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**HUMAN RIGHTS IN NEGOTIATING PEACE AGREEMENTS:
GUATEMALA**

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GENERAL: CONTEXT AND BACKGROUND

The Peace Accords

1. The Guatemalan peace accords put an end to more than three decades of internal armed conflict between the Guatemalan government and insurgent groups (joined as the Guatemalan National Revolutionary Union, URNG). They included detailed provisions for cease-fire, demobilization and reinsertion of ex-combatants. Additionally, the extensive accords attempt to address the underlying causes of the conflict, place significant emphasis on human rights and provide for some measures of redress for victims, recognizing the rights to know and to reparations, albeit with the limitations discussed below. They were designed as a comprehensive “national agenda” including concrete measures, policy guidelines and consultative mechanisms on human rights, justice system reform, displaced populations, the rights of indigenous peoples, the transformation of the military and police forces, democratization, economic development and social justice. They set specific goals in some cases and generally provide for broad institutional, legislative, and constitutional reform.
2. The final peace accord, known as the Agreement for a Firm and Lasting Peace (AFLP),¹ was signed in the country’s capital on December 29, 1996, after 10 years of talks. It provides the overall framework for peace, asserting basic concepts and principles and incorporating the seven substantive agreements and three operational agreements, which had been signed over the final three years of negotiations, under United Nations mediation. The substantive accords are (with date initially signed):
 - Comprehensive Agreement on Human Rights (29.03.1994)
 - Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict

¹ Throughout this paper, all quotations from the peace accords are taken from the English version provided on the UN/MINUGUA website: www.minugua.guate.net.

- (17.06.1994)
 - Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer (23.06.1994)
 - Agreement on Identity and the Rights of Indigenous Peoples (31.3.1995)
 - Agreement on Socio-Economic Matters and the Agrarian Situation (6.03.1996)
 - Agreement on Strengthening of Civilian Power and the Role of the Army in a Democratic Society (9.09.96)
 - Agreement on Constitutional Reforms and the Electoral Regime (7.12.96)
3. Two of the operational accords covered all aspects of the ceasefire, demobilization of combatant forces and the integration of insurgent combatants, including the transformation of the URNG into a political party:
 - Agreement on the Definitive Ceasefire (4.12.1996)
 - Agreement on the Bases for the Legal Re-incorporation of the URNG (12.12.1996)
 4. Compliance by the Parties with these two operational accords was very high, and they proved to be the simplest of all to implement, reflecting both a shared political will and the limited nature of military actions by the time they went into effect. A third operational accord, commonly known as the “Calendar Agreement” (signed 29.12.1996) provided a four-year framework for the implementation of the several hundred commitments contained in all of the accords. This Accord was later modified by the Parties to extend the time frame for an additional four years (through 2004). When UN verification of accord implementation ended in December 2004, many provisions of the substantive accords had still not been implemented, especially those related to Constitutional reform², indigenous rights and socio-economic and agrarian issues.
 5. The Human Rights Accord and the human rights provisions included in the Indigenous Peoples Accord went into effect immediately upon their initial signing, while all of the other agreements took effect upon the signing of the AFLP at the end of 1996.

Background on the Armed Conflict and Human Rights Violations

6. With a current population of some 12 million people, Guatemala has the most inequitable distribution of wealth, income, and land ownership in Latin America, with about 80% living below the World Bank poverty standard. About 60% of the population is Mayan, and together with much smaller Xinca and Garifuna populations, they are subjected to racism and discrimination, structured *de facto* into a system of multiple exclusions. Much of the population is still rural and dependent on access to small plots of land for subsistence. Large sugar cane and coffee plantations dominate the landscape in fertile regions.
7. These stark economic, social and cultural inequalities, the absence of political space for even moderate political opposition, as well a long succession of military governments, some *de facto*, others imposed through fraudulent elections, were the principal underlying causes of the internal armed conflict, the second longest in Latin America (1962-1996). Insurgent organizations, inspired by the Cuban revolution and liberation movements around the world, grew strong in the late 70s, their ranks strengthened by increasing State violence.
8. Terror and counterinsurgency served as the framework for governance, and systematic

² A public referendum on these constitutional reforms was voted down in 1999, after a major publicity campaign by ultra conservatives using strongly racist arguments.

repression of social activists and political opponents was constant throughout the armed conflict. Forced disappearance was common practice, with some 30-40 thousand victims. The most intense military campaigns aimed primarily at eliminating the real and potential civilian base of the guerrillas were carried out especially in the periods 1965-1967, 1981-1983, and 1987-1989. During the 1981-83 campaigns, by far the most intense, the Army committed hundreds of massacres and was responsible for acts of genocide against the Mayan population, according to the findings of the Historical Clarification Commission (CEH). Over the entire period of the conflict, some 200,000 people were murdered or disappeared and hundreds of villages destroyed. In the cases presented to the CEH, 83% of the victims were Mayan; 93% of all violations were committed by the State (including Army, Police and paramilitary forces under Army control) and 3% by guerrilla forces.³

9. During the early 1980s, hundreds of thousands of Guatemalans fled the Army's scorched earth campaigns in rural areas. Estimates for the internally displaced range from 600,000 to one-and-a-half-million, at the peak of the repression in 1982. Many blended invisibly into the ranks of the urban poor in Guatemala City, with no rights and virtually no assistance, almost always hiding their identity. Others gradually returned to their villages or moved to nearby urban centers as the military campaigns wound down; others were captured by the Army and relocated to holding camps and "model villages" under strict military control. About 3,000 displaced families with close ties to guerrilla forces organized as "Communities of Populations in Resistance" (CPR). Hidden in remote areas under insurgent influence, they managed to stay outside of Army control throughout the conflict, and in 1990 they began to demand their rights as civilian population. At least 200,000 people crossed national borders, with some 150,000 seeking refuge in Mexico, only a third of whom lived in camps, with UNHCR protection. About 86% of the refugees were Mayan peasants.⁴
10. As a key part of the counterinsurgency strategy of the 1980s to bring the population under control, the Army organized all males over age 15 into local paramilitary structures, known as Civil Patrols, to provide 24-hour surveillance in their communities. Freedom of movement was controlled by the patrol system and severely restricted for several years in many communities. Most seriously, civil patrols were often used as human shields for military operations and were forced to participate in thousands of human rights violations, including torture, summary executions and massacres.⁵ These repressive structures effectively usurped the role of civilian authorities in most of the countryside.⁶
11. This counterinsurgency in the extreme was effective at reducing insurgent forces to small pockets in remote areas by the mid-80s. The URNG political influence both domestically and internationally surpassed its military clout; despite the massive repression, the State had been unable to defeat them definitively.
12. During the decade prior to the signing of the Agreement for a Firm and Lasting Peace, human rights violations continued to follow patterns determined by counterinsurgency strategy, although at much lower levels than in previous years; the main human rights problems included the following:

³ Historical Clarification Commission, *Conclusions and Recommendations*, par. 1 and 82. In 4% of the violations, no institutional responsibility could be established.

⁴ Comisión para el Esclarecimiento Histórico, *Informe Final, Guatemala: Memoria de Silencio*, Tomo IV, p. 138, par. 4248.

⁵ 18% of violations registered by the CEH involved Civil Patrols, acting alone or in collaboration with the Army. *ibid.*, par. 82.

⁶ With their power stemming largely from their military patrons, PAC leaders often took advantage of their positions to improve their economic situation, in some cases usurping lands and other property from those killed or who had fled.

- Extrajudicial execution, forced disappearance, and torture, focused on activists and political figures considered by the military to be members or supporters of the insurgency.
- Attacks on the civilian population during periodic military campaigns in areas of insurgent activity; these include attacks on organized communities of internally displaced populations (CPR).
- Forced conscription for military service, and forced participation in Civil Patrols.
- Impunity with regards to human rights violations and the general non-functionality of the justice system.
- General neglect of economic, social and cultural rights.

The Peace Process

13. Achieving peace in Guatemala took 10 years, involved four different governments and forceful national, regional and international initiatives⁷. Having reduced guerrilla activity and eliminated or brought much of its civilian base under military control, in 1985 the Army began a “transition to civilian rule”, convening a Constituent Assembly that drafted and approved a new Constitution that year. In 1986, Christian Democrats led the first freely elected civilian government in two decades and soon began to open quiet channels of communication with insurgent organizations. The Christian Democrat government also strengthened its diplomatic efforts for peace in the Central America, where sectors of the political and economic elites began to seek “political solutions” to the ongoing-armed conflicts. These initiatives gained support, especially from Latin America and Europe; the US followed suit with the end of the Cold War and after the electoral defeat of the Sandinistas in 1990, gradually changing its policies to favour negotiations.
14. In August 1987 the five Central American presidents signed the Esquipulas II Agreement that included commitments on democratization, reconciliation and an end to hostilities, as well as a call for all governments to prevent the use of their territory for the destabilization of other countries in the region. While central to the regional peace process, the Esquipulas II text made no mention of respect for human rights as part of the way forward. Rather it called for each country to promulgate an amnesty law to guarantee “the inviolability of life, liberty in all of its forms, the material goods and the security of *all those for whom the [amnesty] decree was applicable.*”⁸ The text referring to amnesty avoided any mention of human rights violations and recognized no issues of imprescriptibility. Within this framework, the disarming of insurgent forces was posed as a precondition for direct negotiations. The governments would then be committed to enter into dialogue with all groups that had disarmed or accepted amnesty.
15. As part of the Esquipulas commitments, Guatemala also established a National Reconciliation Commission (NRC), headed by Mons. Rodolfo Quezada Toruño and including members from the executive branch, opposition political Parties, and “notable” citizens. This entirely national body played a key role as facilitator and provider of national “verification” for the next six years of on-again, off-again talks with the insurgency, but proved incapable of bringing the process to

⁷ National actors included the National Reconciliation Commission; regional actors included the Contadora Group, the OAS and the Esquipulas actors; internationally: the Group of Friends and the United Nations.

⁸ Esquipulas II Agreement, “Procedures to Establish a Firm and Lasting Peace in Central America” (translation and italics are mine). The UN became involved in the regional peace process under this agreement, which asked the Secretary-General to form part of an International Verification and Follow-Up Commission, together with the Secretary-General of the OAS, and the Foreign Ministers of the Central American countries, the Contadora Group and its Support Group.

a close.⁹

16. The process that led to the signing of the AFLP can be characterized as having three distinct phases:¹⁰
17. *1986-1990:*¹¹ Low-level conversations generally using intermediaries take place between the government and the insurgents, with facilitation and mediation provided by the NRC. The UN was asked in March 1990 to act as an observer and “guarantor” of the process, and during 1990 formally organized talks were held between the insurgents and non-governmental actors, leading to public statements of intent to seek a political solution to the conflict.¹²
18. *1991-1993:*¹³ Direct negotiations begin between the government and the URNG (the “Parties”), with Mons. Quezada Toruno, head of the NRC, as the “conciliator”. During most of this period, the government insisted that the URNG disarm and demobilize as a condition for advancing the negotiations. The URNG insisted that these “operational” aspects of the process could only come after agreements on substantive issues and also demanded improvements in the human rights situation.¹⁴ Despite these differences, in early 1991 the Parties finally agreed on an 11-point thematic agenda for the negotiations, which was reflected in full in the final peace accords.¹⁵ A first framework agreement on democratization was signed a few months later.¹⁶ Discussions advanced on a comprehensive human rights accord, the next issue on the agenda, before stalling on some key issues, including establishment of a truth commission.¹⁷ A coup attempt and

⁹ While the other Central American countries also formed their National Reconciliation Commissions, as stipulated by Esquipulas II, it was only in Guatemala that the Commission actually played an important part in moving the process forward.

¹⁰ This periodization is based on the nature of the relationship between the Parties and the type of mediation. Some authors use a somewhat different model, more closely following the changes in governments and the nature of the accords that were approved in the period. See, for example, Rosada, Héctor, *El lado oculto de las negociaciones de paz: Transición de la guerra a la paz en Guatemala*, Fundación Friedrich Ebert, Guatemala, 1998.

¹¹ This period overlapped entirely with the Christian Democrat government, headed by Vinicio Cerezo.

