the sins committed by the past government. Those who benefited from the spoils of apartheid are still benefiting. There has been no special tax imposed, no need for any act of personal contrition, no need for an act of restitution to the victims directly, no loss of jobs or land.' (Yasmin Sooka quoted in Institute for Justice and Reconciliation, 2003, p.7)

It was against the backdrop of such stark inequalities, the denial of responsibility and a lack of justice that the TRC was expected to negotiate a path to national reconciliation.[81]

Guatemala's Transition – Violence, Human Rights and the State

Status of the Accords

As noted in the section on the negotiated settlement, Guatemala's Peace Accords

encapsulated some of the most progressive and comprehensive transformations agreed to by a peace-seeking nation. Reforms were proposed to address the ineffectiveness of the judicial system, the concentration of brutal power in the hands of the military, and the racist exclusionary nature of the state, its institutions, and society more broadly. The Peace Accords however necessitated constitutional and legislative reforms; reforms which required a two-thirds majority of Congressional backing as well as majority support in a national referendum. Without these measures the Accords had no legal authority for implementation. Given the historic exclusion of most of the population from the political sphere and the resistance to transformation exhibited by the elite, it was perhaps inevitable that the referendum would return a negative result. These historic reasons were compounded by factors specific to the referendum: the ability of the 'no' campaign to use fear of change to its advantage; the inherent racism of many of those who did vote; political disillusionment and indifference amongst the majority of the population; and the confusion created by mixing peace-related reforms with unrelated issues.

In the months leading up to the referendum in May 1999, almost all polls showed the 'yes' vote dominating considerably. However the polls also showed a high percentage of individuals with little or no understanding of the issues – a large constituency that was open to manipulation by fear or merely indifference. Unsurprisingly, support for the reforms was strongest in the rural indigenous areas and those regions that had been worst affected by the war (Jonas, 2000).

Leading the opposition to reform was the traditional business sector represented by CACIF and conservative or right-wing groups. These groupings succeeded in obtaining legal rulings which prevented the government or MINUGUA from campaigning in favour of the 'yes' vote. CACIF however took out full page ads warning of ethnic violence and other severe consequences if the referendum was to pass, and newspaper editorials warned against turning political rights over to 'illiterate Indians' and the dangers of 'reverse racism' (Sieder, 2001). The campaign claimed that the reforms would lead to the 'balkanisation' of the country, and that it would turn the country over to the Indians, give more rights to the indigenous population, subjugate the judicial system to customary law, and render the state racist (Jonas, 2000). Right-wing churches asserted that implementation of the Accords would lead to the persecution of 'good Christians' at the hands of pagan Mayan religions (Jonas, 2000). In short, the 'no' campaign drew on every historic racist precept available in pursuit of its objective (Inter-Church Committee on Human Rights in Latin America, 2003).

The right-wing was assisted in their initiatives by the very structure of the referendum which many analysts believe was the primary contributor to its defeat (Jonas, 2000). The constitutional reforms originating from the Accords numbered only 13, however as Congress negotiated what would appear on the actual ballot political compromises and politicisation resulted in the 'adding-on' of completely unrelated issues. The final ballot comprised 50 total reforms to be voted upon, many of them contradictory to others and all of them confusing an electorate that already had little interest.

This lack of interest was demonstrated pronouncedly in the high abstention and voter non-registration on voting day. 81.45 percent of registered voters abstained. If one takes into account both abstentions as well as non-registration, the fate of the Guatemalan peace process was decided upon by a mere 12 percent of the population – 6 percent voted 'no', 5

percent voted 'yes' and a further 1 percent spoiled their ballots (Jonas, 2000).

Jean Arnault, former head of MINUGUA, assessed in the wake of the failed referendum that the Guatemalan population judged the relevance of the peace process for themselves on two key issues – the impact on their personal and economic security (Azpuru, 1999). As both these areas had deteriorated since the signing of the Accords, the attitude of the population had become one of disillusionment and disinterest. Azpuru (1999) warns that when such disenchantment sets in so early on in a transition, it risks delegitimising the peace and promoting a perception of the negotiations as an 'elite project'. Jonas notes however that despite this disillusionment, particularly after the failed referendum, polls still demonstrated that the overwhelming majority of the population *did* want the peace process to continue (Jonas, 2000).

With the reforms rejected, there existed little political will to carry through those aspects of the Accords which could be implemented. Even before the failed referendum, peace resisters who had opposed the entire negotiation process were gaining strength within government. Rather than fight them back, President Arzú began to make crucial compromises (Jonas, 2000). Moreover, as the military resisted strenuously any moves to weaken their powers government began to kowtow to their interests once more. The size of the military was reduced by one-third in personnel, but not in expenditure (Salveson, 2002). [82] It has been alleged that the military inflated its initial benchmark number of personnel by including civilians, reservists and retired officials. In this way, they could then make large decreases on paper without weakening their institutional capacity to any real extent (Schirmer, 1998).

In recent years, the military has managed to regain ground surrendered during the negotiations. The *New York Times* reported in 2002 that the military budget that was meant to be slashed has in fact increased once more to war-time levels.[83] Furthermore, the mandate of the army was to have been restricted to external security matters, leaving internal policing to a new body entitled the National Civil Police (PNC). In blatant contradiction to these commitments, the government issued a decree in 2000 which reformalized the military's participation in internal policing. The newly created PNC is also in defiance of the Accords as the overwhelming majority of its members are recycled from the policing units of the past (Reding, 1998). In short, power continues to be consolidated in the hands of the military in the guise of a new institution and name.

The agreed upon elimination of illegal security structures has been ignored. The EMP, a unit that in theory existed to protect the President but was in practice used for some of the most high profile assassinations and human rights violations during the conflict was to have been dismantled. Instead Amnesty International (AI) reports in 2002 that their budget has doubled. Much of the money used to finance this unit has been diverted from the Peace Secretariat (charged with overseeing the implementation of the Accords) and from the Ministry of Agriculture and Nutrition (Amnesty International, 2002). As AI aptly summarises, 'it defies belief, that at a time when children are starving to death, funds are directed from nutrition towards the Presidential Guard' (Amnesty International, 2002).

A former member of Congress, Amilcar Mendez, admitted feeling powerless in the face of the military's blatant flaunting of the Accords. Far from reducing its budget, the military is

'adding millions of dollars and remilitarisation is taking place – openly' (McConahay, 2002). These actions are in line with the military's view of the peace as merely a formality; the belief that once the interest in peace has blown over the army will easily reassert its old position. In short, as Jonas terms it, the army sees itself as merely biding time in order to 'survive the peace' (Jonas, 2000).

The Agreement on the Identity and Rights for the Indigenous Population (the most relevant Accord with respect to addressing issues of race and citizenship) has, in the words of MINUGUA, been implemented to the least degree. Its provisions and implementation will be dealt with in depth in the section below on Citizenship Post-Transition.

Guatemala's economic reality is little changed, and paradoxically is perhaps worse today than ever before. One percent of landowners still own over 75 percent of land, all of it the most fertile land. UNDP estimated in 1999 that 77 percent of all Guatemalans, and 91 percent of indigenous persons, live in poverty. And the gap between rich and poor is growing. Although the Accords were meant to address this economic gap, they did more to entrench a conservative macro-economic agenda than address the root causes of the poverty. Real wages today are less than half what they were in 1990, less than a third of the economically active population are formally employed (Reding, 1998), and privatisation and downsizing have cost 15 percent of jobs in the private sector in recent years (Kurtenbach, 2002). Perhaps the greatest setback of the Accords, and particularly the Socio-Economic Accord, was that there was no provision for a job creation programme. Not only was this necessary to address the existing wealth disparities, it was vital in the wake of the Peace Accords and the demobilisation of military personnel and civil patrollers. This demobilised population now constitutes some twenty percent of the total population (Schirmer, 1998), and they have been reintegrated into an environment of high unemployment and few economic opportunities.

The growing gap between rich and poor has placed Guatemala's transition at risk and amounts to a serious impediment to the consolidation of democracy. Its experiences are similar to that of its neighbour El Salvador where '[o]ngoing and worsening poverty is one of the major factors contributing to an increase in social violence and common crime; this in turn has sparked calls for maintaining army involvement in internal security – a most definite threat to democratic gains' (Jonas, 2000, p.98). The contribution of ongoing poverty to new levels of criminal and social violence in the transition is covered below, as is the growing military response. Poverty also threatens the peace process however as it prevents those who should be the beneficiaries of the peace from claiming ownership of the process and thus defending it. The high rates of abstention during the referendum is one example of the way in which the process will be allowed to fall by the wayside if it is not seen to be benefiting the population at large.

In those areas where government has moved to meet its obligations, service delivery has been painfully slow. In the area of housing for example, by the end of 2002 the Guatemala Housing Fund had approved less than a thousand housing subsidies whilst one and a half million families waited in need of housing (Guatemala Human Rights Commission/USA, 2002). Approximately six million people still do not have access to adequate land in order to sustain themselves (MINUGUA, 2001). All Accord provisions relating to land redistribution have been rescheduled due to a lack of implementation. Slow delivery coupled with increased expectations from the peace negotiations has led to frustration and

anger amongst those who continue to live on the margins of the economy. With rural poverty and general unemployment now at unprecedented levels some have taken matters into their own hands, choosing to invade and occupy land they feel is rightly theirs (Amnesty International, 2003).

Summing up the impact of the Peace Accords over the past seven years and their limited implementation, long time activist Kathleen Dill has concluded that 'other than provoking renewed social mobilisation (that was quashed during the violence) the Peace Accords and Truth Commission have had little effect on the structures of inequality, the power of the military, governmental corruption and continuing impunity for crimes against humanity' (Dill, in personal communication).

Present Day Guatemala – Violence in New Forms

The following section of this report looks at the role of violence in Guatemala's present transition, the forms it takes, the sectors involved, and its impact on the sustainability of a democratic Guatemala. Whilst attempting to give this section some clarity by dividing it up into key themes, it must be recognised that each of these themes is intimately linked to and impacted upon by the others, and that the divisions imposed are an arbitrary attempt to map the terrain of the subject and its implications for the issues of transition and citizenship more broadly. As such, the key themes covered will be: the impact of past violence, the lack of a disjuncture with the violent past, the rise of crime, the nature of organised crime, the targeting of human rights defenders, the weakness of the judiciary and the culture of impunity, new forms of social violence including vigilantism, and the increasing powers of the military.

The scale and sheer horror of the violence that the state inflicted upon Mayan communities during the conflict has left a legacy that will not be easily erased. The purpose of the violence was not merely to eliminate individuals, but to eliminate the 'social world' of the indigenous community and through this to exert the state's control over this population. This was done by eliminating existing social institutions, traditions and structures and replacing them with 'perverse forms of social organisation' (Godoy, 2002, p.646) that still exist today. Community leaders were targeted and killed merely for the impact it would have on the community. All existing institutions of community relations, including traditional conflict resolution mechanisms, were replaced by militarised versions, infusing violence into the very spaces of the social bond between community members.

The militarisation of communities and the fragmentation of social bonds was not solely the responsibility of the military. Stepputat (2001) notes that in some areas, the guerrillas established a parallel state; recording births and deaths, collecting taxes, drafting men into defence units, and dispensing justice through 'peoples tribunals'. The 'justice' was summary. For example, in the Nentón region villagers reported that guerrillas tore down the village jails, declaring that: 'He who commits a crime will meet this one [pointing to his rifle]. Now there is no jail, only arms.' (Stepputat, 2001, p.294).[84] When the army moved in, it mimicked aspects of the guerrillas' tactics and similarly established a strong presence at a village-level; promising to address issues of security and economic equality in order to win the support of the villagers.[85]

Throughout this period, whether villages were dominated by either the guerrillas or the army, communities were cut off from each other and isolated. Those from other areas or even neighbouring villages were treated with suspicion and often detained (Stepputat, 2001). Within villages suspicion also reigned, eating away at the trust between members of the same community. 'Being subversive' carried the penalty of death. As such no one dared contradict decisions made by the community and most decisions were agreed to 'unanimously' (Stepputat, 2001).[86] The fragmentation of the population and the entrenchment of mistrust and authoritarian values destroyed the social fabric of communities, and thus the context for social citizenship and democratisation post-conflict. [87]

As mentioned above, children were impacted upon disproportionately by the conflict, leaving a violent imprint that is all the deeper because of their vulnerability. In much of the testimony collected, REMHI found that children were present during the atrocities and that because of their age and inability to understand the violence and trauma they were particularly affected (Recovery of Historical Memory, 1998). Half of the reported massacres included the collective killing of children. In many of these cases the children were killed first in order to gratuitously torture the parents before they too were killed. Childhood in general was militarised, mainly for boys who were forced to join civil patrols at the young age of fifteen. Children were forced to witness, participate, or be victims of the conflict, which led REMHI to conclude that violence has been normalised in subsequent generations (Recovery of Historical Memory, 1998).[88]

The socialisation of violence through the vehicle of the patrols has altered values and behavioural patterns; 'violence became a normal method of confronting conflictive situations and promoted contempt for the lives of others' (Commission for Historical Clarification, 1999, p.27). The forming of civil patrols with Mayan men not only greatly extended the state's presence, it forced participation of community members in atrocities. This ensured feelings of complicity and guilt; both sentiments that were used to maintain control (Recovery of Historical Memory, 1998). Because the patrols were formed from members of the community, today victims and perpetrators still live side by side, making it extremely difficult to repair the torn social fabric of the community.

The targeting of children and the militarisation of social relations tore into the social fabric of communities. The most devastating impact however was achieved through the forced collaboration of victims in their own control. The Army used people from target communities as collaborators; either forcing them to commit the atrocities themselves or to identify guerrilla 'sympathisers' for execution. It was precisely these elements that have altered the communities, their customs, and their ways of interacting with each other. Godoy (2002) warns that state terror has 'unique' sociological effects which can impact not just the individuals but also the social spaces they inhabit:

> In viewing the Guatemalan killing campaigns as a collection of atrocities suffered by individual victims, we miss the ways that fear infuses not only people but the social space between them – their institutions, customs, and ways of relating to one another. In this way, the residue of state terror may outlive its survivors and even its perpetrators, replicating itself in new settings and circumstances. (Godoy, 2002, p.661).[89]

Godoy's warnings contextualise accurately the rise of new forms of violence post-conflict, as well as the continuation of familiar patterns detailed below.[90]

Rising Crime – The interface of the political and the criminal

Like many countries in transition, Guatemala has experienced a decrease in political violence but a corresponding increase in common crime and non-political violence. It is estimated that the country's present homicide rate is the highest in Latin America – a continent regarded as having a regional homicide rate twice the world average (Godoy, 2002). Soon after the finalisation of the Peace Accords, '[s]ystematic state-sponsored terrorism was replaced by a massive wave of kidnappings, armed assaults and robberies, and other forms of criminal activity, both spontaneous and organised (Jonas, 2000, p.148). Factors contributing to this rise in crime (and the violent nature of the crime) include:

- the easy access to illegal weapons left over from the conflict;[91]
- an initial 'security vacuum' caused by the military pulling out of domestic policing in line with the requirements of the Peace Accords, but without the civilian policing institutions being in place;
- the diminished value of life inculcated through the conflict;
- the lack of economic opportunities for ex-combatants being reintegrated into a society with already high levels of unemployment;
- the same limitations of economic opportunities on the general population; and
- the exacerbation of previously existing poor socio-economic conditions through the neo-liberal reforms of the Peace Accords which have led to frustrated expectations and increased wealth disparities. All of these factors are playing out in an environment of impunity which encourages rising crime.

Of particular concern to the transition, and the relationship between the state and its citizens, is the exponential rise in organised crime. During the 36 year conflict, military intelligence began to use their positions of power (and the advantage of being beyond the reach of the law) to run illicit activities, including kidnapping and drug smuggling. Since the end of the civil war these same members of the police and military have forged new partnerships with a range of roleplayers: the traditional elite, new entrepreneurs, and common criminals in an alliance that Amnesty International terms 'the corporate mafia state' (Amnesty International, 2002). This alliance participates in a wide range of illegal activity from illegal adoption,[92] car theft rings, drug smuggling and kidnapping, to illegal logging. They also ensure a continued monopoly over key economic sectors such as the oil industry (Amnesty International, 2002). The Amnesty International allegations are supported by evidence unearthed by the Guatemalan media (Jonas, 2000), and the army itself admits that the organised crime has a level of professionalism to it which could only come from those trained in the military (Schirmer, 1998).

The blurring of the line between political and criminal violence (and the financial rewards thereof) is apparent in this new criminal alliance. Many of the participants who engaged in political atrocities in the past (through which they also accrued economic benefits for themselves) have now merely shifted to engaging in economically motivated crimes which state agencies continue to help cover up (Amnesty International, 2002). In the cities, former government death squad members now either engage in crime or hire themselves out as

private security guards or hired assassins.[93] One expert on organised crime noted that not only are the individuals populating the private policing firms the same as those who conducted the war, but the methods used are the same: 'Bodies are often found tortured – it's reminiscent of torture methods used in the counterinsurgency, beating in specific spots of the body, and the way the arms and hands have been tied. You recognise it from the war' (Keen, 2003, p.12).

Syndicates exposed in the recent past have implicated a Vice-Minister of Defence, high ranking military and police officials, customs officers and private businessmen (Vickers, 1999). These partnerships between crime and state parties weaken the institutions of state (Vickers, 1999) and leave them useless to perform their primary function – delivering social goods to their citizens.

Guarding Impunity

One of the social goods being denied through corruption (and which cyclically then encourages criminal activity) is the delivery of justice. Impunity for the political atrocities of the past is intimately related to ongoing impunity for current criminal acts, both because of the common role players, as well as the complicity of the judicial and political system in both the past and the present.[94] Because those in power require the judicial system to be weakened to their own ends, those who seek to combat impunity – in particular human rights defenders – have become the target of both state as well as non-state violence.

