



**Governmental policy facing social human rights movements in
Guatemala. The case of “Hidro Santa Cruz”.**

Submitted by:

Katherine Eve Platzer

08-609-455

KatherineEve.Platzer@student.unisg.ch

Supervised by:

Prof. Dr. Yvette Sánchez

Bachelor thesis

University of St.Gallen

Major International Affaires

- December 2012 -

Abstract: Guatemala is an ambiguous country. With the peace agreement of 1996 it was intended to establish a country where human rights are respected and where conflicts are solved by dialogue, proposals and negotiations. In the following years the state has ratified a good part of the international human rights conventions reaffirming their commitment to human rights. The reality however looks different.

In Santa Cruz Barillas, a community in the north of Guatemala emerged a conflict of increasing intensity. Thereby an enterprise, operated from Spain, wants to install a water power plant in the municipality against the consent of the local population. The people strengthen their resistance, the enterprise hires more private security forces and the government increases military presence, issues more and more orders of arrestment for inhabitants of Santa Cruz Barillas and keeps ignoring the claims of the local people. Furthermore, it granted the licence for the project proclaiming economic development and social welfare for the country. This conflict between the population, the enterprise and the state of Guatemala serves as a case study to analyse the policies that had been taken. It reveals that they violate not only international ratified laws, but also national law. The question is then pursued, what enables such policies to arise or what even encourages such a state response. Thereby several sources were identified, sources that lie within the political system of Guatemala, the history and structure of the country, in the legal implementation mechanisms or in characteristics inherently to the international community.

List of Abbreviations

ADH	Asamblea Departamental de Huehuetenango
CALDH	Centro para la Acción Legal en Derechos Humanos
CIIDH	Centro Internacional para Investigaciones en Derechos Humanos
CIJ	Corte Internacional de Justicia
COCODES	Consejo Comunitario de Desarrollo
CPO	Consejo de los Pueblos del Occidente
CUC	Comite de Unidad Campesina
GANAN	Gran Alianza Nacional
ILO	International Labour Organisation
INDE	Instituto Nacional de Electrificación
LIDER	Libertad Democrática Renovada
MEM	Ministerio de Energías y Minas
MP	Ministerio Publico (MP was created as an autonomous organ to exercise penal action, lead investigations of crimes that were not denounced, but need to be investigated and to watch over the strict compliance with the laws of the country.)
OECD	Organisation for Economic Co-operation and Development
PAC	Patrullas de Autodefensa Civil
PDH	Procuraduría de los Derechos Humanos (The function of PDH is to secure that the government complies with the human rights established in the constitution and with ratified international laws.)
PNC	Policía Nacional Civil de Guatemala
PP	Partida Patriota
UFE	United Fruit Company
UNE	Unidad Nacional de Esperanza
UNGP	UN Guiding Principles
URNG	Unidad Revolucionaria Nacional Guatemalteca

Table of Contents

1. Introduction	5
2. Structure	6
A. Social, political and legal dimension	8
<hr/>	
3. Structure of society	8
4. Political context	10
4.1 Guatemala in a globalized environment	10
4.2 Guatemala and the concept of neoliberalism	12
4.3 The state of Guatemala	13
5. Legal framework of human rights	15
5.1 Constitution	15
5.2 Peace agreement of 1996	16
5.3 Convention No.169 and UN Declaration on the rights of Indigenous Peoples	16
5.4 Human rights and transnational enterprises	18
B. The case of “Hidro Santa Cruz”	20
<hr/>	
6. The conflict in Santa Cruz Barillas	20
6.1 The Project Canbalam and its consequences for the inhabitants	20
6.2 Acceleration of conflicts	21
6.2.1 Attack on three leaders	22
6.2.2 State of emergency	23
7. Social human rights movement	23
7.1 Accusations and claims	25
8. Interim Conclusion	26
C. Sources giving rise to governmental policy	28
<hr/>	
9. The international community’s restricted influence on transnationals	28
10. Historical and structural elements of the society	29
10.1 Trauma of the past	29
10.2 Organised crime	30
11. Lack of consistency and ideology of political parties	31
12. Concentration of political power	32
13. Instauration of the alliance oligarchy-military	33
14. Lack of information	34
15. Weaknesses of institutions	35
16. Lack of reforms, implementation and enforcement	37

17. Conclusion	39
i. Appendix	41
ii. Bibliography	42

1 Introduction

With an average income of Guatemala's 14'757 inhabitants of 2'870 USD per year, it is, along Nicaragua (1'170 USD) and Honduras (1'970 USD), one of the poorest countries of Central America (Weltalmanach, 2012). Like many other countries of Latin America, Guatemala suffered a bloody civil war which lasted for 36 years and ended in December 1996 with the signing of the peace treaty between the guerrillas and the government of Álvaro Arzú. Compared with the other civil wars in Central America during that time, the war in Guatemala lasted the longest and had the highest cost of human life.

Statements such as "things are better now" are true when comparing the present with the 36 years of war. The number of murders and disappearances has decreased and villages are no longer massacred and destroyed. Claiming that Guatemala is now a country where peace prevails is nevertheless more than misleading, because "(p)ease is more than the bare absence of war" (Kurtenbach, 1998, p.131). Since the peace treaty was signed, the living conditions of the inhabitants of Guatemala have not improved much; social disparities between the Mayas and the Ladinos have not decreased and the atmosphere of permanent fear in which the people had to live during the war can still be found in certain regions. The civil war is over, but the inhabitants are far from living in peace. With the peace treaty and the formal democratisation, Guatemala has the opportunity to break with its international isolation. But the foreign inversions did not only boost economic progress, they also gave ground to new problems: social conflicts, arising because of the bad practice of transnationals. Such conflicts between transnational companies and the population of Guatemala are nothing new, but their modality has changed. During the first half of the 20th century, the United Fruit Company enjoyed enormous influence on Guatemala's governments; their interests decided public policies. The firm could not exercise its power directly on the government, but it understood to ensure its political aims through exercising influence on the US government. The United Nations had achieved to establish a certain political control so that the interest of the UFC got accounted for. With the upcoming notion of Neoliberalism, this pattern altered. Transnationals have their domicile not only in the USA, but also in Canada or Europe. But, more importantly, to secure their interests, they try and succeed in exercising influence directly on the government of Guatemala.

At present time, there are many international enterprises of the extractive sector operating in Guatemala. Social resistance movements against extractive projects have evolved throughout the country. The members of such organisations fight for their lands, their environment and their right to self-determination. Their resistance is based on nationally and internationally established human

rights. Some administrations of Guatemala have made a certain effort to incorporate the thematic of human rights in their legal framework, but when it comes to the implementation of these basic rights, the state is not willing or not able to ensure them. Up to now, activists have been taking different legal actions against transnationals or the government of Guatemala without achieving any major progress.

This thesis is concerned with these intensifying social movements against internationally financed mega projects. It deals with the relationship between those movements and the state of Guatemala and detects, on the bases of a case study, the policies taken by the states when facing social movements. Considering the actual situation in Guatemala, it can be argued for a manifestation of the negative consequences of the on-going process of Globalisation and of the economic model of Neoliberalism. The attempt to evaluate the role of the state in this environment and to expose the state's real interests and motivations for the implemented policy will be undertaken.

On the 14th and 15th of July 2012, a health tribunal took place in San Miguel, a town of the department of San Marcos. Protestors demonstrated the severe health damages and environmental pollution that Canadian Mines operating in Guatemala, Honduras and Mexico are causing. After the presentation of the health problems, an international judge asked the leaders of the resistance organisations why they didn't make use of all the international and national legal tools provided by the state and its institutions to restrain such transnational (own observation). This and similar attitudes of high educated people living in Europe or North America shows that there often exists a lack of deeper understanding of the reality activists live in when opposing themselves to powerful transnationals and to the practices applied by the state. The aim of this thesis is therefore to show the real circumstances in Guatemala, under which people have to struggle for their rights. It hopes to contribute to a better understanding of the problems that lie below the image the actual Molina administration tries to transmit to its inhabitants and to the international communities.

2 Structure

The thesis consists of three parts: The contextual framework, the case study "Hidro Santa Cruz" and the analysis of the sources for the governmental policy response.

In a first part, the contextual framework is established to be able to evaluate the policy response on behalf of the state in the case study "Hidro Santa Cruz". Because of the central role of human rights in the conflict, the state's response is analysed according to the implementation of these rights. Therefore, the framework will be drawn around the concept of human rights. It needs to provide a solid basis, on which it can be assessed to what degree the state did or did not comply with its

responsibility to guarantee human rights. Therefore, the framework includes three dimensions: social, political and legal.

After having established the context, the analysis of the conflict in Santa Cruz Barillas follows in a second part. First, the case is presented with its origins and its development up to today. Secondly, the social movement opposing the project and its formation and claims are discussed. Based on the theoretical framework, the actions implemented by the state in Barillas are then evaluated and first, conclusions are drawn as to what degree the government fulfilled its responsibilities to protect and guarantee the rights of its people.

In the third part, the sources for the policy response evaluated in the second part are searched for. This is an attempt to disclose the mechanisms and constraints in play in the process of policy formation.

A. Social, political and legal dimension

This part concentrates on three areas: the political, the legal and the social dimension influencing and determining the policy formation of the state of Guatemala when facing social human rights movements.

3 Structure of society

To understand the dynamics of the high potential for conflicts in Guatemala, one has to understand the structural configuration of the society.

Reding writes about Guatemala that it is a product of “an incomplete conquest” (1997, p.2). Thereby he addresses the fact that although the Spanish conquistador Pedro de Alvarado succeeded in subjecting the native Mayan peoples in the 1520s and 1530s, they have, up to this day, remained numerous (Hermann, 2008, p.101). The population of Guatemala is nowadays fragmented and divided into four ethnic groups: around 50% Maya, 40% Mestizos¹, 5% white people and 2% black people (Kurtenbach, 1998, p.152). The Mayas are divided further into 21 distinctive peoples, each with its own language (Herrmann, 2008, p.102).

To understand some of the structural deficits that exist today, one has to consider the history of the country, namely the civil war. This period from 1966 to 1996 was shaped by war and mass murder. The guerrillas established their base in the highlands of Guatemala and made it to the centre of the insurgency. The counter insurgency of the government in 1982 hit the civilians living there especially strong. 440 villages were massacred, also in the municipality of Santa Cruz Barillas, around 50% of the population was forced to flee and all men were forced to participate in the paramilitary (Kurtenbach, 1998, p.116). In December 1996, Otto Perez Molina, at that time general, signed the peace agreement as representative of the government of Álvaro Arzú together with Carlos Gonzales. The agreement was first and foremost only a commitment of the elites to stop solving conflicts with arms. But to establish and maintain peace, the society had to be transformed. Therefore, demilitarisation by the state and demobilisation of the URNG-Guerilleros, the reworking of the massacres, disappearances and displacements of the war and the (re-)construction of infrastructure and of a functioning education and health system was necessary.

¹ Mestizos or also called Ladinos are people with a mix descent from indigenous peoples of Latin America and Europeans.

After the peace agreement, the URNG had a platform to advocate their ideology; the political arena. The reorientation of the role of the military after the peace agreement, on the other hand, had proven to be more difficult than expected. First, the armed forces had to be reduced. Many of the discarded soldiers found a new job in private security forces, a special form of disarmament. For the remaining soldiers it was intended to assign them to new tasks, such as the war on drugs and the participation in the construction of infrastructure (Kurtenbach, 1998, p.134). The war has caused a deep trauma within the population, especially in the regions where the massacres happened. The reworking of the past is therefore psychologically of great importance to assure national conciliation, but this was very difficult for all involved, the rural population, guerrillas, paramilitary and the military. A speaker of the military announced in 1995 that the military is not going to apologize for the human rights violations during the civil war because "apologies are necessary, if one did something wrong. But the army only defended the national interests" (p.135).