¹² “Oslo Accord” (March 29, 1990), signed by the members of the NRC (representing the government) and the URNG, set up the procedures for the meetings with political parties, business groups, religious leaders, academics and popular organizations. The accord also named Mons. Quezada as “conciliator” and made the request of the UN.

¹³ This period coincides with the center-right coalition government, headed by Jorge Serrano, as well as the first 6 months of an interim administration. In May 1993, after two and a half years in office, Serrano dissolved the legislature and courts, and with strong support from military intelligence, declared himself sole power. A major civic movement quickly coalesced to oppose the move, and the Constitutional Court intervened, finding Serrano’s decrees to be unconstitutional. Serrano and others in his government fled to Panama, and the Congress named Ramiro de León, at that time the country’s Human Rights Ombudsman, as interim President to fill out the rest of Serrano’s term.

¹⁴ In practice, however, in this period there is a break with the Esquipulas II model, which called for insurgents to disarm before there could be direct negotiations with the government. The guerrillas refused to disarm, and the government entered into direct negotiations anyway.

¹⁵ “Mexico Accord” (April 26, 1991). This Accord also contained a number of other points that set the rules for this phase of the negotiations, defining among others, the functions of the “conciliator,” the observer role of the UN, and the “private and discreet” nature of the meetings.

¹⁶ “Queretero Accord” (July 25, 1991). This accord is basically a set of principles, with no specific concrete commitments or goals and was not included in the Agreement for a Firm and Lasting Peace. More specific commitments on democratization are included in the “Agreement on the Strengthening of Civilian Power and the Role of the Army in a Democratic Society” and the “Agreement on Constitutional Reforms and the Electoral Regime.”

¹⁷ Personal communication, Héctor Rosada, (head of the government negotiating team, June 1993 - December 1994). See also, Stephan Baranyi, “The Challenge in Guatemala: Verifying Human Rights, Strengthening National Institutions and Enhancing an Integrated UN Approach to Peace,” Research Paper 1; Centre for the Study of Global Governance; London School of Economics, Sept. 1995. Another factor in the early delays was the government’s objections to the UN Observer, Dr. Francesc Vendrell, which was furious with some of his actions and claimed that he repeatedly over-stepped his role (personal communication, Francesc Vendrell). The UN

constitutional crisis in May 1993 brought the process to a standstill.

19. 1994-1996:¹⁸ Direct negotiations between the Parties and agreements signed on all substantive and operational issues, with UN mediation. During this period all of the substantive and operational agreements included in the AFLP were signed. In January 1994, the Parties, meeting in Mexico, agreed to renew talks using the previously approved agenda and to finalize the peace accords by the end of 1994, asked the UN to provide a moderator for the negotiations and verify the accords, and established a Group of Friends of the peace process.¹⁹ This opened the way for a much more central role for the UN and other international actors, which proved to be essential for achieving peace.
20. The “Framework Accord” also provided for the creation of a Civil Society Assembly (ASC), an innovative structure that served as a forum for participation in discussions of all of the substantive issues on the agenda.²⁰ Non-binding, consensual proposals from the ASC were presented to the Parties and often served as base documents for the negotiations. After the Parties reached an agreement, the text was to be ratified by the ASC, as a final step in the approval process. This proved to be a completely formal measure; even when civil society organizations disagreed deeply with the text, ASC approval was always granted, generally due to the sway held by the URNG over many of the participating organizations.²¹

National and International Attention to the Human Rights Situation

21. In the late 70s and early 80s, the Guatemalan organizations (peasants, students, labor unions, lawyers, political parties, etc.) that suffered human rights violations were the most active in denouncing those violations, often working closely with international counterparts. Repression eventually destroyed or greatly weakened most of these organizations. When national human rights activism reemerged in the mid-80s, the new organizations were generally victims’ groups, made up of relatives of the disappeared and widows, demanding an end to the abuses, the return of their loved ones, reparations, and exhumations of mass graves, among other issues.

Secretary-General recalled Dr. Vendrell in May 1992 and in July named as his replacement Jean Arnault, who would continue as the UN mediator for the final phase of the negotiations and then head the UN Verification Mission from 1997-2000.

¹⁸ This period includes the last two years of the interim government headed by de León, as well as the first year of the newly elected (center-right) government, headed by Alvaro Arzú.

¹⁹ The “Framework Agreement for Renewal of the Negotiations between the Government of Guatemala and the URNG.” (January 10, 1994). The Group of Friends of the Guatemalan peace process was made up of Colombia, Spain, the US, Mexico, Norway and Venezuela. Obviously, the time frame for the negotiations was not met, and this was cause for many acrimonious exchanges between the government and the URNG. Intense international pressure was exerted at several points, by the UN and the Group of Friends, to move the process forward.

²⁰ The ASC was created as a compromise measure from among the diverse proposals on how civil society should be included in the negotiations. The government, which did not want to recognize the representivity or legitimacy of the URNG to negotiate on the substantive issues, repeatedly insisted (even after the Oslo Accord) that these be negotiated in-country, with the participation of all social sectors, with the URNG participating as one more sector after accepting amnesty, and leaving direct negotiations between the Parties only for the operational aspects of cease fire and demobilization. The URNG, of course, insisted on its legitimacy as a negotiating party on all issues, but was in favour of some significant form of civil society participation. Civil society organizations, in general, pressured to have a direct presence, with voice and vote, at the negotiating table. The most powerful private sector organization (CACIF) refused to recognize the legitimacy of the URNG to participate on the substantive agenda and declined participation in the ASC. Quesada presided the ASC, with over 70 participating organizations at its peak. (For background on the different proposals and for the CACIF position, see *Guatemala 1986-1994: Compendio del Proceso de Paz*, Infopress Centroamericana, Guatemala, 1995; pp.195-215 and 136-150, respectively.

²¹ There was especially deep dissent on the Agreement for the Historical Clarification Commission (see more below) and on the Socio-Economic Accord.

22. In the early 90s, other organizations emerged with somewhat stronger legal skills and a focus on combating impunity. The Catholic Church contributed in this regard when it opened the Human Rights Office of the Archdiocese of Guatemala (ODHA), providing legal services for some of the first human rights cases taken to the Guatemalan courts in this period. In addition, the ODHA provided the technical support for a three-year, nationwide, inter-diocesan project to document human rights abuses and their consequences during the armed conflict. Begun in early 1995 almost two years before the end of the armed conflict, this project opened the way for the later work of the Historical Clarification Commission (CEH) established under the peace accords.²²
23. Today, a few organizations are increasingly sophisticated in using international mechanisms and instruments, especially those provided by the Inter-American system, but there is still little ability to construct and litigate human rights cases in national courts.
24. International human rights NGOs, such as the Washington Office on Latin America, Amnesty International and Americas Watch/Human Rights Watch, have been active on Guatemala for decades, sending investigative missions, producing numerous reports and providing a range of support for their counterparts in Guatemala.²³ Their reports over the years have evolved to reflect the changing circumstances of human rights violations, focusing first on the systematic, selective repression of activists and political leaders, then on the massive violations during the years of scorched earth campaigns, then on the situation of the displaced population, the organization of the displaced population in model villages and the creation of Civil Patrols, and more recently on impunity and the persistence of clandestine security structures.
25. Guatemala has been a major concern of the OAS/Inter-American Commission for Human Rights, which began receiving complaints on the situation shortly after the start of the armed conflict in 1962. By 2001, the IACHR had produced five special country reports on Guatemala, conducted 10 on-site visits since 1982, and published follow-up reports on the general situation in its Annual Report for each year from 1983 to 1991, and for 1993, 1994, 1996 and 1997.²⁴ The Commission has resolved on many, many individual cases over the years, reaching an amicable settlement with the Guatemalan State on more than a hundred cases in the past few years. These settlements have involved substantial economic reparations in some cases, as well as commitments from the State to recognize publicly its responsibility and to ensure that cases move forward in the national courts. The Inter-American Human Rights Court, the judicial arm of the Inter-American system, has ruled on nine cases from Guatemala in recent years, developing important jurisprudence, especially on the issues of victims rights and chain of command responsibilities.²⁵

²² This project, know as REMHI (for recovery of historical memory), was created, in part, as a response to the weak mandate defined for the CEH. Human rights organizations, the ODHA among them, were extremely sceptical that the CEH would produce a useful report. The ODHA undertook to produce its own report, counting on the structures of the Catholic Church to facilitate a community-based approach to testimony taking and truth telling. See, *Guatemala Nunca Más*, Informe Proyecto Interdiocesano de Recuperación de la Memoria Histórica, ODHA, 1998. For more on the CEH, see below.

²³ During the most intense years of the internal armed conflict, religious organizations such as the World Council of Churches and the National Council of Churches (USA) also played an important role in ensuring international attention to the situation in Guatemala, as did the many development organizations, such as Oxfam and World Neighbours, which had worked in Guatemala over the years.

²⁴ The Commission's monitoring during the early years of the conflict led to the publication in 1966 of its "Requests for Information Transmitted to the Government of Guatemala," followed by the publication of special country reports in 1981, 1983, 1985, 1993, 1994, and 2001.

²⁵ See for example, Inter-American Human Rights Court, "Myrna Mack vs. Guatemala," sentence of 25 November 2003.

26. The United Nations has also paid particular attention to Guatemala since 1979, with yearly resolutions until 1998. From 1982 to 1986, the Commission on Human Rights mandated a Special Rapporteur to study the human rights situation in Guatemala. In 1986 it replaced that mandate with one for a Special Representative of the Commission to receive and evaluate information from the Government of Guatemala on the implementation of human rights protection measures included in the new Constitution of 1985.²⁶ In 1987 the Commission ended the Special Representative mandate and asked the Secretary-General to appoint an Expert to assist the Guatemalan government in human rights matters. There were three independent experts over the next ten years who reported and made recommendations annually to the Commission.²⁷ The Commission passed its final resolution on Guatemala in 1998 (E/CN.4/Res/1998/22), based on the report of the Secretary-General's Mission to Guatemala to study "the evolution of the situation of human rights in Guatemala in the light of the implementation of the peace agreements" (E/CN.4/1998/93). In that resolution, the Commission expressed a number of concerns regarding important deficiencies for full respect for human rights, as well as the need to fully implement the peace accords, but also acknowledged that "institutionally there no longer exists an established State policy that violates human rights or individual guarantees in the country" (E/CN.4/Res/1998/22).
27. Since then, attention to Guatemala has continued through the visits and reports of Special Rapporteurs of the Commission and Special Representatives of the Secretary-General on a range of thematic issues.²⁸ The UN Office of the High Commissioner for Human Rights has also had a technical assistance project in the country for a number of years, and has recently signed an agreement with the Guatemalan government to establish a field office in the country. (As of May 2005 the Guatemalan Congress had still not ratified that agreement).
28. In November 1994, the UN established a verification mission in Guatemala (MINUGUA), first to verify the human rights situation and the implementation of the Comprehensive Human Rights Agreement, and later to verify all of the accords under the Agreement for a Firm and Lasting Peace. That mission finally closed in December 2004, having produced 14 reports to the Secretary-General on the human rights situation during its mandate.

THE COMPREHENSIVE AGREEMENT ON HUMAN RIGHTS (CAHR)

Human Rights and International Humanitarian Law in the Peace Accords

29. The text of the Comprehensive Agreement on Human Rights begins by affirming the applicability of human rights law to the actions of the State, based on the "constitutional provisions in effect in respect of human rights and international treaties, conventions and other instruments on the subject to which Guatemala is a party," and "the wish [of the Parties] that the agreement on human rights and international verification be applied in accordance with the aforesaid constitutional provisions and international treaties."²⁹ As a way of binding the URNG to a similar standard, the Accord established that the insurgency "undertakes to respect the inherent attributes of the human being and to contribute to the effective enjoyment of human rights."³⁰

²⁶ Viscount Colville of Culross held both of those posts.

²⁷ They were: Mr. Hector Gros Espiel (1987-1990), Mr. Christian Tomuchat (1990-1993), and Ms. Monica Pinto (1993-1997).

²⁸ These include: food security, violence against women, independence of judges and lawyers, human rights and fundamental freedoms of indigenous peoples, the situation of human rights defenders.