State violence in support of impunity is a result of a continuity of power between the past and the present. At the highest political levels, there has yet to be any disjuncture with the personalities of the past. Former dictator General Montt, who presided over the 'genocidal' years of the conflict is currently President of Congress, and the party he founded is in power. It is a widely-held belief that President Portillo, who is currently in power, is little more than a 'puppet' of the aging dictator. This puppeteering has now become insufficient however, and in May 2003 the FRG nominated Montt as their presidential candidate in the upcoming elections to be held at the end of 2003.[95] Montt's shadow over the political landscape of Guatemala has already made it difficult to consolidate democracy, and impossible to seek redress for the past or reforms for the future. It has created instead what one American newspaper called 'a climate of intimidation and remilitarisation' in Guatemala (Blanford, 2002).[96]

The National Civil Police (PNC), a body intended to replace the militarised old policing force with a civilian dominated institution, has met little of the establishing criteria spelled out in the Peace Accords. The new police force was to exclude those who had served in the old military or security institutions including the discredited National Police (PN). Instead, the PNC that has been adopted, has easily circumvented basic requirements which has resulted in the 'recycling' of 90 percent of the old force into the new (Jonas, 2000). MINUGUA reported in its 11th Report on Human Rights that the new police force is the 'principal author of extrajudicial executions', and that activists and those working for social justice have been its specific targets (cited in Inter-Church Committee on Human Rights in Latin America, 2003).[97]

Those who seek to investigate the past, or address current criminal activity have become

the targets of intimidation, harassment and death. Amnesty International relates the story of one rural community and their attempts to exhume bodies from a massacre site in order to build a case of genocide against former authorities. Former patrollers suggested to the villagers that they should let the past lie: 'Forget the bones, if you want to complain about what happened here in the village, you're going to go through the same thing again' (Amnesty International, 2002).[98]

Human rights organisations in particular have been targeted for attacks, and have found little support from the state.[99] Guatemalan NGOs reported 125 cases of human rights violations against human rights workers in the first six months of 2002, and Amnesty International reports that virtually every human rights organisation has been attacked in recent months or has suffered serious abuses and violations in patterns that reflect closely those perpetrated in the past (Amnesty International, 2002).[100] PACs that were meant to have been demobilised in the 1990s are re-forming in order to seek economic gains. One of these gains, as mentioned above, is the payment of reparations from the state. Patrollers have however also begun to attack human rights organisations; blaming these groups for standing in the way of their reparations claims, and threatening to burn down offices if payments were not delivered soon (Amnesty International, 2003). Amnesty characterizes these organisations as 'living under siege' and reports that there has been a 'human rights meltdown' since 2000 (Amnesty International, 2002).[101]

The state has failed to address the targeting of human rights defenders, and instead dismisses the incidents as 'common crime' despite the evidence that death threats and execution style murders are hardly the trademark of 'common criminals' (Reding, 1998). Additionally, the state appears to be openly instigating the violence by publicly labelling human rights defenders as subversives and 'traitors to the country' (Amnesty International, 2002). Most notably, Vice-President of Congress stated in an address in 2001 that; 'The Minister of the Interior and the Director of the National Civil Police have informed us that the people who are intending to destabilize the country through confrontation belong to groups which claim to defend human rights.' (Amnesty International, 2002).[102]

The jealous guarding of a culture of impunity by high-ranking authorities has been successful to date – not one person responsible for the atrocities of the past has been successfully prosecuted (Amnesty International, 2002).[103] Furthermore, the government has refused to investigate the routine assassinations of rural human rights workers and land reform leaders (Blanford, 2002). This subjugation of the criminal justice system has implications for democracy more broadly. With conviction rates for murder at less than 10 percent of reported incidents and public perceptions that crime is skyrocketing, there is a nostalgic recalling of the authoritarian justice of the past, and a growing propensity for vigilantism. The undermining of the judicial system during the years of repressive violence has left behind a feeling of serious distrust in the system as well as a questioning of its utility (Commission for Historical Clarification, 1999). In 1997, more than 80 percent of citizens surveyed expressed having little or no trust in their justice system (Pásara, 2001).

Lynchings

Vigilante acts began surfacing in Guatemala during the 1990s, under the first democratically elected dispensation.[104] Vigilantism abruptly accelerated in 1996 with the

conclusion of the Peace Accords, and has been rising in numbers ever since. Between 1996 and 2001, MINUGUA reported 347 incidents of lynchings. This number is believed to be an underestimate as many of the incidents occur in deeply rural areas and are not reported. Additionally, the number of incidents do not reflect the total number of people lynched, as one incident often involves more than one victim.[105] The phenomenon of mob justice in Guatemala is an expression of anger with the current inadequacies in policing and justice, a nostalgia for summary justice,[106] and a consequence and reflection of the brutality of the past. Furthermore, there is evidence to link at least some of the violence to organised manipulation by figures in the military and the former civil patrols in a bid to further their own agendas.

Vigilantism in the Guatemalan context is, according to Godoy (2002), an expression of fear for personal security and anger with a state that cannot or will not provide the protection due to its citizens. Both the policing forces as well as the judicial system have been compromised and weakened as noted in previous sections. The retreat of the military from internal policing as prescribed by the Accords has left a vacuum in which rising crime is left unchecked. The lack of faith in the judicial system is so acute that there is little credibility placed in the assumption of innocence or the due process of law. Pásara (2001) writes that a not guilty verdict by the courts is often followed by charges from the public of corruption and calls for a judicial purge. The assumption made is that if a person is arrested they are guilty and should be jailed or executed (Pásara, 2001).[107]

The anger performed through vigilante actions is played out not just on suspected criminals but often targets the state itself, with increasing cases of civilians either attacking police stations in order to drag criminals from the prisons, or holding police at bay until 'justice' has been meted out to the suspects. The perceived effectiveness of the alternative judicial models of the past has contributed to high levels of support for vigilantism, or what in Guatemala is termed *justicia a mano propia* (justice at one's own hands). In a survey conducted in 1996, 75 percent of Guatemalans expressed support for some or other form of vigilante justice, with 58 percent support for burning suspected criminals to death and 71 percent support for lynching them (Pásara, 2001). It would be plausible to assume that with the number of vigilante attacks increasing, it is likely that the number of citizens who view these actions as justified has increased over the past seven years.[108]

Whilst it is true that crime and violence has risen exponentially in Guatemala since the transition, it is insufficient to look only at the justifications of the perpetrators of vigilantism (i.e. high crime and a weak judiciary) in order to understand the contributing factors to this violence. The targets of vigilante actions are predominantly lynched for less serious (i.e. non-violent) crimes. Three-quarters of recorded lynchings have been for property crimes with minimal value, and only one in every ten are for serious or violent crimes (Pásara, 2001). Most disturbingly, the location and form of the vigilantism points to the deep impact of the violence of the war. The majority of lynchings are taking place in rural areas, in particular those areas of the country that were the most severely impacted by the conflict. *This is despite the fact that these areas have comparatively low levels of criminality* (Sieder, 2001).[109]

The discrepancy between levels of criminality and levels of vigilantism appears to lie at least in part in the legacy of the violence of the past. It has already been noted that violence

can have a substantial impact on both individuals as well as the overall social relations within a community. Godoy (2002), who has conducted extensive research on the rise of vigilantism in Guatemala notes that the lynchings are a direct consequence of past state terror. Drawing on ethnographic research in the country, she concludes that 'the process by which state violence ruptured and replaced the preexisting institutions of civil society in Guatemalan communities … has led to lynchings in the postwar period' (Godoy, 2002, p. 641).

The normalisation of violence and its acceptability as a form of conflict resolution was consolidated during the past, and was entrenched in younger generations through the socialisation vehicle of the PACs (Godoy, 2002). The civil patrols as well as the army used terror and specific forms of killing as a clear 'message' to others during the conflict. This same form of 'messaging' is visible in present-day lynchings where torture, burning and mutilation are often employed and the body left there for others to see (Kobrak, 2002). The forms of the killings also reflect the past, with petrol burning being used most frequently (Godoy, 2002). REMHI noted in its report that after gun shot wounds, burning was the most common cause of death in massacres recorded (Godoy, 2002). Other similarities to war-time violence used by the army include the use of coercion by a few leaders in order to instigate a mob to participate.

Who exactly these leaders are is unclear. It is however increasingly apparent that mob justice in many cases is being either manipulated, or in some cases instigated, by individuals seeking to fulfil their own agendas (Amnesty International, 2002). This is evident in the fact that, contrary to the spontaneity one would expect of such a phenomenon, many actions are highly coordinated (see Esparza, 2002). This is apparent firstly in the number of individuals involved. For example, incidents can involve several hundred people from several villages, suggesting coordination. Additionally, a number of human rights organisations have stipulated that the incidents are being initiated by outsiders to the area for their own purposes. Amnesty International gives the example of a mob lynching which was carried out by former PAC members (as opposed to local community members) gaining vengeance against 8 villagers who were pursuing a suit against them for the massacring of their families (Amnesty International, 2002). Godoy (2002) similarly provides an example of a family of five killed in 2000 by lynching. All had testified before the Commission for Historical Clarification, as well as the courts (Godoy, 2002). Godoy notes that there is no way of knowing how many individuals have been killed for personal or political reasons and have been accused of criminal activity only to guarantee their elimination (Godoy, 2002).

MINUGUA, as well as local activists living in the affected areas, have concluded that many of these lynchings are the work of former patrollers and military commissioners who, although stripped of their powers through the Accords, continue to hold de facto authority at a local level (Godoy, 2002; Gonzalez, in personal communication).[110] One such locally based activist voiced the argument that the lynchings are being used to give the impression of chaos and disorder under the new regime, in order to justify the return of military involvement in the everyday running of the state (Gonzalez, in personal communication). They pose a further threat to the success of democracy in that the instigation of violence at a local level brings back the spectre of past violence, retraumatizing and fragmenting the community and therefore destroying any chance of democratic values taking root (Esparza,

2002).[111]

The rise in violence has also been used to further a racist agenda and obstruct any reforms designed to create a more inclusive state. Mob violence and lynchings are being portrayed by the conservative media as an example of *derecho consuetudinario* (indigenous customary law) (Godoy, 2002). Given that the peace agreements were meant to integrate customary law into the overall judicial system, and that this very characterisation of customary law was used to defeat the proposed reforms in the referendum, the manipulation of lynchings for a conservative agenda puts at risk both the peace process, as well as any attempts to address racism.

Social Cleansing and Identity-Based Violence

The lynchings are merely one element of a wider campaign of intolerance and 'social cleansing' that has gained impetus in Guatemala in the past decade. The nexus between lynchings and 'social cleansing' more broadly is starkly illustrated in the case of ten villagers who were summarily executed in 1998 for alleged theft and the smoking of marijuana (MINUGUA, 2001). The assassins left behind a note that read; 'We're sorry, but we have to do this because it's our job to clean communities' (Reding, 1998). Among the members of this 'social cleansing group' (of which there are now reportedly a number in formation), were former military commissioners and former PAC leaders (Godoy, 2002). In many of these killings, former counterinsurgency operatives leave the same 'calling cards' they left when dealing with those labelled 'subversives' during the conflict (Reding, 1998).

Social cleansing and identity-based crimes are largely a result of ingrained suspicion towards 'subversives' and 'dissidents' during the conflict. Violence is now targeted not just at criminals and human rights defenders, but also more broadly at street children, prostitutes, homosexuals, transvestites, and others perceived to be a challenge to the 'moral order'. Intolerance and the denigration of others are encouraged by the state, if not through their complicity, then by the failure to enact or enforce laws that would protect targeted social groupings. Gay rights are not widely recognised in Guatemala and transvestites and homosexuals are vulnerable to hate crimes and killings (author unknown, 2000). Homophobia is so prevalent that state forces often accuse victims of 'being gay' in order to dehumanise them in the public eye. In this way, victims of Guatemala's most high profile assassinations in recent years – anthropologist Myrna Mack killed in 1990, and Bishop Gerardi – were both accused of homosexual activity by the state (Reding, 1998).

Street children too have become targets of social cleansing campaigns. It is estimated that there are close to 5000 children living on the streets of Guatemala's capital (Harris, 1996). Casa Alianza, a charity that works with street children has close to 350 criminal cases on behalf of these children pending in the judicial system. They have accused more than 120 police officers and 40 members of the military of various counts of abuse of authority, torture and murder of street children (Harris, 1996).[112] With the increasing spread of HIV/AIDS amongst these exposed populations (it is estimated that street children have a positive infection rate of 35 percent), discrimination against those with HIV compounds an already vulnerable status (Reding, 1998).

These attitudes of intolerance take on a violent form in Guatemala as a result of the

normalisation of violence in the past and the deep societal scars this has left. Violence is manifesting itself not just in stranger crimes and identity-based acts, but equally in communities where those who formerly held power struggle to hold on to it through the transition.

In rural communities, the return of refugees who fled during the conflict has resulted in an increased number of land conflicts and land invasions. During the 1980s, civilian patrollers were not just given guns by the state, but were encouraged to buy their own guns. Their affiliation with the military during the conflict provided them with the spoils of war, such as the abandoned land and homes of those fleeing as refugees. With these refugees now returning, some patrollers are using violence to protect their acquisitions. Of the approximately 20,000 who fled during the war and have returned, only a third have been able to return to their original land. The rest have found their land occupied during their absence, and are now role players in a situation with the potential for widespread violence and renewed conflict (Reding, 1998).

Violence against women and children

Violence in the home has also increased in the wake of the conflict. The Committee on the Rights of the Child expressed concern recently that violence against children appears to be on the increase in Guatemala (Human Rights Watch, 2002). Similarly, high levels of gender violence prevail. Studies estimate that as much as one-third of all Guatemalan women are subjected to physical violence by men and levels of rape, though not credibly quantified, are believed to be endemic (Reding, 1998). Gender violence has its roots partly in the broader context of spiralling violence in Guatemala generally, but also in the challenge to conservative gender relations posed by the conflict and its consequences.[113] During the armed conflict, many indigenous women were widowed and became head of their household, challenging traditional notions of a woman's 'place'.[114] Some went on to become important leaders in their communities and outspoken advocates of indigenous rights during the peace negotiations as they became more aware of their capacity to lobby for change (Sieder, 2001). Sieder (2001) writes that, as a consequence, many women 'increasingly challenged their traditionally subordinate role in local affairs and became less willing to submit to the will of the men in their communities (or customary law)' (p.214). These challenges to old patterns could contribute to what has been termed 'change-generated conflict' (Alvarez, 2002) – that is, new patterns of conflict frequently witnessed in countries undergoing a transition.

The threat to democracy

The levels of social violence and human rights violations have reached dangerous proportions in Guatemala, and as stipulated above it is not just human rights defenders who continue to be attacked: 'journalists, union organisers, indigenous rights activists, street children, homosexuals, and women among others, continue to face death threats and physical violence, including murder' (Reding, 1998). Although the violence appears to be taking place in the non-political sphere it continues to have its roots in the political conflict, shares many of the same protagonists, and is often enacted for both criminal as well as political motives. The country that the international community once held up as the post-Cold War hope for a model of a Latin American transition from conflict to democracy today

is 'spiralling rapidly towards ungovernability.' (Amnesty International, 2003).[115] Guatemala can perhaps best be described by what Debiel and Klein (2002) term a country with a 'fragile peace'; that is, even though a settlement has been found to the violent conflict between the parties:

the economy, state and society remain shaped and influenced by structures of violence. Indeed in some cases the situation is so fragile that we could speak of a latent war – even though a return to armed struggle is not always directly imminent. The option of violence is deeply embedded in the collective memory and often influences (consciously or unconsciously) the present thinking and actions of the political players locally. (Debiel and Klein, 2002, p.1).

The danger of Guatemala sliding into the familiar response of authoritarianism and military-rule in the face of insecurity and chaos is increased by the active campaigning of the armed forces for a return of war-time powers. Jonas criticises the Peace Accords for claiming to subsume the military to civilian rule, yet failing to provide a mechanism for policing during the transition. The National Civil Police was only meant to come into being at the end of 1999 – over two years after the Accords came into effect (Jonas, 2000). In the interim, the rise of crime has been used by the military as a justification for a return to the practices of the past. The government has conceded to allowing the army to 'jointly' manage internal security with the PNC, however this scenario in essence means that the military is once again running domestic security[116] – in direct contradiction to the stipulations of the Accords. In this way, the increasing crime and vigilante responses are being used to undermine the democratic gains and the transition as a whole.[117]

The inability to consolidate peace and democracy has left some fearing that Guatemala is on course for a return to the conflict of the past; or alternatively that there is a threat of ethnically-based secessionism and eventually a fractured state if the inclusive citizenship envisioned in the Accords continues to be sidelined (Sieder, 1997). Others, however, have posited that despite the poor implementation of the Accords there has been, and will be, no resumption of conflict: the guerrillas have been successfully demobilised, new political spaces have been opened, and those in opposition are now fighting in a political arena, not a military one (Salveson, 2002). Whilst this critique may be correct in assuming that there will be no resumption of conflict in a form that exactly mirrors the conflict of the past (which took place in a particular historical context of the Cold War), this view of 'conflict' fails to take into consideration the continuities of violence and the fact that the 'conflict' is still happening, although in an altered context. Rising levels of all crime, organised and common, vigilantism and crimes of 'social cleansing' all point to the redirection of violence and conflict into new arenas. Although a few, predominantly the elite, may be using the political arena as the new space for contestation, it would appear that many Guatemalans have become disillusioned with the lack of benefits emanating from a political solution, and have instead chosen to either disengage from the political sphere, or to redirect violence into other spaces.[118]

Beyond the continued autocratic tendencies at a state level, the failure of Guatemalan society to internalise the democratic values hoped for has placed the consolidation of a democratic dispensation in peril. In response to the high levels of crime and violence, many Guatemalans – including those who were the worst affected by the dictatorships of the past

- are today calling for a stronger state:

> Guatemalan peasants do not just want a state strong enough to repress common criminals. They also want a state strong enough to deal with the conflicts they face, often over land and often with each other. (Stoll, 1998, p.44)

Gonzalez (in personal communication) expresses the irony of her country's 'peace' as being that in the past there was an authoritarian regime, 'but today we have an authoritarian society'.