Nevertheless there have been efforts from the state to approach this issue. In 1994 the Commission for Enlightenment of the History was established with the objective to clarify the human rights violations and all other incidents that caused the population to suffer (*Fundación Acción pro Derechos Humanos*, n.d.). Based on the recommendation of the Commission, the state created in 2003 the National Program for Reparation to attend and indemnify victims of the armed conflict (Nevada & Hurtado, 2007). These efforts the reworking of the past had been advancing very slowly after the end of the war. Only in the area of impunity for the massacres could in the last few years some significant progress be achieved (Interview with Cadena, August 23, 2012). So, members of the government of 1982 and 1983, such as Ex-chief of military López Fuentes and Ex-president Efraín Ríos Montt, now have to answer for the crimes committed under their leadership. Concerning the construction of infrastructure and an education and health system, there are large differences between the departments. According to a national survey of 2011, the development index² in Guatemala is on average 0.55, whereas the regions north, north-west of Guatemala lie below the national average, such as Huehuetenango with an index of 0.46. The literacy rate also shows the differences between the regions. In the urban areas of Guatemala, the rate is 0.86, whereas in the rural areas, this number only amounts to 0.66. Other indicators such as unemployment, the quality of housing and poverty only confirm the precarious situation of the rural regions compared to the cities. Now, 51% of the rural population identify themselves as indigenous, whereas in urban regions, only 28% do so (INE, 2011, pp.24-30). Consequently, the indigenous people are the ethnic group most affected by the deficient state presence in rural areas. In Santa Cruz Barillas, many people even cross the borders to get health attendance by a doctor in Mexico (Interview with Cadena, August 23,

²As indicators served population, education, health, habitability of housing, work and poverty.

2012). All these factors are jointly responsible for the high delinquency. Violence even increased after the signing of the peace agreement (Cabanas, 2008, p.2). The little influence of the state and the high degree of organised crime cause difficulties for the state to exercise its monopoly of violence in these areas. As a result, the population installed *juntas de seguridad* to supposedly establish and maintain order by themselves by exercising lynch law.

The oligarchic structure achieved surviving political and economic crises. Good examples are the failures of the repeated attempt for land reforms. Nowadays, the land distribution is still very unequal: 2.5% of the population own 65% of the land in Guatemala. These big landowners additionally own the most fertile lands. Whereas many peasants live below the margin of subsistence, big landowners leave around 15% of their land (40% of which is first class farmland) without cultivation (Hermann, 2008, p.128).

Indigenous people are not only in a bad situation economically, there is also still a sentiment of racism between the Ladinos and the Mayans. Throughout the history of Guatemala, the indigenous people have been disadvantaged and suppressed by the European settlers. This sentiment was reinforced once more during the civil war when the government (predominantly Ladinos) attacked the rural population (predominantly Mayans) to abolish the Guerrillas. The well-known policy strategy at that time was the following: If you want to kill the fish (Guerrillas), deprive him the water (support of the rural population). The peace agreement and the established laws proclaiming equality of the different ethnic groups constitute an important advancement, but there is still a long way to go until they are granted their right to participate in an emancipated manner in the construction of the future of their country.

4 Political context

In this chapter, the three relevant actors involved in policy-formation responding to conflicts such as in Santa Cruz Barillas, where the population opposes a project of a transnational firm, are distinguished. These three actors are the international community, the enterprises and the state of Guatemala.

4.1 Guatemala in a globalized environment

The process of globalisation has significantly increased the interconnectedness of nation-states and their dependencies among each other. The national polity, the national economy and the national community are no longer neatly separated from the outside world. A state transformation is taking place (Sorensen, 2011, p.454).

The ability of a state to strengthen its political influence in a globalized environment or to limit the influence of other states upon itself, so Sorensen, requires four features (p.454). First, it needs to have efficient political-administrative institutions, recognised as legitimate by the majority of the people. As the case study will show, Guatemala's governmental institutions are very weak. Governmental bodies lack independence and political will to comply with their function. Also, those involved in social conflicts put very little confidence in these institutions. The absence of the state in rural regions additionally constitutes a constraint upon the possibility to take actions.

Secondly, the economic basis of the state has to comprise the ability to design, construct, produce, finance and distribute economic goods within its own economic sphere. Guatemala's economy does not contain those abilities. With a gross national income per inhabitant of 2870 USD, Guatemala is after Nicaragua and Honduras the poorest country in Central America (Weltalmanach, 2012). According to statistics of 2010, only 1'107'192 people have a dignified job with a contract and basic social insurance (*Banco de Guatemala*, 2010, p.33). To put this number into a relation: A statistic elaborated in 2011 states that the economically active population³ amounts to 5'706'948 (INE, 2011, p.17). The domestic market is therefore very weak, leading to an export oriented economy highly dependent on the world market.

Thirdly, the feeling of common nationhood and identity among the population of a country is important. The stronger the pronouncement of this feeling, the stronger a state as independent entity can be characterised. There are two kinds of community: community of sentiments and community of citizenship. Where there is a common language and a common cultural and historical identity, one speaks of a community of sentiment. Citizenship, on the other hand, describes the relationship of the state with its citizens, including political, social and economic rights and obligations. In Guatemala, both communities are very weak because the population is very fragmented. Especially the division between the Mayas and the Mestizos is strongly apparent in many different areas. Although the Mayas were put on equal footing with the Spanish born in America during the Barrios administration (1873-1885), the Mestizos are still strongly overrepresented in all public positions and now form the upper- and middle-class (Hermann, 2008, p.102).

The last feature constitutes the degree to which a state exercises its sovereignty independently over its territory. Because institutions at international level are getting more powerful, they sometimes have the possibility to intervene in the decision-making process of a state. Guatemala is constitutionally independent and therefore seen as sovereign in the sense that it has the final political authority within its state. However, historically seen, Guatemala's politics have always been

³ Economically active population represent the ones already working or the ones actively looking for a job.

influenced by the United States. The crucial role of the USA in the overthrow of the government of Arbenz in 1954 serves as a good example (Kurtenbach, 1998, p.80). Nowadays intervention on Guatemala from the outside takes another form and is exercised through international institutions such as the international monetary fund. Sorensen calls this "negotiated intervention" (p.455), either realized by donor control or by international supervision. An example for this is the international pressure exercised on the state of Guatemala to implement liberal policies, which lead, for instance, to privatisation and the adoption of free trade agreements.

In Sorensen's classification of states into modern, post-modern, weak-post-colonial and modernizing states, according to these factors, Guatemala is classified as a weak-post-colonial state.

"The community of citizens transforms in that sense that civil and other rights are no longer being granted solely by the sovereign state" (p.457). Thus, a set of universal human rights has been defined at a global level. This gives a single state new possibilities for controlling events outside its territorial jurisdiction, but with this comes the price of outsiders having influence over the affairs at home (p.459). As a weak-post-colonial state, the first part of this statement applies to Guatemala, the second part does not. This leads to the conclusion that the international community can exercise a considerable amount of power over the Republic of Guatemala, but that Guatemala, on the other hand, has little ability to exercise influence on the governments of other countries.

4.2 Guatemala and the concept of neoliberalism

Since the 1970's, there has been a strong tendency of states to turn towards neoliberalism in political-economic practices: Deregulation, privatisation and the withdrawal of the state from public areas (Harvey, 2005, p.2). Guatemala treaded this path when Álvaro Arzú became president in January 1996 as candidate of the conservative National Advancement Party (PAN). He is primarily known for the achievement of the peace agreement in his first year as president between the government and the URNG. The agreement was crucial to establish the condition for internal peace and international acceptance and to thereby enable economic development. He was regarded as a representative of the enterprises, orientated towards modernisation (Kurtenbach, 1998, p.131). The best known example for the implementation of a neoliberal agenda during the Arzú administration is the privatisation of telecommunication. Several legal requirements such as the constitutional requisite for a two-thirds majority in Congress for the divestiture of autonomous institutions were bypassed in order to sell the telecommunication company to the private sector (Bull, 2004, pp.228&233).

The motivation for the implementation of the neoliberal model is primarily the expectation that freedom and democracy would ensue and that by opening the society to market based competition,

poverty would be alleviated best. But in many countries this is not the whole story. As Hristov points out, for most Latin American countries, the neoliberal model “produces poverty, aggravates existing poverty and inequality, impedes social development by turning human rights into commodities, and destroys sustainable livelihoods by granting corporations unprecedented rights and freedoms” (2005, p.90). She argues that neoliberal political- and economic practices intensify the process where economic and decision-making power becomes concentrated in a small group of people and where resources get privatized. The lower middle class is excluded from the participation in the increased income opportunities, increasing the inequality between the social classes. But a neoliberal nation-state refrains from redistributive interference. The government policy decisions become more responsive to the interests of powerful elites and less to their people. The force driving the neoliberal transformation process is thereby not only coming from the government itself, but also from the outside in the form of foreign investment, imports, international trade laws and pressures to comply with debt-payings (p.92).

In Guatemala, such negative consequences of neoliberalism can be observed. One of them is the very high social stratification. Whereas 62.1% of the national income falls upon 20% of the total population having a high income, the poorest 20% of the population only have access to 2.4% of the national income. The economy is controlled by a few elite groups. Profit that is generated is absorbed by the traditional oligarchy, the transnationals and the new economic elites. The new economic elites arose from the favourable treatment of different governments during the privatisation processes and when allocating the resources of the state. Together with the military and the leaders of the criminal economy, drug traffic and organised crime, these groups form the power elites of the country; their interests dictate public policy (Cabanas, 2008, pp.7-8).

4.3 The state of Guatemala

The state of Guatemala is made up of different interdependent bodies: The executive, made up of the president, his cabinet and the vice-president, the legislative, meaning the unicameral Congress, the judicative and governmental institutions such as *Procuraduria de los Derechos Humanos* PDH and *Ministerio Publico* MP.

The government of Guatemala is defined as a representative democracy. The state is made up according to the principles of a presidential system, where the president is head of state, as well as head of government. In the political arena, 14 parties participate; therefore it is a multi-party system. Elections are held every four years to vote the president and the unicameral Congress of currently 158⁴ deputies. Each party proposes a president and a vice-president, which is then elected by the

⁴ The number of deputies depends on the number of the population.

voters by an absolute majority. If no such majority is achieved in the first round, a runoff is held among the top two contenders. The majority of deputies of congress are elected by plurality from single member districts and some are elected nationwide by party list. The president appoints all ministers, who comprise, together with the vice-president, the cabinet, which is headed by the president itself. He is also commander-in-chief of the armed force (Reding, 1997, p.8&10). The Congress can dismiss the President and the Vice-president with a two-third vote (Art. 165(h) of the *Constitución Política de la República de Guatemala No. 18-93* of the November 17, 1993).

The state of Guatemala does have some mechanisms admitting participation on the level of the communities through organisations such as COCODES, as well as through local governments. But the influence of these local authorities on subjects touching national interests meets its limits fast. Power is centralized in the national government and regional governments are tightly controlled (Yagenova, García, E., Gracia, R., Véliz, & Cruz, 2010, p.56 and Reding, 1997, p.9).

In 2012, Otto Perez Molina was elected president. His party is the *Partida Patriota* PP which is a conservative right wing party strongly influenced by the military and proclaiming the policy of the "iron hand". Thereby Molina wants to establish order and combat organised crime by building on the military and national police and by showing zero tolerance to criminals and executing rigorous sentences. In the Congress, 15 parties participate, whereat the PP is represented strongest with 63 deputies. LIDER is the second strongest party with 28 deputies, followed by TODOS with 13. All the other parties have only nine or even less representatives in the Congress (*Congreso de la Republica de Guatemala*, 2012). In the Cabinet, as well as in the Congress, the representation of Mayans is very weak. So is of the 14 ministers, for example, only one indigenous, and that is the minister for culture and sports (*Secretaría General de Presidencia de la Republica*, 2012).