²⁹ CAHR, Preamble.

³⁰ *ibid.*

30. When the CAHR was signed, the most relevant international conventions and instruments to which Guatemala was a party, included (year ratified in parentheses):

- Convention on the Prevention and Punishment of the Crime of Genocide (1950)
- Four Geneva Conventions (1952) and the two Additional Protocols (1987)
- American Convention on Human Rights (1978)
- Convention on the Elimination of All Forms of Discrimination Against Women (1982)
- International Convention on the Elimination of All Forms of Racial Discrimination (1983)
- Convention regarding the Struggle against Discrimination in Education (1983)
- Convention on the Status of Refugees (1983)
- Supplementary Convention on the Abolition of Slavery, Slave Trade, and the Institutions and Practices Analogous to Slavery (1983)
- Inter-American Convention to Prevent and Punish Torture (1987)
- Acceptance of jurisdiction of the Inter-American Court of Human Rights (1987)
- International Covenant on Economic Social and Cultural Rights (1988)
- Convention Against Torture and other Cruel, Inhumane and Degrading Treatment (1990)
- Convention on the Rights of the Child (1990)
- International Covenant on Civil and Political Rights (1992)

31. Nevertheless, Guatemala had not yet ratified or recognized key implementation mechanisms for several of these instruments. The CAHR made no mention of this situation, nor did it call on the government to ratify other instruments. The Indigenous Rights Accord called for the ratification of the Convention on Indigenous and Tribal Peoples (ILO 169), and this was done in 1996. The Historical Clarification Commission took up this issue again in its recommendations made in 1999, and there has been significant progress over the past four years, including: ratification of the Inter-American Convention on Forced Disappearances (2000), the Additional Protocol to the American Convention on Human Rights regarding social economic and cultural rights (2000), the Facultative Protocol of the International Covenant on Civil and Political Rights (2000), the Facultative Protocol of the Convention on the Rights of the Child, regarding the participation of children in armed conflicts (2002), as well as recognition of the competence of the Committee Against Torture to receive individual complaints (2003).³¹ It should be noted, though, that in many cases, domestic legislation has not yet been harmonized with these instruments.

32. The CAHR includes nine major commitments. The first of these is a general commitment by the Guatemalan government to enforce “the principles and norms designed to guarantee and protect the full observance of human rights” and to “encourage all those measures designed to promote and perfect norms and mechanisms for the protection of human rights.”³² At the same time, the Accord essentially defined certain civil and political rights as priority rights, directing UN verifiers to “pay particular attention to the rights to life, integrity and security of the person, to individual liberty, to due process, to freedom of expression, to freedom of movement, to freedom of association and to political rights.”³³

³¹ MINUGUA, *Informe de Verificación: Estado de cumplimiento de las recomendaciones de la Comisión para el Esclarecimiento Histórico*, (25 February 2004), section 3.4.1. See: www.minugua.guate.net.

³² CAHR, “I. General Commitment Regarding Human Rights.” See, Baranyi, op.cit., p. 6, for a brief discussion of the potential negative implications of having established this priority; in retrospect, his observations in this regard proved to be quite accurate.

³³ CAHR, “X. International Verification by the United Nations”, par. 12.

33. The other major commitments cover:
34. *Actions to strengthen national protection mechanisms.* This brief section of the Accord established no specific goals, but rather included general issues of government respect for the autonomy of the courts and the Public Prosecutor's Office, as well as a promise of political and financial support for these institutions and the Human Rights Ombudsman.³⁴
35. *Measures against impunity.* This includes a commitment by the government not to promote legislation "or any other type of measures designed to prevent the prosecution and punishment of persons responsible for human rights violations," and it established that "no special law or exclusive jurisdiction may be invoked to uphold impunity in respect of human rights violations."³⁵ These provisions would become very important during the discussion of amnesty provisions at the end of the negotiation process (see below). Given the massive use of forced disappearances and extrajudicial executions during the conflict, special attention was given to these issues, and the government committed to promote reform of the Penal Code to typify and punish forced disappearance as a particularly grave crime, as well as to promote recognition in international fora as a crime against humanity. Forced disappearance has now been typified as a crime, but there has been no State investigation into past disappearances, nor provision made to recognize the category of absence due to forced disappearance, as recommended by the Historical Clarification Commission (CEH).
36. *Combating any manifestation of illegal security forces and clandestine structures, lustration and professionalization of the security forces, and regulating the right to own and bear arms.* There was no elaboration on how any of this should be done. In particular, there was no administrative procedure or vetting process defined in the Accord for the purpose of lustration of the security forces. This issue was later taken up by the CEH, which recommended that a special Presidential Commission be set up to examine the conduct of military and public security officers during the armed conflict and apply administrative measures in accordance with the UN draft "Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,"³⁶ but no action has been taken in this regard.
37. *Guarantees for freedom of association and movement.* In addition to a general statement of respect for these rights, this section of the Accord focuses almost entirely on participation in the Civil Patrols (PAC). This issue had provoked enormous attention from national and international human rights organizations, and was the object of radically differing positions. The URNG (and church and civil society groups) called for immediate elimination of the PAC, while the government and the Army insisted that they could not be disbanded until a ceasefire was in place. This divergence was reflected in the Accord's ambiguous language, most of which had been agreed to in August 1992.³⁷ The Accord stopped short of eliminating these paramilitary structures (this would come shortly before the signing of the AFLP and after the insurgency declared a unilateral cease fire in March 1996 as a sign of good faith with the new government). Rather the government agreed not to form new PACs, "provided that there is no reason for it to do so;" the Accord then tasked the Human Rights Ombudsman to investigate whether participation was voluntary or not and to follow-up on his findings.
38. *An end to forced conscription for military service.* The administrative and legislative measures to this end, in addition, were to ensure that conscription be voluntary and non-discriminatory (for decades young indigenous men had been subjected to forced conscription more than other Guatemalans) and not violate human rights.

³⁴ The Human Rights Ombudsman was created in the 1985 Constitution.

³⁵ CAHR, "III. Commitment against Impunity.

³⁶ CEH, Report of the Commission for Historical Clarification: Conclusions and Recommendations, "Recommendations," par. 42-45; Guatemala, 1999.

³⁷ "Primer acuerdo sobre las PAC abre expectativas", in *Inforpress Centroamericana*, no. 995; Guatemala (13.08.92).

39. *Measures to protect for human rights organizations and defenders.* The government committed to take special measures to ensure protection and to investigate any complaints in this regard.
40. *Reparations and/or assistance to the victims of human rights violations.* This part of the Accord recognizes that it is a “humanitarian obligation” to provide reparations and/or assistance to victims of human rights violations, avoiding direct mention of the rights of victims or of legal obligations. It provides no specific provision and offers only general guidelines that the reparations or assistance be provided by the government, through civilian, socio-economic programs, giving priority to the most needy. The Calendar Accord indicated that the reparations program should take into account the recommendations of the Historical Clarification Commission, which were presented in early 1999; those recommendations drew in part on the UN draft “Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violation of International Human Rights and Humanitarian Law” (E/CN.4/Sub2/1996/17), establishing the need for restitution, compensation, rehabilitation, and other measures of satisfaction and dignification.³⁸ In 2003, a National Reparations Program was finally established, more than 20 years after the vast majority of violations were committed.
41. *Human rights and the armed confrontation.* This section obliges the Parties to ensure an “end to the suffering of the civilian population and to respect the human rights of those wounded, captured and those who have remained out of combat.” This language was used, rather than a direct reference to the 1949 Geneva Conventions and the additional protocols, both of which Guatemala had ratified, or more generally to international humanitarian law, in order to overcome one of the major, contentious issues in the negotiations on this Accord. The URNG had insisted since the start of talks on the applicability of the Geneva Conventions, especially in its work in international and diplomatic circles.³⁹ During the negotiations, the Guatemalan government and Army refused to recognize the applicability of the Geneva Conventions to the specific situation of the internal armed confrontation in the 1990s. They argued with great vehemence that the situation in Guatemala did not correspond to the conditions established in Article 1, Section, 1 of Protocol II for the existence of a non-international armed conflict, and therefore the Conventions did not apply. Rather, their position was that the insurgency at that time was capable of no more than the “isolated and sporadic acts of violence and other acts of a similar nature”, mentioned specifically in Protocol II as conditions that do not conform an armed conflict.⁴⁰ Their chief concern was that acceptance would represent tacit recognition of the URNG as a belligerent force, which they wanted to avoid at all cost. Despite explanations by expert advisors to the negotiations (and later by MINUGUA) that application of Common Article 3 would not affect the legal status of either party, the government and military would not budge on this, and the compromise language was developed.⁴¹ For subsequent UN verification of this commitment, however, the Parties were informed by MINUGUA that the language was interpreted to cover: attacks against life and personal integrity, especially any form of murder, mutilation, torture or cruel, inhumane or degrading treatment; hostage taking; attacks on civilian property; summary justice; acts of terrorism; attacks against objects indispensable to the survival

³⁸ *ibid.*, par. 7-21.

³⁹ Their intent on this issue was at least two-fold: to achieve recognition of their status as a belligerent party (as the FMLN had done years earlier) and to limit Army operations against the communities that provided them with support.

⁴⁰ “Respeto a las normas del derecho internacional humanitario,” position paper of the Guatemalan government; photocopy, no date (from the text, it is possible to infer that it was produced between Sept 1991 and May 1993). The opposition on this point was such that in the Accords, the term internal armed conflict is never used; rather the phenomenon is generally referred to as the “internal armed *confrontation*” or simply the “armed confrontation.” In addition, in the commitment under discussion from the CAHR, a specific disclaimer was included in the text that: “These statements by the Parties do not constitute a special agreement, in the terms of article 3 (Common), paragraph 2, second subparagraph of the Geneva Conventions of 1949.”

⁴¹ For a discussion of the applicability of the Geneva Conventions and the additional protocols, see CEH, *Informe Final*, Tomo I, par. 71-74, and Tomo II, par.1676-1695.

of the civilian population; and forced displacement of populations.⁴² In this way and others, the Mission employed the principles of humanitarian law, without naming them as such, applying them with equal rigor to both Parties. The government ultimately accepted this approach in practice.⁴³

Verification Mechanism Established in the CAHR⁴⁴

42. The CAHR calls for the immediate creation of a UN mission with a mandate to verify the human rights situation and compliance by the Parties the accord, as well as to strengthen national justice sector and human rights institutions, giving special priority to the Human Rights Ombudsman, the Judiciary and the Public Prosecutor's Office. The Mission would report to the UN Secretary-General on a regular basis. These reports were to be forwarded to the competent UN bodies, as well as to the Parties. In addition, the Mission was authorized to make recommendations to the Parties based on its findings and inform the Guatemalan public about its functions, actions and findings. At the time it was signed, the CAHR was considered to be "the most complete instrument to date governing the activities of a UN human rights field Mission."⁴⁵ To carry out its mandate, the Mission would be permitted to:

- Establish itself and move freely throughout national territory
- Interview any person or group of persons freely and privately
- Visit government offices and URNG camps freely and without prior notice
- Collect all information relevant for the implementation of its mandate

43. With regard to verifying the human rights situation, MINUGUA was empowered to:

- Receive, consider, and follow-up on complaints regarding possible human rights violations;
- Establish whether the competent national institutions have carried out the necessary investigations independently, effectively and in accordance with the Guatemalan Constitution and international human rights norms;
- Determine whether or not a violation of human rights has occurred.

44. Two limiting factors were placed on the Mission's activities. First, its mandate only applied to events and situations subsequent to its installation (prior human rights violations would be investigated by the Historical Clarification Commission). In practice, the Mission stretched the edges of this limitation by focusing on due process, one of the priorities established for verification in the Accord. This allowed MINUGUA both to monitor judicial proceedings in those few human rights cases from the past being tried in national courts, as well as to periodically remind the Public Prosecutor's Office of its obligation *ex-officio* to investigate any summary executions or forced disappearance of which it had knowledge. The latter was particularly relevant, although totally ineffective, as follow-up to the hundreds of exhumations of

⁴² See MINUGUA, Manual de Referencia para el personal de la Misión de Verificación de Naciones Unidas en Guatemala (Nov. 1994), on www.minugua.guate.net. This manual draws heavily on the Geneva Conventions in its juridical basis for the verification of these points.