The legacy of an authoritarian past and the ongoing militarisation of all aspects of public life pose serious challenges to democratisation. With the military and former patrollers potentially fomenting chaos in order to justify an increased role for themselves in the everyday running of the country, the complacency and willingness of the citizenry to accept this as a solution to current problems places the country at risk of returning to the past, and as a result continuing the racist exclusion of a large portion of its population.

Security, Justice and Violence Today

Guatemala and South Africa remain highly violent societies. New expressions and targets of violence sit alongside older forms, victims and perpetrators. The legacy of a violent past, plus the force of political change and transition itself have ensured a displacement of violence, but not its elimination. As a result, neither society can truly be considered 'post-conflict'. Both countries are marked by:

- high levels of crime – both are considered to have some of the worst murder rates in the world;
- difficulties with ex-combatant reintegration and the easy availability of weapons;
- extra-legal violence: particularly in the form of vigilantism and lynchings;
- high violence against women - Interpol recently cited South Africa as having the highest rape statistics globally;
- continued marginalisation of sections of the population who are then vulnerable to being both perpetrators as well as victims of violence.

Alongside the actual manifestation of violence today, the ways in which each society represents and interprets violence also reveal similarities, both across time and between countries. For example, in both countries there is:

- a continuing 'culture of violence';
- a blurring of the line between 'political' and 'criminal' violence; and
- a strong call amongst the population to reinstate the death penalty.

The persistence of violence – as both fact and social phenomenon - is complex and cannot be explored in this report. However, key issues of relevance include:

Violence and identity

The impact of the brutal conflicts of the past continue to be felt in both countries, as the 'pervasive nature of the violence [has] seeped into all parts of public life, undermining the moral, interpersonal and social fabric of society' (Hamber, 1999). Historically, any peaceful mechanisms of conflict resolution were replaced with violence as a means of control. This was done primarily by the state, although violence also became a means to an end for certain liberation movements in both countries, and as a result violence itself gained (and still retains) a legitimacy throughout society. Both Guatemala and South Africa are referred to as having a 'culture of violence' – defined as being 'a society which endorses and accepts violence as an acceptable and legitimate means to resolve problems and achieve goals' (Vogelman and Simpson quoted in Hamber, 1999).

The intimate relationship between violence, identity and social control has had brutal consequences in both contexts. In Guatemala 'social cleansing' crimes are perpetrated against those deemed to be unfit for society (for example, street children, homosexuals and alleged criminals). In South Africa, violence is perceived as a necessary 'corrective' measure for those who go against the moral code of society: the use of corporal punishment has been outlawed in the new democracy, however many continue to feel it is a necessary mechanism for instilling discipline; vigilantism is justified in part as a method of instilling right and wrong in suspected criminals; and recent reports allege that African women suspected of being lesbians are raped on a daily basis in the townships in a ritual that is referred to as 'corrective rape'. The belief is that lesbianism is a western and 'white' identity and that African women need to be violated in order for them to reconnect with their 'true' African woman identity (Mufweba, 2003).[119] Identity-based crimes also continue to feature in the form of xenophobic attacks on African migrants and racially-motivated crimes (cf. Harris, 2001; Harris, 2004).

Not only does violence continue to play out in both countries, the impact of a violent past has also initiated a cyclical repetition of trauma (both individually and collectively). Pumla Gobodo-Madikizela, a former psychologist with the South African Truth and Reconciliation Commission, tells of visiting a township and seeing young girls playing a 'game' of re-enacting a necklacing murder.[120] She notes that none of the girls were old enough to have ever witnessed the gruesome ritual used during the violence of the 1980s. Nevertheless, they appeared to have an imprint of the 'dance of death', as she calls it, that they played out with chilling accuracy – a testament to the impact of past violence that continues to be felt by the next generation (Gobodo-Madikizela, 2003). Gobodo-Madikizela concludes from this experience that these children have internalised the use of violence, and that they carry the collective fear and horror of the past deep within them.

Shifting representations of violence: nostalgia, politics and crime

Despite (or perhaps because of) the high levels of violence, it is interesting to note that both populations generally express a sense of nostalgia for the 'security' of the authoritarian past.

In the course of conducting interviews with ordinary Guatemalans on the shortcomings of the justice system, one researcher noted that many of them expressed admiration and nostalgia for the era of General Ubico (1931-1944) (Pásara, 2001). Ubico was a heavy-handed dictator who executed even petty thieves to impose not the rule of law, but the rule

of order in Guatemala. Similarly, in the run up to the 2003 elections, some of the communities worst affected by Montt's reign in the past are willingly lobbying for his reinstatement as President – often citing the security provided by his authoritarian tactics and contrasting this to current feelings of being overrun by criminals.

In South Africa this nostalgia often takes the form of support for the authoritarian methods of the past. For example, a survey of attitudes towards human rights amongst the general population found that 47 percent of respondents either supported the use of force by police officers or were indifferent towards or ignorant of the issue (Pigou, *et al*., 1998). In a country where the use of extra-judicial killing and torture were rampant amongst the police force during the apartheid period, it is disturbing that South Africans, many of whom would have been victims of such methods in the past, appear to be indifferent to their use against criminals today.

The changing representation of violence – from politics to crime

In both Guatemala and South Africa the transitions have been marked by a dramatic rise in crime.[121]

The rise in crime in both countries appears to have similar and multiple root causes. In South Africa some of the causal factors have been described as 'a patriarchal society where women and children are devalued and vulnerable; the historical development of a culture of violence where violence was seen by all significant political parties as a legitimate means to achieve their goals; the deregulation of state control during the negotiations period; an ineffective criminal justice system and the perception that there will be no serious consequences for criminal activity' (Hamber, 1999).[122] As noted in previous sections, each of these factors could be similarly applied to Guatemala's current context.

Countries in transition frequently experience a displacement of violence from the political to the social or criminal sphere, as patterns put in place during the conflict persist and those who had used the cover of the war to reap personal benefits continue to do so after the formal cessation of conflict. These new forms of criminal activity have a strong connection to the violence of the past with regards to role players, motives and methods. A recent newspaper article covering the run up to the presidential election in Guatemala wrote of how 'democracy' has been hijacked and transformed into the perfect 'trojan horse' for the preservation of powers and impunity:

'the goal of the brotherhood of past and current military officers has been to regain control of the country, including its major political parties. The army's power is based on organized crime, from which has arisen a new social class of complicit officers and corrupt officials, protected by a narrative of lies: a relentless campaign of misinformation to erase from public memory the army's crimes, and denial of all the country's problems.' (Goldman, 2003)

In South Africa political violence still exists, but not at previous levels and it is today primarily locally concentrated. Additionally, it does not appear to have any connection to or complicity with those in power. Although political violence has not altogether disappeared,

the concern in the South African context is more firmly on the rise in criminal violence. In both countries, however, rising crime poses a challenge to the creation of a culture of respect for human rights. Indeed, it has instead contributed to a demonisation of certain human rights values. Whereas human rights groups enjoyed widespread support during the eras of oppression for protecting individuals from the powers of the state, today they are viewed as being 'soft on crime and public order problems, and opposed to the death penalty' (Wilson, 1997, p.46). Additionally they have spoken out in both countries against vigilante action, pitting them against communities who feel they have little other choice in the face of increasing insecurity (Wilson, 1997).

Criminal justice today

The violent nature of crime is facilitated by a perception amongst instigators in both countries that the criminal justice system is somewhat inoperable. Both countries have had to deal with a lack of credibility in their criminal justice systems as, historically, the judicial system and police were instruments of repression rather than protection. Moreover as conflict ceased and a transition was embarked upon, both countries experienced a 'security vacuum' (Jonas, 2000, p.148) – a time during which the security apparatus of the *ancien régime* had lost all credibility and was largely defunct, and yet its replacement with new democratic institutions had yet to occur.

In South Africa the credibility of the criminal justice system has been assisted by the fact that the new government now reflects the will of the majority, there has been a clear break with the past and there have been serious attempts at establishing transformation and accountability. Nevertheless, levels of effectiveness in the criminal justice system are still relatively low; with only one in seven murders resulting in conviction (Hamber, 1999).[123] The failings of the system are compounded by the perception of ineffectiveness amongst South Africans resulting in low levels of trust. Surveys reveal that forty-one percent of South Africans feel that they would 'never' or 'hardly ever' trust the police to bring a criminal to book (Reality Check cited in Hamber, 1999).

In the context of high levels of violent crime, a general culture of violence and real/perceived failings in the criminal justice system, there has been a reactionary use of violence as a perceived means to attaining security. As a result, vigilante action and calls for the reinstatement of the death penalty are common in both countries.

Violence as a reaction to crime

Similar to experiences in Guatemala, South Africa has experienced increasing reports of community and individual acts of violence against suspected criminals (Weekly Mail in Hamber, 1999). The use of extra-legal violence has continuities to the past where, much like Guatemala, the absence of the state in those areas inhabited by the oppressed majority meant that there was a historic reliance on community or informal mechanisms of justice. Furthermore, there are continuities of violence in both contexts from the past to the present in terms of the types of violence utilised, and the targeting of subversives in the past and criminals in the present (cf. Harris, 2001).

Acceptance for vigilantism in its various forms appears to predominate in South Africa – a nation-wide survey in 1997 found high levels of support amongst black South Africans for vigilante actions with one in five stating that it was 'sometimes right for a vigilante group to physically hurt a suspected criminal' (Schönteich quoted in Hamber, 1999). Hamber speculates that results would not differ fundamentally in the white community; they would merely take a different form because of access to resources. In white suburbia the reliance on extra-legal violence to contain crime has resulted in the use of private security firms: a phenomenon that has been termed 'vigilantism of the rich' (cf. Hamber, 1999; Harris, 2001). The private security industry has grown from R141m in 1978 to R8 billion in recent years (Schönteich quoted in Hamber, 1999). There are currently twice as many security guards as cops, and the sector is poorly regulated (NIM quoted in Hamber, 1999).

Violence as a response to crime and insecurity has also taken the shape of vocal calls for the reinstatement of the death penalty in South Africa. The use of capital punishment was repealed in 1995 by the Constitutional Court; however increasingly the population is demanding that a referendum be held to determine the matter. In a nationally administered survey it was found that the majority of respondents (73 percent) maintained it was a mistake to take away the death penalty in South Africa, and only 14 percent disagreed with the statement. Whites in particular felt it was a mistake (88 percent), followed by Indians (85 percent), coloureds (83 percent), and Africans (69 percent) (Pigou, *et al.*, 1998). The racial differentiation is likely a result of the death penalty being used by a white judiciary against the black population during apartheid when South Africa ranked as one of the ten countries that most frequently utilised the death penalty (Amnesty International, 2003).[124]

In spite of the important similarities noted between the countries, it is also important to note that violence has taken on unique manifestations particular to each country. To cite just a few:

- Violence, though endemic in South Africa, is unlikely to scuttle the democratic project and reinstate a minority led government[125] – which in Guatemala it appears to be doing;
- South Africa has experienced violent xenophobia in the past decade, perpetrated by South Africans from across the racial spectrum, primarily against those from other African countries;[126]
- The use of violence in Guatemala against returning refugees and internally displaced persons over land that had been occupied by others in their absence;
- Guatemala's disturbing 'social cleansing' crimes.

Consolidating Citizenship in a Post-Peace Accord Guatemala

Citizens and subjects

The history of Guatemala over the past five centuries has been one premised on exclusion; a relationship between a racially defined state and its similarly defined 'citizens', and those that were treated as its 'subjects'. The process of nation-state formation in the country has been described as being a struggle "between Indians and the State" – a conflict that defined both the Indian

communities as well as the State. (Smith in Stepputat, 2001, p.287)

In the rural highlands of Guatemala - that part of the country populated primarily by the Mayan majority - there has historically been little state presence. These regions have instead existed outside the reaches, or interests, of the state. Where the state's attention did turn to these communities, it was in an intermittent attempt to impose external institutions and destroy local autonomy (Stepputat, 2001).[127] The relationship of the state to these populations was largely mediated through an economic elite who relied on 'coercion and clientelist networks to secure their access to labour and land' (Sieder, 2001, p.209). In other words, the relationship between the state and the Mayan population was, in the first half of the 20th Century, one of exploitation - not only as a result of a highly centrist and repressive state, but because this state was at the same time paradoxically weak and absent (Sieder, 2001).

The servile position demanded of the Maya in their relationship to the state is embodied in Stepputat's (2001) description of the occasional face-to-face encounters with the *ladino* local authorities, and to the *ladino* in general, in which the Mayans: 'have had to carry state employees on their backs across the mountain ranges; have had to bring them food and firewood; have had to take off their hat, bow their head, and look to the ground when talking to *ladinos* in general and state employees in particular; have had to put up with arbitrary taxation and humiliating violence …' (p.298). The imposition of 'subjecthood' was ensured through the continual blocking of Maya from entering the political sphere or from participating in public life. So whilst the indigenous population became progressively more involved in the wealth production of the state (through their provision of labor), this involvement was contradicted by the inability to acquire political influence – a sphere to which the *ladino* elite acted as gate-keepers (Stepputat, 2001). Entry to the political domain was permitted only by shedding the indigenous identity; by 'leaving their [Mayan] communities and "redressing" – literally and symbolically – as *ladinos*' (Stepputat, 2001, p. 303).

Such transgression of boundaries was dangerous for the state, however, as it challenged ingrained notions of an 'Indian's place', and threatened the overall structures of power through which those with privileges benefited. During the conflict any form of organization was targeted by the army, and communities with cooperatives and schools were specifically earmarked for attack. Public institutions implied education as well as autonomy, and in the eyes of the army; 'such villages had the potential to become sympathetic to the revolutionaries' (Richard Wilson quoted in Everingham, 2002, p.3). One refugee relates the story of being questioned by an army officer who had come to 'control' his community. The officer accused the individual of 'being political' on the basis that 'you speak Spanish, you know how to write'; shouting at him that: 'It's your fault that we have to come here' (Stepputat, 2001, p.304).

At the heart of the Guatemalan civil conflict was the defense of privilege against the assertions of citizenship and rights that would surely result from the political involvement and awareness of a subjected population. To this end, the army's counterinsurgency campaign was carried out by a 'weak but despotic state that attempted to eradicate the bases for the autonomous Indian community once and for all.' (Smith, quoted in Stepputat, 2001, p.287). The relationship of the indigenous population to the state has however been more

complex than merely one of exclusion and antagonism. Parallel to this has been a desire on the part of this population to be a part of the nation, to enjoy the benefits and status of full citizenship. It is this desire that the Guatemalan military exploited in the forming of civil patrols. Stepputat (2001) argues that the PACs were interpreted by villages as being an instrument for inclusion in the nation. In other words, the only citizenship that was on offer to the Maya was one that was violent and militarized; a citizenship that involved becoming an agent of the repressive state, in return for a perceived escape from being a *subject* of the state.[128]

By the end of the conflict, the relationship between the Guatemalan nation and the majority of its members was non-existent. The only state presence many Guatemalans had experienced was the violent presence of the army; and the only citizenship known to them was the corrupted and exploitive citizenship offered through participation in the civil patrols. The targeting of political and social institutions for destruction had left Guatemalans weary of organization, and the historically weak state had left them distrustful of the public sector. Transition to democracy and the inclusion of previously marginalized groupings would require a wholesale transformation of the state and its institutions in order to guarantee inclusion, participation and the practice of citizenship for all Guatemalans.

Understandings of citizenship

The concept of citizenship implies a contract between an individual and the state - a reciprocal agreement which includes both rights as well as duties in the goal of affirming the dignity of the individual as well as guaranteeing the common good of all citizens. Liberal democracies have traditionally conceived of citizenship narrowly in terms of political rights and obligations. This minimalist model was also applied to Guatemala's transition, where the UN Mission in Guatemala defined citizenship as being 'expressed and developed in the exercise of the right to elect and be elected, in the possibility of holding public office and social control, which guarantees the legitimacy of the political system, of political parties and elected authorities' (MINUGUA, 2001, p.28).

This limited definition has been broadened in recent times to include social and economic citizenship with an understanding that the practice of citizenship cannot take place without a guarantee of a minimum quality of life (economic citizenship)[129] or a sense of belonging and solidarity between fellow citizens (social citizenship). Fraser and Gordon write that this broader conceptualization of citizenship 'encompasses full participation in cultural, social, economic and political life and a commitment to human rights and social justice' (in McGrath, 2000).

The consolidation of citizenship, and its expansion to include all members of the state, is particularly important for countries transitioning away from an authoritarian and divisive past. The ability to establish democratic governance 'is essentially about the restructuring of the relationship between the state and the society' (Simpson, 2000). It entails the creation of a new contract of citizenship, the reconstruction of the state, and the incorporation of those previously excluded; not merely into participation in the political sphere, but in equal access to the benefits, services and protection of the state. The success of a transition and the deepening of democracy presumes the transformation of the structures of social and economic injustice that initiated conflict in the first place. Without this transformation and

the guarantees provided by equal citizenship, conflict may merely be transformed from the political arena into new forms or sources of violence.