For the election of the director of the MP, the attorney general, the congress chooses three candidates whom it presents to the president. The president then has the ultimate choice. The attorney general is elected around the midterm of the president's period of office (Art. 251 of the *Constitución Política de la República de Guatemala No. 18-93* of the November 17, 1993). The Ombudsman of PDH is elected solely by the congress. Every citizen can submit a complaint, where after the PDH can initiate an investigation and recommend a course of action to other agencies of the government (Reding, 1997, p.9). The intention in creating the institution in 1985, so believes Santos, was to free the congress from the interests of the executive and to counterbalance public policies that could violate human rights. There are two ways how a citizen can ask the PDH to take action. One is to identify oneself and report somebody directly in form of a legal claim. The other option is to turn to the PDH and tell them about a violation of human rights, but without accusing anyone legally. A narration of course does not have the same weight as a denunciation, but

nevertheless, the PDH will start an investigation to find out if human rights were violated and if yes, which ones (Interview with representative of PDH, August 24, 2012).

5 Legal framework of human rights

Because the social movement in the case study, bases its claims on human rights, it is crucial to know the legal framework of those rights. On a national level, the constitution and the peace agreement of 1996 are thereby decisive. On the international level, the Convention Nr.169 and the Declaration on the rights of Indigenous Peoples are discussed, as the social movement mostly refers to these documents.

5.1 Constitution

The constitution of the Republic of Guatemala incorporates a generous set of human rights. It commits the state "to guarantee to the inhabitants of the Republic life, liberty, justice, security, peace, and full personal development" (Art. 2 of the *Constitución Política de la República de Guatemala No. 18-93* of the November 17, 1993) and guarantees the freedom of speech and freedom of the media, including the press, freedom of association, the right of petition and the right of peaceful assembly. It also creates the ombudsman of human rights and the court of constitutionality. Important for international law is Article 46, stating that International treaties have the force of law upon ratification and that human rights conventions prevail in domestic order. In the case study, the state implemented the state of emergency. Therefore it is necessary to mention Article 138, which defines the legal bases for such an application. It states that this measure has to be proclaimed by the president and authorized within three days by the congress. If the congress gives its approval, the measure comes into effect. It can be declared in case of "invasion of the territory, heavy threat to the peace, activities against the security of the state or catastrophe". The rights that can be limited are the rights concerning freedom of action (everyone can do whatever is not prohibited by law), legal detention (only when fulfilling certain requirements, one can be arrested), interrogation of detained people (only juridical authorities are authorised to interrogate persons held in custody), the liberty to move freely, the right to assemble and manifest and the liberty to freely express one's thoughts.

According to Ramón Cadena, lawyer and director of the CIJ, the constitution is a good constitution, a good initial framework to develop a democracy in which human rights are respected and protected. However, like many other experts, he criticises the implementation. The gap between the human rights guaranteed in the constitution and the actual practices was especially large during the years of the civil war. When the war ended, this situation improved. Some advocate a reform of the

constitution to implement some accords made in the peace agreement of 1996, such as the one on the Identity and Rights of Indigenous People. The debate about a constitutional reform has existed for several years already. Principally, it aimed at the reformation of the election process for judges because the existing election process established in the constitution was practically infiltrated by the organised crime. Based on supervisions by several NGO's, a proposal was brought forward aimed at strengthening the independence of the judiciary. These proposals were discussed until the election of the current government (Interview, August 23, 2012). In August 2012, president Otto Pérez Molina and Vice-president Roxana Baldetti handed in a new proposal to the Congress (Gobierno de Guatemala, 2012), which now meets strong opposition by CIJ and other organisations.

5.2 Peace agreement of 1996

In 1996, the government under the Arzú administration and the URNG signed a peace agreement, ending thereby the war which persisted 36 years. It does not constitute written out laws, but is more a political consent to establish laws implementing the content of the agreement. Formulating the covenant, the main focus lied on removing the causes which had led to the war to prevent such a recurrence. As the four basic elements, it contained the human rights accord, the accord on Identity and Rights of Indigenous People, the Accord on Socioeconomic and Agrarian Issues and the Accord on demilitarisation to contain the power of the army. The concept of human rights was established in the constitution already and was therefore nothing new, but the human rights accord introduced a new mechanism; the UN Verification Mission. The implementation of the accord on the Identity and Rights of Indigenous Peoples, on the other hand, requires profound constitutional reforms and the transformation of the country's educational, judicial, and political systems (Jonas, 2008, pp.15-17).

In 2007, the European Parliament held an international conference on progress and setbacks of compliance with the Accords reached in the agreement and concluded that the "progress in compliance with the Accords has been minimal", especially considering the realization of indigenous rights, the protection of human rights and the improvement of the socio-economic situation (p.1).

5.3 Convention No.169 and UN Declaration on the rights of Indigenous Peoples

The two internationally ratified documents this thesis focuses on are the Convention Nr.169 and the Declaration on the rights of Indigenous Peoples, because they are the two international documents most important for the social movement in the conflict of the following case study.

The establishment of the Convention No. 169 on indigenous and tribal peoples of the International Labour Organisation ILO set a milestone in the development of international indigenous people's rights. Guatemala ratified the convention in June 1996 as an integral part of the peace agreement.

Article one of the Convention defines who belongs to a tribal or indigenous people and constitutes thereby the coverage of the Convention (ILO, 2009, p.10). These definitions are used as guiding principles for national and regional processes of identifying indigenous peoples. The understanding and recognition of their indigenous diversity has evolved and deepened over the last 30 years. It recognises 24 different ethnic groups within their country: 21 Maya groups, Xincas, Garífunas and Ladinos (p.22). Because deep-rooted inequalities exist between indigenous peoples and the dominant communities within states, such as between the Mayas and the Ladinos en Guatemala, article two calls upon the government to assume its " responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity" (cited in ILO, p.30). The Convention covers topics such as education, health, social security, labour rights, participation and consultation, natural resources, land and territories and development. For Guatemala and our case study of "Hidro Santa Cruz", the latter four mentioned are of great significance. Article 6 at seq. requires that indigenous peoples are able to effectively participate in decision making processes which may affect their rights or interests. Therefore, "(G)overnments shall consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly" (Art.6 Abs.1a cited in ILO, p.50). This also applies for decision-making processes concerning natural resources pertaining to their lands, even if the state retains the ownership of mineral or sub-surface resources, as does the state of Guatemala (p.108). Further, the convention protects the lands and territories of indigenous people because of their great importance to them and obliges the government to respect the "special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories" (Art.13 cited in ILO, p.189). The right for development is an inalienable human right, already declared in the Universal Declaration of Human rights adopted in 1945. However, indigenous people have often ended up being the victims of development instead of being its beneficiaries. This is the result in many cases because they are marginalized of the participation in the shaping of development strategies. Therefore, the Declaration establishes that " (t)he peoples concerned shall have the right to decide their own priorities for the process of development [...] and to exercise control, to the extent possible, over their own economic, social and cultural development" (Art.7 Abs.1 cited in ILO, p.189).

The Convention No. 169 has enhanced the dialogue between governments and indigenous peoples to continue their work to protect and promote indigenous peoples' rights. As a result of their effort, the United Nation adopted in 2007 the Declaration on the rights of Indigenous Peoples and thereby provides the international community with a common framework for the realization of these rights. Although the Convention No. 169 and the UN Declaration were negotiated at different time periods

and by different bodies and their contents might therefore differ in some respects, they are compatible and mutually reinforcing. The implementation processes of these two documents are largely the same. Following the adoption of the UN Declaration, there exists a general consensus that the focus should now lie on the implementation at national level (ILO, 2009, p.5).

Although Guatemala continues to ratify important international human rights conventions, such as the Rome Statute in January 2012 (Committee of Human Rights, 2012, p.1), Risse, Ropp and Sikkink describe the country as anything but a success-story in their evaluation of the actual impact of international human right norms on domestic politics (1999, p.2).

5.4 Human rights and transnational enterprises

The OECD Guidelines, the UN Global Compact and the UN Guiding Principles on Business and Human Rights are the three most important documents that address the problematic of powerful transnational companies and their responsibility towards human rights.

The Organisation for Economic Co-operation and Development OECD was established in 1961. Its function is to “use its wealth of information on a broad range of topics to help governments foster prosperity and fight poverty through economic growth and financial stability” (OECD, n.d.). The member states discuss and agree on the rules of the game of international co-operation and establish them in form of formal agreements, standards or guidelines. One of these is the OECD Guidelines for Multinational Enterprises. They are non-binding recommendations of principles and standards for responsible business conduct for transnational corporations operating either in or from countries adhered to the Guidelines. The OECD calls on the governments of the countries committed to the Guidelines to promote and implement them.

In 2000, the UN Global Compact, which encourages business worldwide to adopt sustainable and social responsible policies, was born. Therefore, it is primarily directed towards companies, but it also includes the governments, labour and civil society organizations, and the United Nations. Up to now, it counts with more than 10,000 members, including over 7,000 businesses in 145 countries around the world (United Nations, n.d.).

The impact of these two documents is limited to the countries and companies which decided to participate on a voluntary base. Therefore, it was not possible to construe direct responsibility from transnational enterprises. The UN Guiding Principles on Business and Human Rights UNGP changes that. It is not a document that has to be ratified first by states or enterprises to become effective. It established human rights responsibilities for all corporations (Business & Human Rights Research Centre, n.p.).

Just like all the other international human rights conventions, such as the UN Guidelines and the UN Global Compact, its great weakness is the implementation. There are no enforcement mechanisms. It nevertheless constitutes a considerable advancement: Now that the responsibilities of every enterprise are defined, it can lead to a “naming and shaming” in case of non-compliance (Interview with Wettstein, October 23, 2012).

B. The case of “Hidro Santa Cruz”

In Guatemala, many conflicts can be seen between the population, the government and transnational companies. The case selected for the analysis about the hydro power plant “Hidro Santa Cruz” in Santa Cruz Barillas, in the department of Huehuetenango, operated by a transnational company with head office in Spain. The arrival of the power plant initiated a conflict: Civil society opposes to the firms project, the project continues to be implemented, demonstrations and manifestations follow, finally causing the state to intervene.

6 The conflict in Santa Cruz Barillas

Santa Cruz Barillas lies in the north of the department Huehuetenango near the border of Mexico. The government presence there is weak, not only in terms of infrastructure, education and health system, but also in terms of securing the rule of law. According to Santos, Barillas is one of the municipalities most abandoned by the state. The people living in this region are mostly farmers, producing for their own necessities. Around 60% are Mayans (INE, 2011, p.25) of the ethnic group Q’anjob’al.

The conflict arose with the initiation of the Project Canbalam. Therefore, it is first discussed what this project is about. Then the conflict itself, its development and its aggravation in May 2012 is illustrated.

6.1 The Project Canbalam and its consequences for the inhabitants

In 2007, a consultation in Santa Cruz Barillas was realised to decide over any project of mines, water power plants or any other corporate activity that would affect the environment. 46’481 people participated, of which 46’472 rejected any projects of such kind. Nevertheless, in November 2010, the enterprise Hidro Santa Cruz S.A. requested the local government to grant a licence for the construction of a water power plant: Project Canbalam. As the local government declined the request, the Ministry of Energy and Mines stepped in and authorized the project in May 2011 (*Convergencia por los Derechos Humanos*, 2012, p.4&5).