⁴³ For a brief discussion of how MINUGUA dealt with the international humanitarian law issue, see, Leonardo Franco and Jared Kotler, "Combining Institution Building and Human Rights Verifications in Guatemala: The Challenge of Buying In Without Selling Out," in *Honouring Human Rights From Peace to Justice*, The Aspen Institute, 1998; p. 54.

⁴⁴ See www.minugua.guate.net for the text of the Agreement.

⁴⁵ Franco and Kotler, *op.cit.*, p. 44.

clandestine graves sites conducted by non-governmental forensic teams over the past ten year.⁴⁶ The second limiting factor dealt with the fact that the conflict was not yet over and military operations continued in some parts of the country. The Army wanted language restricting Mission staff from any presence that might interfere with those operations. In some of the final changes to the Accord, more ambiguous language was introduced, indicating only that in these circumstances, the Mission should "make the necessary security arrangements."⁴⁷ In practice, the Mission had almost unlimited access, with strongest resistance coming from judges and prosecutors, who did not always want to allow review of their proceedings, and from plantation owners, who argued that Mission staff presence during peasant land "invasions" both exceeded MINUGUA's mandate and emboldened peasants to act.

45. Through its tenure, MINUGUA was expected to play a central role in strengthening national institutions, reflecting what was generally considered to be one of the lessons learned from the recent UN experience in neighbouring El Salvador. The Mission was to cooperate with and provide direct support to national justice sector and human rights institutions, especially the Human Rights Ombudsman, and encourage international technical and financial assistance for them. A Trust Fund was established in 1995 to support part of the Mission's technical assistance work; some \$19 million was donated to that fund through voluntary contributions from member states, with close to half going to projects aimed directly at strengthening justice sector and human rights institutions and supporting reform processes addressed in the peace accords.⁴⁸
46. MINUGUA opened its offices in Guatemala on November 21, 1994, a full eight months after the CAHR was signed. During the delay, serious human rights violations continued, with acrimonious exchanges between the Parties on this and other issues, and civil society groups urging prompt action by the UN. After the June signing of the controversial agreement to create the Historical Clarification Commission (see below), the negotiations stalled once again, and the General Assembly delayed approval for the Mission in part to pressure the Parties to resume serious talks.⁴⁹
47. The Accord makes brief mention of the need for a national verification mechanism, but none was ever established.⁵⁰ The government did some reporting on advances, from its perspective, through its Peace Secretariat, while the multisectoral "Follow-Up Commission" (both established in the Calendar Agreement) made occasional statements on advances and problems.

Opponents and Proponents of the Comprehensive Agreement on Human Rights

48. In general the strongest opposition to including human rights issues in the accords came from powerful, hard-line forces in the military and the private sector. Strongest support came from the URNG, the Catholic Church, victims and human rights groups, a broad range of other civil society organizations, and some political parties, with the international community playing a vital role, as well. For the most part, the greatest difficulties in approving this and other accords were more rooted in political and ideological factors, rather than in specific technical or substantive issues.

⁴⁶ Exhumations should have led to immediate investigations by the Prosecutor, but in all but a very few cases this has not happened. See, MINUGUA, "Verificación del debido proceso en los casos de masacres cometidas durante el enfrentamiento armado interno", Nov.2004.

⁴⁷ Successive draft texts of the language on international verification (unpublished). A special agreement on security arrangements was signed between MINUGUA and the government in Feb. 1995.

⁴⁸ MINUGUA (internal document), "Final Report on the MINUGUA Trust Fund," Nov.2004. For an excellent discussion of the practical relationship between the verification and institutional strengthening functions, see Franco and Kotler, *op.cit.*

⁴⁹ Franco and Kotler, *op.cit.*, p.46.

⁵⁰ CAHR, Article 10, par. 1.

49. The Army strongly held (and still holds) that it soundly defeated the guerrillas on the battlefield, and was particularly concerned that the insurgents not be able to use the negotiations and the accords as a way to increase their military strength or to turn their military defeat into a political victory. Together with the organized private sector, they maintained that human rights violations were caused by the armed confrontation, that the subversives kept the country submerged in violence even after democratic elections and the return to constitutional rule, and that the solution to the human rights problems lay in disarming the subversives, declaring an end to the conflict and granting a general amnesty. As mentioned above, these same forces also opposed bilateral negotiations with the URNG on the substantive agenda (see note 20). Reflecting this position, as late as November 93, the Guatemalan government proposed to reorganize the negotiations, leaving out a human rights agreement, arguing that such an agreement was unnecessary since it had reaffirmed respect for human rights principles and norms in Guatemala in a previous declaration, “without any need for an accord or understanding with any faction.”⁵¹
50. Regarding specific contentious issues, in addition to the Civil Patrols and the applicability of international humanitarian law, very few other issues were the cause of the considerable delays in signing the human rights agreement. The UN played a key role in developing a draft for the agreement in early 1992, many elements of which made their way into the final text.⁵² But the process repeatedly stalled for political reasons and finally stopped over the question of the creation of a commission to investigate past human rights violations. The Army strongly opposed any commission of this sort, while the URNG considered its inclusion to be non-negotiable. The human rights agreement was finally signed after the Parties agreed to treat the issue of a truth commission in a separate accord to be signed three months later, with the Army yielding in principle on the creation of such a commission and the URNG accepting that its findings not “individualize responsibility”, nor carry judicial effects (see below). Other important points of contention arose around defining the nature (national or international; special or already existing mechanisms) and timing of verification (to enter into effect immediately or after the final peace was signed). While controversial, these issues had been substantially resolved at least a year before the agreement was signed.⁵³
51. In general, the UN and the international community played a central role in shaping the contents of the peace accords, for human rights, as well as all of the others, and it would be difficult to overestimate their importance in the peace process. Many analysts consider them to have been a “third party” at the table, in many instances compensating for the relative weakness of the URNG (especially militarily and its inability to hold significant territory).

CURRENT PROTECTION ISSUES IN THE PEACE AGREEMENT

52. In addition to international verification, the CAHR emphasized strengthening national human rights and justice sector institutions. The Agreement on Strengthening Civilian Power and Role of the Army provided for judicial reform, the creation of an entirely new civilian police force, and broad transformation of the military.

⁵¹ Presidencia de Guatemala, “Declaración oficial de derechos humanos,” Oct. 1993; par.1 (photocopy; translation is mine). Curiously, the rest of the text of this declaration is virtually identical to the text of the pre-agreement with the URNG that was on the negotiating table at that time, except for the question of verification. On this issue the declaration thanks the UN for the support of its independent expert for Guatemala and the OAS for the work of the Inter-American Commission for Human Rights in their ongoing verification of the human rights situation in the country, and requests that those mechanisms continue to provide advice and verification.

⁵² The draft was prepared by Francesc Vendrell, UN Observer, García-Sayán, UN advisor, and Mons. Quezada, in a working meeting in Miami, according to García-Sayán, Diego, *Vidas paralelas, Región andina: desafíos y respuestas*, Comisión Andina de Juristas, 1998; p.91.

⁵³ Draft accord dated April 1993, unpublished.

International Verification as a Mechanism of Current Protection

53. International verification focused on the human rights issues covered in the CAHR and the Indigenous Rights Accord for the two years before the Agreement for a Firm and Lasting Peace was signed, at which time MINUGUA's mandate was expanded to include verification of all of the accords, both substantive and operational. At its peak in 1999, MINUGUA had 16 field offices and 550 staff, with 310 internationals and 240 nationals, including a small group of international military (21) and police (50) observers.⁵⁴ In most general terms, its verification work was aimed at ensuring both respect for the rights covered in the accords, as well as compliance and advances in the many other specific commitments.
54. Initially MINUGUA's human rights verification focused almost entirely on case work, which formed the basis for its public reporting and for its more discreet meetings with the Parties. Case work was also used throughout to identify systematic and systemic problems in the police, the Public Prosecutor's Office and the courts, providing useful inputs for designing or modifying sectoral reform processes and for identifying priorities for international cooperation. No evaluation or review has been done on the direct impact on the specific cases that were verified, but there would probably be general agreement on the following insiders' view regarding the importance of the Mission's human rights reports, especially in the first years:
- ...the public reporting process was essential...it served as an incentive for good behaviour, keeping both Parties on notice that violations would be made public. The reports also focused national attention on human rights, and in particular on the issue of impunity. This focus helped to legitimate a human rights discourse previously labelled as subversive, and helped to move the public debate toward a common diagnosis of the problems to be overcome.⁵⁵
55. Over time, case verification ceased to produce new insights into the workings of impunity or the obstacles for achieving greater protection and respect for human rights. The Mission gradually moved to complement case work with broader analyses, and in 2000 began to produce thematic situation reports, based not only on cases, but other forms of verification such as on-site visits, meetings with officials, and statistical information. These reports generally allowed a more integrated approach, dealing with complementary commitments in several different accords. Human rights issues covered in this way included: the justice sector, the prison system, children, and two reports each on exhumations and lynchings. Other parts of the Mission also produced excellent thematic reports on peace accord issues, including indigenous peoples and discrimination, labor, housing, education, fiscal policy, land, rural development, conflictivity, the National Civilian Police, and military reform.⁵⁶
56. Early attempts were also made to verify some parts of the Indigenous Rights Accord using a case-based methodology, with a focus on discrimination, but this proved to be very limiting, as few cases were presented.⁵⁷ The Mission began to include an analysis of discrimination throughout its human rights verifications, seeking to detect, document and help correct injustices, especially with respect to access to justice, treatment by police and justice sector officials, etc.⁵⁸ Once the full Indigenous Rights Accord came into effect, specific verification tended to focus on the functioning of the many special commissions set up under the Accord, arguably to the detriment of follow through on more structural issues.

⁵⁴ MINUGUA, internal documents.

⁵⁵ Franco and Kotler, *op.cit.*, p.50.

⁵⁶ See MINUGUA website, where several of the reports are also available in English.

⁵⁷ Even today there are still few denunciations of discrimination by indigenous people, although a few high-profile cases have been taken to the courts in the past two years; the phenomenon is so widespread that it has been internalized as "natural" both by the victims and the victimizers.

⁵⁸ Franco and Kotler, *op.cit.*, p. 55.

57. MINUGUA's regional field offices were essential for its verification work and allowed the Mission to become one of the few institutions in the country that could draw on significant empirical input from around the country for its analyses of a range of issues.⁵⁹ The Mission's field presence was also valued by civil society groups and vulnerable populations in particularly conflictive parts of the country, since it served a protective and/or dissuasive function around human rights violations.

Strengthening of National Institutions: the Human Rights Ombudsman

58. The Human Rights Ombudsman (Procurador de los Derechos Humanos, PDH) was created in the 1985 Constitution, with a broad mandate to receive, investigate and follow-up on complaints, to resolve on cases of human rights violations and direct the responsible State institution to correct its actions, to educate the public on human rights and generally to act as a people's advocate.⁶⁰ His role covers all of the rights recognized in the Constitution and the ratified international instruments. Authority is vested directly in the Ombudsman, not the institution that he heads. This has meant that the personality and individual priorities and interpretations of each Ombudsman have enormous impact on how those functions are engaged and implemented, impeding more consistent institutional development. As with many other state institutions, it is chronically underfunded and forced to complement its budget with international funds. When international verification began, about two-thirds of the 300 PDH staff was concentrated in the capital, with the rest in precariously staffed regional offices; today, while most of the PDH's limited technical resources are still concentrated in the capital, about half of the 500-plus staff (many of them human rights educators) is posted in the 28 field offices.

59. MINUGUA was mandated to strengthen the PDH. Nonetheless, over the entire period, even during the negotiations on the CAHR, each Ombudsman expressed (public or discreet) displeasure or outright opposition to the presence of an international verification mechanism.⁶¹ They argued that its very existence weakened the authority and legitimacy of the PDH and that the major international resources that sustained the UN Mission should have gone to strengthen the PDH. Requests to MINUGUA from the three Ombudsmen who held office during the Mission's ten years in the country, consistently focused on cars, computers and radios, expressing little interest in more substantive interactions. In general, it was extremely difficult to establish a relationship as equal colleagues between the two institutions, given both the huge difference in resources and staff professional levels, as well as other more subjective factors, such as different institutional cultures and dynamics, as well as the arrogance of some UN staffers (and the symbolic power of those big white cars).