Paradoxically it is precisely in this context of transition that the deepening of citizenship and democracy is the most difficult to achieve. Not only must the relationship between individuals and the state be renegotiated, but relationships between citizens themselves must be re-established. In referring to Locke, Nagy (2003) argues that a sense of belonging and solidarity between citizens, i.e. horizontally, is integral to the achievement of substantive citizenship for all, and that; 'the agreement between citizens to form a political association necessarily precedes the contract between civil society and government' (Nagy, 2003, p.3). This social citizenship must overcome past divisions and relationships of enmity, and replace them with a sense of mutual responsibility for one another.[130] In the wake of conflict, this realignment and commitment to the common good must also include an acknowledgement of the wrongs of the past.[131] This is particularly the case where conflicts and divisions are racially based, as the impact of discrimination is to deny the humanity and equality of the other, hindering their ability to become full members of the state or exercise their rights.[132]

Guatemala's transition and the rebuilding of citizenship

The blueprint for the consolidation of a new and inclusive citizenship was codified in the form of the Indigenous Rights Accord, a document that was intended to spell the way to substantive equality through the notion of 'differentiated citizenship'. That these issues spoke to the very heart of the conflict meant that it was precisely in the process of negotiating this Accord that many of the tensions over the definition of the country and historical racism played themselves out.

There was from the start of the negotiations a realisation on the part of some in power that the path of nationhood that had been followed historically had failed (Plant, 1999), and that only by restructuring the very foundations of the state would a new and peaceful nation be possible. Initially the integration of the indigenous population into full citizenship was made on the grounds of 'equal rights'. It increasingly became apparent however that this would not lead to the practice of full citizenship rights in a historically unequal and divided society. What was adopted, was a framework of 'differentiated citizenship' – one which endorsed special rights and positive discrimination in the context of a unitary Guatemalan state (Sieder, 1998).[133] Sieder writes that the Peace Accords as a whole reflect this framework of citizenship in a recognition that it was necessary, 'to secure equality in the law and full citizenship for all Guatemalans' (Sieder, 1998, p.248).

Differentiated citizenship is not a new discourse in Guatemala, and resistance to it has often been premised on the assertion that the Guatemalan nation must be built on universal citizenship and uniform equality before the law.[134] The issue of customary law is particularly contested in this way, and the recognition of customary law in the Accords (within the confines of the existing judicial system) has been manipulated and presented by those who opposed the reforms as entailing one set of laws for the Mayan population, and another for the rest. As noted in the section on the national referendum, the adoption of special rights has been characterised by the right and the mainstream media as leading to ethnic separation, renewed conflict and the 'balkanization' of the country (Sieder, 2001). It

is precisely on the emotive and reactionary content of this debate that the referendum on the Peace Accords fell. The acknowledgement of customary law was portrayed by conservative right-wing groups as allowing human rights violations to be sanctioned by law,[135] citing the episodes of lynchings as being acts based on customary law – a claim that was a deliberate misrepresentation (Sieder, 1998).[136] MINUGUA condemned the campaign run prior to the referendum as having 'revealed the continuing existence of strong racial prejudices in broad sectors of the population' (MINUGUA, 2001, p.8).

The Indigenous Rights Accord and the consolidation of citizenship

The resistance of large sections of the population aside, the Peace Accords were intended to reform the state and address the issue of citizenship: to provide measures that would make the nation more inclusive through the incorporation of indigenous culture and customary law; and to transform the institutions of the state to ensure representivity, equal access to services, and the opportunity for participation amongst citizens. To this end, the Preamble of the Indigenous Rights Accord declares, 'all matters of direct interest for the indigenous peoples need to be dealt with by and with them and that the present agreement seeks to create, expand and strengthen the structures, conditions, opportunities and guarantees regarding participation of the indigenous peoples'.

Given the importance of the Accords in redefining the Guatemalan nation and mapping a path for transformation, it is worth reviewing the implementation of some of the key commitments of the Indigenous Rights Accord to assess the extent to which the character of the state has changed to accommodate the citizenship claims of all its members. The following section looks briefly at the fulfilment of transformation requirements in terms of the language used and representivity of the public service sector, as well as overall spending priorities. It then looks specifically at the reforms in the sectors of land distribution, education and the judiciary as key sites for the consolidation of an inclusive citizenship.

Reform of the public sector

The exclusion of the indigenous population from participation or benefit from the public sphere has been carried out historically by the use of Spanish as the only official state language for accessing services, as well as the complete exclusion of Indians from any role in the public service. Since the signing of the Indigenous Rights Accord, there have been some small moves towards creating a more representative state. At a legislative level an amendment to the Constitution was approved redefining the Guatemalan nation as multi-ethnic and multicultural. In September 2002, Congress further approved a law reforming the penal code to prohibit discrimination and provide for jail sentences of between one and three years, as well as fines, for any discrimination based on race, ethnicity, religion, age or disability (cf. http://www.whiteprivilege.com; Guatemala Human Rights Commission/USA, 2002).

These reforms however have been extremely limited, and MINUGUA has noted that of all of the Accords, the Indigenous Rights Accord has been implemented to the least degree - and that the overwhelming majority of the commitments made in all Agreements to overcoming racial discrimination and improving the lives of the Mayans have not been implemented. They further noted that although the eradication of discrimination is a long-

term process, the political will of government leaders to move beyond a mono-cultural model of the state is non-existent. As a result:

> The practice of the State, the definition of institutions, its philosophy, doctrine, distribution of public expenditure, political pragmatism, as well as the adoption of laws, continue to favour one small social, economic and ethnic group only. Therefore, the widespread and intense discrimination and racism as a state policy, continue. (MINUGUA, 2001)[137]

The lack of any real commitment to transformation can be seen in the state's spending priorities,[138] as well as the superficiality of those reforms that are adopted. There has yet to be a revision of existing legislation in order to repeal or rewrite those that are discriminatory in wording or practice. Employment in the public sector is still predominantly a *ladino* preserve, and this under-representation of the indigenous population reproduces existing discriminatory patterns (MINUGUA, 2001).[139] Language, perhaps the most important obstacle to accessing services for the indigenous population, has yet to be addressed and Spanish remains the exclusive language for most public departments (Salveson, 2002). The impact of language as a vehicle for exclusion and discrimination was exemplified in a case reported by MINUGUA of an accused criminal held in preventive custody for over 14 months without ever being properly questioned. *The prosecutor claimed that the individual had a disability that prevented him from understanding Spanish, and he was therefore judged to be mentally handicapped.* No attempt was ever made to question the suspect in his own language (MINUGUA, 2001).

The superficiality of a commitment to reform is best exemplified by the spending priorities of the current government. Adherence to the Accords has been the strongest in the establishing of Commissions on particular issue areas – such as indigenous rights to land, cultural rights, the reworking of the education system – as well as new institutions designed to encourage democracy and human rights. However, it appears that government's commitment does not extend beyond the creation of these bodies, and the *modus operandi* has been to establish institutions to address various commitments in the Accords, and then allow them to flounder due to a lack of resources and political support (Salveson, 2002). Salveson (2002) offers the example of the *Defonsoría Maya* in the office of the Human Rights Ombudsman which was intended to contribute to fulfilling the obligations of protecting indigenous rights and establishing popular legal offices. The lack of budgetary allocations has reduced this body to one person with no powers. The Public Defenders Office has also been closed due to a lack of funds.[140] The money being pulled from these institutional bodies whose mandate it is to oversee the implementation of the Accords is being diverted to the military, whose budget has increased significantly in recent years to now equal war-time levels.[141]

The approach of making only cosmetic changes to a violently exclusionary political and economic system has meant that little in effect has been done to address the root causes of the civil war. The persistent characteristic of racially-based citizenship is evident in three sectors of public service delivery that have critical importance to the transformation of the state – land reform, education, and the judicial system.

Land

Land access is an issue of critical importance both because of its spiritual and economic significance to the indigenous population, as well as the need to address the historic dispossession of Mayan land and the challenges this poses to entrenched economic privilege. Nevertheless, all commitments in the Accords that would have improved access to land for the indigenous peasant population have been rescheduled due to non-compliance by government, including measures for restitution. CONTIERRA, the government panel established by the Presidency to adjudicate on land conflicts conducts its hearings and business solely in Spanish. This has contributed to the already existing suspicion amongst most Mayans of the state's intentions. Lack of legitimacy coupled with the slow pace of land reform has lent itself to increasing numbers of land invasions and protests amongst rural villagers. This has been met with an increasing number of murders of rural land reform leaders.[142]

Education

The Peace Agreements specifically noted the importance of the education system of a country in inculcating the values of a nation, including a democratic ethos and a commitment to multiculturalism. MINUGUA notes however that whilst the amount of money spent on education has increased in line with the Agreements, the character of that education has not evolved. There has been no attempt to ensure that the type of spending meets the needs of the indigenous population, and as such their access to education continues to be limited. Bilingual education has yet to be rolled out,[143] and disturbingly, MINUGUA notes that the plans in place to do so in the future use the study plans of Spanish speaking schools. In other words, there has been no change in the curriculum to accommodate Mayan culture into the education initiatives to make them relevant to the whole population (MINUGUA, 2001). The role of bilingual education is not seen to be one about teaching the culture and values of the indigenous population, but rather continues to be treated as a vehicle of assimilation - leading MINUGUA to conclude that:

> school is not conceived as a way to strengthen national unity and to transmit and develop the values and knowledge of all cultures, but rather as a way to integrate indigenous peoples into the Spanish-speaking culture, thereby detracting from the value of their languages and cultural values. (MINUGUA, 2001)

Without an emphasis on teaching the youth new attitudes of respect and tolerance to counter the implicit messages of racism that have been transmitted through the workings and culture of Guatemalan society, there is little chance that Guatemala will produce any sustained process of democratisation into the future.[144]

Judicial System

Common to all post-authoritarian societies is a need to build 'an effective rule of law which protects and enforces the rights and obligations of citizenship' (Sieder, 1998, p.97). Guatemala however did not only face the challenge of transforming a judicial sector to combat impunity, it also needed to create a culturally plural system that would reflect the

worldviews of its entire population in the body of law governing the nation, as well as combat the inherent racism that had historically characterised the judiciary. Sieder (1998) argues that to rebuild a system that has never served its population, and therefore has no credibility amongst citizens, would mean achieving three critical objectives: tackling impunity and corruption and ensuring judicial independence; demilitarising law enforcement and modernising investigative capacity; and, making the rule of law less discriminatory and 'ethnicised' (p.97).[145]

Reforming the judicial system to a more inclusive model was codified in the Indigenous Rights Accord which committed the state to integrating indigenous customary law into national law – though subject to state law superseding customary law.[146] This move was described by Sieder (2001) as a radical departure from the past as it signified a move away from a state monopoly on judicial authority, and the use of law to dominate and 'civilise' the Mayan population.[147] Moreover, she argues that the recognition of customary law allowed for in the Indigenous Agreement 'opens up the prospect of building a less discriminatory and a more inclusive form of citizenship' (Sieder, 1998, p.98). Much like the other commitments in the Accords, and specifically in the Indigenous Rights Accord, these reforms have yet to take place, and customary law has not been integrated into the prevailing body of law. Moreover, the justice system remains in the hands of the elite, and with no legal aid available for the poor, and rampant corruption in the criminal justice sector, one human rights worker has asserted that for those with the means to pay bribes, it is easier to get out of jail than it is to get caught. This means that those who are in prison are generally the poor who cannot afford bribes or an attorney to represent them. In short, the rule of law does not appear to apply to those with money and the judicial system seems to penalize only the poor (Keen, 2003).

For the Mayan majority, the judicial system does not only work against them as a financially disadvantaged grouping, but also through the obstacles of language and the overt racism of officials. Although some moves have been made towards gaining interpreters in the judiciary and hiring indigenous legal officials, there are to date only 60 interpreters servicing over 500 courts at a national level. There are also only a minimal number of judicial officials who are familiar with some of the indigenous languages (only 7 of the 23 are represented). This means for example that there are only 4 judges with some understanding of the Mam language - even though the language is spoken in more than 20 municipal districts by over 300,000 persons (MINUGUA, 2001). As noted in the case of a suspect held for 14 months without proper questioning, the consequences of language barriers can be devastating. MINUGUA notes that in the Huehuetenang region of the highlands where the majority of the population is indigenous, there is not one single translator available. The inability to communicate with the courts and the unwillingness of the officials to assist has meant that every legal case lodged by the indigenous population has been rejected (MINUGUA, 2001).

The inherent racism of those officials serving in the judiciary reinforces the message that the law does not apply for the Indian population, only against them. Amnesty International publicised the case of one of a handful of cases charging military officials with abuses in the past. The Tuluché massacre case, brought by a group of Mayan villagers against Candido Noriega the commander of a PAC responsible for the massacre, was brought before the courts in 1999 where Noriega was charged with 150 abuses. The judge in the

case found that the thirty indigenous witnesses had lied – declaring without evidence that they had drawn on media reports to form a consistent testimony (even though they were non-Spanish speaking and the ability to draw on local media was questionable at best). *At the same time however the court found that their testimony was contradictory.* Amnesty's trial observer concluded that there was consistent bias in favour of the defendant and a racial element in the rejection of witnesses' testimony (Amnesty International, 2002).[148]

The lack of credibility in the criminal justice system has had a negative impact on fostering a new notion of citizenship. The rich, who already have better access to the criminal justice system, have merely created their own services; fencing themselves in behind high barrier gates and pouring resources into a burgeoning private police force that now numbers over 50,000 – more than double the 20,000 members of the state's National Civil Police (Keen, 2003). The privatisation of the security of citizens means that the state is no longer providing one of the key responsibilities of the citizenship contract. This is merely the formalization of the practice of vigilantism (described in previous sections) that has been adopted by other Guatemalans; and it signifies the continuation of parallel structures of authority that undermine the functions of the state and weaken the underpinnings of citizenship.

Participatory Democracy

This weakening of the state to the detriment of its citizens has been facilitated by the neo-liberal economic policies adopted by the state since the late 1980s and codified in the Peace Accords, which have deepened the social crisis and limited the state's ability to provide services to its citizens.[149] The economic policies have not only meant an increase in unemployment through the sale of public services - and thus jobs - but have also diminished the influence citizens can effect in demanding core services – turning them from citizens into merely consumers or clients. As a statement by women's organisations in the region noted; 'If the quality of a service is poor, the public must make their complaints as clients and they will be attended to in so far as it is profitable for the company to do so … . At the same time, increases in poverty greatly reduce the consumption of the majority of the population …' (Clulow, 2003).

What little poverty alleviation has taken place in line with the Accords is implemented in a top-down fashion, failing to consult local communities, construct a needs-assessment, or dialogue with potential beneficiaries (Prado, 1997). Participatory democracy, or the institutions required to facilitate it, remain a foreign concept in this country. One human rights worker criticised the disjuncture between politics and people's lives:

> This whole thing of participation, democracy, dialogue has become very
> shallow, very on the surface. Participation does not mean anything deeper than
> you being physically in a meeting, and democracy as the formal party system
> has also become very shallow. There have been many efforts to have a formal
> legal state, but we have a formal legal state with people starving. So the
> question is how democracy, participation and the legal state have nothing to do
> with the quality of life of the people, and why there's so little emphasis on the
> latter. As time passes, it becomes so obvious – this disconnection. (Keen, 2003,
> p.30)

The model of limited popular participation was also reflected in the peace negotiations, where despite the role played by the ASC, the negotiations were largely between the guerrillas, the government, and the UN; representing three elite groups with vested interests who conducted deliberations behind closed doors. This did little to foster the participation of the population at large or to inculcate a sense of ownership amongst them.

A direct consequence of the lack of popular democratic participation has been to allow the elite to continue to dominate all levels of politics to their own benefit. Farer (2000) observes that the deep paradox of the Accords is that they were intended to create the conditions for the incorporation of the masses into the folds of the state and thus real citizenship. Until this incorporation takes place however, it is difficult to get the Accords implemented as those who do wield power (the old elite) have little political interest in implementing them.

The cycle of authoritarian governance is not only actively guarded by those in power, it is assisted by the legacy of historic suspicion and apathy amongst most Guatemalans who are unwilling to become involved in any activities relating to the public sphere or governance. Pásara (2001) stipulates that there is a direct causal relationship 'between Guatemala's lamentable lack of healthy participation in institution building and the government's historical weakness' (p.6). As noted previously, for most Guatemalans the army was the only expression of government known to them. The weakness of the state and its disinterest in providing social services or benefits meant that the state had no meaning for ordinary citizens. This has delegitimised public involvement in the eyes of Guatemalans. Taxes are seen merely as a way of stealing money from inhabitants,[150] and the public sphere is characterised as corrupt – those who involve themselves in it are tarred with the same brush. Support for the concept of democracy therefore is weak – less than half of the population express pro-democracy views (Pásara, 2001), and there is a widespread distrust of voting as a result of years of fraudulent elections (Prado, 1997).[151]

As noted in previous sections, the impact of the conflict on rural villages was to isolate them from each other, and moreover, to fragment the relationships within the villages. Villages were constructed as 'discrete spaces, isolated from one another', and anyone not from the village was an unknown and was frequently detained (Stepputat, 2001, p.296). Within the villages, to be denounced as a subversive carried the punishment of death. As a result, everyone tended to do everything in unison, silencing any opposition that may have existed (Stepputat, 2001). The entrenchment of a popular suspicion towards one another can be seen as originating during this period, and the destruction of the social fabric of communities also destroyed the materials for constructing the national basis for a social citizenship (Stepputat, 2001).

Demonization of public involvement and the fragmentation of society resulting from the conflict has discouraged individuals from involving themselves in any social grouping beyond the family; resulting in a 'narrowing of the boundaries of public spaces' (Pásara, 2001). Some churches even depict these spaces as being part of an 'evil domain', and discourage their congregations from any political involvement (Pásara, 2001). Pásara concludes that for all of these reasons – the lack of service delivery, a historically weak and absent state, the isolation of communities as a tactic of the war, and the distrust of public institutions:

there is probably no better place than Guatemala for studying a culture in which there is little concept of seeing others as valued neighbours or even as fellow citizens. A significant number of Guatemalans share territory but nothing else. Even worse, some of them even make an effort to ignore each other. So, many people in Guatemala focus on personal situations rather than coming together with others to address common interests. (Pásara, 2001, p.5)

This cycle of historic distrust in the state, unwillingness to engage in public institutions, and the view that these institutions are only for private gain, has created a self-perpetuating cycle in Guatemala that makes it impossible for the roots of democracy to take hold. Ownership of the public by all citizens – a key element of democracy – is absent, as is any attitude of social responsibility or participation in public processes. In the absence of popular participation, there is the freedom for the elite who have historically ruled to merely continue in their old ways.