Hidro Santa Cruz is a company that belongs to 85% to Ecoener and 15% to HidraliaEnergía, both Spanish companies (Gramajo: “*Hidroeléctrica*”, 2012, p.4). The project Canbalam contains a water power plant of 5MW and is planned to be installed over the Canbalam River in Poza Verde, in the municipality of Santa Cruz Barillas, using the river flow with a jump of more than 263 meters to

generate electricity. The current will be channelled and passed through a turbine and then returned to the river (Ecoener & HidroEnergía, 2010, p.4). 26 communities are located along the river and thereby directly affected by the project. The construction of the water power plant began in November 2011, but then got interrupted by the increasing conflict in the region (Gramajo: *"Congreso ratifica el estado de Sitio"*, 2012, p.4).

When presenting the project, Ecoener and HidroEnergía outlined the benefits for the communities as follows: Improvement of the access to electricity, creation of jobs and infrastructure and establishment of social compensation programs. These benefits need to be put into perspective: For the construction of the power plant, 75 workers are needed. Once the power plant is constructed, the number of the jobs created will be reduced to approximately 6 workers. Concerning the benefit of improved conditions of electricity access, the enterprise indicates the fact that by ley they are not in charge of the distribution and the ascertaining of prices (Ecoener & HidroEnergía, 2010, pp.22ff). Waqib'kej, a national coordination and convergence of different organisation speaking up for indigenous peoples' rights, lament the negative consequences. For the people Q'anjob'al of Santa Cruz Barillas, the land the enterprise is occupying is sacred. According to them, their forefathers had created the communities to protect precisely this land. Furthermore, deriving the river can have grave consequences for the communities living alongside. But first and foremost, they are opposing the project because of the way it is established, not just without informing them, but without any respect for their rights, such as the right to be consulted (Waqib'kej, 2012).

6.2 Acceleration of conflicts

In 2009, workers of Hidro Santa Cruz clashed with people opposed to the project. According to the ADH, their leaders tried to mediate so it would not come to violence. As a result, the company registered a legal charge against 7 leaders. In 2010, Hidro Santa Cruz registered another charge, this time against 6 members of the ADH. In the same year, the ADH presented a lawsuit to the PDH, denouncing that Hidro Santa Cruz invades their territories with the construction of the water power plant. Until today, PDH has not paid any attention to it. After the enterprise obtained the licence and started the phase of construction, the inhabitants of the village complained about intimidations by the enterprise's armed private security personal. In 2011, another charge was made by the enterprise, this time against the local government for opposing themselves to the development by not having approved their request for the licence. This led to great anger among the people and to riots, leading the government to increase the military presence. In April the same year, 23 orders of arrestment were issued for people accused of having participated in a demonstration where construction equipment of the enterprise got damaged. Leaders of the community, on the other

hand, approached the police based on explosions they had heard on the territory of the enterprise and a dog that had been found dead and torn into pieces. They demanded an investigation about the use of mines on behalf of the enterprise, an explosive device exclusively permitted to be used by the military. The police only found a hole in the ground and closed the investigation (*Convergencia por los Derechos Humanos*, 2012, p.4-7).

At the beginning of May, the conflict has increased even more. It began with an attack on three leaders of the community and accelerated with the response of the government of Guatemala with the proclamation of the state of emergency in Santa Cruz Barillas.

6.2.1 Attack on three leaders

On the 1st of May, in the afternoon, three leaders of the community, Andrés Francisco Miguel, Pablo Antonio Pablo and Esteban Bernabé, returned from the capital of the department to Poza Verde. On their way, they got attacked by two armed men; Andrés Francisco Miguel got shot and died immediately, his two companions got injured. According to a communication of the CPO, one of the leaders had refused to sell his territory to the enterprise of Hidro Santa Cruz and, as a consequence, had been subject to harassments. Therefore they believed that the attack was arranged by people of the enterprise (CPO, May 2012). This suspicion got confirmed a few weeks later. On the 28th of May, the Ministerio Publico brought to court the two suspected men: Ricardo Arturo García López and Oscar Armando Ortíz Solares. The function of Ricardo Arturo García López within the company of Hidro Santa Cruz was Chief of the private security force. The two accused rejected in their first declaration any of the incidents of the 1st of May. Later, they declared they had no other choice but to shoot, for their own protection (*Centro de Medios independientes*, 2012).

When people were instructed about what had happened, two groups formed. One detained the officials who had just finished their investigation on the scene of the murder, pressing the magistrate to return and to promise to expel Hidro Santa Cruz. After he had done so, the officials were led go at the same evening. The other group, some armed with guns, directed themselves first to the hotel where the workers of Hidro Santa Cruz normally stayed. They were looking for the mayor and two deputies whom they had asked to come to the scene of the crime and who had ignored the request. After not having found them, they went to the military base. They entered the base assaulting three persons of the military, among them the major, threatening him heavily that they would lay hands on him when the mob was calmed down by a speech and dissolved (*Convergencia por los Derechos Humanos*, 2012, pp.8&9).

6.2.2 State of emergency

In the evening of the same day, the president Otto Pérez Molina declared the state of emergency and transferred a great amount of police and military to Santa Cruz Barillas (Batres, 2012, p.76). According to Santos to install the state of exception the military presence increased by 700 staff members (Interview, August 23, 2012). Minister of interior Mauricio López Bonilla justifies this decision saying that the situation in Barillas was one of anarchy, leaving the president no other choice ("*Guatemala decreta estado de sitio en población fronteriza con México*", 2012).

The next day, on the 2nd of May, civilians arrested nine people and another three the following day, beating and handing them over to the military base, which then assigned them to the capital city. The accusations were assault, rebellion, heavy robbery, unauthorized association and illegal detention (*Convergencia por los Derechos Humanos*, 2012, p.10). On the 18th of May, the president of Guatemala cancelled the state of emergency. According to Molina, the necessity of a state of exception has settled because "it was achieved to readopt the state of governability in the community" (Arévalo, 2012). Others claim that the opposition of the inhabitants of Barillas to this measurement simply had been too strong and that the international community, especially the European Union, had executed pressure by condemning this response of the state (Interview with representative of PDH, August 24, 2012).

It was argued that the proclamation of the state of exception was not conforming to the constitution of the Republic of Guatemala. But not only the proclamation of its own, but the formal procedure of the implementation has to be criticized. The president passed on the order to implement the state of exception without any authorization of the congress. Nevertheless the congress approved the decision and the proceedings of the president retroactively (Interview with representative of PDH, August 24, 2012).

7 Social human rights movement

Several groups made up of members of the civil society are involved in the conflict in Santa Cruz Barillas. They are structured into organisations, which again form networks. There are three networks decisive in forming the opposition to Hidro Santa Cruz. One is the Convergence for Human Rights in Guatemala, consisting for example of CIIDH and the *Centro para la Acción Legal en Derechos Humanos*⁵ CALDH. Another is Waqib'Kej, conformed out of organisations of Mayas and peasants with the objective to articulate the struggle of the indigenous peoples. The network of the *Consejo de los*

⁵ Centre for Legal Actions in Human Rights

*Pueblos del Occidente*⁶ CPO is, in contrast, locally concentrated to the area of Huehuetenango and therefore essential for the case study “Hidro Santa Cruz”. It tries to communicate the organized people of the different communities in Huehuetenango in their struggle to ensure their territories and natural resources are respected. Thereby they aim at reconstructing a “system of life which is harmonic with Mother Nature” (CPO, n.d.). The most active organisation of the Council in the area of Santa Cruz Barillas is the Assembly of the *Asamblea Departamental de Huehuetenango*⁷ ADH. It was formed as a “follow-up to the pacific and democratic mobilisations manifested in the consultations vis-à-vis the concessions of mines and megaprojects violating the collective rights of the people of Guatemala” (ADH, n.d.). This group of people, here in a wide sense interpreted as these three networks, finds its opposition in two adversaries; the state of Guatemala and the enterprise Hidro Santa Cruz. The collective goal is the respect by the government and the enterprise for their rights and their enforcement on behalf of the state. The collective identity can only be found within the regional organisations and networks. Social structures given by historic disputes complicate the collaboration of organisations with members of different ethnicity. Therefore, collective actions often take place regionally. Because the organisations do not have access to the decision making arenas in parliament, they try to achieve some political impact by drawing the attention and support of the public. Therefore they engage in a series of non-institutionalised actions taking the form of protest and information politics.

The establishment of networks such as the CPO constitutes an effort to improve the articulation between the different organisations on a national and even transnational level. On the 18th of June, a manifestation took place in Santa Cruz Barillas to commemorate Andrés Francisco Miguel and to demonstrate once more the disagreement of the people with the enterprise “Hidro Santa Cruz”. This action was called “Todos somos Barillas”, translated: “We all are Barillas”, expressing the solidarity of the people of Guatemala with the struggle of the communities affected by the conflict. Therefore, representatives of several communities of the area attended the activity, travelling up to six hours by car to participate (own observation, manifestation of June 18, 2012). There are efforts made to increase the articulation among the organisations in Guatemala, but there is still room for improvement. A leader of the ADH said in a speech during a reunion: “We are all one people, fighting for the same goal; the respect for our rights and the possibility to live a dignified life in harmony with Mother Nature. We do not differentiate between people based on colour or ethnicity; we differentiate people according to their convictions. The ones fighting for the same cause as we do are our brothers” (own observation, Reunion of ADH in July 2012).

⁶ Council of the Mayan people of the Occident

⁷ Department of Huehuetenango for the Defence of the Territory

7.1 Accusations and claims

Accusations and claims are brought forward by both sides; by the social indigenous peoples' rights movement and by the enterprise and the state.

The enterprise generally kept a low profile, but on the 9th of May, Fernando Rodríguez, representative of Hidro Santa Cruz in Guatemala, gave an interview to Prensa Libre. According to him, Hidro Santa Cruz has been subject to intimidation from the initiation of the project on forward. He claims that the ADH and the CPO, among other organisations, are leading a hate campaign against the enterprise, trying to manipulate people to oppose themselves to the project: "They say we are miners, and they keep saying it" (cited in Gramajo: "Hidroeléctrica ", 2012, p.4). According to him, the conflicts began alongside with the phase of construction when workers of the private security of Hidro Santa Cruz were kidnapped and part of the installation was put on fire. This led the enterprise to search the dialogue with the people of Barillas and it achieved that, from the 26 communities, 23 ended up in favour of the project. The ones still opposing the project are "only a group of criminals. In reality, there are many people in favour we had to take away from the place because their lives were in danger supporting us" (p.4). The government accuses the social movement of opposing itself to development. The MP claims that some inhabitants of Barillas take advantage of the situation to carry out their criminal acts under the cover of the social movement. Therefore, so the MP, it does not criminalize the social movement, but combat organised crime.

The *Convergencia por los Derechos Humanos*, on the other hand, accuses the enterprise based on testimonies of persons of the community of having bought the territory for the construction site with "extra-legal measurements" (2012, p.5). The CPO criticizes heavily the response of Hidro Santa Cruz to the social movement: Intimidations, actions of menace and legal persecution (May 2012). The fact that the private security force employed by the company has augmented substantially reinforces this impression (*Convergencia por los Derechos Humanos*, June 2012, p.5). People of the community perceive the atmosphere among the inhabitants as very tense. According to them, this is because the enterprise divides the people and brings nothing more than disquiet and violence (CPO & ADH, 2012, p.2).

Stronger than the claims against the enterprise are the ones directed towards the government and its institutions. The CPO and the ADH declared the state of Guatemala became an instrument, used from powerful enterprises to serve their interests (2012, p.1.). In reunions organised by the *Consejo Comunitario de Desarrollo*⁸ COCODE with the purpose to give the enterprise the possibility to explain their project, the enterprise appeared conjointly as a single entity with the magistrate (*Convergencia*

⁸ Committee of the Community for Development

por los Derechos Humanos, 2012, p.5). The Committee of Unity of the Peasants CUC makes similar charges. They claim that the judges are acting in favour of the company and had been constraining the work for the defence of the arrested men for the incidents of the 1st of May. When the MP had issued orders of arrestment against leaders of the resistance on the bases of robbery and illegal detentions, it was clear to the opposition that those are only false pretences to criminalize leaders and to weaken the movement. They also criticize the military presence established by the state in the community. According to them, the objective of the military base in Barillas is not fighting organised crimes, but to establish control over the population and to suppress it if necessary (p.1).