60. In practice, while MINUGUA was to give priority to strengthening the PDH, the relationship between the two institutions was always troubled. In general, relationships were closer between the respective field offices than at headquarters level. During most of MINUGUA's operations, people who brought human rights complaints to the Mission were encouraged to take them to the PDH as well, and were often accompanied by Mission staff to that end. Formal pilot projects for joint verification work were started in two provinces in MINUGUA's first year, but fizzled out, in part due to the different procedures for case verification, in part due to institutional

⁵⁹ Much of the analysis produced in Guatemala suffers from the country's exaggerated centralization and tends mostly to reflect the situation in the capital.

⁶⁰ The Ombudsman is elected by Congress for a five-year term and formally serves as an autonomous commissioner of the Congressional Human Rights Commission.

⁶¹ Very early drafts for the CAHR proposed that the PDH alone assume verification of the Accord. This idea was dropped both because of the legal complications implicit in the Ombudsman being a commissioner of the Congress, the need for legislation to change his mandate, and the (paradoxical) reticence by the Ombudsman at that time to assume the functions. Personal communication, Hector Rosada and draft CAHR texts (unpublished).

rivalries. Informally, over the entire period of the UN Mission, much information was shared on cases and investigative strategies between the two organizations at the field level; staff of the two institutions often travelled together to conflict sites or to investigate complaints, in the Mission's vehicles, as few PDH outposts had functioning vehicles. Throughout, MINUGUA advocated for larger budgetary assignments for the PDH and encouraged international donors to provide additional support. Through its Trust Fund, MINUGUA provided funds to the PDH to help create an Indigenous Rights Defence section.

61. In the Mission's final two years, new formal agreements were signed between MINUGUA and the PDH as part of the Mission's close-out, transition plan. These included agreements for renewed joint verification; a large-scale, decentralized training program for virtually all field staff to improve human rights verification and strengthen capacity on other peace accords; and other technical assistance, especially on information systems. This work directly involved nearly all Mission staff, produced some successes and other failures, and in general, was too little, too late. The Ombudsman had announced in 2003 that he would take over follow-up verification of pending peace accord commitments, but never created the institutional capacity to do so. At the end of the UN Mission, the PDH is stronger and more effective than it was in 1994 (although still quite weak in relation to the demands of fulfilling its essential mandate). That said, it is not clear how much of a role the UN actually played in that process.

Justice Sector Reform

62. The Historical Clarification Commission offered scathing conclusions about the justice system in Guatemala during the armed conflict:

Acts and omissions by the judicial branch, such as the systematic denial of habeas corpus, continuous interpretation of the law favorable to the authorities, indifference to the torture of detainees and limitations on the right to defense demonstrated the judges' lack of independence. These constituted grave violations of the right to due process and serious breaches of the State's duty to investigate, try, and punish human rights violations....

The justice system, nonexistent in large areas of the country... was further weakened when the judiciary submitted to the requirements of the dominant national security model... by tolerating or participating directly in impunity...the judiciary became functionally inoperative with respect to its role of protecting the individual from the State, and lost all credibility as guarantor of an effective legal system. This allowed impunity to become one of the most important mechanisms for generating and maintaining a climate of terror.⁶²

63. As a legacy to the armed conflict, then, justice sector institutions were extraordinarily weak, inefficient and open to corruption and tampering from military, political and economic elites. To address this situation, broad reform measures were included in the Agreement on Strengthening of Civilian Power and the Role of the Army in a Democratic Society. In addition, in a parallel process to the peace negotiations, in 1994 Congress had approved a new Criminal Procedure Code that introduced many human rights and due process guarantees and eliminated the inquisitorial system, in place since colonial times. It was hoped that with the signing of the peace accords, justice reform would move forward steadily and be a key factor in human rights protection and in eroding the practices that ensured impunity.
64. The Civilian Power Accord prioritized justice reform measures "to put an end to inefficiency, eradicate corruption and guarantee free access to the justice system, impartiality in the application

⁶²Historical Clarification Commission, *Conclusions and Recommendations*, par. 94 and 57.

of the law, judicial independence, ethical authority and the integrity and modernization of the system as a whole.” In addition, it called for specific constitutional and legislative measures to:⁶³

- Create a judiciary career to guarantee the independence and impartiality of judges.
- Create an autonomous and independent Public Defender's Office to provide legal assistance to those who cannot afford their own counsel.
- Reform the Penal Code to: prioritize criminal prosecution of the most serious offences, respect the country's customs and cultural differences, fully protect human rights, and characterize threats and coercion of judicial personnel, bribery, graft and corruption as particularly serious offences to be severely punished.
- Provide the Judiciary and the Public Prosecutor's Office with required financial resources.
- Expand coverage, provide multilingual services, and recognize indigenous legal systems.
- Implement an effective protection plan for witnesses, prosecutors, and individuals who cooperate with the justice system.
- Create a Commission on the Strengthening of the Justice System, with State and civil society members to make recommendations on: modernization, access to justice, streamlining procedures, professional excellence, and ways to ensure citizen participation in the judicial reform process.

65. There has been important progress on the justice sector issues covered in the Civilian Power Accord. Some of the most notable advances include: creation of the legal and administrative framework for the reform of the sector (Judiciary, Public Prosecutor, Public Defender Institute, and penitentiary system); modernization plans defined for the Supreme Court, Public Ministry and prison system; advances in justice sector coordination, both centrally and locally; greatly increased territorial coverage of the judiciary at the municipal level; creation of a free public defenders service; increased space for civil society proposals and monitoring of the justice system, both centrally and locally; increased numbers of court interpreters and judiciary officials who speak indigenous languages; reform of procedures for selecting judges and magistrates; and passage of the Judicial Career Law and Judicial Systems Civil Service law.⁶⁴

66. The Commission on the Strengthening of the Justice System continues to function and has been one of the most productive of the dozens of mixed, national commissions formed under the peace accords, producing excellent studies and recommendations for the reform process. MINUGUA and other specialized institutions also produced numerous studies, identifying weaknesses and needs, and providing concrete support. In general, justice reform has been one of the strongest priorities of the international community, which has provided much technical assistance and invested some US\$110 million in the judiciary over the past decade. About 40% of the funds were provided as donations from major bilateral donors and the rest as loans from the World Bank and the Inter-American Development Bank.⁶⁵ The Public Prosecutor's Office has also received significant international support. While much of the loan money has gone for infrastructure and technical modernization, which has helped improve territorial coverage of the judiciary, significant funds have also been used for all of the other aspects of the proposed reforms.

⁶³ Agreement on Strengthening of Civilian Power and the Role of the Army in a Democratic Society, Article 3.

⁶⁴ For an excellent review of justice sector reform, see, “Informe de Seguimiento de la Reforma Procesal Penal en Guatemala,” in *Revista Justicia Penal y Sociedad*, No.19, 2003; in addition, see, MINUGUA, 14th report on human rights; UN General Assembly, A/58/566; par. 32. It is important to note that even with regard to the advances mentioned, progress has been partial and insufficient on all issues.

⁶⁵ Personal communication, Helen Mack, member of the Commission on the Strengthening of the Justice System.

67. Nonetheless, progress faltered in 2000, and now, according to MINUGUA, implementation of the reform process is “slow and uneven, hampered by internal and external opposition to change, a lack of qualified personnel, frequent changes in senior leadership and, in recent years, inadequate budgets.”⁶⁶ Judicial reform remains one of the major frustrations of the peace process. MINUGUA summarized the situation this way in its final human rights report:

The loss of momentum for the reform of public security and justice institutions has undermined hopes for improving the fragile human rights situation in Guatemala. The deterioration of the National Civilian Police and slow modernization of the courts and the Public Prosecutor’s Office have undermined key commitments of the peace agreements: there has been almost no significant progress in combating impunity or eliminating clandestine groups; human rights defenders and judicial sector officials remain subject to ongoing threats, harassment and, in some cases, fatal attacks; and systematic discrimination against indigenous communities continues unabated⁶⁷.

68. Today the workings of the justice system (including the Judiciary, Police and Public Prosecutor’s Office) are the greatest source of impunity in cases of human rights violations, far more important towards this end, than the amnesty provisions in the National Reconciliation Law (see below). A recent analysis of six major human rights cases, which have been in the courts for years, identified a series of mechanisms used to obstruct and prevent justice. These “technical” problems, combined with persistent intimidation and threats against plaintiffs, prosecutors and judges (or in extreme cases the physical elimination of judges, investigators or key witnesses) are the “gears” of impunity. ⁶⁸ While further advances in the reform and modernization process are essential, what has been lacking throughout is the political will to attack the structural issues, ensconced powers, and remnant ties to current and past military intelligence operatives, which are the deepest and most resistant impediments to the proper functioning of justice.

Police Reform

69. For decades the National Police and its special detective forces were largely managed as an appendage of the military, implicated in many human rights violations and were corrupt to the core. Recognized as a central problem in the peace process, this same Accord called for the creation of an entirely new National Civilian Police (PNC), encharged with maintaining public order and internal security. The Accord included organizational guidelines for the new PNC and called for the creation of a Police Training Academy, a police career track, and the development of a multicultural police force.
70. The PNC was established in 1997 and reached peace accord-mandated force levels in 2001. The Police Academy and professional career were created, and a program was developed to facilitate recruitment of indigenous officers. The government chose the Spanish Guardia Civil to provide initial training for the new police, and the European Union established a 32 million Euro, five-year program for the PNC. The US spent some US\$11 million in the period 1997-2000, focusing mostly on specialized training for criminal investigation and other technical assistance; later aid

⁶⁶ MINUGUA, 14th report on Human rights, *op.cit.*, par. 33.

⁶⁷ *ibid.*, par. 52.

⁶⁸ Fundación Myrna Mack, *Apuntes sobre los engranajes de la impunidad en casos de violaciones de derechos humanos en Guatemala*, Guatemala, 2004; pp.69-71. This study identifies these major obstacles: prosecutors’ decisions to exclude the possibility of a political motive, even before an investigation, thereby distorting or delaying those investigations; deficiencies in the investigation, especially regarding treatment of the crime scene and physical evidence, often including deliberate tampering at the scene; alternation and loss of evidence once it is in competent hands; admission of dozens of baseless *amparos* and procedural reviews, and excessive delays in making final rulings on these (which commonly takes several years); and judges’ unwillingness to use the coercive powers of the courts to review State documents classified by the military as secret.

centered on drug interdiction.⁶⁹ About 20% of the MINUGUA Trust Fund went to projects for the PNC (mostly with Norwegian and Swedish donations), directed toward the Police Academy and training in human rights, creating administrative controls, and increasing the multi-ethnic composition of the Police. In general, international support for police reform was less forthcoming than for many other peace accord issues.⁷⁰

71. Initial progress was considered to be significant, but problems quickly arose. Perhaps one of the most important issues was the decision, supported by the URNG during the negotiations, to permit the “recycling” of members of the former National Police and the Treasury Police into the new PNC, with no review to identify and vet human rights violators or corrupt officials. By the end of 1999, about 70% of the members of the PNC had previously served in these disbanded forces, notorious for their corruption and human rights violations; the induction of new recruits has now cut that figure in half, but the percentage climbs for higher ranking members.⁷¹
72. MINUGUA considered the current situation of the PNC to be “one of the most serious setbacks for the peace process.”⁷² About 12% of the current force has been implicated in major violations of police regulations and/or serious criminal actions. The MINUGUA report cites several reasons for the rapid deterioration of the PNC. These include chronic under-funding, ad-hoc policies, constant changes in senior leadership, recruitment policy (mentioned above), insufficient force size, understaffing, under-resourced and unqualified staff for the Criminal Investigation Service, and inadequate supervisory and disciplinary mechanisms.⁷³
73. With the failures of the police to provide security for the population, in a context of spiralling delinquency and organized crime, the government has turned increasingly to the Army to shore up police action with joint patrol operations, and even for criminal investigations. This trend has increased in the past year, and in a similar vein, the latest PNC Director has appointed several recently retired, mid-level Army officers to key leadership posts in the police, reversing years of efforts to remove military influence in public security forces.

