

# **Truth-telling and Seeking Justice from Below: Mayan Women's Voices on Transitional Justice in Guatemala**

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**January 2021**

Thesis submitted in accordance with the requirements of the University of Liverpool for the  
degree of Doctor in Philosophy

## Abstract

# Truth-telling and Seeking Justice from Below: Mayan Women's Voices on Transitional Justice in Guatemala

By Juliette Doman

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This research focuses on Maya Q'eqchi women survivors of wartime sexual violence and their struggle for justice. In particular, I consider their specific experiences and the agency they have been able to realise in the process of bringing to trial two former members of the military. I analyse their participation in this process and their experiences of organising alongside Guatemalan women's rights organisations and other Mayan women survivors of wartime sexual violence. Furthermore, I consider what justice means for these survivors, focusing, in particular, on the significance of the trial<sup>1</sup> and the sentencing both for them and for the women's rights activists working in the organisations that have supported them. I go on to examine the extent to which the survivors and the activists have achieved their objectives within their particular struggles. Additionally, I consider the extent to which the legal process is able to truly capture the harms that they have experienced and provide redress for those harms. This is a pertinent consideration, given that justice may take on many different meanings; international law and the Guatemalan legal system more closely reflect their European and US counterparts, frameworks far removed from Mayan cosmologies and customary legal practices. To close, I examine the meaning of the trial for the women's rights organisations and what they feel has been its real impact, considering, in particular, the silence surrounding wartime sexual violence and widespread impunity for that violence before the trial took place and, in general, the high levels of gender-based violence and attendant impunity in contemporary Guatemala.

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<sup>1</sup> The Sepur Zarco trial, named after the Sepur Zarco community in which the military outpost was situated, took place in Guatemala City in the February of 2016. The trial represented the first time that wartime sexual and domestic slavery had been prosecuted in the national courts of the country in which the crimes took place.

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## Acronyms and Abbreviations

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ACOGUATE	<i>Acompañamiento Internacional Guatemala</i> (International Accompaniment Guatemala)
Alianza	<i>Alianza Rompiendo el Silencio e Impunidad</i> (Breaking the Silence and Impunity Alliance)
AVEMILGUA	<i>Asociación de Veteranos Militares de Guatemala</i> (Military Veterans Association of Guatemala)
AVIHDESMI	<i>Asociación de Víctimas, Viudas, Huérfanos y Desarraigados del Conflicto Armado Interno de la Sierra de las Minas</i> (Association of Victims, Widows, Orphans and People Displaced by the Internal Armed Conflict in the Sierra de las Minas)
CACIF	<i>Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras</i> (Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations)
CALDH	<i>Centro para la Acción Legal en Derechos Humanos</i> (Centre for Human Rights Legal Action)
CEH	<i>Comisión para el Esclarecimiento Histórico</i> (Historical Clarification Commission)
CGN	<i>Compañía Guatemalteca de Níquel</i> (Guatemalan Nickel Company)
CICIG	<i>Comisión Internacional Contra la Impunidad en Guatemala</i> (International Commission Against Impunity in Guatemala)
COCODE	<i>Consejo Comunitario de Desarrollo</i> (Community Development Council)
CONAVIGUA	<i>Coordinadora Nacional de Viudas de Guatemala</i> (National Organisation of Guatemalan Widows)
CREOMPAZ	<i>Comando Regional de Entrenamiento de Operaciones de Mantenimiento de Paz</i> (Regional Peacekeeping Operations Training Command)



CRSV	Conflict Related Sexual Violence
DEMI	<i>Defensoría de la Mujer Indígena</i> (Ombudsman for Indigenous Women)
ECAP	<i>Equipo de Estudios Comunitarios y Acción Psicosocial</i> (Community Studies and Psychosocial Action Team)
FAFG	<i>Fundación de Antropología Forense de Guatemala</i> (Guatemalan Forensic Anthropologist Foundation)
FGER	<i>Federación Guatemalteca de Escuelas Radiofónicas</i> (Guatemalan Federation of Radiophonic Schools)
FGT	<i>Fundación Guillermo Toriello</i> (Guillermo Toriello Foundation)
FIDH	<i>Federación Internacional por los Derechos Humanos</i> (International Federation for Human Rights)
ICC	International Criminal Court
ICTJ	International Centre for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
INTA	<i>Instituto Nacional de Transformación Agraria</i> (National Institute of Agrarian Transformation)
LASA	Latin American Studies Association
MTM	<i>Mujeres Transformando el Mundo</i> (Women Transforming the World)
NGO	Non-Governmental Organisation
NISGUA	Network in Solidarity with the People of Guatemala
OAS	Organization of American States
OACNUDH (OHCHR)	<i>Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos</i> (Office of the United Nations High Commissioner for Human Rights)