The social movement calls upon the governmental authorities and the enterprise to end the conflict. The CUC addressed itself directly at the current administration of Molina and its policy strategy “mano dura”, which, it claims, is only applied against the indigenous people and the social movements. They call upon the functionaries, especially of Santa Cruz Barillas, to not participate in the oppressive policy of the president of the republic and to not act as accessories of the enterprises, but to act according to ethical norms and to fulfil their mandate as an advocate of the common good (CUC, p.2). The CPO demands the immediate suspension of the licence for the construction and the operation of the project Canbalam and the withdrawal of the enterprise from the region. They demand the formation of a commission including the organisations of the civil society, with the purpose of investigating the responsibility of what occurred at the beginning of May (CPO, May 2012, p.1). This is of great importance because various organisations want to clarify that the disturbances following the assassination of the 1st of May cannot be accounted to the social movement for the defence of the natural resources (SEDEM, ICCPG & ODHAG, 2012).

8 Interim Conclusion

The two main problems resulting from the entrepreneurial activities in Santa Cruz Barillas is on the one side the occupation of the territory and on the other side the economical aspect, that the whole benefit of the energy production is privatized. The essence of the conflict however goes much further than that (Interview with representative ADH, August 30, 2012). The fight of the social movement is not so much about the direct consequences of the water power plant, but the way the project is implemented by the enterprise, with the support of the government and its neoliberal political agenda. In Barillas, the social movement is accused of opposing itself to development because of their lack of understanding. The social movement takes issue with this imputation: “We want development, but a development respecting our vision of the world and of our territory” (Waqib’kej, 2012). The conflict is about the ignorance of basic human rights ratified and supposedly guaranteed by the state, such as the right of being consulted or the right for self-determination. The struggle is

for an execution of such projects, compliant to human rights, be it in Barillas or somewhere else (Interview with representative ADH, August 30, 2012).

The case of Barillas supports the thesis that Human rights are integrals, that there is a violation of Human rights as one identity. For instance, the installation of the project Canbalam without the consent of the people hits the right for self-determination. People oppose and the response of the state affects the right for life and for free expression. The lack of protection from the state, the militarisation and criminalisation drives inhabitants of Barillas to flee, producing displaced people and so on. Therefore it is not possible to separate between the rights. The non-compliance of the government to human rights in Barillas will be classified differently, namely on two levels, differentiated by the degree of the intensity of the violation by the state.

The first level constitutes the more passive non-sanctionary role of the state favouring the enterprise when making policy decisions or legal investigations. In the case of "Hidro Santa Cruz", this can be demonstrated by the behaviour of the PDH; it did not respond to denunciations against the enterprise made by the inhabitants. Also, the police closed the investigations about mines on the territory of the enterprise very quickly. Further, the MP directed their attention in the investigation about the attack occurred on the first of May towards the two accused man as individuals, not as employees of the enterprise. According to the MP, if a link between the actions of the two men and the enterprise would be revealed, drastic measurements could be taken, such as the cessation of the construction permit or even the closing of the enterprise, "but this is very complicated and implies high costs" (Interview with representative MP, August 28, 2012). Judging based on the fact that the enterprise continues to have the permission for its project, such measurements were never adopted.

On a second level, the state adopts a more active position suppressing the social human rights movement by its policies. The state presence in Barillas in the form of education, health and security has been very low in the past. This changed with the arrival of the transnational's interests in the region because of its potential to produce hydraulic energy. State presence has increased in form of military presence. The proclamation of the state of emergency suspended some constitutional rights, giving thereby extraordinary power to the military and enabling the high number of detentions executed during this period. These policies disclose the two strategies of the government to control social movements: Militarisation and criminalisation.

C. Sources giving rise to governmental policy

Based on the case study of “Hidro Santa Cruz”, the policy response has been classified on two levels: First, they are aimed at granting the enterprise advantages by a favourable treatment of governmental entities and secondly, they are intended to suppress the social movement that opposes the project by criminalisation and militarisation. Several sources have been detected that gave rise to the policies.

9 The international community’s restricted influence on transnationals

There is now a change taking place within the framework of international law on human rights (Interview with Wettstein, October 23, 2012). Traditionally, human rights conventions such as the Convention Nr.196 and the UN Declaration on the rights of Indigenous Peoples were directed towards the government of the state where the violation of those rights occurred. Increasingly, the international community tries to hold directly responsible the residence countries of the transnationals and transnationals themselves. Spain as one of the 34 members of the OECD therefore has to account for the implementation of the OECD Guidelines within its territory (OECD, n.d.). The control of the implementation is established by mutual surveillance. In case of nonfulfillment, the OECD can issue a reprehension, which does not have any legal binding character. A crucial reason for the lack of any legal binding agreement is certainly the limited capability of a country to decide over the business activities of a company that is located in another country. It might be very difficult for Spain to control the actions of Hidro Santa Cruz in Guatemala. Another effort constitutes the initiative for the UN Global Compact. Neither HidraliaEnergía nor Ecoener are members and therefore do not have to incorporate the values of the Compact (United Nations, n.d). Since the establishment of the UN Guiding Principles in 2011 however, the international community has the opportunity to demand concrete human rights responsibilities directly from transnationals, even if they are not part of the UN Global Compact. This convention constitutes the most promising tool for the international community, not only to exercise pressure upon the government of Guatemala, but also upon Spain and HidraliaEnergía.

According to Wettstein, Director of the institution for business ethics at the University of St. Gallen, the current debate about human rights is not much concerned with ethical questions about interpretations anymore. Essential is now the discourse about implementation. The UN Guiding Principles are written out, adopted and applicable to any entity violating human rights. Now the focus lies on how to operationalize them. But this turns out to be very difficult. The prevalent

approach for the implementation of the UN Guiding Principles is to make residence countries responsible for guaranteeing that their transnational companies do not violate human rights. But, just like the OECD Guidelines, the problematic of the extraterritorial application of laws restrict the establishment of any enforcement mechanisms (Interview, October 23, 2012).

Consequently, the political system is central to the analysis as it remains first and foremost responsible for the respect, protection and enhancement of the rights of the inhabitants of Santa Cruz Barillas. Next to securing that the policy response produced within the political system is conform to human rights, it also implies the obligation to compel any other entity within the territory of Guatemala that its actions do so, too.

10 Historical and structural elements of the society

The consequences of the armed conflict are still very present in the society of Guatemala. This trauma of the past constitutes the base on which the society interprets actions and takes decisions. Another criterion influencing the society in terms of decision making poses the high rate of violence caused by organised crime.

10.1 Trauma of the past

Despite the slow advancements in the area of impunity for massacres committed during the war, an effective reworking process on a national level has not yet taken place. The Committee of Human Rights expressed concerns that the reparation programs adopted by the National Program for Reparations only addresses economic issues and disregards its actual task of psychosocial accompaniment and the restoration of the historic memory (Committee of Human Rights, 2012). This leaves the Guatemalan society still traumatised of the 36 years of war. People aged above 32 might have been babies, children or might even have served as adolescents in the military, have joined the guerrilla troops or have been forced to participate in the paramilitary. They are left struggling with the experiences they made during all those years they have been standing between the two fronts; between the Guerrilla and the military, both parties trying to use them for their goals and not flinching to use brute force.

With this historic background, the government has to be very clear about the image they want to create for the population when increasing the military presence and exclaiming the state of emergency. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya states that these types of practices contribute to a climate of mistrust and provoke disputes within the community and evoke inevitably the memories and the

terror of the past (2011, p.17). The suspicion suggests itself, according to Santos, that such a response to the social movement in Barillas was intended to seed again the terror of past times and to calm down the situation by suppressing and intimidating the population. According to the representative of the PDH, the heavy charges brought forward against the arrested people during the state of exception are a good example of how it is tried to intimidate the population. They pursue the goal of the government to establish an image among the people that the state is taking drastic measures when facing social unrest.

The fact that some people fled to the mountains and even across the border to Mexico when the military arrived in Santa Cruz Barillas shows the climate of fear that has been produced in the community. They were afraid they could be made responsible for the riots of the first of May and be arrested (Interview with representative ADH, August 30, 2012). Another example is the way how people reported to the PDH the human rights violations that occurred in Barillas caused either by governmental authorities or by the enterprise itself. The people were too afraid to present themselves personally and denunciate. The PDH had to get active and start investigations mainly based on narrations (Interview with representative of PDH, August 24, 2012).

10.2 Organised crime

The procedure of the government in the conflict in Santa Cruz Barillas is part of Molina's policy strategy of the "iron hand". Considering the experiences the inhabitants of Guatemala made during the civil war, such as the massacres, the persecution and displacement, a policy promoting actions to be carried out by the state with an iron fist would be expected to be of little popularity. Therefore, the question arises how a president who has been a general during the civil war and had promoted in his election campaign the policy of an "iron hand" could win presidency?

Molina was not the first who has run for presidency advocating such a policy. In the past decade, Guatemala has seen the resurgence of right-wing political activity. In 2003 General Efraín Ríos Montt had been campaigning for president. He had become president once before, in 1982. Now he is accused of being responsible for the massacres during his period of presidency. Although he finished the presidential election in 2003 at third place, his campaign securing to end crime and corruption by the use of overwhelming force had a strong impact on further presidential campaigns. In the presidential election of 2007, Otto Pérez Molina took the same line as Ríos Montt in his campaign. He and his Party, the PP, encouraged the citizens to believe that only by a policy that prioritizes above everything else the combat of organised crime, order can be established throughout the country. Therefore, he announced that in case of winning the election, he would be willing to use any amount of coercive power necessary to fight organised crime. With a 47% of the votes, he didn't win this

election, but the proximate one in 2011, and now he is implementing his policy of the “iron hand” (Benson, Fischer & Thomas, 2008, p.48).

The answer to the question of what enables rights-wing military policies therefore constitutes the high criminality within the country. After the signing of the peace treaty, a reduction of crimes was not achieved; the opposite was the case, violence increased (Cabanas, 2008, p.2). The global peace index ranks Guatemala in 2012 with the 124th position of 158, whereby the higher the number, the less peaceful the country is (Vision of Humanity, 2012).

Benson, Fischer and Thomas asked in their survey a Mayan woman why she supported Otto Pérez Molina although she had known his role as a general in 1982, her answer was simply that she did not have any other choice. As a resident of Guatemala City, she would vote for whichever candidate will clean up the streets and bring security (2008, p.48).

11 Lack of consistency and ideology of political parties

Politicians are also called representatives, thereby implying their function to represent the common interests of the citizens. The case of Hidro Santa Cruz showed that this is often not the case. Interests of powerful individuals or minority groups are thereby of great concern within the political arena because politicians taking office are already committed to influential actors. This is made possible by the party system itself.

According to Cadena, many parties are founded and financed by some powerful communities of interests, then pushed to power and after the four years period in government they break into pieces. From these pieces, other parties might form alliances, but they also do not have a long durability. The landscape of the different parties in Guatemala is therefore **unstable** and subject to many changes. For instance, there are currently 15 parties represented in the congress. The previous government of Álvaro Colom was formed by the UNE, represented in the congress with 30 of 157 deputies and only excelled by the PP, which had eight seats more. Just one legislation later, the UNE counts with only 7 seats and shares the sixth place in congress with party GANA (*Congres de la Republica de Guatemala*, 2008 & 2012). This creates a system where parties come to power, serve the interests they are committed to and then disappear. Mostly the economic elites, but also the military and the organised crime are behind this strategy (Interview with Cadena, August 23, 2012).