Military and Intelligence Reform

74. The Agreement on Strengthening of Civilian Power and the Role of the Army in a Democratic Society laid out a series of measures to transform the military for peace time, eliminate military participation from what should be civilian functions in the State, restructure and regulate intelligence functions and structures, and generally, ensure civilian control over the military. It defines the Army’s function as defence of the country’s sovereignty and territorial integrity. The many specific commitments on the Army refer to reducing force size and budget; defining a new doctrine and educational system for a peacetime army, respectful of human rights, of the Constitution, and in the spirit of the peace accords; reorganizing territorial coverage to respond to its functions and doctrine; and promote legislation to regulate conscription and permit alternative social service. It makes no provision, however, for vetting of any kind to address the problem of serious human rights violations, crimes against humanity and acts of genocide committed by members of the military still active and in command posts.⁷⁴

⁶⁹ WOLA, “Rescuing Police Reform: A Challenge for the New Government,” pp. 47-49.

⁷⁰ *ibid.* p.5.

⁷¹ *ibid.* pp. 1-2. Information on current percentage, MINUGUA, 14th Report on Human Rights, *op.cit.*, par.27.

⁷² MINUGUA, 14th Report on Human Rights, *op.cit.*, par.25.

⁷³ *ibid.*, par. 26-31. During the last government, there were four Interior Ministers and eight PNC Directors; in the first year of the current government there were two Interior Ministers and two PNC Directors.

⁷⁴ Agreement on Strengthening of Civilian Power and the Role of the Army in a Democratic Society, Article IV.C.

75. There have been many important changes, leading to a tangible limitation on the Army's influence in matters of State. The Army is now smaller than required by the peace accords, a new doctrine has been defined in the spirit of the accords, and several State institutions previously under military control (National Geographic Service and a television channel, for example) have been converted to civilian control. But the process is not complete. Educational reform is still incipient, with the new curriculum including human rights and international humanitarian law. Nonetheless, there has been no critical discussion of what went on during the armed conflict, and many recently graduated officers still argue that the violations were necessary to defend the Constitution. In 2004, the government finally eliminated the Presidential Chief of Staff (Estado Mayor Presidencial, EMP), formally in charge of presidential security, but most notorious for its role in countless covert, repressive operations during the conflict and after; unfortunately, many of its members have been relocated into security posts in other State institutions. Some mandated changes, such as permitting a civilian Minister of Defense, required constitutional reform, and were part of a large package of peace-related reforms that were voted down in the constitutional referendum held in 1999.
76. Little has been accomplished on intelligence reform. A Secretariat for Strategic Analysis under civilian control has been created, but is consistently under-funded and remains very weak. The necessary legislative proposals have been produced after hundreds of hours of discussions between civil society organizations, the military and other representatives of the State, dealing with issues such as freedom of information, regulating State and military classification and declassification, creating civilian security structures and integrating them into a single intelligence system, and establishing democratic controls over these structures. Not one has been approved by Congress. All of these issues are fundamental for the democratization process, for limiting possibilities for non-recurrence of massive human rights violations, and in moving forward in the efforts against impunity⁷⁵

Economic and Social Rights

77. A specific accord was signed to address economic and social issues, considered to be among the most important causes of the armed conflict. This very extensive text deals with everything from education, health, housing, labor, women's rights, land and rural development issues, to taxes, government spending, public administration, and decentralization. For some issues it established concrete goals (for coverage, percent increases in State spending, etc.), for others it provided statements of principle or policy guidelines, proposed legislative measures, or called for the creation of new institutions (for example, for financing land purchases for peasants and another for resolving land conflicts). A strong emphasis on citizen participation is present throughout. In general, while many social and economic rights are covered, the language of the Accord does not assume an explicit rights-based approach to these issues, but rather frames the commitments as important for improving the common good, combating poverty, or increasing productivity.
78. This Accord was one of the most criticized by civil society groups, who generally felt the measures included did not go far enough to address the profound disparities in society.⁷⁶ In particular, the measures on the agrarian situation fell short of the expectations for agrarian reform, emphasizing instead market-based mechanisms, the regularization of titles,

⁷⁵ The Army has used the argument of state secret to avoid providing documentation to the courts in human rights cases, or even to permit budgetary review by Congress, covering up suspected large-scale corruption.

⁷⁶ This Accord was signed in the home stretch of the negotiations, when there was a clear political decision by both Parties to finalize everything by the end of the year, leading to a greater willingness on the part of the URNG to compromise, even on some key issues. The discontent over this Accord was also felt internally in the URNG, leading to the resignation of its Political Commission, which, together with the commanders-in-chief of each of the insurgent organizations, had participated in all of the negotiations until that time.

modernization of the cadastre, conflict resolution, and the definition of a public policy for integrated rural development. Even so, and despite strong peasant organizations and significant international pressure, advances in this area have been quite limited, restricted mostly to ongoing and inconclusive dialogue on rural development policy, pilot projects for the cadastre, the creation of a trust fund for land purchases (FONTIERRA) and a center for dealing with land conflicts (CONTIERRA).⁷⁷ The international community has consistently funded these measures, often with negligible State counterpart funding, and has exerted important pressure for further compliance on land issues, especially on the cadastre, with little effect. Obstacles to implementation in this area are multiple and include the general disorganization of the relevant State institutions, and most importantly a lack of political will and deeply entrenched resistance to dealing with land issues among the economic and political elites, who continue to insist on the criminalization of land conflicts and repression of peasant demands.

79. Paradoxically, for this least “revolutionary” of the accords, implementation has proven to be difficult and very partial, even for very basic measures such as educational reform or improving health statistics. The enormous deficits in economic, social (and cultural) rights, together with impunity, represent the country’s most glaring human rights problems as the peace process moves into its third decade. In addition to the negative factors mentioned for land issues, one of the major impediments has been an inability to reform fiscal policy as called for in the Accord.⁷⁸ Guatemala continues to have one of the lowest tax bases in the world, and has been unable in 8 years to meet the goal of tax revenues at 12% of GDP, as established in the Accord. This has meant both that the State has very limited funds available for social investment or other reform processes and that it has been able to cover a lack of political will to move forward on hard issues by pleading insufficient funds.
80. Despite these difficulties and shortcomings in implementing the socio-economic agreement, it has provided a vital framework for civil society advocacy on these issues and has slowly gained recognition and legitimacy within the State and even the more modernizing sectors of the business elites as a reasonable agenda for modernization. And despite the complexities posed for the verification of such a multifaceted Accord, MINUGUA reports on socio-economic issues helped goad progress, provided a tool for civil society participation and gave orientation to the international community. More generally, MINUGUA’s work in this regard allowed the UN to have a permanent, independent and authoritative voice on these issues, serving as a constant reminder that a firm and lasting peace depends on providing solutions to overcome deep social, economic and cultural inequalities.

SPECIFIC PROTECTION ISSUES

Indigenous Peoples Rights

81. The Agreement on Identity and the Rights of Indigenous Peoples is a far-reaching document aimed at overturning the country’s deeply entrenched racism, discrimination and exclusion of indigenous peoples (Mayans, Xincas and Garifunas), who make up about 60% of the population. It includes measures to: recognize the identity of indigenous peoples and formally establish that Guatemala is multi-ethnic, pluricultural and multilingual; combat discrimination, especially against Indigenous women; and promote cultural rights, indigenous languages, spirituality, and science, protection of and access to sacred sites, the use of traditional dress, education and other social, economic and civil rights, traditional law, and land rights. The Accord also established numerous commissions, with indigenous and State representation to develop the specific

⁷⁷ Once created, these institutions have been seriously underfunded and at times on the verge of collapse.

⁷⁸ Attempts at tax reform in Guatemala over the past 40 years have meant early retirement for several Finance Ministers, provoked coup attempts, and even brought down a dictator (Ríos Montt, in 1983).

proposals to deal with each of these issues; while these structures were successful in opening venues for greatly increased indigenous participation on public policy, very few of their consensual proposals have been implemented, pending congressional approval, thus revealing what may be considered a major flaw in the design of the Accord.

82. After long debates, in 1996 Congress ratified ILO Convention 169, although adding a preamble to the resolution that sought to limit land claims (as yet untested). The Convention provides the framework for many of the measures identified in this agreement, and organizations are beginning to demand implementation of the consultative provisions contained therein. There have been other important advances, as well, notably around access to justice, legislation to criminalize discrimination, more bilingual education and advances in educational reform, and access to sacred sites. Nonetheless, the many structural issues at the heart of the Accord remain unresolved. Several specific commitments required constitutional reform and were turned down in the 1999 referendum; most, however, depend to a large degree on the firm decision by the State to press forward on the issues.⁷⁹ In retrospect, it is hard to imagine how the Parties believed that all provisions could be implemented in four years, given the nature of racism and systemic *de facto* discrimination. Despite its complexity and mixed results to date, this agreement still provides an invaluable platform for advancing indigenous rights and work to implement it has placed the debate on these issues firmly in the public sphere.

Women and Women's Rights/ Children's Rights

83. No specific mention was made of women or women's rights in the CAHR, although some important aspects are taken up in the Agreement on Resettlement of Uprooted Populations, in the Agreement on Identity and Indigenous Peoples' Rights, and in the Socio-Economic Agreement. In particular, the Socio-Economic Agreement includes a substantial section on "Women's Participation in Economic and Social Development," which begins by recognizing the State's obligation "to promote the elimination of all forms of discrimination against women," and goes on to recognize the equal rights of women in the home, the work place and political life. Most specifically, the government committed to "revising national legislation and regulations to eliminate all forms of discrimination against women regarding economic, social, cultural, and political participation, and to make effective government commitments deriving from the ratification of the Convention on the Elimination of All Forms of Discrimination against Women."⁸⁰
84. The Resettlement Agreement deals most specifically with questions of access and participation, and states that "the Government commits to eliminate any form of *de facto* or *de jure* discrimination against women with regard to access to land, housing, credits and participation in development projects. The gender-based approach shall be incorporated into the policies, programs, and activities of the comprehensive development strategy [for reintegration]."⁸¹ Similar language with regard to access for women was included in the Socio-Economic and the Indigenous Rights Agreements. MINUGUA's last comprehensive verification report on women indicated that there had been significant, although uneven, compliance, especially for returned refugee women, on the question of access to land and land titling.⁸²

⁷⁹ For a fuller discussion of the Indigenous Accord and the situation of indigenous peoples in Guatemala, see MINUGUA, "The Indigenous Peoples of Guatemala: Overcoming Discrimination in the Framework of the Peace Agreement," Verification Report, Guatemala; September 2001; and Report of the Special Rapporteur on the Situation of Fundamental Freedoms and Rights of Indigenous Peoples; February 2003.

⁸⁰ Agreement on Social and Economic Aspects and the Agrarian Situation, Article I, Section B. par. h.

⁸¹ Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, Article III, par.8.

⁸² MINUGUA, "Los desafíos para la participación de las mujeres guatemaltecas," Informe de Verificación No.9, Guatemala, March 2001.

85. The Indigenous Rights Accord includes a section on the “Rights of Indigenous Women,” which recognizes the particular vulnerability and double discrimination of indigenous women. As specific measures to address this situation, the government promised to “promote legislation to classify sexual harassment as a criminal offence, considering as an aggravating factor in determining the penalty for sexual offences the fact that the offence was committed against an indigenous woman” and to create an Office for the Defense of Indigenous Women's Rights.⁸³
86. In all three accords there is a strong emphasis on women’s participation in a variety of arenas, and this may well be the area in which most progress has been made, especially through the creation of a Presidential Secretariat for Women, the National Women’s Forum, and the inclusion of representatives of women’s organizations in the formal system of decentralized development councils. These bodies and the strong non-governmental networks of women’s organizations have had important successes in promoting legislative and regulatory reforms on a variety of relevant women’s rights issues, although representation of women in many important decision making bodies is still quite limited, and daily, de facto discrimination of women remains deeply ingrained in the country’s culture and institutions.⁸⁴
87. In interpreting the accords, MINUGUA considered that it had a clear mandate for verification of children’s rights based on: the general commitment in the CAHR that covered the rights of children (through both Constitutional provisions and the fact that Guatemala had ratified the Convention on the Rights of Children); the language in that Accord conferred a priority on vulnerable populations; and the inclusion of a broad range of cultural rights in the Indigenous Rights Accord.⁸⁵ However, there are few explicit provisions in any of the accords on children and children's rights, beyond providing education,⁸⁶ improving the health care system, monitoring workplace protection, strengthening bilingual education for indigenous children, and enacting administrative measure to ensure that children born in uprooted families outside the country are registered as native-born Guatemalans.