Fragmentation of communities and inherent suspicion of one another also undermines the citizenship project in other ways; namely by posing an obstacle to the forming of relationships between citizens and thus the foundations for mutual recognition and a sense of belonging. Nagy (2003) argues that this sense of belonging and solidarity is integral to the achievement of substantive citizenship (see discussion above). This relationship amongst citizens is particularly important in the context of societies emerging from a history of oppression, as the population has been 'desensitised' to the injustices perpetrated on others. In other words, there is a lack of mutual recognition or acknowledgement of mutual belonging that must first be overcome in the new state if a truly equal citizenship is to be established. Nagy notes that in 'established democracies' the basis of social citizenship is formed through a shared democratic ethos and past. In transitioning countries this shared ethos is absent, and what replaces it is 'collective memory, or shared 'truth' and acknowledgement of the past' (Nagy, 2003, p.10). The establishment of a 'framework for new types of relationships' between members of conflict-ridden societies also implies a process of reconciliation (Chapman, 2002). It is precisely these new relationships that form the basis for citizenship in a 'post-conflict' scenario; and it is for this reason that truth commissions and transitional justice bodies seeking to address the question of past atrocities, justice, acknowledgement of victims, rewriting of history, and institutional transformation[152] with an eye to promoting reconciliation in these countries are important as mechanisms to promote and lay the foundations for a new citizenship – one that includes a common identity and commitment to each other.

With regards to Guatemala's truth commission, the CEH was unable to achieve much consensus amongst the population or acknowledgement of historic injustice. Keen (2003) notes that as the military essentially won the war, they do not see themselves as needing to express remorse.[153] Consequentially there has been a wholesale absence of any expressions of guilt or shame to date. One human rights advocate expressed surprise at this attitude, noting that: 'We thought that during the work of the truth commission … that there would be some who came forward anonymously. But nobody did' (quoted in Keen, 2003, p.25). If the social foundations of citizenship require relationships of mutual respect and acknowledgement amongst fellow citizens, it is unlikely to take root in a country where there is no remorse for the genocidal consequences of a racialised conflict.

Citizenship in a citizen / subject divide

In 1976, of the twenty-six million people living in South Africa only four million had full citizenship rights: those classified under apartheid as 'white'. Nineteen million Africans who lived their entire lives within South Africa's borders were considered foreigners in their own country (Hausfeld, 2003).

With the declaration of 'independence' for the homeland territories in 1976, citizenship for Africans was restricted to the Bantustans (Klaaren, 2000). The effect was to render all blacks within the borders of the old South Africa temporary migrants. As the Minister of Bantu Administration and Development stated in 1978, the goal of granting such nominal 'independence' was to ensure that no black person could claim rights from a country they did not hold citizenship for:

'If our policy is taken to its full logical conclusion as far as the black people are concerned, there will be not one black man with South African citizenship … . Every black man in South Africa will eventually be accommodated in some independent new state in this honourable way and there will no longer be a moral obligation on this Parliament to accommodate these people politically.' [quoted in Klaaren, 2000 #41, p.25]

The citizen / subject divide was an integral element of the apartheid project: one that ensured that the subject population contributed their wealth through labour to build the economy of the country, but could enjoy no corresponding citizenship rights. Much as the oppression of the Mayan majority in Guatemala ensured cheap labour for the coffee plantations upon which the Guatemalan economy was built, in South Africa the enforced poverty of the masses was perpetrated to supply cheap labour to the farms, mines and homes of white South Africa.

In South Africa the ability to build trust and credibility in a new system of governance, and to consolidate an inclusive citizenship, was facilitated by the fact that the party of the oppressed majority (the ANC) was voted into power and that the process of democracy was seen to be representative and legitimate. Though there have been serious obstacles to transformation, and many South Africans remain on the fringes of the nation in terms of accessing their full rights as citizens, a decade on much progress has been made, and importantly the political space exists for these people to voice their dissent without fear of intimidation or harm.

Civil Society

With 2003 an election year in Guatemala[154] - and with the presidential candidacy of Rios Montt having been approved by a Constitutional Court packed in his favour - the country looks set to slide rapidly back into an open conflict similar to that of the past. It would be wrong to assume however that the transition period has brought no positive changes to check the regression to authoritarianism. There have been some significant changes during this time of 'transition-less transition' (Dill, 2002) which could pose at least a partial challenge to the reestablishment of old patterns of power and conflict. Elements of civil society have been transformed and there is increased mobilisation in some sectors (Prado,

1997) - particularly amongst the indigenous population. Whilst a united citizenry active in checking the powers of the state has not materialised, expectations of transformation coupled with increasing frustration at a lack of real change, have spurred some citizens to become involved in protest for the first time.

As noted in the above section on the peace negotiations, the role allowed to civil society during the peace process was limited. Nevertheless, even this limited engagement provided a space for the seeds of new mobilisation to take root. For the Mayan population the impetus did not only present itself through involvement in the negotiations. Ironically, the very ethnicised nature of the conflict lent itself to the mass mobilisation of the indigenous population that is happening today for the first time in the country's history (Brett, in personal communication).[155] As the negotiations between the government and the former guerrilla groups drew to a close, the prevailing sense of unity amongst civil society that had until that point been based on the urgency of opposing a violent and oppressive state fell away, opening the space for mobilisation on new grounds. Amongst the new groups that emerged out of the revolutionary left during this period were a number of Mayan organisations grouped around concepts of Mayan pride and culture; what Wilson has termed a rise of groupings based on 'the politics of culture and identity' (Wilson, 1997, p. 47). This new awareness of cultural rights and the call to have them realised has had a positive impact on the character of the nation. There has been an 'explosion' of newspapers and radio programmes in indigenous languages (Rohter, 1996), and the New York Times commented in 2000 that with the end of the war the indigenous population has for the first time become part of the nation and its identity. The reporter was at the time covering the Mayan traditional festival marking the end of the Mayan year which was celebrated openly for the first time in history, and more surprisingly, was covered nationally by the media (Rohter, 1996).

Race Relations in Post-Peace Accord Guatemala

Attitudinally there has been a shift towards a state endorsed discourse of multiculturalism and recognition of the cultural rights of the Mayan population. In his study of the *ladino* provincial elite in the Guatemalan highlands, Hale finds that there is today an assumption that the racism that existed in the past is something that most now purport to condemn (Hale, 2002). Contrasting their own attitudes to those of past generations, the interviewees commented:

Fifty, even thirty years ago, [*Ladinos* of the older generation] insist, you met an Indian walking toward you on the sidewalk, and he would bow his head and step aside. Anything less would be considered a provocation. Indian inferiority formed part of the landscape, an unquestioned and unquestionable natural fact. (Hale, 2002, p.515).

This progression in attitudes however appears to exist only on the surface, and is qualified as being a support for multiculturalism and cultural rights 'so long as they don't go too far' (Hale, 2002, p.490) – in other words, as long as there is no challenge posed to the privileges and power accrued through the structures of the past. Hale describes this notion of multiculturalism as corporate or neo-liberal multiculturalism; an acceptance of certain rights that flow from the recognition of cultural differences, but not those rights that would challenge or upset the neo-liberal economic state and its ideals (Hale, 2002). Demands for

substantive equality are met very differently from those premised on cultural 'recognition':

> The Maya Movement (as opposed to Mayas who are struggling to end impunity, get war reparations, and other issues related to state violence) focuses on cultural issues … . They have made some progress because of course the state finds their work less threatening than that of the Maya who want prosecutions and reparations. (Dill, in personal communication)

Any discussion of upsetting existing economic relations, redress or redistribution is condemned as 'reverse racism'; and Hale notes that amongst the group of *ladino* elites with whom he spoke, there was fear and alarm expressed that if the Mayans were to come to power they would *voltear la tortilla* – literally flip the tortilla - and reverse the system of power relations that has existed for 500 years.[156] Any talk of measures designed to ensure substantive citizenship for all culminates in comments from the group such as 'they'll never change; now they've turned racist towards us!' (Hale, 2002, p.515).

Hale's group of *ladino* provincial elites mirror a broader trend amongst conservative sectors of Guatemalan society. Whilst a thin veneer of 'multiculturalism' and human rights has coated the 'new' national discourse, Gonzalez (in personal communication) notes that there is a hypocrisy and double morality on the issue of race. The threat posed for the first time to the privileges of the elite has invoked a harsh and defensive reaction which has prompted a resurgence of racism - but cloaked in the discourse of a concern over renewed violence. One European ambassador interviewed by the *New York Times* commented that the newspapers and magazines of the country are 'full of angry columns and letters expressing fear that Guatemala may be heading down "the road to another Bosnia".' (Rohter, 1996). During the referendum, the opposition obtained legal rulings preventing either the government or MINUGUA from campaigning in favour of the 'yes' vote; CACIF took out full-page advertisements in national newspapers warning of ethnic violence and other severe consequences should the referendum pass; and newspaper editorials carried articles which warned against extending political rights to 'illiterate Indians', predicted 'reverse discrimination' and the 'balkanization' of the country should the reforms go through (Sieder, 2001). The resistance to change has placed severe limits on the parameters of Mayan citizenship, restricting their involvement in the political sphere only to those issues of a cultural nature, and not to full political and social citizenship. One Amnesty International observer commented on the implications for citizenship in this regard noting:

> Rights pertaining to language, dress, sacred sites, gender, political participation and fundamental human rights that do not threaten the status quo, have received a degree of coverage. However, rights that seek the integration of indigenous peoples in the Guatemalan nation-state on their own terms but that derive from issues such as land, socio-economics and political autonomy, and hence fundamentally continue to challenge the state, are left unrealised. Clearly then, citizenship remains partial. (Brett, in personal communication)

The realisation of full citizenship for all Guatemalans has yet to occur eight years after the end of its conflict. With levels of violence in society at an all time high, authoritarian structures of state and society untransformed, and the racial attitudes of the past largely intact, Guatemala appears to be poised to retreat into the dark days of its violent past. This

is not to say however that the limited transition thus far has not had some effects on Guatemalan society. There has developed, as a result of the conflict and the peace process, a 'rights understanding' amongst various sectors of the population, particularly the indigenous population and returning refugees.[157] This increased awareness has existed simultaneously with a knowledge however of the absence of the state in the past and the ongoing ineffectiveness of the state to secure rights in the present. The consequence of this disjuncture between expectation and realisation has been to reinforce the lack of legitimacy of the state in the eyes of its citizens, leading to what O'Donnel has aptly described as 'low intensity citizenship' (in Sieder, 2001).

Conclusion

For democracy to take root after a history of civil conflict and authoritarianism, the creation of a new and inclusive contract of citizenship is surely a necessary element. In countries where this conflict has been rooted in a historical ethnic or racial cleavage, the need for such a citizenship is all the more important, but also more difficult. If we are to define this new citizenship as including many of the factors noted above - deepened norms of democracy, citizen participation, a new relationship between state and citizens and between citizens themselves, and the transformation of historically unequal state institutions and practices – then it would be difficult to characterise Guatemala's political system over the past decade as representing a successful democracy. Few measures have been taken to broaden the constraints of a previously limited and exclusionary citizenship, and to realise the rights of all Guatemalans. Additionally, patterns of exclusion precipitate old and new forms of violence in society, threatening to destabilise democratic gains further.

In the context of a similar history of internal colonisation and racialised segregation and conflict, South Africa's own transition to democracy has been considerably more successful. With a government of the majority in power, the political will to effect transformation and address the legacy of racial oppression has resulted in much progress towards inclusive citizenship in the post-apartheid era. Yet old patterns of exclusion continue for many who have been unable to benefit from a changing political order and a number of challenges must still be overcome if substantial societal transformation is to be affected. The mechanism of the truth commission, used to facilitate the transition and deal with issues of justice, failed to engage substantially with the overall system of racialised victims and beneficiaries, choosing instead to individualise responsibility and thus deny the basis for acknowledgement of past wrongs - a basis for true reconciliation.

Additionally, the transitions of both Guatemala and South Africa have taken place in an era where the free market ideology, contested during the period of the Cold War, has emerged as the dominant paradigm of the new world order. Acceptance into the international community has also meant integration into the international economy, resulting in an aggravation of already existing patterns of economic inequality. As inequality in both countries was racially defined, the ability to achieve an inclusive political citizenship is being steadily eroded by the parallel inability to include these populations economically and socially, even in South Africa where the political will for change exists. Ongoing poverty and social marginalisation along the same racial lines as the past has fed into increasing violence in both societies, and will stand as an obstacle for both Guatemala and South Africa to racial reconciliation and thus a new and inclusive citizenship.

Notes:

[1] This introduction updates the proposal *Consolidating Citizenship and Reconciliation in the Post-Truth and Reconciliation Commission Period* submitted to the Ford Foundation (2000).

[2] Perpetrators of political violence had to fully disclose details of their past crimes in order to qualify for amnesty. Simply put, it was agreed that justice would be overlooked provided that the perpetrators publicly told the truth. The truth, it was hoped, would help the process of healing individual victims and the nation.

[3] Theissen, G. (1996). *Between Acknowledgement and Ignorance: How white South Africans have dealt with the apartheid past*. Research report based on a CSVR-public opinion survey conducted in March 1996. Braamfontein: Centre for the Study of Violence and Reconciliation.

[4] Dewhirst, P. & Valji, N. (2003, April) Little joy, no rainbow, victimized again. *City Press*.

[5] Oakley-Smith, T. (2003, May). Editorial, The Star.

[6] The indigenous population is made up of different groups, however the majority are Mayan.

[7] Mixed race.

[8] A former Commissioner of the Inter-American Human Rights Commission notes that 'whitening' did not necessarily mean racial mixing, and that by no means would the *ladino* population 'encourage their daughters to marry Maya'. What was intended by whitening was rather that the indigenous population cast off their traditions in order to pursue a Western education and adopt the Spanish language and dress (Padilla, in personal communication).

[9] Forced labour was only delegislated in the 1940s.

[10] This ability to self-define has impacted on population demographic statistics which vary widely. Estimates of the proportion of indigenous persons ranges from 40-60% of the total population. A World Bank survey reported that the Indian population comprised only 36%, however the study relied entirely on self-identification as indigenous rather than on external characteristics "such as the observance of historical cultural traditions, speaking a native language, or wearing traditional clothing" (Plant, 1999, p.336). Those surveys that combine external characteristics with self-identification place the numbers more realistically between 55-65%, and it is this figure that is predominantly agreed upon as the more legitimate estimate.

[11] Brazil, South Africa and Guatemala have the largest gini coefficient, i.e., wealth gap between the rich and the poor.

[12] In 1996 at the conclusion of the conflict it was estimated that the number of indigenous persons living in extreme poverty (91.3%) was almost double that of the non-indigenous population (55.6%) (Torres-Rivas and Léon, 1998, p.29).

[13] This is a particularly alarming statistic in light of the relationship between education and the ability to overcome poverty. A recent World Bank study of 10 countries found a direct relationship between levels of education and levels of poverty. The study noted that education level is the single most important determinant of poverty and economic inequality (McCleary, 1999).

[14] The Guatemalan truth commission found that the absence of state social spending for all but a decade (from 1944-1954) entrenched inequalities (Commission for Historical Clarification, 1999).

[15] Whilst feminisation of poverty exists throughout the world it has been particularly acute in Guatemala and South Africa for historic reasons. Both countries have strong patriarchal cultures, and in South Africa under apartheid, African women were legally considered minors for their entire lives – ensuring their complete disempowerment in all public and private relationships.

[16] Methods of classification included such practices as 'the pencil test' in which individuals were made to put a pencil in their hair – should it fall out they were considered coloured, if not they were classified as African.

[17] The impact of long-term social practice should not be belittled in comparison to legislated inequality as the end result is the same. As the director of the United Nations Mission to Guatemala (MINUGUA) noted; '[s]ocial inequality and ethnic separation are worse in Guatemala today than they were at the end of the apartheid regime in South Africa.'

[18] The TRC described the 1913 Land Act as: 'an act of violence, a brutal separation of people from their essential means of sustenance' (Truth and Reconciliation Commission, 1998, Vol.1, p.41).

[19] The progressive policies of the previous regime were quickly reversed, and by 1962 less than five percent of poor farmers who benefited from redistribution were able to retain their land (Everingham, 2002).

[20] The causes of the conflict and its roots in racism and economic inequality are explored in depth below.

[21] The Commission for Historical Clarification found in its investigation that 'the undeniable reality of racism as a doctrine of superiority expressed permanently by the State constitutes a fundamental factor for explaining the particular viciousness and indiscriminate approach with which the military operations were carried out against hundreds of Mayan communities in the west and northwest of the country, *in particular between 1981 and 1983 …*' [emphasis added, Commission for Historical Clarification, 1999 #33]. This period

coincides with Montt's rule from 1982-1983.

[22] After having massacred half the village, the military then resorted to the 'WHAM' strategy – winning hearts and minds - with the other half. According to Esparza the military under Montt adopted a 'developmentalist' strategy – 30 percent killings, 70 percent 'development' – as a way of undermining the motivations for the spread of communism (Esparza, 2002).

[23] This finding is essentially identical to the findings of the South African Truth and Reconciliation Commission on the root causes of conflict during the apartheid-era.

[24] MINUGUA in 2000 estimated that this inequality in land tenure has worsened even further today and that 1% of landowners now own 75% of land (all the most fertile), whilst 96% of farmers are concentrated on 20% of the land. Coupled with the ill-distribution of land is the current levels of wastage of land – large properties cover the most fertile land in the country, yet only 32% of these lands are under cultivation; compared to small landholdings which are the least fertile and are utilised at a rate of 85% (International Center for Human Rights Research, 1996).