The current party in power, the PP, seems to promote the interests of such actors; it is a conservative right wing party strongly influenced by the military and supported by entrepreneurs. In the case of Hidro Santa Cruz, many believe that the enterprise actively supported the election campaign of Otto Pérez Molina (Cabanas: *“Hidro Santa Cruz: el poder de la impunidad”*, 2012, p.4).

The way how the process of market liberalisation was undertaken provides a good example to illustrate how economic elites succeeded in imposing their interests in the political decision-making arena. When the electricity sector changed from being a service to being a property, many transnationals got attracted by the profit potential of this business, like in the case study. Hidro Santa Cruz produces the energy, another enterprise then undertakes the tasks of transmission and the enterprise Fenosa distributes the energy (Interview with representative ADH, August 30, 2012). Before, this was all done by the *Instituto Nacional de Electrificación*, INDE, a governmental institution created in 1959 to generate, transmit and distribute energy in the country (INDE). In the process of privatisation, the entities responsible for the distribution were sold to the Spanish firm Fenosa for 101 million USD. The real value was estimated at 400 million USD (Yagenova et al., 2008, p.58).

This model of political representation reproduces and generates privileges. In a state designed for this, there is little to no room for human rights, not only because of the desire for personal enrichment of those elites, but also because of the lack of understanding how a capital economy can incorporate human rights. According to Santos, the economic elite of the country traditionally believe that an effective human rights implementation would go against the interests of the capital. There is no vision of a liberal market economy where there is space for the development and establishment of human rights (Interview, August 23, 2012). The argumentation of Hidro Santa Cruz that the people opposing the project Canbalam oppose the economic development of Guatemala illustrates precisely this lack of understanding.

12 Concentration of political power

The executive and the legislative power are traditionally dominated by the same party. In the current legislature, this feature is pronounced very clearly. President Otto Pérez Molina and Vice-president Roxana Baldetti are of the PP. As the president can appoint all the ministers, his cabinet consequently represent the interest of the country very one-sided. For instance, just one of his 14 Ministers is Mayan, namely the Minister for Cultures and Sport, and this department has traditionally been assigned to a Mayan. With 63 deputies, the PP is also dominant in the Congress. The second largest party is the LIDER with 28 seats. Parties that could give counterweight to the policy agenda of the PP, such as the URNG, have very little to say in the congress. The URNG is represented with just one deputy. Therefore, the political system is currently very much dominated by the Patriotic Party: by the president and his cabinet, the vice-president and the congress.

Subsequently, when the Congress takes decisions, such as about the approbation of the state of emergency in Santa Cruz Barillas the president had proclaimed, he agrees very easily. Although the

president had violated national laws by his rushed actions of the second of May, the congress still approved his decision retroactively.

Structural factors of the political system might weaken representativeness and responsiveness and thereby enhance the concentration of power within one political party. So plurality-majority systems promote a weak representation of some social groups (Knill & Tosun, 2011, p.381), as it is the case in Guatemala. According to Dahl, the right of an organised opposition is only reached when the executive can be dismissed by a majority in parliament and thereby becomes fully responsible to the legislature (cited in Mair, 2011, p. 92). The Constitution of the Republic of Guatemala does concede its Congress this power. The congress can dismiss the President and the Vice-president with a two-third vote, but if the Congress counts with 158 seats and the PP alone already has 63, even an alliance among all the other parties could not provide such a majority. Further has the government in Guatemala City far reaching control over local authorities. The Ministry for Energy and Mines granted the license for the project although the government of the municipality of Santa Cruz Barillas had declined it before.

The conclusion is therefore that Guatemala does not have the ideal mechanisms incorporated in its political system to give sufficient consideration to all different ethical groups and their interests.

13 Instauration of the alliance oligarchy-military

The authority of the military is reaching sectors it should not reach. Under the current administration it is argued that, once again, civil power is degraded facing military power. Additionally, a strong military increases the power of the president as he is the supreme-commander of the military forces (Art.182 of the *Constitución Política de la República de Guatemala No. 18-93* of the November 17, 1993).

Historically, the military had the role to control and guide the state. After the war, however, the peace agreement separated the tasks of the military clearly from the civil society. It prohibits its use for domestic political functions unless in case of any kind of emergency. The agreement aimed at decreasing the military's power and independence. As a direct consequence, military bases all over the country had been closed solemnly, but then, shortly after, many were opened again. The argument was that the increasing delinquency on the countryside could only be combated with an increased military presence (Kurtenbach, 1998, p.134).

The current administration increases military presence within the county using the same reasoning. In the regions bordering Mexico, the argument of fighting drug traffic is brought forward. The representative of the MP explains that especially in the regions where the state presence is very

little, like in Santa Cruz Barillas, military presence is necessary. In Guatemala, the notion exists that these are ostensible reasons to legitimize the increased role of the military within the country. Thereby, the true intention is not to fight organised crime, but to enforce the interests of the economic elites (Solano, 2012, pp.2-3). "In Guatemala a debate is going on; do we have a military government or an ex-general who became the government? I am more with the believe of the first one", so Santos (Interview, August 23, 2012). The representative of the PDH also denotes the government of president Molina as a military government and supports this view (Interview, August 24, 2012).

President Molina allocated in the proposal of the state's expenditure for 2013 66'562'199 Quetzales to the ministry for national defence, while in 2011 and 2012, an amount of 43'831'584 respectively of 43'589'000 had been allocated to them (*Ministerio de Finanzas Públicas*, n.d.). Thereby it is claimed that in the proposal for 2013, other programs, such as the fight against malnutrition, health care and education, are disregarded (González, 2012). Further, the president, assigned many key positions to retired generals, which he had known from his time in the military. Such indicators support the believe that the government of the PP tries to restore the old alliance of the oligarchy with the military (Solano, 2012, pp.2-3).

According to Santos, in the first seven months, the use of military force had intensified. The representative of the ADH explains that the support of the current government for extractive projects did not increase compared to past ones, but what have changed in this government are the practices how such projects are supported. The conflict in Hydro Santa Cruz provides the best example.

14 Lack of information

The right for information was not included in the constitution of the Republic of Guatemala. In 2008, however, the law for access to public information passed legislation, a progressive law that provides strong bases to exert the right for information. It incorporates the right to request information and it obliges all public entities to provide a lot of information proactively (Mendel, 2008, p.87). Access to full information constitutes a necessity for many indigenous people's rights to be exercised. So for example in the case of the right to be consulted: To enable indigenous people to reach a decision when being consulted, the government needs to ensure that they "have all relevant information and that it can be fully understood by them" (ILO, 2009, p.63).

The representative of the PDH blames a large part of the responsibility for the conflict in Santa Cruz Barillas to disinformation. The government granted the enterprise the license without having

informed the community what this project is about. Therefore people were kept in the dark. They do not know the true objectives of the project; where is the energy produced in Barillas intended to go, for whom and for what. The social movement in Barillas requests a dialogue between representatives of the enterprise and of the government and members of their organisations to establish intercommunication and find solutions. The problem is, though, that the parties advocating the project only allow a dialogue between those in favour of the project supporting the enterprise's activities. "It is a dialogue between themselves. Like this, one cannot solve the problem" (Interview with representative ADH, August 30, 2012).

15 Weaknesses of institutions

Two weaknesses of governmental institutions are identified. One is their dependence from the government and the congress, and the other lies within the institutions themselves. The institutions involved in the conflict in Barillas showing such weaknesses are the PDH and the MP.

Despite the formal autonomy of these two institutions, both had taken actions or had failed to take actions to not interfere with the interests of the government and Congress. Therefore, the government and the Congress have effective tools to create dependencies. So has the president for instance the power to elect the attorney general, which is the head of the MP, from a list of six candidates. The last paragraph of Article 251 states "the President of the Republic can remove him for justified reasons established according to the rules" (*Constitución Política de la República de Guatemala No. 18-93* of the November 17, 1993). What "justified reasons" are is not further specified in the constitution.

The PDH is a good example in the case study to show its dependency from the Congress. The PDH stated its disagreement with the practices employed by the military in Barillas during the state of exception and confirmed that there was reasonable evidence to justify the fear and terror among the people facing the proceedings of the public authorities. There is also no doubt that the formal procedure of the proclamation of the state of exception was not conform to the laws of Guatemala. This should have been enough reason for the PDH to not only criticise the proceedings of the government, but to condemn it, especially the proclamation of the state of emergency by the President. The problem thereby was that the election of the ombudsman of the PDH was just around the corner and Sergio Morales was very ambitious to get re-elected. Since the congress elects the candidate for this position and because the congress is dominated by the PP, which is headed by president Molina itself, Sergio Morales gave the internal orders to not stand on the president's feet. What he did was not condemning the proceedings in Santa Cruz Barillas, but withdrawing the office

from this town (Interview with representative PDH, August 24, 2012). The PDH as institution is seen as a platform where one can negotiate and make deals. But not only from the outside, so Santos, even within the institution itself are limits until to what degree the employees see themselves as a human rights advocate and promoters. Their responsibilities are more extensive than to administer and transmit protocols. Additionally, many employees working for the PDH do not have sufficient knowledge about human rights. These factors impede that the work is carried out in the best and most effective manner (Interview with Santos, August 23, 2012).

Weaknesses within the institution can also be found in the MP. Hidro Santa Cruz has levied several charges since the initiation of their project against several actors of the social movement and even against the local government. Benson, Fischer and Thomas have observed such behaviour in other cases, such as the Conflict between the population and the Canadian goldmine GoldCorp in San Miguel Ixtahuacán. They identified it as a strategy to face social movements, which serves as a precedent for other communities opposing themselves to transnational projects. "By claiming to be the victim of violence, the company [GoldCorp] turned popular protest and collective disapproval into a case of individual wrongdoing and criminality" (2008, p.42). The MP fails to identify the claims made by Hidro Santa Cruz as such a strategy. Santos criticizes that it has little capacity to understand phenomena that are not aligned with criminal acts, but have their origins somewhere else. All cases are mostly resolved by penalties such as fines, jail or even death penalty, but in the case of Hidro Santa Cruz, such an approach does not resolve the conflicts. The MP should have an incorporate vision of the situation in Guatemala being able to identify the real problematic. Therefore, the employees of the MP should not only have knowledge about the laws and their application established already, but assume their role as rectors in the material of human rights. The representative of the MP, on the other hand, secures that the MP tries to differentiate between acts that are criminally motivated and acts motivated to manifest disagreement, which he confirms is completely legal. Nevertheless, one thing is certain: Not all the people arrested during the state of emergency and afterwards can be drug dealers.

The committee of human rights sent a delegation to Guatemala in March 2012. Their observations resulted in similar concerns. They criticised the reduced knowledge about the ratified international human rights of the legal authorities and the judges. They also lamented the weaknesses that persist in terms of the capacity of the institutions responsible for the investigation and sanction of human rights violations to comply with its function. Therefore, they urge the government to support the processes initiated by the MP and the judges and to provide them with the human and material recourses needed (Committee of Human Rights, 2012, p.2).

Further, Cadena criticizes that despite some effort, there are still no effective mechanism established to secure the protection of the judges within the MP. This limits their independence (Interview, August 23, 2012).

The PDH and MP are weakened by their dependencies on the president and the congress, by the appointment of people based on their political compromises and not based on their skills or by the assignment of a very small budget. According to Cadena, it is no coincidence that these institutions are dependent and weak; it is a deliberate plan of several governments that had been in power.

16 Lack of reforms, implementation and enforcement

A major factor hindering the social movement's human rights claims to result in any remedy is the lack of reforms of the national law, of implementation mechanisms of national and international ratified laws and the lack of the capacity and willingness of the state to enforce them.