Return of Refugees and Displaced Persons

88. With the return to civilian rule in 1986, the Guatemalan and Mexican governments intensified efforts to encourage refugees to repatriate. Small numbers of families began to trickle back in this way, sometimes being allowed to return to their home communities, but often being relocated to Army-controlled model villages.
89. As an alternative to individual repatriation, refugees in the camps began to organize for a collective and dignified return. They formed the Permanent Commissions (Comisiones Permanentes, CCPPs) as their official representatives and, with support from UNHCR, entered into direct negotiations with the Guatemalan and Mexican governments to establish the

⁸³ Agreement on Identity and the Rights of Indigenous Peoples, Art.II, Section B, par.1. The Office for the Defense of Indigenous Women’s Rights was created in 1999, but has suffered from insufficient funding and organizational problems, which has limited both its territorial outreach and its effectiveness. Sexual harassment has yet to be typified as an offence.

⁸⁴ MINUGUA, “Los desafíos...,” *op.cit.*

⁸⁵ MINUGUA, “Situación de la niñez y la adolescencia en el marco del proceso de paz de Guatemala,” Informe de Verificación No.6, Guatemala, December 2000.

⁸⁶ The Socio-Economic Accord nowhere explicitly recognizes the rights of children to education. The specific commitments on educational coverage were some of the weakest in the accords, promising only that “by the year 2000, the Government undertakes to provide access, for all those between ages 7 and 12, to at least three years of schooling;” (Art.II, Section A, par. c. I), less than what is guaranteed in the Constitution.

conditions for their return.⁸⁷ Negotiations culminated in 1992, with the signing of the “October 8 Accords”, and organized returns began in 1993. The October 8 Accords set important precedents for the Agreement on Resettlement of Populations Uprooted by the Armed Conflict, establishing that return was voluntary and recognizing the rights of returnees to life, freedom of organization and expression, and land.

90. The Agreement on Resettlement of Populations Uprooted by the Armed Conflict came into effect after much of the return and repatriation process had already happened. Thus, it defined “uprooted populations” to include refugees, returnees, and the internally displaced, whether dispersed or in groups, including the Communities of Population in Resistance (CPR). It established the following principles and guarantees: the right to live and reside freely in Guatemala, the right to a voluntary, secure, and dignified return, be it to their home communities or to another place of their choice; strict respect for human rights; protection for families headed by women; respect for the cultural rights of the indigenous; and the right to participate in decisions on resettlement policies and projects. The government committed to replace or provide personal documentation (identity cards, birth certificates, etc.) for all of those uprooted, and to promote legal measures to protect the rights of return to the lands they had left or to provide adequate compensation. For those who owned no land before fleeing, the government would identify lands that could be purchased and provide financing for them. The Accord also emphasized that assistance projects would be non-discriminatory, so as to facilitate reconciliation with the populations already living in the communities or in neighbouring villages, and established a Trust Fund for these projects under UNDP administration. A technical commission (CTEAR) to oversee implementation of the Accord was established with equal representation of the government, the uprooted and the international community (in a consultative capacity); the CTEAR continues to operate and is considered to have been a key factor in resolving both political and technical problems throughout the process.⁸⁸
91. In all, some 31,000 refugees participated in the collective return process, which began in 1993 (several years before the end of the armed conflict) and drew to a close in 1998. Another 20,000 people repatriated individually, some of whom received very limited emergency support, while the rest of the refugees chose to stay in Mexico under a naturalization program offered by the Mexican government. In general, only those refugees or internally displaced who were organized in one way or another received significant support for resettlement.
92. While tensions between the military and returnees were strong, especially in the early returns, in general, serious human rights violations were infrequent, as international presence and verification provided a generally effective barrier.⁸⁹ Government credit was provided to acquire lands for those who could not or chose not to return to their original lands or for those who had no land previously.⁹⁰ Recovery of original lands was very complicated for several reasons: irregularities in land tenancy before the exodus, especially in frontier areas where titling was incomplete and lands still being paid off; loss of documentation; spontaneous resettlement; and Army initiatives to resettle some abandoned areas with new, formerly landless population, where

⁸⁷ Precisely because of this participation, the refugees defined this process specifically as ‘return’ as opposed to ‘repatriation’, the latter denoting an individual process in which governmental and UN criteria held exclusive sway.

⁸⁸ MINUGUA, “Poblaciones Desarraigadas,” in *Retomando el Camino: Tareas pendientes en la construcción de la paz*, Feb. 2004; p. 3.

⁸⁹ One particularly tragic exception was the October 1995 massacre in the return community at Xamán, Alta Verapaz. In violation of a key agreement prohibiting Army presence in return communities, the Army entered the community during celebrations marking the first anniversary of the return. When community members objected, soldiers opened fire, killing eleven people, including several children. Charges were quickly brought against the soldiers by the community, but the criminal procedure has been marked by the usual meanderings of the justice system. Almost ten years later, the case is still in the courts.

⁹⁰ MINUGUA, “Poblaciones Desarraigadas, *op.cit.*, p. 2.

they wanted to be assured of a loyal base. Negotiations to recover and establish legal rights for original lands have been difficult, with very diverse solutions, depending especially on original land tenure status and the type of population then living on abandoned lands. Negotiations are ongoing in many cases. In general, those who returned earliest, when government and international attention was focused on these issues, were most successful in recovering property or receiving new lands.⁹¹

93. While the government land programs were a vital part of the return process, conditions in new resettlement communities were generally very difficult, as they had to be built from scratch, with little or no existing infrastructure. Much of the land obtained by returnees was in remote areas, often infertile and over-used plantations, often purchased at greatly inflated prices. Laws to speed the personal documentation process were temporary, and while many thousands benefited under their provisions, many of the internally displaced, especially, have no legal identity.
94. About 20,000 internally displaced, organized as CPR or as part of the National Council of Displaced, were also relocated to new lands under government programs established in the Accords. ⁹² Negotiations with the 3,000 families that comprised the CPR were particularly complicated, as they wished to stay together on lands where they had established their “liberated” communities (or “illegal villages” as the Army called them), which were not their original lands and which had other claimants, generally also internally displaced. Most members of the CPR were eventually relocated to new lands, in other parts of the country.
95. In a final review of the situation of the uprooted, MINUGUA stated that those who benefited from the resettlement programs had been provided with “the minimal conditions for establishing their homes and to begin cultivating,” noting only meager progress on Accord provisions for formal housing, healthcare, education, and integrated development programs, leaving resettlement communities in a situation of similar abandonment to other poor, rural communities in the country.⁹³
96. Besides land/property issues, the most significant tensions around the return process had to do with the sites chosen by the refugees for return, since they were often in areas of relative insurgent strength, sometimes near their home communities, sometimes not. The Army, which generally considered the refugees to be guerrillas or guerrilla supporters, objected to many of the sites, arguing that guerrilla strategy was to create a barrier of resettlement communities around their areas of operations.⁹⁴ In fact, the Permanent Commissions representing the refugees were heavily URNG-dominated and did prioritize return to guerrilla areas, probably in an effort to strengthen their claim to having established territorial control. This caused many delays in returns, which often became the effective strategy for dealing with the situation.
97. Other tensions arose, in some cases, between returnees and the local populations, which could include those who had not fled, others who had quickly returned to their home communities after a brief period of displacement, and/ or others who had settled in the area in the interim. All of them had learned to survive under strict military control, many had assimilated the military’s view of the refugees and displaced as subversives, and some had benefited economically from the abandoned properties. While the Catholic Church and Guatemalan and international NGOs played an important role in mediating some of these conflicts, return to Guatemala was a difficult process for the refugees. They were often viewed with suspicion by neighbouring communities

⁹¹ CEH, Tomo IV, pp. 156-157, par. 4304-4311. Reliable overall figures for percent of recovered lands are not available.

⁹² MINUGUA, “Poblaciones Desarraigadas,” *op.cit.*, p.2; and figure for repatriation from, CEAR, “El Reasentimiento en época de paz,” Guatemala, Oct.1997.

⁹³ MINUGUA, “Poblaciones Desarraigadas,” *op.cit.*

⁹⁴ Héctor Rosada, personal communication.

and the State, and faced an underlying resentment that they had had it easy, that they had left and received support from the international community in exile during some of the darkest and bloodiest times in Guatemala. Despite provisions in the accords to ensure a territorial approach to include all populations in the area in resettlement strategies, the specific support returnees received from international NGOs, governments and the UNHCR, often provoked envy in neighbouring communities living in conditions of extreme poverty themselves. Some of the return programs tried to address this issue by including neighbouring communities and break down the returnee/those who never left dichotomy, with varying degrees of success.

98. The return was particularly difficult for women.⁹⁵ Before the returns began, refugee women, with support from UNHCR and other international actors, were beginning to organize in the camps and to participate in camp decisions-making processes, previously an exclusively male domain. However, on return, the space for women's organizing began to close down, as men reasserted their "traditional" roles within the home and the community, and argued that women's organizations were competing for scarce resources. A focus of women's organizing since return has been to gain access to land, under peace accord provisions, with varying degrees of success.⁹⁶
99. Despite the challenges of the return process, it had defining characteristics that set it apart from other experiences, and for some observers, it sets the standard for future negotiations and preparations for refugee return. The refugees participated directly at the table in the negotiation of the conditions for their return. Dozens of Guatemalan NGOs organized together to support the return and resettlement process. The international community, both governmental and non-governmental, was a very strong partner in the process, working closely with the returnees, providing essential political (and physical) accompaniment and generous funding. The Guatemalan experience is also notable for the exemplary and proactive role played by the UNHCR in support of refugee participation in all decision-making processes, in support of refugee organizing efforts, in particular, women's organizing, and in accompanying and verifying the return process.

DEALING WITH THE PAST

100. Towards dealing with the past, the peace accords included provisions for a truth commission (Historical Clarification Commission, CEH) and reparations; the Parties asked the Congress to deal with the question of amnesty. No other specific mechanisms for accountability or ensuring victims rights were provided for in the accords, but some issues were taken up in the recommendations made by the CEH.

National Reconciliation Law

101. One day after the final peace accord was signed, Congress passed the "National Reconciliation Law," approving a text produced after intense lobbying and extensive negotiations. The law provided for amnesty for political and connected crimes committed during the conflict by the insurgents against "State security, institutional order, and the public administration," as typified in the Penal Code and other national legislation, as well as those perpetrated by the State, in its attempts to "prevent, impede, persecute or repress those political and connected crimes

⁹⁵ It was also very difficult for young people, who had grown up in Mexico with access to education, employment and urban centers, and for whom return to remote rural areas was an alienating and isolating experience. Many went back to Mexico, thus leaving families split.