ODHAG	<i>Oficina de Derechos Humanos del Arzobispado de Guatemala</i> (Office of Human Rights of the Archbishopric of Guatemala)
PAN	<i>Partido Acción Nacional</i> (National Action Party)
PRI	<i>Partido Revolucionario Institucional</i> (Institutional Revolutionary Party)
SATRC	South African Truth and Reconciliation Commission
UN	United Nations
UNAMG	<i>Unión Nacional de Mujeres Guatemaltecas</i> (National Union of Guatemalan Women)
WCC	War Crimes Chamber

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## Chapter One: Editor's Introduction

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In May of 2017, I returned to Liverpool having spent a number of years in El Salvador as part of my own PhD research and reintegrated myself into the postgraduate research community at the university. Juliette was a part of this community and our shared research interests on questions of multidimensional violence and the struggle for social justice in the Central American region gave us a broad platform on which to develop our friendship. Over the years that followed, we had many opportunities to discuss these issues and, through the numerous conversations that we shared, I was provided with an understanding of the complexities of the Sepur Zarco case and the wider context in which it had played out. Juliette's wholehearted commitment to the matter of her research was obvious and it became clear that she felt a deep connection to the Guatemalan women to whom it was giving voice.

When Juliette passed, those of us that knew her were faced with the sudden sad loss of a dear friend and colleague. She possessed the rare ability to show an authentic interest and care for others that was felt in her company and laid bare in her work. What is more, the academic and advocate communities were confronted with the sober concern that such important research would not see the light of day. Were this to have happened, given that Juliette was witness to such a unique and historic moment for Guatemala, would have been an unthinkable tragedy to all those with an interest in the case and would have dealt a heavy blow to the women survivors, who had overcome tremendous adversity to make their stories heard.

Thanks to the commitment of Juliette's family, her departmental colleagues at the University of Liverpool, and the John Lennon Memorial Fund, it has been possible to compile the research and content that she had left behind and present it in this current form, as a posthumous doctoral dissertation. Examining the pages that follow, the reader is able to appreciate the bearing of the research that Juliette had carried out and understand the course that she intended to pursue. While Juliette was not able to put her doctoral project forward as she would have wanted, all of us that have been involved in the compilation of her work believe that it will prove to be a valuable resource on which to depend and provide a solid foundation on which future research can be constructed. Imperative too is that Juliette receive the posthumous recognition that she so deeply deserves for such significant research and such fearless dedication to the greater cause.

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In order to undertake the edition of the work that Juliette had completed and piece it together in this current form, I was given access to the entirety of the files relating to her research that she had saved both on her personal computer and on the shared drive at the University of Liverpool. These files included complete draft chapters, rough ideas and offcuts, audio files containing interviews and transcripts, informal fieldnotes, conference presentations, and photographs that Juliette had taken, as well as trial documents and saved copies of many of the secondary resources that she had used.

From these files, it has been possible to present three chapters as almost completed by Juliette, two of which she had written in full draft form (chapters one and three) and one of which required a more involved degree of editing (chapter two). The first two of these chapters embrace theoretical issues. The first provides a general overview of the concept of transitional justice and the second an exploration of the struggle for justice from below. The third examines the specific methodology that Juliette adopted for her research. There follows a fieldwork report that has been included as it presents a comprehensive overview of the completed thesis that Juliette intended to submit. The following chapter comprises a selection of informal fieldnotes that detail three separate events to which Juliette was observer, in order to build an image of the context in which she was conducting her research. Following this, a paper that Juliette presented at the Latin American Studies Association (LASA) conference in Barcelona, Spain, in May 2018, on intersectionality and transformative reparations is included to contextualise the material in the chapter that follows.

The final chapter has been pieced together as a jigsaw puzzle, primarily from transcriptions of the interviews that Juliette had carried out with the women survivors and representatives of the organisations supporting them. This chapter is comprised, for the most part, of the first-hand research that she had completed. To provide context, a blog post and an article published by Juliette are also included. The chapter concludes with a further extract from Juliette's fieldnotes that recounts her experiences attending events commemorating the one-year anniversary of the sentence. In addition, the original ethics application, a notice of amendment to this application, a research ethics information sheet and participant consent form, a list of interviews, focus groups and observations, materials that she pieced together for an exhibition relating to her research, and a link to a video presentation given by Juliette are included as appendices.