[25] South Africa's liberation struggle similarly took place within the Cold War context which allowed for the conflation of international anti-communist propaganda with domestic racism. The entire struggle was denounced as communist (therefore justifying their elimination) even though the liberation movement was a conglomerate of a wide spectrum of interests and ideologies – from hard line Marxists to liberal capitalists.

[26] The number of disappeared in Guatemala is estimated by Human Rights Watch to comprise 42% of the total number of disappeared in Latin America – this in a country that is one of the smallest in the region both geographically and in terms of its population (Wilson, 1997).

[27] Except for a brief respite under President Carter, Guatemala received considerable military funding from the USA throughout the conflict. Montt himself was a graduate of the United States' School of the Americas, and during his eighteen months of brutal rule he was referred to by President Reagan as a 'man of great personal integrity and commitment … totally dedicated to democracy' (Kobrak *et al*., p.54).

[28] This resonates with an attitude expressed before the SATRC: 'a snake gives birth to a snake', which is a Zulu proverb quoted by Victor Mtembu, a member of the Inkatha Freedom Party, during the course of his amnesty application for his involvement in the infamous Boipatong Massacre. He proffered this in partial explanation of the political motivation for the murder of an eight-month old baby along with the baby's mother in the course of the massacre. Mtembu and his sixteen co-conspirators were granted amnesty on the basis that they were deemed by the Truth and Reconciliation Commission's (TRC) Amnesty Committee to have satisfied the conditional amnesty requirements of the National Unity and Reconciliation Act (Simpson, 2003). It is interesting to note that a similar analogy was also made by perpetrators in Yugoslavia to 'justify' their actions (Simpson, in personal communication).

[29] It has been noted that gender-specific violence also served a counterinsurgency purpose during this time by 'humiliating, emotionally injuring and breaking the resolve of survivors to discourage further collaboration with the rebel movement.' (Kobrak, *et al.*, 1999, p.82).

[30] The Human Rights Office of the Archbishop of Guatemala (ODHAG) conducted its own truth commission entitled the Recovery of Historical Memory (REMHI). Both the state as well as the church commissions are dealt with in detail in a later section.

[31] This view is most notably put forward by David Stoll who argues that indigenous communities were caught 'between two armies' with little choice (Stoll, 1993). Esparaza adds however that a comprehensive sociological analysis of the 'choices' of the Mayans during this time must also include the exploitation by the state of the dire social conditions in which these communities lived; leading some to 'choose' to be victimisers and army collaborators for the social and economic status on offer (Esparza, 2002).

[32] The Bank of the Army was established by Decree in 1971 and allowed the military to control their finances with no regards for accountability (REMHI cited in Esparza, 2002).

[33] Big business and large landowners are represented through CACIF. The association has been described as 'embodying white power' (Padilla, in personal communication).

[34] Keen notes that 'War is not necessarily simply a contest; it is sometimes a system.' (Keen, 2003, p.4).

[35] Others have estimated that 90 percent of the population lived below the poverty line by the end of the 1980s, with three quarters in extreme poverty and unable to afford a basic minimum diet (Jonas, 2000).

[36] Later replaced by the Civil Society Assembly (ASC).

[37] Elements of CACIF were so determined to resist that during the negotiations a group of extremists broke away from the organisation in order to sue the government for talking to the URNG (Jonas, 2000). CACIF itself later came on board reluctantly when their 'bottom line' was impacted by the international community who cut off aid in the absence of a final agreement.

[38] This was a substantial achievement in itself, as only a year previously, Guatemala's elite, both military and civilian proclaimed that they would 'never' negotiate a UN moderated and verified peace with the guerrilla opposition forces (Jonas, 2000).

[39] This security component was particularly important given that the environment in which GND members operated was one of harassment and intimidation. Nine of the participating university members were detained by security forces, one never reappeared. A number of GND members were kidnapped and tortured (Alvarez, 2002).

[40] ASC thus included virtually all organised sectors of civil society except business –

CACIF pulled out after the admittance of some human rights organisations, claiming that the forum now included 'illegal groupings' (Alvarez, 2002).

[41] Salveson notes the ironic dilemma between negotiating merely an operative agreement such as a cease-fire and a substantive agreement which seeks to address the root-causes of the conflict. Whilst comprehensive agreements are more likely to prevent a lapse into conflict, they are infinitely more difficult to agree upon and are much less likely to be implemented (Salveson, 2002). The latter part of this reasoning resonates in present day Guatemala where implementation has been virtually non-existent.

[42] The full text of the various accords are available online at the United States Institute of Peace.

[43] At its strongest in 1982 the URNG was estimated to have 3,500 armed combatants, 10,000 in Local Irregular Forces and up to 60,000 active supporters. By the completion of the Peace Accords in 1996, it had less than 2,000 combatants and a limited support base (Wilson, 1997).

[44] In addition to the UN, the peace process was mediated and assisted by a group of states referred to as the 'Group of Friends'. Countries in this group included Colombia, Mexico, Norway, Spain, USA, and Venezuela.

[45] Wilson attributes the weakness of the CEH Accord to a number of factors including: 'civil actors' lack of influence on the process, the political weakness of the URNG at that moment and the poor communication between the commanders and the politico-diplomatic committee researching and formulating policy' (Wilson, 1997, p.33).

[46] The naming of names is an important debate amongst those who work in the field of transitional justice. Amongst others, former Chilean truth commissioner José Zalaquett argues that to name names would be to presume guilt on those who have not been afforded the right of due process. In the case of Guatemala, MINUGUA noted that a broad and structural view of the conflict is all that a commission of that nature can hope to record, as there was so much mass violence as to render few individual cases 'justiciable'. Wilson argues however that particularly in Guatemala it is 'generally known' who committed the violence, and that many of the massacres have been extremely well documented by both the Church as well as human rights groups; and that at a minimum such cases should be noted. In general, proponents for the inclusion of names argue that to do so limits the denial of truth by officials and the military which contributes to a culture of impunity and denies the dignity of the victims (Wilson, 1998).

[47] Although one of the primary reasons REMHI was launched was in anger with this inability of the CEH to name perpetrators, it ended up not being able to correct this weakness in its own report for fear of endangering the lives of those who gave testimony (Sieder, 1998).

[48] The progressive nature of the Indigenous Rights Accord and the comprehensive reforms it encapsulates could potentially give the text impact and significance beyond Guatemala's

borders, as it seeks to address the complex issues of ethnicity and national identity that still plague numerous Latin American countries where the indigenous population has experienced a similar history of exclusion and severe discrimination (Plant, 1989).

[49] These were the Commission for the Officialisation of Indigenous Languages, the Commission of Sacred Places, the Commission on Reform and Participation, the Commission on Communal Lands, and the Commission on Education Reform.

[50] The Agreement was composed of five sections – democratisation and participatory democracy; social development; agrarian situation and rural development; modernisation of public management and fiscal policy; and final dispositions.

[51] Jonas argues that the Agreement was the best that could be expected given the neo-liberal views of the government at the time and the influence of the international lending institutions. More optimistically than many, she notes that when read together with the other Accords, the Socio-Economic Agreement represents an important first step (Jonas, 2000).

[52] The former legal advisor for MINUGUA argues that the international community in effect 'produced' an agreement. This has had implications now for compliance (Pásara, 2001).

[53] Additionally, those military officers who agreed to the Accords have now been replaced post-1999 by General Montt's own people. The Joint Chief of Staff is Montt's son, and the rest of the military owe their position to Montt even though formally it is Portillo who is in power (Keen, 2003, p.23).

[54] The REMHI Commission was located in the Human Rights Office of the Archbishop of Guatemala.

[55] The full name of the Commission is the 'Commission for Historical Clarification of Human Rights Violations Which Have Caused Suffering to the Guatemalan Population'.

[56] Perhaps the most vivid and tragic example of the prevailing dangers for those seeking to disclose the truth was the brutal assassination of Bishop Gerardi, the head of REMHI, days after the report was made public in April 1998.

[57] The REMHI Report is structured in 5 parts. Part One, covers the impact of the violence; Part Two, the methodology of horror; Part Three, the historical context; Part Four, the victims of the conflict, and Part Five, the recommendations.

[58] The other being in El Salvador shortly before the Guatemalan commission.

[59] This is perhaps one of the strongest indications of just how racialised the conflict as well as the nation of Guatemala is, in that much like in South Africa, the commissioners needed to represent the racial groupings of the country.

[60] Approximately 25,000 of these cases were killings.

[61] The Accord establishing the CEH gave it six months with the possibility of a six-month extension. In the end, the full twelve months were utilised.

[62] Guatemala's truth commission was not unique in this regard as no other commission in the region has held public hearings.

[63] One international organisation, Para Nunca Olvidar (Never to Forget), has made an attempt to address the need for public hearings and the benefits it can provide by recording the stories of a handful of Mayan survivors told in their own words and voices and playing them back on local radio stations, as well as making them available internationally on the internet and on CD. The identities and faces of the victims are concealed for ongoing security reasons, however by initiating this project the organisation claims that its goal is to inform, provide an avenue for healing, and initiate national discussion of the atrocities of the conflict and the continuing violence today. The project operates under the slogan 'democratisation of the spoken word'.

[64] The original mandate of the CEH had been to investigate all violations of the 36-year conflict. Commission Chair Christian Tomuschat noted that this was an impossibility given the constraints of time, capacity and resources. Furthermore, during authoritarian rule and civil war violations occur on a daily basis, and to cover each of those abuses is beyond the function of any truth commission (European Centre for the Search For Common Ground and Harvard University Program on Negotiation, 2002). The Commission therefore decided to limit its investigations to torture, killings and disappearances (European Centre for the Search For Common Ground and Harvard University Program on Negotiation, 2002). This narrowing of investigative criteria did not appear to have a detrimental affect on the overall scope of the Commission.

[65] Although the Commission's investigations and findings were limited to the two sides, the state and guerrillas, it does acknowledge in its summary that a comprehensive explanation of the conflict cannot be provided by an analysis that is limited to only the two parties, as any such interpretation 'fails to explain or establish the basis for the persistence and significance of the participation of the political parties and economic forces in the initiation, development and continuation of the violence; nor does it explain the repeated efforts at organisation and the continuous mobilisation of those sectors of the population struggling to achieve their economic, political and cultural demands' (Commission for Historical Clarification, 1999).

[66] Stoll continues on to note that because both sides used the indigenous population as their foot soldiers, the demarcation between victim and perpetrator is unclear, and thus micro-level history is important to capture this complexity. He writes: '[b]ut since most of the population is Mayan and poor, and both sides used local people for killing there will be no shortage of cases in which victims in one time and place becomes victimisers in another, with rationales for committing one wrong being adduced from having been wronged on previous occasions, that will often stretch back to before the arrival of guerrillas and soldiers' (Stoll, 1998, p.56).

[67] The Commission's report already spanned 12 volumes (5 volumes of analysis and 7 annex volumes).

[68] The fact that the CEH was a UN administered commission did mean that the accusations of bias were in someway limited by the fact that the process was not subject to the political pressures of a national commission in the same way as the South African TRC was – where former beneficiaries were able to denounce the Commission as little more than 'an ANC witch hunt'.

[69] The process for arriving at the recommendations was remarkably participative. All who gave testimony were asked for suggestions for the final recommendations, and a public forum was convened in which the participation of over 400 people and 139 organisations was solicited.

[70] In particular, the CEH noted the importance of the implementation of the Peace Accords in this regard. The UN Mission has stated that some of the more important aspects of the Accords in addressing racism are the recognition of the double deprivation suffered by indigenous women; the need to make racial discrimination illegal; the reviewing of all existing legislation to eliminate those which are racist in content or impact; the dissemination of information on indigenous rights; and the reviewing of social spending to address the ongoing entrenchment of the racial and economic divide (MINUGUA, 2001).

[71] As noted above, the PACs had a membership of over 900,000 at their peak in the 1980s - this in a country with an overall population of just over 10 million.

[72] The government has implemented some form of what it considers 'community reparations', however a member of MINUGUA reports that the projects undertaken have been ones of infrastructure delivery, clearly different from those specified by the Commission, and that they do not differ from measures the State should be providing in any event (i.e., building schools and clinics), independently of its obligations to a reparations programme.

[73] In the same month, the state signed Governmental Accord 228-2003 which established a payment of Q.5,241.60 (approximately $670USD) to be paid in three instalments to each individual civil patroller.

[74] Dissemination was assisted by the presence of the UN Office of Project Services (UNOPS) which gave away tens of thousands of summary volumes and donated many more complete sets to schools, libraries and NGOs (Chapman and Ball, 2000).

[75] The affirming of Montt's candidacy by the Constitutional Court has been described as 'highlight[ing] the country's return to military control and the reversal of minimal democratic steps' (Helweg-Larsen, 2003, available online).

[76] Applicants needed to meet established criteria in order to be granted amnesty. Amongst the criteria was the need to demonstrate political motive and affiliation; disclose the whole truth about the incident; and prove that the applicant's actions were proportional to the

objective sought. The deal was essentially a 'carrot and stick' approach – those that came forward and met the criteria would not only be indemnified of criminal charges, they would also be protected against any civil claims against themselves for the acts in question. The 'stick' was that to not come forward risked the chance of being implicated by those that did, resulting in prosecution. In the end, the amnesty committee heard primarily from foot soldiers, whilst those who had ordered the violations remained quiet, taking their chances that the state had limited resources to spend on prosecutions and that the judiciary was relatively untransformed and would likely rule in their favour. To date, they appear to have been correct in this assessment. For an overview of amnesty issues see (Villa-Vicencio and Doxtader, 2003).

[77] In addition, focus on the excesses of apartheid implicitly accepted the legitimacy of the racist laws enacted under the regime and their impact – choosing to only treat as criminal those acts that even the apartheid state deemed unlawful. Mamdani in a submission to the TRC contested this perspective, and noted that apartheid law itself was a 'crime which was institutionalised as law' (Truth and Reconciliation Commission, 1998, Vol.1, p.42).

[78] On a positive note, the survey found that attitudes of the younger generation differed considerably from those of the older respondents in their views of the past and historical injustice. This is likely a result of a new democracy which continually affirms its commitment to a human rights culture. Importantly, this differing perspective on the past does not mean that youth accept the need for redistribution and socio-economic justice anymore than the older generation. Verwoerd, amongst others, has noted that white youth do not see their lifestyle and opportunities as being a legacy of apartheid, but rather attribute it to something inherent to themselves, i.e. to their hard work or good education (Verwoerd, 2000).

[79] A summary of this decision is available online at http://www.legalinfo.co.za/data/Conlaw1.htm

[80] This attitude has included a rejection of all reparations recommendation except for a once off minimal payment of approximately $4000US to each victim identified by the TRC. Any reparations that would have demanded something of beneficiaries was rejected – including a once-off wealth tax, the restructuring of the inherited apartheid debt, or a required contribution from businesses.

[81] For a comprehensive overview of the South African TRC see Posel and Simpson, 2002; Bell and Ntsebeza, 2001; Wilson, 2001; James and Vijver, 2000; and the wide variety of papers and research published on the Commission at http://www.csvr.org.za/pubslist/pubstrc.htm.

[82] Of those 7,800 troops that were demobilised in the first months of 1997, only 42 were officers (Schirmer, 1998).

[83] As the number of lower personnel was cut while the military budget continued to grow Keen (2003) observes that senior officers are profiting nicely from the peace deal.

[84] One can see the roots of present day practices of vigilantism and lynchings apparent in these practices, as well as the nostalgia for the authority and order of the past.

[85] This suppression of civilian authority in order to create a parallel and militarised system of justice weakened an already dysfunctional judicial system and has contributed enormously to the continued ineffectiveness of the system (Godoy, 2002).

[86] The targeting of 'subversives' has carried over into the new dispensation in the form of 'social cleansing' discussed below.

[87] Although the term 'post-conflict' is used here, it is questionable whether any society can be considered post-conflict if levels of violence continue during the transition but are merely displaced from the political to the social sphere (cf. the Violence in Transition series, CSVR, for research based on the premise that violence mutates and changes but does not disappear with political transition).

[88] Children were also the disproportionate victims of the crimes of the past in that the use of mass rape as a weapon of war led to children that were socially rejected and/or abandoned (Recovery of Historical Memory, 1998).

[89] The legacy of the violence of the past also has implications for the consolidation of democracy in Guatemala presently. As REMHI asks in the conclusion to its report; 'What are the potential consequences of the training, methodology, and infrastructure of violence in Guatemala? How might they jeopardise the future in the post-conflict reconstruction?' (Recovery of Historical Memory, 1998).

[90] Kobrak notes that new forms of social violence are not exclusively about old wartime scars, but also about new contributing factors such as decreased community control due to increased immigration and better roads, and the breakdown of traditional Mayan political-religious structures (Kobrak, 2002).

[91] The Sustainable Development Institute in Guatemala found in a recent study that there are approximately 1.7 million illegal firearms in circulation at present (Guatemala Human Rights Commission/USA, 2002). The Human Rights Ombudsman has estimated it at closer to 2 million – which would mean one firearm for every six people in the country (http://www.guatemaladaily.com). This is at least in part a result of a state policy during the conflict of not just supplying civilian patrollers with weapons but encouraging them to buy their own – the majority of which were never registered (Reding, 1997).

[92] The lucrative trade in illegal adoption began during the conflict when children whose parents had been killed were often taken and either used as servants or sold for adoption. This practice persists today and has grown to the point where more children are adopted from Guatemala than any other Latin American country – despite their proportionally small population. 98% are adopted outside the country and 80% are illegal (Amnesty International, 2002).

[93] Some have also begun to engage in crimes of 'social cleansing' described below.

[94] Impunity is also a result of a judicial system weakened by the conflict, inherent racism, the authoritarian power of the military in the past, and the system's historic use of patronage appointments.

[95] Montt has had to satisfy himself up until now with merely being the power behind the scenes because of a constitutional provision barring anyone who seized power by force in the past from holding the highest political office. As mentioned above, a stacked Constitutional Court has overturned the applicability of this provision to Montt.