⁹⁶ It should be noted however, that returnee women's organizations are the only returnee organizations that continue to function in Guatemala. Returnee women have joined forces with other rural women's groups to advocate on a number of key issues, including rural development issues and access to land.

committed by the insurgents.”⁹⁷ Amnesty meant the permanent extinction of criminal responsibility. It stipulated, however, that the amnesty would not apply to “genocide, torture, forced disappearance, or other crimes that are imprescriptable or which do not permit amnesty under domestic law or international treaties ratified by Guatemala.”⁹⁸

102. Amnesty would be granted only after a specific judiciary procedure, with due process guarantees. Upon receiving a case, which might be covered under the amnesty, the Public Prosecutors Office or a judge was instructed to transfer the matter immediately to the jurisdictional Appellate Court, which was to rule within strict time limits. The same article that defined this procedure, also instructed that “all of the crimes that lie outside the parameters of the current law or those that are imprescriptable or do not allow for the extinction of criminal responsibility in accordance with domestic law or the international treaties approved or ratified by Guatemala must be processed according to the Criminal Procedure Code.”⁹⁹ It was this final disposition that led the Historical Clarification Commission to recommend the strict application of the National Reconciliation Law, as a way to call for prosecution of those crimes for which amnesty was not applicable. Nonetheless, there have been no *ex-officio* criminal investigations of imprescriptable crimes.
103. Human rights groups and victims advocates united in a months-long fight against a general, blanket amnesty and then divided in their opinions over the results. Some celebrated the text as a victory, the best that could be hoped for against strong political forces that had advocated a general amnesty as a condition for peace. Others opposed any amnesty for either party and feared that despite the definition of imprescriptable crimes, the courts would grant amnesty anyway.
104. MINUGUA provided training on the law to all Appellate Court magistrates in the months after the law went into effect, to ensure its correct application. To date, the courts have not provided amnesty to anyone on trial for serious human rights violations.¹⁰⁰

The Historical Clarification Commission

105. The “Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer” was the name given to the accord to establish the Guatemalan version of a truth commission. This shortest of accords, with the longest of titles, was the most controversial of the twelve accords and the one that caused the most delay in the negotiations (see above). Wisely, it did not promise reconciliation.
106. The Accord recognized the right of the Guatemalan people to know the full truth about the human rights violations and acts of violence committed during the armed conflict, as a means for assuring non-repetition. The term “acts of violence” was used throughout to refer to actions by insurgents that violated the principles of international human rights and humanitarian law. The objectives of the CEH, as defined, were to:

⁹⁷ Decreto no. 145-1996, Ley de Reconciliación Nacional (27 Dec 1996), Art. 2 and 5.

⁹⁸ *ibid*, Art. 8.

⁹⁹ *ibid*, Art.11.

¹⁰⁰ Nonetheless, the case is not closed on this law. In January 2005, the Constitutional Court (the country’s highest) issued a controversial ruling in a high profile massacre case (Dos Erres) that has been in the courts for years. It ruled that several years of judicial proceedings were invalid because a lower court had not sent the case immediately for review under the National Reconciliation Law, but rather several months into the process. The Constitutional Court based its ruling on this procedural issue, despite the fact that the Appellate Court had denied applicability of amnesty, given the nature of the crimes, when it had reviewed the case several years ago.

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

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

III. Formulate specific recommendations to encourage peace and national harmony in Guatemala. The Commission shall recommend, in particular, measures to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights and to strengthen the democratic process.”¹⁰¹

107. The Army vigorously opposed any accord on this issue, as did many others in the State, arguing that delving into these issues would prevent peace building and bring on revenge, while fearing that it might lead to stronger measures for accountability, including criminal proceedings. The URNG held the establishment of a truth commission to be a non-negotiable part of the peace agreements, but eventually ceded on key issues.¹⁰² After four years of discussions and great behind-the-scenes international pressure, the Parties finally approved a text, which met with generalized rejection from the human rights community and victims organizations. The most controversial elements were the following:

- The Commission could not attribute responsibility to any individuals (that is, it could not name names).
- The findings would not have judicial aims or effects.
- The Commission would have six months, extendible to one year, to carry out its investigations.

108. Earlier government proposals were even weaker, stipulating that the report was to be kept secret for up to 25 years, disallowing the identification of individual *or institutional responsibilities*, and calling for the Human Rights Ombudsman, a generally weak figure, to head the Commission.¹⁰³

109. In the end, the Commission had three members, one appointed by the UN Secretary-General who would act as Coordinator and two Guatemalans to be chosen by the Coordinator, from lists approved by the Parties, as well as the support staff it required to carry out its mandate.¹⁰⁴ The Commission’s investigations were to be “reserved” to guarantee the confidentiality of its sources and the security of those who presented testimony and information; thus, there were no public hearings. The public was invited to come forward with information and complaints, and the Parties agreed in the Accord to cooperate fully with the Commission. The CEH had no subpoena powers to call people who might have relevant information. No promise of reparations or amnesty were included.

110. The CEH was installed in July 1997 and presented its 12-volume final report in February 1999. At the peak of its investigations, the CEH had 14 field offices and a staff of 269; staffing

¹⁰¹ Agreement on the Establishment of the Commission to Clarify Past Human Rights Violations and Acts of Violence that have Caused the Guatemalan Population to Suffer.

¹⁰² Many analysts believe that the URNG was willing to cede on the question of naming names, in order to protect their own leadership from future criminal proceedings or other measures to ban them from electoral politics, as had been the case in El Salvador.

¹⁰³ Draft texts, unpublished.

¹⁰⁴ The text called for the UNSG to name the then-UN mediator of the negotiations to head the CEH. After the final peace accords were signed, the mediator was instead named SRSG in Guatemala and head of MINUGUA, and the SG named Dr. Christian Tomuschat to head the CEH.

reflected the hybrid, national-international nature of the Commission, with just under half international staff. Commissioners and staff visited some 2000 communities and received testimony or other information from about 20,000 people.¹⁰⁵

111. In its deliberations, the CEH constructed its legal framework based on the Universal Declaration of Human Rights, international human rights treaties, and international humanitarian law, arguing that even when the Guatemalan State may not have signed some instruments until the final years of the conflict or may not have recognized their applicability (for example of the Geneva Conventions), their precepts were considered to be international customary law during the second half of the 20th century and thus applicable. In addition, it argued that “only international rules and principles permit objective measurement of the distortions and even perversions of the country’s justice system, at least partially, under various military governments.”¹⁰⁶
112. Given its limitations on identifying individual responsibilities, the CEH placed strong emphasis on determining institutional responsibilities in each of the 7,517 cases (which involved 42,275 victims) that it opened and produced extensive findings on how institutional policies, structures and practices led to the violations. These have been important for those working on security and intelligence reform, and have proven to be important in arguing State responsibility in some cases presented to the Inter-American system. The CEH conclusion that the State committed genocide has provided the systematic empirical base and legal argumentation to substantiate a long-time claim by victims and advocates. Nonetheless, the limitation on identifying individual perpetrators, represents a major limitation on the victims’ right to know and an impediment to accountability.
113. With regards to the question of “judicial aims or effects,” the Commissioners interpreted this simply to reflect the fact that the CEH was not part of the country’s judicial system and thus, had no recognized jurisdiction. With similar reasoning, they indicated that the limitation on the judicial aims or effects of their findings, in no way limits the national justice system (or other courts) from using elements contained in their report, nor does it diminish the rights of victims or their families to legally pursue cases discussed therein. Subsequent events have confirmed this interpretation in practice, as a number of cases are in the Guatemalan courts, in the Inter-American system, or in European courts, all of which have recognized CEH findings as admissible documentary evidence.
114. The CEH made some eighty recommendations organized in the following categories: measures to preserve the memory of the victims; measures to compensate the victims; measures to foster a culture of mutual respect and observance of human rights, measures to strengthen the democratic process, other measures to favour peace and national harmony, and the creation of a follow-up body.
115. Despite their enormous scepticism regarding the mandate, human rights and victims groups applauded the CEH final report and recommendations, for its breadth of coverage and the clarity of its language, and generally considered it to provide a form of reparation, in and of itself. While the State and elites have generally rejected or ignored the report, civil society organizations continue to use it in a variety of ways and continue to press for implementation of its recommendations. Implementation of recommendations has been limited, but important progress was made in late 2003 with the creation of a National Reparations Program, which

¹⁰⁵ CEH, *Informe Final*, “Mandato y Procedimientos,” Tomo I, Guatemala, 1999.

¹⁰⁶ *ibid.*, par. 69-74.

essentially follows the CEH recommendation on this issue.¹⁰⁷

National Reparations Program

116. Victims and human rights groups had long advocated for creation of a reparations program with State funding. They were finally successful, taking advantage of a very complex political opportunity when the government offered monetary compensation to ex-Civil Patrollers in 2002 for service provided during the conflict, as part of an electoral campaign strategy. The reparations program was established by Executive Order and began to function in late 2004. It is governed by a board comprised of five representatives of the State and five from victims groups and will function for 10 years, with an annual budget of about \$38 million. The program is designed to provide compensation, restitution, rehabilitation and/or measures of dignification to some 250,000 people.¹⁰⁸

RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE PEACE AGREEMENT

117. The human rights dimensions of the accords, and specifically the Comprehensive Agreement on Human Rights, are in many ways the heart of the agreements and have provided an anchor for the peace process in the post-war years. The fact that the CAHR went into effect before the Agreement for a Firm and Lasting Peace was signed and that international verification was established for it, built confidence in the process and lent greater credibility to demands for respect for human rights.

118. The very breadth of the Guatemalan peace agreements and their uneven implementation over the past eight years, however, poses special challenges for assessing their success or failure. The agreements brought relative peace to the country, contributed to ending the systematic violations of civil and political rights, and opened significant political space for participation and for dissent; in this very important sense they have been a success. But they have not led to major advances in resolving other structural causes of the conflict, as was the announced intent, and the systematic violations of economic, social and cultural rights present major challenges still to be addressed. Continued social polarization, the weak functioning of the State, and the limits of the legislature as a space for real consensus-building on national policy, together would have made it impossible to reach the kinds of political decisions contained in the Indigenous Rights or the Socio-Economic Accords, had this not been done at the negotiating table. Some might argue that then dooms them to failure. I do not share that dim view, but rather believe that these accords serve as a tool to help pull the society forward, even though implementation may be far from complete. Civil society groups continue to press for advances on these more structural aspects of the accords, which still serve as a major platform for advocacy and a road map for State policy. In this sense, then, the final verdict on them is still out.

119. This uneven progress makes it difficult, as well, to assess the long-term sustainability of the process. Failure by the state to implement key commitments on land rights, for example, have led to great tensions in rural areas, which have spilled over into violence, with several deaths in recent months, some directly attributable to the police as summary executions. Activists who work on economic rights or who seek accountability for human rights violations committed during the conflict continue to suffer threats and intimidations. Criminal investigations on these

¹⁰⁷ For a review of implementation of the CEH recommendation through 2003, see MINUGUA, *Informe de Verificación: Estado de cumplimiento de las recomendaciones de la Comisión para el Esclarecimiento Histórico*, (25 February 2004), at www.minugua.guate.net.

¹⁰⁸ Census-taking is beginning in 2005 and should be finished in 2006; programs will begin to function simultaneously; personal communication, Rafael Herrarte, Executive Director of the PNR.

types of acts, when opened, simply do not advance.

120. At the same time, the lack of judicial or administrative mechanisms in the accords for accountability for past human rights violations have left many of those responsible for massive human rights violations in positions of national power. At the local level, it means that in many communities, victims often live next door to their victimizers, humbled daily by their own impotence. Impunity continues to be imposed through the workings of the justice system. While there is a small but increasing number of cases “from the past” in the national courts, forward progress on them demands enormous commitment from family members and their legal support teams, against many odds. The workings of impunity for human rights cases, at least in Guatemala, seems to set the tone and model for the workings of the justice system, in general, setting even greater obstacles for justice reform.
121. In addition, a number of now-retired, high-ranking military men, most who formerly worked from intelligence structures with command responsibilities for many atrocities, have now used their knowledge of clandestine operations and continuing ties into military intelligence and the justice system, to build their own organized crime networks. They are also believed to be involved in some of the threats, intimidations and break-ins committed against human rights defenders and their organizations, and to have a role in ensuring impunity in certain cases. The problem of these “clandestine structures” headed by major human rights violators has become an increasingly grave problem for the rule of law. Guatemalan civil society organizations strongly promoted the creation of a special UN commission (CICIACS) that would have independent powers and work with the Prosecutor’s Office, to investigate these groups and open criminal proceedings against them. The Guatemalan government signed an agreement with the UN to this effect in January 2004, but it has been put on hold after finding major resistance for ratification in Congress and being ruled unconstitutional by the Constitutional Court.
122. Thus, while the decision to let major crimes go unpunished may have been important for peacemaking, that same decision has major implications for the potential success of peace building. Accountability, justice reform, and police reform are three cornerstones of a single process toward strengthening the rule of law. They take time and require long-term commitment, and are essential for a sustainable peace.