The first big failure was that until today, not one government achieved to incorporate the peace agreement into the constitution. President Molina now put forward a proposal for such a reform, but many believe that it is more about giving Molina the appearance of a democratic president and to reinforce his power. The reforms proposed do not remove the fundamental sources for the existing problems in Guatemala; they stay at the surface. One example is the incorporation of the indigenous people's rights (Interview with Cadena, August 23, 2012). In his proposal, the so called reforms are limited to the rights of the Mayans to have an own identity and spirituality and obliges the state to respect them. Furthermore, he reinforces the state's responsibility to respect and to promote the languages spoken by other ethnical groups than the Ladinos (*Presidencia de la República*, 2012, pp.46-47). He refrains from taking any reforms that would actually entail some concrete measurements to advance the situation of the indigenous people.

Not only laws of the constitution are required to be reformed, but also other laws, such as the law for public policy. The United Nation urged the government to adopt a security policy which is of pre-emptive nature using an adequate amount of force and an integrated perspective on human rights. The application of the state of emergency should thereby not become a tool used by the state to facilitate security forces to execute other functions. The government of Guatemala is criticised for doing exactly that. Therefore, a reformation of the law for public policy is demanded, to strictly limit the application of the states of exceptions (Committee of Human Rights, 2012, p.4). However, the priority should not be put on the reformation of laws, but on the establishment of implementation mechanisms for the laws that already exist.

Many parts of the peace agreement of 1996 have not been implemented until today. Thereby, the convention about the Identity and Rights of the indigenous people is part of the agreement that makes least progress concerning its implementation. It basically deals with the problematic of full access for the Mayans to the system of justice, the elimination of the marginalisation and exclusion, the democratisation of the political parties and the recognition of their identity (COINDE, 2012).

Concerning the international human rights ratified, the representative of the PDH denotes Guatemala as a schizophrenic state: It seems to be a state which has signed and ratified a good part of international human rights conventions, but when it comes to implementation, the picture doesn't look that good anymore. The United Nations also called upon the government to guarantee the rights of the indigenous people, but thereby addressing specifically the right for consultation established in the Convention No.169 OIT. It was criticized that the lack of domestic regulations on consultations and misunderstandings about the content and scope of the regulations that do exist are jointly responsible that this rights is not getting implemented (Anaya, 2011, p.2). A justification for non-compliance with the law is, according to the representative of the PDH, that it only states that people have to be consulted, not how and by whom this shall be done. Further, it is argued that even if such a consultation is conducted, it is not clearly deducible from the right to be consulted that the result also has to be decisive for the decision whether or not to give a license. The representative emphasises the necessity of the regulations needed to enable a correct implementation to be developed not unitary, but in a process incorporating the communities, especially the indigenous people (Interview, August 24, 2012).

When coming to the enforcement of human rights, the high degree of impunity is a major impediment. Many reported criminal acts against members of indigenous communities, as well as denounced violence against human rights activists remain unpunished (Anaya, 2011, p.17). In the case of the assassination of Andrés Francisco Miguel, there have been serious efforts for investigations against the attackers, but they remained superficial; deeper lying motivations that would reveal the necessity for the government to take adequate measurements in Santa Cruz Barillas are not of concern. The representative of the ADH claims that the neoliberal politics implemented by the government prevent thereby an objective criminal prosecution of enterprises.

There has been and still is little compromise of the government to implement the obligations and norms of the peace agreement. The reason is that these agreements touch core interests of some very strong actors; private initiative, military, even interests of the organised crime. These sectors do not want to lose their control (Interview with Cadena, August 23, 2012). COINDE claims that up to now, the economic and political elites of the country have therefore committed themselves to the nonfulfillment of the peace agreement to maintain the living situation of the indigenous people on

the poor level as it has always been. As a result, the access to education, a home, a dignified job and health care is not given for the majority of the Mayas (COINDE, 2012)

17 Conclusion

The riots on the evening of the first of May are an expression of the accumulated resentment of the population caused by the incidents which were never dealt with by the state. Santos believes that this conflict and the demonstrations of the first May had been foreseeable (Interview, August 23, 2012). The social movement in Barillas has exhausted the democratic path to a large extent; it made use of all mechanisms provided by the national authorities to manifest its inconformity and pronounce the population's needs. They claim their rights based on nationally and internationally ratified laws, they brought forward denunciations to the PDH and the MP, they directly addressed the government, as well as the public and the international community to call attention to their situation and they organised demonstrations and held manifestations. The result: nothing. The intimidations, legal persecutions and the extension of cleavages within their own community continue.

Santos believes that Guatemala is now in the process of making a very important decision: Either the social movement finds new democratic ways to stand up for the inhabitants' rights, or it chooses to take less peaceful measures (Interview). If it elects the second option, the state would answer with a policy of the "iron hand", incapable and unwilling to engage in any dialogue and much less would the governmental authorities be able to find solutions. Cadena says that people in Guatemala are nowadays "closer to what has been the reality when the civil war began in 1930 than to the reality when peace began 36 years later" (Interview, August 23, 2012). The situation of the human rights clearly improved when compared to the situation during the war, but after the peace agreement was signed, there have not been any further advances in practice, especially not for the indigenous population. With the peace agreement, there was a possibility to establish a state where human rights are respected and to transform the relationship between the state and the society in such ways that dialogue, proposals and negotiations would triumph, believes Cadena. Today, looking back, the euphoria of the society transformed into apathy (Interview).

To bring about a change, structural reforms are needed. A model of the state has to be implemented that respects the human rights of every individual and secures a participation in the decision making process of all ethnic groups within Guatemala on equal shares.

To achieve such a change, the social movement has to become stronger. It needs to amplify its strategy by also using tools provided on an international level, as it is now up to focusing very

strongly on the right for consultation. Furthermore, it needs to continue its effort to expand its articulation not only within the country, but with other social movements that are getting harmed by the same economic interests, independent of their geographical location. Not only the society of Guatemala can bring about such a structural transformation, also the citizens of Spain can launch initiatives. They can execute pressure either directly on the transnational enterprises or on their government to bring them to establish legal binding mechanisms that enable the enforcement of human rights compliance from transnationals, even when they are operating outside the frontier. To mobilize people outside Guatemala, they first need to be informed and sensitized. Of course, depending on the internal situation within Spain, such as the political stability and the wellbeing of its population, such a mobilisation might be more or less difficult. The international community also plays an important role. As a sub-system of Guatemala, Spain and all the other countries, it has the ability to gather information from different countries and can thereby attain a more concluding picture of the interrelationships of all the relevant actors. International pressure has showed a considerable impact in the conflict in Santa Cruz, as it contributed to the annulment of the state of emergency. When a country such as Guatemala has ratified a considerable amount of human rights conventions, the positive incentives could be offset by a less strict monitoring of the international community because they concentrate on countries that have not ratified such treaties (Hathaway, 2002, p.86). Therefore, it is crucial that the international community observes the situation in Guatemala and identifies correctly the policies implemented by the government.

Appendix

Interview Partners

Representative of MP (*Ministerio Publico*)

MP is the department of public prosecution.

August 28, 2012 - Guatemala City

Representative of PDH (*Procuraduria de Derechos Humanos*)

PDH observes compliance to human rights and admonishes violations of such.

August 24, 2012 - Guatemala City

Representative of ADH (*Asamblea Departamental Por la Defensa del Territorio en Huehuetenango*)

ADH forms opposition to Hidro Santa Cruz.

August 30, 2012 – Huehuetenango

(The representatives of MP, PDH and ADH prefer not to be mentioned by their names)

Jorge Santos

Director of CIIDH (*Centro Internacional para Investigaciones en Derechos Humanos*)

CIIDH defends and promotes the human rights in Guatemala by observation, investigation and divulgation.

August 23, 2012 – Guatemala City

Ramón Cadena

Lawyer and Director of CIJ (*Comision Internacional de Juristas*)

CIJ dedicates all its effort to grant the primacy, coherence and application of international law, as well as of the principles that promote human rights.

August 23, 2012 – Guatemala City

Prof. Dr. Florian Wettstein

Director of the institution for business ethics, University of St.Gallen

October 23, 2012 – St.Gallen

i. Bibliography

ADH: Asamblea de Pueblos de Huehuetenango Por La Defensa del Territorio. Available online at <http://www.blogger.com/profile/01666054011357345247>, checked on 17/11/2012.

ADH and CPO (2012): Declaración de Barillas. "Libertad a los presos y perseguidos políticos" Todos y todas somos Barillas. Available online at <http://www.albedrio.org/htm/otrosdocs/comunicados/aphdt-002.html>, checked on 17/11/2012.

Alemann, U. and Forndran E. (2002): *Methodik der Politikwissenschaft. Eine Einführung in Arbeitstechnik und Forschungspraxis*. 6th ed. Stuttgart: W. Kohlhammer.

Anaya, J. (2011): Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya. Observations on the situation of the rights of the indigenous people of Guatemala with relation to the extraction projects, and other types of projects, in their traditional territories*. United Nations. Available online at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/140/31/PDF/G1114031.pdf?OpenElement>, checked on 17/11/2012.

Animal Politico (2012): Guatemala decreta estado de sitio en población fronteriza con México. Available online at <http://www.animalpolitico.com/2012/05/guatemala-decreta-estado-de-sitio-en-poblacion-fronteriza-con-mexico/>, checked on 17/11/2012.

Arévalo, L. (2012): Deponen el estado de Sitio. In *La Hora*, May 2012. Available online at <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/158599-deponen-el-estado-de-sitio>, checked on 25/08/2012.

Batres, R. (2012): El gobierno "seguro" de Otto Perez Molina y el PP. In *El Observador* (Año 7, Nos. 34 y 35), pp. 55–77.

Benson, P. Fischer E. and Thomas K. (2008): Resocializing suffering: neoliberalism, accusation, and the sociopolitical context of Guatemala's new violence. Vol. 35 Issue 5: *Latin American Perspectives*. In *Latin American Perspectives*, 2008 (issue 5), pp. p38-58, 21p. Available online at www.jstor.org/stable/27648119, checked on 30/10/2012.

Bull, B. (2004): The Role of Local Economic Groups in Telecommunication Privatization in Central America: Sage Publications, Inc (20: 227). In *Journal of Developing Societies* 2004 20: 227 (DOI: 10.1177/0169796X04050960). Available online at <http://jds.sagepub.com/content/20/3-4/227.full.pdf+html>, checked on 6/10/2012.

Business & Human Rights Research Centre: UNGP. Available online at <http://www.business-humanrights.org/SpecialRepPortal/Home/Protect-Respect-Remedy->, checked on 4/11/2012.

Cabanas, A. (2008): *La encrucijada de Guatemala: regresión autoritaria o democracia participativa*. Edited by bakeaz: centro de documentación y estudios para la paz. Guatemala (87). Available online at <http://www.bakeaz.org/es/publicaciones/mostrar/238-la-encrucijada-g>, checked on 17/11/2012.

Cabanas, A. (2012): Hidro Santa Cruz: el poder de la impunidad. In diálogo 43, pp. 3–4.

Centro de Medios Independientes Guatemala (2012): Relación de los sindicatos del asesinato de ANDRES FRANCISCO MIGUEL con la empresa ECOENER HIDRALIA. Available online at <http://barillasresiste.wordpress.com/2012/08/31/santa-cruz-barillas-2/>, checked on 17/11/2012.

COINDE (2012): El Consejo de Instituciones de Desarrollo –COINDE- en el día internacional de los pueblos indígenas, declara que:, 2012.

Committee of Human Rights (2012): Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto. Observaciones finales del Comité de Derechos Humanos. Available online at www2.ohchr.org/.../CCPR.C.GTM.CO.3_sp.doc, checked on 17/11/2012.

Congreso de la Republica de Guatemala (n.d.): Conociendo nuestro congreso. Available online at http://www.infantil.congreso.gob.gt/index.php?option=com_content&view=article&id=46&Itemid=56, checked on 17/11/2012.