[96] Additionally, Montt's son is currently Minister of Defence.

[97] The MINUGUA report also expressed extreme concern over the prevalent and persistent use of torture by the police and armed forces (cited in Inter-Church Committee on Human Rights in Latin America, 2003). This practice has become normalised by its frequent use during the war.

[98] In spite of these threats and violence against them, victims formed the Association for Justice and Reconciliation in 2000 – a legal body made up of survivors of massacres in twenty different communities. AJR is seeking justice in genocide cases brought against the Military High Command of both the Lucas García as well as Rios Montt regimes (see http://www.justiceforgenocide.org).

[99] In this regard too, the recommendations of the CEH have been ignored. They call for special legislative measures to be taken specifically oriented to the protection of human rights defenders.

[100] This demonstrates the continuity of patterns of violence from the conflict to the transition, now being employed to serve different (but similar) ends.

[101] Immediately after the Peace Accords, the human rights situation in Guatemala appeared to stabilise and even improve, particularly through the course of 1998/1999. Although no direct correlation can be made, it was with the handover from President Arzú to President Portillo (of General Montt's FRG party) that human rights have again been violated on a massive and systematic scale.

[102] The number of cases of intimidation and harassment of human rights defenders has reportedly increased since the appointment of a former military intelligence operative who was in place during the worst atrocities of the war, to the position of Minister of the Interior (Inter- Church Committee on Human Rights in Latin America, 2003).

[103] The case against the alleged murderers of Bishop Gerardi, the head of the REMHI Commission, resulted in the orchestrated assassination of three witnesses and six potential witnesses – homeless people who had been sleeping outside the Bishop's house the night he was killed. Dozens of other people assisting with the prosecution were intimidated with threats or severely harassed. To date, there has been no conviction for the murder which has been upheld (Amnesty International, 2002).

[104] The discourse around vigilantism post-war also needs to take into account the continuities of violence, in that the actions of the military and the guerrillas towards criminals and 'subversives' could also be labelled as vigilantism.

[105] In one of the worst cases of mob violence to date 8 men rumoured to be involved in kidnappings and theft were pulled from their truck as they drove by, doused in petrol and burned alive.

[106] Padilla notes that this nostalgia is in some ways the 'rhetoric of transition' that exists more broadly than just in the Guatemalan context. As crime increases and insecurity predominates, citizens recast the authoritarianism of the past as 'the good old days' (Padilla, in personal communication).

[107] Guatemala reinstated its death penalty in 1996 after calls from the public for tougher penalties for criminals. In 1999 President Portillo agreed upon a request from the Pope, prior to his visit to the country, to suspend further executions and to once again abolish the death penalty. This has as yet not occurred as the death penalty is strongly favoured by the people. If General Montt manages to win the 2003 election one can be certain that the death penalty will be used again.

[108] Vigilantism is also perpetuated by an attitude of complicit support from government. Of the lynchings recorded by MINUGUA from 1996-2001, less than 3% resulted in prosecutions.

[109] Esparza writes that most crime occurs in the *ladino* dominated regions, but the majority of lynchings take place in Mayan areas with low levels of crime – but where the violence of the past was the most brutal (Esparza, 2002).

[110] Godoy also notes that local FRG politicians are frequently involved in the lynchings, but to what extent this action is independent, or part of a national strategy to return to authoritarianism and military rule is unknown (Godoy, 2002). Nevertheless, the military does appear to be achieving some success in re-establishing themselves in domestic matters as is noted below.

[111] MINUGUA estimates that in 80% of cases, one or more former members of the PACs instigate and lead the mob (cited in Keen, 2003, p.14).

[112] The culture of impunity however and the low regard for street children means that cases involving their abuse rarely result in convictions. Of all the cases received of such a nature between 1990 and 1998, 86 percent remain unresolved. In those instances where the perpetrators of the abuse were known members of the national police, 93 percent of the cases received remained unresolved (Zarifis, 2003). In the first six months of this year, over one hundred children under 18 have been murdered in Guatemala City alone. The United Nations Committee on the Rights of the Child noted in their periodic report in 2001 that there was a lack of investigation of allegations against the new police force for involvement in numerous incidents of violence against children (International Commission of Jurists, 2002).

[113] The patriarchal nature of society in Guatemala is evidenced in its laws. A rapist can be exonerated in certain situations if he offers to marry the victim (Reding, 1998); a man may by law deny his wife the right to work outside the home (Reding, 1998); and sexual harassment has yet to be codified as a crime (MINUGUA, 2001).

[114] MINUGUA estimates that women head one out of five households in Guatemala.

[115] Jonas expresses how by 1999 'the idea that Guatemala might have served as an example of post-conflict sustainable development appear[ed] somewhat absurd' (Jonas, 2000, p.182).

[116] The EMP – the security unit responsible for some of the most high profile killings of the conflict – has been kept in operation with the excuse of fighting crime (León, 2002). This, in spite of the dearth of evidence that points to the unit's ties to and involvement in organised crime today and the political crimes of the past.

[117] Kurtenbach (2002) sees the crime problem as being an essential paradox for the Guatemalan state: 'If government takes a lenient approach, other groups will be rational in adopting this pattern of behaviour. If, on the other hand, the government responds with repressive measures, this will tend to strengthen the influence of security forces, endangering a redefinition of civilian-military relations and the aim of subordinating the military to civilian authorities' (Kurtenbach, 2002, p.139).

[118] This disillusionment is perhaps best witnessed in the referendum results.

[119] This is not to imply that lesbianism is accepted within 'white' South Africa however as high levels of intolerant and homophobic attitudes prevail across the racial spectrum.

[120] Necklacing was the primary method used to kill suspected collaborators in the townships during the anti-apartheid struggle. It involves dousing the victim in petrol, restraining them by placing a tyre over them and then lighting them on fire.

[121] One must be careful however in stating that there is more violence today than in the past, as in the past the violence was construed as political and today is defined as criminal, but it is impossible to determine whether levels of violence are in fact higher in South Africa today. What is certain is that the issue of crime has become politicised, as violence which had affected only black areas and townships in the past is now being felt in the 'white suburbs' – leading to a racialisation of the issue of crime to serve differing agendas.

[122] Added to these factors are the reintegration of ex-combatants into a climate of high unemployment and the free availability of weapons – it is estimated that in South Africa there are between 11 to 14 million firearms in circulation (Hamber, 1999) – this would translate into roughly one firearm for every four South Africans.

[123] In Guatemala only 3% of crimes are ever investigated (Jordan, 2003).

[124] Between June 1982 and June 1983, 81 black people were convicted of murdering white

people and 38 were executed in South Africa. By contrast, none of the 21 white people convicted of murdering black people were executed (Amnesty International, 2003).

[125] Despite the extremist Boeremag organisation's attempts to overthrow the state by violent means in recent years.

[126] See (Harris, 2001)

[127] These limited efforts had little success until the civil war (Stepputat, 2001).

[128] Stepputat notes that it would be wrong however to see the PACs as being a form of citizenship (i.e. relationship with the state) as there were no constitutional rights being offered, and that a more accurate term is perhaps 'corporate patriotship' (Stepputat, 2001, p. 297).

[129] In addition to the contract of citizenship being about providing a guarantee of the dignity of the individual through the provision of a minimal quality of life, economic rights also impact on the ability to exercise political rights - i.e., without food or shelter, the ability to be politically active is hampered.

[130] This mutual responsibility is expressed through an active civil society, a wide tax base, a comprehensive set of social securities for the disadvantaged etc.

[131] In the case of South Africa and Guatemala acknowledgement for the wrongs of the past must be accompanied by an even more important acknowledgement of past and continued privilege.

[132] Nagy (2003) posits that political systems that are based on the oppression of others desensitise us from a 'sense of injustice'. In other words, there is a lack of mutual recognition that must then be overcome in the new state if citizens are going to look on each other as equals.

[133] This framework reflected largely the recommendations of indigenous activists and NGOs who lobbied for a policy of multicultural or differentiated citizenship within the framework of universal human rights (Sieder, 1998).

[134] Differentiated citizenship is similar to the discourse of affirmative action in South Africa – both seek to redress the racially inherited imbalances of the past and achieve substantive equality. Both however have provoked a reactionary response from those who demand 'universally-applicable' standards, and who are in essence seeking to do little more than defend their own privileges.

[135] In both South Africa and Guatemala, the transition appears to have all role players aware of their rights, but only to the extent that many of them employ human rights talk to justify conservative and reactionary agendas. In the case of Guatemala, right-wing groups exhibit a concern for the implications of human rights if customary law is recognised. In South Africa vigilantism is justified as a right to security, and the continual segregation of

schools as the right of parents to choose who their families associate with.

[136] Esparza notes that the opposite is in fact true – that before the war and the militarization of these communities, there was no record of lynchings or of violence being used to resolve community matters, and that on the contrary, Mayan customary law is based on principles of reconciliation and not of punishment or vengeance (Esparza, 2002, see also Godoy, 2002).

[137] In South Africa, the transformation of the public sector has posed huge challenges to the new government. In the past employment by the state was a means of job creation for the Afrikaner population, and as such the South African state had the largest bureaucracy of any country outside of Communist Soviet Union. This ensured that the public sector had an institutional culture of entitlement and entrenched bureaucracy, as opposed to that of service-provision. Transforming a largely white male bureaucracy into one which represented all South Africans was frustrated by a number of obstacles. The first was the bind placed on the public sector by the negotiations process and the agreed upon 'sunset clauses'. These clauses guaranteed that no civil servant from the old regime would be laid off from their job in the first five years of democracy. Whilst this was an important element of the negotiated transition, it ensured that the civil service remained bloated by those who had served under apartheid and had little political will towards the agenda of the new government. Despite these, and other, obstacles affirmative action policies and a concerted campaign of awareness of the role of service-providers has made much headway in most sectors.

[138] MINUGUA notes that one of the key barriers to overcoming discrimination and targeting public policy to the needs of the indigenous poor is the absence of ethnically disaggregated data. For example, it is impossible to know how the levels of poverty and illiteracy of indigenous women has impacted on their health as health indicators are not available according to ethnic identity (MINUGUA, 2001). This raises a concern as to the commitment of the state towards reform – how can public policy properly address the needs of the indigenous population if data isn't collected to reveal what those needs are?

[139] The new National Civil Police has only 14% of personnel of indigenous origin (MINUGUA, 2001). The army fares better in terms of overall representation, however, the majority of its indigenous personnel continue to be ghettoised in non-ranking positions. In departments that provide public services, the number of indigenous employees is severely deficient (MINUGUA, 2001).

[140] Amnesty International has noted that those institutions with a significant role to play in combating impunity have been weakened to the point of dysfunction by the lack of resources. The Prosecutor's Office for Special Cases, charged with investigating cases of particular importance such as the genocide cases brought by victims groups and currently pending against Generals Garcia and Montt, has no resources. Allocation of spending priorities lies de facto in the hands of Montt as President of Congress and the founder of the current party in power (Amnesty International, 2003).

[141] This diversion of funds from the social departments of government has its roots in the conflict, when most departments had their resources severely depleted by the defence

budget constantly drawing from them (Keen, 2003).

[142] In South Africa land reform continues to be a politically sensitive and often reactionary debate. Conservative white farmers frequently allude to the situation in Zimbabwe where years after independence the Zanu-PF government began seizing white farm land by force for redistribution. These parallels have been drawn more frequently in recent months as a new South African land bill allows the Minister of Land Affairs to expropriate land where the administrative process is moving too slow. Initially a Land Court was set up to settle land claims from those who had their land taken from them under the Land Act of 1913. The court process proved much too slow however and other avenues have been explored. To date, none of the targets for redistribution have been met. With regards to commercial land the aim was to redistribute 30% over fifteen years. After eight years only 1.2% had been redistributed (Department of Land Affairs statistics, cited in Institute for Justice and Reconciliation, 2003, p.6). With rural poverty intimately linked to access to land, redistribution needs to occur more rapidly. Moreover, citizenship in the new South Africa must be built on feelings of belonging, mutual responsibility and justice – the repossession of land stolen under apartheid is therefore crucial.

[143] MINUGUA notes that in most areas, the only attempt at intercultural education has been through the work of NGOs with international support (MINUGUA, 2001).

[144] South Africa similarly has grappled with the need to transform the education curriculum of schools but has had to deal with this at the same time as addressing the integration of previously segregated schools. On a positive note, spending in the education sector has been evened out across schools from the racially based spending priorities of the past. This has created the perception for some that 'standards' have dropped, leading those who can afford to do so to put their children in private schools. History is being taught in a more inclusive manner and is based now in part on the TRC and its findings.

[145] Much like Guatemala, South Africa's judiciary entered the transition tainted by its role in upholding the brutality of apartheid as it was codified in law. The South African Human Rights Commission noted in its investigation into the transformation of the judiciary since 1994 that the success of apartheid 'was in no small measure due to the manner in which the administration of justice often responded with great loyalty and enthusiasm to the demands of the apartheid state - demands that were in the main unreasonable, unethical and improper … The laws that were required to be applied, the manner in which the system was staffed and it's modus operandi all reinforced the notion of the superiority of one group and the inferiority of another located largely on biological factors.' (South African Human Rights Commission, 2002, p.7). The SAHRC further noted that during the apartheid regime not a single white man was sentenced to death for raping a black woman, yet numerous black men were hanged for raping white women; concluding that this was only one small indication of the entrenched assumptions that were made about human worth and value within the judiciary (South African Human Rights Commission, 2002). In spite of serious attempts at reforming the judiciary, the majority of magistrates – the visible face of justice in the country – remain white males (South African Human Rights Commission, 2002). For many South Africans this reinforces in them the low levels of credibility they have in their own judicial system.

[146] Sieder (2001) defines customary law as 'the uncodified concepts, beliefs and norms that, within a given community, define prejudicial actions or crimes; the processes by which these should be resolved; and the sanctions or resolutions decided and applied' (Sieder, 2001, p.219 note 4).

[147] Sieder has also argued that the incorporation of customary law could go far towards combating impunity and the legitimacy crisis of the judicial system, as it acknowledges the role of community-based efforts rooted in customary indigenous law which stress restitutive measures and non-violence in its dealings (Sieder, 1997).

[148] Although the everyday examples of racism in the judicial system are numerous, they have a particular impact when the racism surfaces in cases designed to call to account military officials for past atrocities. Farer (2000) notes in this regard the case of 11 returning refugees shot by the military shortly after the signing of the Peace Accords. The case was marked by intimidation and threats to the prosecution, and although the judge did find the 25 soldiers guilty of manslaughter and complicity, he commuted their sentence to a fine which translated into each soldier paying $100US for each peasant he had shot (Farer, 2000).

[149] Keen (2003) notes that in relation to the safety of its citizens, current economic policies have made it impossible for the state to challenge the private security firms, ex-PACs, and military groupings.

[150] The negative perception of taxation also creates a reinforcing cycle. Taxation is designed to perform an equalising measure in societies, foster a sense of mutual responsibility to the common good, and provide a minimum standard of living for all citizens. For this reasons, there is a need to tax adequately and be seen to be providing these services. However, as the social relationship between citizens was seriously damaged by the conflict, and taxation rates are the lowest in the region (and have never been used to support the needs of the poorest), the poor perception of the taxation system makes it difficult to increase taxes in order to rebuild relationships, thus continuing the cycle.

[151] Pásara (2001) notes that a further difficulty in encouraging a democratic culture is that voting is not mandatory in Guatemala. He writes that whilst such an observation may sound odd to most readers, voting has been imposed on citizens in most Latin American countries as a civic duty in order to promote popular participation.

[152] The existence of effective national political institutions is also integral to reconciliation, and thus to citizenship (Chapman, 2002).

[153] If one judges by the statistics of those who applied for amnesty to the TRC it is possible to conclude that members of the former South African security forces were similarly reluctant to apologise for their role in the war. Despite the universal acknowledgement that the violence of the past was primarily perpetrated by the state against its citizens and specifically those involved in the liberation struggle, the TRC figures demonstrate that only 18% of applicants for amnesty were from the former security forces. Alternatively 61% were members of the ANC or ANC affiliates: Ernest, C. A Quest for Justice: An analysis of

the TRC Amnesty Hearings. Unpublished CSVR paper.

[154] Presidential elections are due to take place on November 9th of this year.

[155] Also contributing to this new mobilisation has been the focus on indigenous rights globally in the post-Cold War era, as well as the mobilisation that took place across the Latin American continent in 1992 in opposition to the planned celebrations marking the 500-year 'anniversary' of the discovery of the New World by Columbus (Brett, in personal communication).

[156] Similarly, in South Africa affirmative action is dubbed by its opponents as 'reverse apartheid'. This argument is used in particular by the Democratic Alliance, the official political opposition and traditionally the preserve of white business, to fend off any programmes aimed at redress or redistribution. The reconciliation debate has also been co-opted by these sectors to maintain the status quo in terms of economic power relations. For example, talk of reparations from former beneficiaries or a once-off wealth tax as proposed by the TRC draws criticism of 're-dividing' the country and undoing the feel good rainbow nation reconciliation of the Mandela era.

[157] Returning refugees, through their interaction in exile with the UNHCR and international NGOs, became a highly politicised group able to lobby for certain securities from the state upon their return (Sieder, 2001). In fact, the War Torn Societies Project noted in its background paper on Guatemala that the country was unique amongst war recovering states in that its refugees had organised, negotiated with government and carried out their own repatriation in the early 1990s (Torres-Rivas and Léon, 1998).

References

Alvarez, E. (2002). The Civil Society Assembly: shaping agreement. *Owning the process: public participation in peacemaking*. C. Barnes, Accord.

Alvarez, E. (2002). Foreword. *Owning the process: public participation in peacemaking*. C. Barnes, Accord.

Alvarez, E. and T. P. Prado (2002). Guatemala's peace process: context, analysis and evaluation. *Owning the process: public participation in peacemaking*. C. Barnes, Accord.

Amnesty International (2002). Country Report: Guatemala. 2003. Available online at http://www.ai.org.

Amnesty International (2002). Guatemala: Civil Defence Patrols Re-emerge, Amnesty International. Available online at http://www.ai.org.

Amnesty International (2002). Guatemala's Lethal Legacy: Past impunity and renewed human rights violations. Available online at http://www.ai.org.

Amnesty International (2002). On the front line: Threatened human rights campaigners appeal to the international community to help stop attacks against them, Amnesty

International. Available online at http://www.ai.org.

Amnesty International (2003). Guatemala Deep Cause for Concern: Amnesty International's assessment of the current human rights situation in Guatemala, Amnesty International. Available online at http://www.ai.org.

Amnesty International (2003). Killing Again: Arguments against the death penalty. Johannesburg. Available online at http://www.ai.org.

Author unknown (2000). Guatemalan Gays Hold First March. *Reuters*. Guatemala City.

Azpuru, D. (1999). Peace and Democratization in Guatemala: Two Parallel Processes. *Comparative Peace Processes in Latin America*. C. J. Arnson. Washington, DC, Woodrow Wilson Center Press.

Barnes, C. (2002). Democratizing peacemaking processes: strategies and dilemmas for public participation. *Owning the process: public participation in peacemaking*. C. Barnes, Accord.

Bell, T. and D. Ntsebeza (2001). *Unfinished Business: South Africa*, Apartheid and Truth. Cape Town, RedWorks.

Blanford, A. (2002). Outside view: Priest killers of Guatemala. *The Washington Times*.

Bond, P. (2002). *Elite Transition: From apartheid to neoliberalism in South Africa*. London, Pluto Press.

Brett, R. (2003). email correspondence. Campaigner Americas Program, International Secretariat, Amnesty International.

Buvollen, H. P. (2001). *National Reconciliation and Civil Society in Guatemala, an Empirical Approach*. Guatemala Five Years after the Peace Accords, Oslo, Norway.

Chapman, A. (2002). *Approaches to Studying Reconciliation*. Conference on Empirical Approaches to Studying Truth Commissions, Stellenbosch, South Africa.

Chapman, A. and P. Ball (2000). The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa and Guatemala (draft version).

Clulow, M. (2003). Neoliberal globalization - a feminist view from Central America: Analysis by five feminist organisations, One World Action. 2003.

Commission for Historical Clarification (1999). Guatemala: Memory of Silence: Conclusions and Recommendations. Guatemala City, CEH.

Cronin, J. (1999). A Luta Dis-Continua? The TRC Final Report and the Nation Building Project. TRC: Commissioning the Past, University of Witswatersrand, Johannesburg, South Africa, Centre for the Study of Violence and Reconciliation.

Debiel, T. and A. Klein (2002). *Fragile Peace: State Failure, Violence and Development in Crisis Regions*. London, Zed Books.

Dill, K. (2002). Guatemala's 'Transitionless' Transition Towards Democracy, NISGUA. 2003.

Dill, K. (2003). Personal correspondence. Guatemala City.

Esparza, M. (2002). *In the Hands of the Army: Postwar Violence, Guatemala a Case Study*. University of Albany, Unpublished Doctorate Thesis.

European Centre for the Search For Common Ground and Harvard University Program on Negotiation (2002). Strategic Choices in the Design of Truth Commissions, http://www.truthcommission.org. 2003.

Everingham, M. (2002). *Property Rights and Citizenship in Post-Conflict Societies: Guatemala and South African Compared*. International Studies Association, New Orleans, LA.

Farer, T. J. (2000). Swallowing Injustice to Build Community: Latin America After the Era of State Terror. Denver, Colorado, Graduate School of International Studies, University of Denver.

Fullard, M. (2004). Dis-Placing Race: The South African Truth and Reconciliation Commission and interpretations of violence. Centre for the Study of Violence and Reconciliation, Johannesburg.

Gobodo-Madikizela, P. (2003). Repairing SA's damaged psyche. *Mail and Guardian*. Johannesburg.

Godoy, A. S. (2002). "Lynchings and the Democratization of Terror in Postwar Guatemala: Implications for Human Rights." *Human Rights Quarterly* 24: 640-661.

Goldman, F. (2003). In Guatemala, democracy is just a useful story. *International Herald Tribune*. New York.

Goldman, P., C. Kelso, M. Parikh (2000). "The Chixoy Dam and the Massacres at Rio Negro, Agua Fria and Los Encuentros: A Report on Multilateral Institution Accountability", Woodrow Wilson School, Princeton University.

Gonzalez, M. (2002). Personal interview. Anthropologist with AVANSCO.

Guatemala Human Rights Commission/USA (2002). Guatemala Human Rights Updates, GHRC/USA. 2002.

Hale, C. R. (2002). "Does multiculturalism menace? Governance, Cultural Rights and the Politics of Identity in Guatemala." *Journal of Latin American Studies* 34: 485-524.

Hamber, B. (1999). ""Have no doubt it is fear in the land": An exploration of the continuing cycles of violence in South Africa". *South African Journal of Child and Adolescent Mental Health* 12(1): 5-18.

Harris, B. (2004). Arranging Prejudice: Exploring Hate Crime in post-apartheid South Africa. Johannesburg, Centre for the Study of Violence and Reconciliation.

Harris, B. (2001). "As for Violent Crime that's our Daily Bread": Vigilante violence during South Africa's period of transition. Johannesburg, Centre for the Study of Violence and Reconciliation.

Harris, B. (2001). A Foreign Experience: Violence, Crime and Xenophobia during South Africa's transition. Johannesburg, Centre for the Study of Violence and Reconciliation.

Harris, B. (1996). Guatemalan police convicted of murder of street children, One World News Service. 2002.

Hausfeld, M. (2003). Presentation on the apartheid reparations lawsuits. University of Witswatersrand.

Hausfeld, M. D. (2003). Presentation on the apartheid reparations lawsuits. University of the Witswatersrand.

Hayner, P. B. (1999). In Pursuit of Justice and Reconciliation: Contributions of Truth Telling. *Comparative Peace Processes in Latin America*. C. J. Arnson. Washington, DC, Woodrow Wilson Center Press.

Helweg-Larsen, S. (2003). General Rios Montt And The Guatemalan Elections, zmag. 2003. Available online at http://www.zmag.org.

Human Rights Watch (2002). Human Rights Watch World Report 2002: Guatemala. New York, Human Rights Watch.

Hunt, S. (2002). Rethinking a Model for Peace in Guatemala, IDRC. 2002.

Ignatieff, M. (1996). "Articles of Faith." *Index on Censorship*.

Institute for Justice and Reconciliation (2003). Reconciliation Barometer: Tracking socio-political trends. Cape Town.

Inter-Church Committee on Human Rights in Latin America (ICCHRLA) (2003).

International Center for Human Rights Research (1996). Draining the Sea: An Analysis of Terror in Three Rural Communities in Guatemala (1980-1984), American Association for the Advancement of Science. 2002.

International Commission of Jurists (2002). *Attacks on Justice: a global report on the independence of judges and lawyers*. Geneva, Centre for the Independence of Judges and

Lawyers of the International Commission of Jurists.

James, W. and L. v. d. Vijver, Eds. (2000). *After the TRC: Reflections on Truth and Reconciliation in South Africa*. Cape Town, David Philip Publishers.

Jonas, S. (2000). *Of Centaurs and Doves: Guatemala's Peace Process*. Boulder, Colorado, Westview Press.

Jordan, M. (2003). Chaos turns deadly in Guatemala: Drug trade, lawlessness push murder rate up as national election nears. *Washington Post*. Washington DC.

Keen, D. (2003). *Demobilising Guatemala*. Crisis States Programme, University of the Witswatersrand, Johannesburg.

Khan, F. (2003). Skills Revolution in the Making in South Africa. *Inter Press Service*. Cape Town, World Education Forum. 2003.

Klaaren, J. (2000). Post-Apartheid Citizenship in South Africa. *From Migrants to Citizens: Membership in a Changing World*. T. A. Aleinikoff and D. Klusmeyer. Washington, D.C., Brookings Institution Press: 221-252.

Kobrak, P. (1999). [Organizing and repression in the University of San Carlos, Guatemala, 1944 to 1996](). Washington, DC, American Association for the Advancement of Science (AAAS).

Kobrak, P. (2002). Guatemala: Political Violence at the Grassroots, Santa Fe Institute. 2002.

Kobrak, P., P. Ball, H. Spirer (1999). State Violence in Guatemala, 1960-1996: A Quantitative Reflection. Washington, D.C., American Association for the Advancement of Science.

Kurtenbach, S. (2002). The Central American Conflict System: External Players and Changing Violence. *Fragile Peace: State Failure, Violence and Development in Crisis Regions*. T. Debiel and A. Klein. London, Zed Books.

Laur de Pérez, C. (2002). Prolonged Expectations: Initiatives to Provide Redress to Victims of Guatemala's Internal Armed Conflict, International Centre for Transitional Justice.

León, B. A. d. (2002). Stagnant Transformation: Democratic Transition and Military Conversion in Guatemala. *Fragile Peace: State Failure, Violence and Development in Crisis Regions*. T. Debiel and A. Klein. London, Zed Books.

Library of Congress Country Studies (2002). Honduras: The Arias Plan.

Mamdani, M. (1996). "Reconciliation Without Justice." *South African Review of Books* 46.

Mamdani, M. (2000). The Truth According to the TRC. The Politics of Memory: Truth, healing and social justic. I. Amadiume and A. An-Naim. London, Zed Books.

Marais, H. (1998). *South Africa: limits to change: the political economy of transition*. Cape Town, University of Cape Town Press.

Marsh, K. (2002). "Review Essay: Two Steps Forward One Step Back: Conflict and Contradiction in Post-War Guatemala." *Journal of World-System Research* 3(3): 444-450.

McCleary, R. M. (1999). Postconflict Political Economy of Central America. *Comparative Peace Processes in Latin America*. C. J. Arnson. Washington, DC, Woodrow Wilson Center Press.

McConahay, M. J. (2002). Guatemala Remilitarizing, Civilian Democrats Cry Foul, New California Media. 2002.

McGrath, S. (2000). The Practice of Social Citizenship: Lessons from the Canadian Centre for Victims of Torture, Canadian Centre for Victims of Torture. 2003. Available online at http://www.icomm.ca

MINUGUA (2001). Verification Report: the Indigenous Peoples of Guatemala: Overcoming Discrimination in the Framework of the Peace Agreements. Guatemala City, MINUGUA.

Mufweba, Y. (2003). 'Corrective rape makes you an African woman'. *Saturday Star*. Johannesburg.

Nagy, R. (2003). *Toward a Theory of Transitional Citizenship*. International Political Science Association, Durban, South Africa.

Padilla, D. (2003). Personal interview. Dr. David Padilla. Former Commissioner with the Inter-American Committee for Human Rights, Organisation of American States.

Pásara, L. (2001). The Guatemalan Peace Process: The Accords and Their Accomplishments, Kroc Institute.

Pigou, P., N. Valji, R. Greenstein (1998). Assessing Knowledge of Human Rights among the General Population and Selected Target Groups. Johannesburg, Community Agency for Social Enquiry.

Plant, R. (1999). Indigenous Identity and Rights in the Guatemalan Peace Process. *Comparative Peace Processes in Latin America*. C. J. Arnson. Washington, DC, Woodrow Wilson Center Press.

Posel, D. and G. Simpson, Eds. (2002). *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*. Johannesburg, Witswatersrand University Press.

Prado, T. P. (1997). Advocates and Guarantors: Establishing Participative Democracy in Post-war Guatemala. *Negotiating Rights: the Guatemalan Peace Process*. R. Wilson and R. Sieder. London, Conciliation Resources. 2.

Preti, A. (2002). "Guatemala: Violence in peacetime - A critical analysis of the armed conflict and the peace process." *Disasters* 26(2): 99-119.

Recovery of Historical Memory (1998). Nunca Más. Guatemala City, Human Rights Office of the Archbishop of Guatemala (ODHAG).

Reding, A. (1997). Guatemala: Democracy and Human Rights, University of Minnesota. 2002.

Reding, A. (1998). Human Rights in Guatemala Since the Signing of the Peace Accords, Resource Information Centre, Immigration and Naturalization Service.

Reding, A. (2000). Guatemala: Kaibiles and the massacre at Las Dos Erres, Resource Information Centre, Immigration and Naturalization Service. .

Rich, V. (1996). Gender Violence in Guatemala, Third World Network. 2003.

Rohter, L. (1996). Guatemala's Maya Majority Flexes Its Political Muscles. *New York Times*. Guatemala City.

Salveson, H. (2002). Guatemala: Five Years After the Peace Accords - The Challenges of Implementing Peace, Norwegian Ministry of Foreign Affairs.

Saul, J. "Cry the Beloved Country: The Post-Apartheid Denouement." *Monthly Review.* 52(8):1-51.

Schirmer, J. (1998). Prospects for Compliance: The Guatemala Military and the Peace Accords. *Guatemala After the Peace Accords*. R. Sieder. London, Institute of Latin American Studies.

Sieder, R. (1997). Reframing Citizenship: Indigenous Rights, Local Power and the Peace Process in Guatemala. Negotiating Rights: the Guatemalan Peace Process. R. Wilson and R. Sieder. London, Conciliation Resources. 2. Available online at http://www.c-r.org/accord.

Sieder, R. (1998). Conclusions. *Guatemala After the Peace Accords*. R. Sieder. London, Institute of Latin American Studies.

Sieder, R. (1998). Customary Law and Local Power in Guatemala. *Guatemala After the Peace Accords*. R. Sieder. London, Institute of Latin American Studies.

Sieder, R. (2001). Rethinking Citizenship: Reforming the Law in Postwar Guatemala. *'States of Imagination': Ethnographic Explorations of the Postcolonial State*. T. B. Hansen and F. Stepputat, Duke University Press.

Simpson, G. (2000). Rebuilding Fractured Societies: Reconstruction, reconciliation and the changing nature of violence - Some self-critical insights from post-apartheid South Africa. Johannesburg, United Nations Development Programme: 31.

Simpson, G. (2002). 'Tell No Lies, Claim No Easy Victories': A Brief Evaluation of South Africa's Truth and Reconciliation Commission. Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission. D. Posel and G. Simpson. Johannesburg, Witswatersrand University Press: 220-251.

Simpson, G. (2003). *Presentation to the Open Society Foundation Workshop on Crime and Development*, Stellenbosch.

South African Human Rights Commission (2002). Enquiry into Racism and Racial Discrimination in the Department of Justice and Constitutional Development.

Stepputat, F. (2001). Urbanizing the Countryside: Armed conflict, state formation, and the politics of place in comtemporary Guatemala. *'States of Imagination': Ethnographic Explorations of the Postcolonial State*. T. B. Hansen and F. Stepputat, Duke University Press.

Stoll, D. (1993). *Between Two Armies in the Ixil Towns of Guatemala*. New York, Columbia University Press.

Stoll, D. (1998). Human Rights, Land Conflict and Memories of the Violence in the Ixil Country of Norther Quiché. *Guatemala After the Peace Accords*. R. Sieder. London, Institute of Latin American Studies.

Terreblanche, S. (2002). *A History of Inequality in South Africa 1652-2002*. Durban, University of Natal Press.

Theissen, G. and B. Hamber (1998). "A State of Denial: White South African Attitudes to the Truth and Reconciliation Commission". *Indicator South Africa - The Barometer of Social Trends* 15(1).

Torres-Rivas, E. and B. A. d. Léon, Eds. (1998). From conflict to dialogue: the WSP Guatemala way. Geneva, United Nations Research Institute for Social Development.

Truth and Reconciliation Commission (1998). The Truth and Reconciliation Commission of South Africa Report. Cape Town.

UNOPS (2000). *The Operations of the Historical Clarification Commission in Guatemala: Systematization of CEH Office of Support Experiences*. Guatemala City, United Nations Office for Projects and Services (UNOPS).

Verwoerd, W. (2000). The TRC and Apartheid Beneficiaries in a New Dispensation. Politics and Promises: Evaluating the implementation of the TRC's recommendations, Centre for the Study of Violence and Reconciliation, Johannesburg.

Vickers, G. R. (1999). Renegotiating Internal Security: The Lessons of Central America. Comparative Peace Processes in Latin America. C. J. Arnson. Washington, DC, Woodrow Wilson Center Press.

Villa-Vicencio, C. and E. Doxtader, Eds. (2003). *The Provocations of Amnesty: Memory, Justice and Impunity.* Cape Town, Institute for Justice and Reconciliation.

Vinegrad, A. (1998). From Guerrillas to Politicians: the Transition of the Guatemalan Revolutionary Movement in Historical and Comparative Perspective. *Guatemala After the Peace Accords.* R. Sieder. London, Institute of Latin American Studies.

Weissert, W. (2001). Happy Easter: Guatemalan Students Beat Up Suspected Criminals at Holiday Time, ABC News. 2002. Available online at http://www.ABCnews.com

Wilson, R. (1997). "The People's Conscience? Civil Groups, Peace and Justice in South African and Guatemalan Transitions. London, The Catholic Institute for International Relations.

Wilson, R. (1997). Violent Truths: the Politics of Memory in Guatemala. *Negotiating Rights: the Guatemalan Peace Process.* R. Wilson and R. Sieder. London, Conciliation Resources. 2.

Wilson, R. (1998). The Politics of Remembering and Forgetting in Guatemala. *Guatemala After the Peace Accords.* R. Sieder. London, Institute of Latin American Studies.

Wilson, R. (2001). The Politics of Truth and Reconciliation in South Africa. Cambridge, Cambridge University Press.

http://www.whiteprivilege.com (2002). Guatemala Bans Discrimination, http://www.whiteprivilege.com.

Zarifis, I. (2003). Guatemala: Children's Rights Case Wins Judgment at Inter-American Court of Human Rights, Human Rights Brief: a legal resource for the international human rights community. 2003.