Congreso de la Republica de Guatemala (2008): Diputados y Diputadas. Sexta Legislatura 2008 - 2012. Available online at <http://200.12.63.122/gt/diputados.asp>, checked on 26/10/2012.

Congreso de la Republica de Guatemala (2012): Diputados y Diputadas. Séptima Legislatura 2012-2016. Available online at <http://www.congreso.gob.gt/legislaturas.php>, checked on 26/10/2012.

Constitución Política de la República de Guatemala (17/11/1993): Título I: La persona humana, fines y deberes del estado & Título II: Derechos humanos. Available online at http://www.oas.org/juridico/MLA/sp/gtm/sp_gtm-int-text-const.pdf, checked on 17/11/2012.

Convergencia por los Derechos Humanos (2012): Estado de sitio. Santa Cruz Barillas, Informe de verificación. Available online at http://www.semillerosdepensamientos.org/include/uploads/nodo/Barillas_informe_UDEFEGUA.pdf, checked on 17/11/2012.

CPO: Consejo del Pueblo Maya de Occidente. Available online at <http://consejodepueblosdeoccidente.blogspot.ch/>, checked on 17/11/2012.

CPO (Mai, 2012): COMUNICADO URGENTE. Available online at <http://noticiascomunicarte.blogspot.ch/2012/05/comunicado-urgente-ante-el-inminente.html>, checked on 17/11/2012.

CUC (2012): Criminalización y persecución política del movimiento indígena, campesino y popular guatemalteco. Available online at http://www.cuc.org.gt/es/index.php?option=com_content&view=article&id=477:criminalizacion-y-persecucion-politica-del-movimiento-indigena-campesino-y-popularguatemalteco&catid=34:contenido&Itemid=53, checked on 17/11/2012.

Ecoener and HidroEnergía (2010): PROYECTO HIDROELÉCTRICA CANBALAM. BARILLASHUEHUETENANGOGUATEMALA. Available online at <http://es.scribd.com/doc/37099729/Proyecto-Cambalam>.

European Parliament (2007): INTERNATIONAL CONFERENCE. The Guatemala Peace Accords Ten Years Later: An Analysis and the Outlook for International Cooperation. Available online at http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/droi20071126_guatemala_003/DR_OI20071126_Guatemala_003en.pdf, checked on 26/10/2012

Fundación Acción pro Derechos Humanos: Informe "GUATEMALA: MEMORIA DEL SILENCIO"; Comisión para el Esclarecimiento Histórico (CEH). Available online at <http://www.derechoshumanos.net/lesahumanidad /informes/guatemala/informeCEH.htm>, checked on 17/11/2012.

Galíndez, C. De Rosa Y. and Mujica A. (2008): Problemas de las empresas multinacionales en el ámbito internacional. Available online at <http://www.gestiopolis.com/economia/problemas-de-las-multinacionales-en-el-comercio-internacional.htm>, checked on 19/08/2012.

Gobierno de Guatemala (2012): Reformas Constitucionales son presentadas al cuerpo diplomático acreditado en el país. Available online at <http://www.guatemala.gob.gt/index.php/2011-08-04-18-06-26/item/1682-reformas-constitucionales-son-presentadas-al-cuerpo-diplomatico-acreditado-en-el-pais>, checked on 17/11/2012.

Gobierno de la República (2011): Invest in Guatemala. Guatemala; Oportunidades de Inversión 2011. Available online at <http://www.investinguatemala.org/images/stories/pdfs/presentacionpaisjunio2011.pdf>, checked on 17/11/2012.

González, B. (2012): Gobierno prioriza solo la seguridad. In *siglo21*, 25/10/2012. Available online at <http://www.s21.com.gt/nacionales/2012/10/25/gobierno-prioriza-solo-seguridad>, checked on 17/11/2012.

Gramajo, j. and Agencies (2012): Congreso ratifica el estado de Sitio. In *Prensa Libre* 2012, 9/05/2012, pp. p.4. Available online at <http://issuu.com/prensalibregt/docs/plmt09052012>, checked on 17/11/2012.

Gramajo, j. and Agencies (2012): Hidroeléctrica. "La manipulación afecta la inversión". In *Prensa Libre* 2012, 9/05/2012, pp. p. 4. Available online at <http://issuu.com/prensalibregt /docs/plmt09052012>, checked on 17/11/2012.

Harvey, D. (2005): *A brief history of neoliberalism*. New York: Oxford University Press Inc.

Hathaway, O. (2002): Do Human Rights Treaties Make a Difference? (Vol. 111). In *Yale Law Journal*, Vol. 111, 2002 (Boston Univ. School of Law Working Paper No. 02-03). Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=311359, checked on 5/11/2012.

Hermann, F. (2008): *Guatemala*. 3rd ed. Ostfildern: DuMont-Reiseverl.

Hristov, J. (2005): Freedom and Democracy or Hunger and Terror: Neoliberalism and Militarization in Latin America. In *Social Justice* Vol. 32 Issue 2, pp. p89-114, 26p. Available online at <http://web.ebscohost.com/ehost/detail?vid=5&hid=127&sid=67cc0422-2a9e-457a-92f5-3625e9ce0dfe%40sessionmgr113&bdata=JnNpdGU9ZWwhvc3QtGjI2ZQ%3d%3d#db=sih&AN=18894761>, checked on 18/10/2012.

ILO: Indigenous & Tribal Peoples' Rights in Practice. A Guide to ILO Convention Nr. 169. Available online at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_106474.pdf, checked on 17/11/2012.

INE (2011): Pobreza y Desarrollo. Un enfoque departamental. Available online at <http://www.ine.gob.gt/np/encovi/documentos/Pobreza%20y%20Desarrollo%202011.pdf>, checked on 9/11/2012.

Jonas, S.: Democratization through Peace: The Difficult Case of Guatemala. In *Journal of Interamerican Studies and World Affairs* Vol. 42, No. 4, Special Issue. Available online at <http://www.jstor.org/stable/166340>, checked on 18/10/2012.

Knill, Christoph & Tosun Jale (2011): Chapter 20: Policy-Making. In Daniele Caramani (Ed.): *Comparative Politics*. 2nd Edition. Oxford: Oxford University Press, pp. 373–388.

Kriesi, Hanspeter (2011): Chapter 16: Social movements. In Daniele Caramani (Ed.): *Comparative Politics*. 2nd Edition. Oxford: Oxford University Press, pp. 293–308.

Kurtenbach, S. (1998): *Guatemala. Orig.-Ausg.* München: Beck.

Mair, P. (2011): Chapter 5: Democracies. In Daniele Caramani (Ed.): *Comparative Politics*. 2nd Edition. Oxford: Oxford University Press, pp. 84–101.

MEM (2012): Gui del subsector eléctrico y de las energías renovables. Guatemala. Available online at http://www.mem.gob.gt/wp-content/uploads/2012/04/Guía-del-Inversionista_20121.pdf, checked on 17/11/2012.

Mendel, T. (2008): *El Derecho a la Información en América Latina. Comparación Jurídica*. Edited by Ciencia y. Cultura La Organización de las Naciones Unidas para Educación. Available online at <http://unesdoc.unesco.org/images/0018/001832/183273s.pdf>, checked on 17/11/2012.

Ministerio de Finanzas Públicas: Presupuestos Aprobados, 2013. Available online at <http://www.minfin.gob.gt/presupaprobado/presupaprobados.html>, checked on 17/11/2012.

Ministerio Publico de Guatemala: Acerca del MP. Available online at <http://www.mp.gob.gt/acerca-del-mp>, checked on 17/11/2012.

Nevada, E. and Hurtado P.: El Programa Nacional del Resarcimiento mejora su labor El Programa Nacional del Resarcimiento mejora su labor. In *El Periodico*. Available online at <http://www.elperiodico.com.gt/es/20070404/actualidad/38393/>, checked on 17/11/2012.

OECD (n.d.). Available online at <http://www.oecd.org>, checked on 17/11/2012.

OHCHR (n.d.): What are human rights? Available online at <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>, checked on 12/10/2012.

Poggi, Gianfranco (2011): Chapter 2: The nation-state. In Daniele Caramani (Ed.): *Comparative Politics*. 2nd Edition. Oxford: Oxford University Press, pp. 68–81.

Presidencia de la República: Proyecto de Reforma a la Constitución Política de la República de Guatemala. Documento para análisis y discusión. Available online at <http://de.slideshare.net/YuriFranco/proyecto-de-reforma-a-la-constitucin-poltica-de-la-repblica-de-guatemala>, checked on 17/11/2012.

Reding, Andrew (1997): Democracy and Human Rights in Guatemala. Edited by World Policy Institute. Available online at www.ciaonet.org/wps/rea01/, checked on 15/09/2012.

Risse, K. Thomas R. Steve C. and Sikkink K. (1999): The power of human rights. International norms and domestic change. New York: Cambridge University Press. Available online at <http://books.google.de/books?hl=de&lr=&id=kpsDPvaCOCAC&oi=fnd&pg=PR9&dq=The+Power+of+Human+Rights,+Guatemala&ots=na262vP34q&sig=W5EIDqDwkoPt4ALAy99ujQYZddE#v=onepage&q=The%20Power%20of%20Human%20Rights%2C%20Guatemala&f=false>, checked on 25/10/2012.

Secretaría General de Presidencia de la Republica (2012): Funcionarios nombrados al 30 de Octubre del año 2012. Available online at <http://www.sgp.gob.gt/historialdefuncionarios/2012/Func.htm>, checked on 26/10/2012.

SEDEM, CIIDH, CALDH, ICCPG, ODHAG, UDEFEGUA, FGT, ECAP, CEG (2012): Ante el estado de sitio. Available online at <http://www.fgtoriello.org.gt/ante-el-estado-de-sitio/>, checked on 17/11/2012.

Solano, L. (2012): Santa Cruz Barillas: los intereses detrás un Estado de sitio. La política energética y las hidroeléctricas. In diálogo 43, pp. 2–3.

Sorensen, G. (2011): Chapter 24: Globalisation and the nation state. In Daniele Caramani (Ed.): Comparative Politics. 2nd Edition. Oxford: Oxford University Press, pp. 452–466.

United Nations: UN Global Compact. Available online at <http://www.unglobalcompact.org/>, checked on 17/11/2012.

Viljoen, F.: UN Chronicle; International Human Rights Law: A Short History. United Nations. Available online at http://www.un.org/wcm/content/site/chronicle/cache/bypass/home/archive/issues2009/wemustdisarm/internationalhumanrightslawashorthistory?pagination=true&ctnscroll_articleContainerList=1_1&ctnlistpagination_articleContainerList=true, checked on 17/11/2012.

Vision of Humanity (2012): 2012 Global Peace Index. Available online at <http://www.visionofhumanity.org/gpi-data/#/2012/OVER/>, checked on 17/11/2012.

Waqib'Kej (2012): Comunicado familiares presos políticos Barillas 290612. Guatemala. Available online at <http://waqibkej.org/2012/07/03/la-asociacion-de-victimas-de-barillas-exigio-la-liberacion-de-los-presos-politicos-en-defensa-del-territorio/>, checked on 25/08/2012.

Weltalmanach (Ed.) (2012): Statistische Daten; Guatemala. Available online at <http://www.weltalmanach.de/staaten/details/guatemala/>, checked on 11/09/2012.

Wöhl, S. (2011): Die politische Rationalität des Neoliberalismus. Wien: Verlag für Gesellschaftskritik (2011 (Jg.40)), pp. S.37-48.

Yagenova, S. García E. Gracia R. Véliz R. & Cruz W. (2010): Los movimientos sociales y el poder. Concepciones, luchas y construcción de contrahegemonía. 1st ed. Ciudad de Guatemala: Facultad Latinoamericana de Ciencias Sociales, FLACSO-Sede Académica Guatemala; Editorial de Ciencias Sociales.