Where chapters appear more or less in the form that Juliette had left them, the editing process has simply tidied the format, added punctuation, corrected spelling, and, in some cases, rearranged sentence structure so that the narrative reads more smoothly. For the most part, I have respected the sentences elaborated by Juliette; only in certain cases have I divided and rearranged them. According to the same criteria, I have also divided or united paragraphs. It must be kept in mind that the chapters

that Juliette had written were drafts, so my editing of them has, in this sense, intervened only so as to allow a more natural flow. In the same vein, some words or phrases have been removed or combined where Juliette repeated information, when phrases were not finished, or where lines were left as general ideas. This has been particularly true in the editing of chapter two.

For lack of a definitive index, it has at times been difficult to understand the order and structure of the chapters as Juliette would have intended them to appear. In this respect, various documents containing notes and ideas have been used to get a fuller grasp of what Juliette had planned to do. While these documents do not appear in their complete form in this thesis, they have been made use of to give it direction. In some sections, the reader will note heavy use of a small number of key sources; however, there were often signposts that Juliette had left throughout the work that suggest that she intended to insert further references in order to reinforce certain points that are made. In some cases, with the advice of her supervisory team, I have added these references for the benefit of the reader.

It must be noted that the quotes included from the women survivors appear as translations from their original Mayan Q'eqchi. As Juliette describes in the methodological chapter, she was required to contract an interpreter so that the women could tell their stories to her. In other instances, however, interview transcripts appear in English, in particular where Juliette has made notes rather than recordings. Because of this combination of languages, quotes appear in their English translation in the main text. Where the interviews have been conducted with representatives of the supporting organisations, the translations are Juliette's; where quotes are presented by the women survivors, the translations are my own. In the case that the quote has been translated into English, footnotes have been included that communicate the Spanish original, as translated by the interpreter. In this regard, many of the Spanish quotes have been tidied for grammar and clarity where the original was articulated in Q'eqchi.

Furthermore, all of the participants in this thesis have been anonymised. Although Juliette had stated in her ethics application that those already in the public eye or that specifically requested would be named, she had not saved any consent forms that would have advised either way. As such, the women survivors are referred to as Doña followed by a fictional initial. All other participants are referred to by a pseudonym and, where relevant, a description of their role is provided.

As a final point, although I have made every effort to allow Juliette's prose to guide the narrative, there are points throughout the thesis in which I have included a brief editor's note to signpost the connections that have been made between sections that had been left open and to provide more information where certain ideas had not been fully developed. Similarly, there appear more extensive

editor's introductions to the chapters that I have pieced together from the material that Juliette had collected. In spite of these interventions, the language style of Juliette has been carefully preserved, and her unique voice, enthusiasm, and urgency continue to resonate throughout the pages.

## **Supervisors' introductions**

Marieke Riethof

The first time I met Juliette she had just returned to the UK after living in Guatemala for seven years. She told me about a formative experience as a volunteer human rights accompanier in Guatemala in 2004 (she also discusses this in Chapters 4 and 5 of this dissertation), which led her to apply for the PhD in Latin American Studies. What struck me in this conversation was her deep sadness about the immensity of the atrocities committed during the civil war and the lack of justice for the indigenous victims. Juliette had a profound and genuine sense of empathy with the people she worked with in her research. This empathy is evident in the way she designed her research, in how she constantly reflected on her presence in Guatemala and on the relationships she built as part of her research. When we worked on Juliette's drafts and research material her unique approach and commitment stood out. Her commitment was not just based on sadness but also on a sense that her research could contribute to the search for justice and to raise awareness in the UK. We have included examples of Juliette's commitment to awareness raising to illustrate how her research was connected to her activism.

Marieke Riethof and Niamh Thornton

The intention of this dissertation is twofold: to produce a document of the research carried out by Juliette Doman and to create an archive for future research. As described by Luke Grover in his introduction as editor, this has been a painstaking process of drawing together extant chapters completed by Juliette, work that was in draft form, and the compilation of her rigorously and carefully researched material. As a consequence, as supervisors we have taken a deep look into Juliette's own archive and become more familiar with her research process than is usual in this role.

The clear thread running through Juliette's written work and research material is her commitment to the project and to the subjects of the research. She was acutely aware of the traumatic experiences of these individuals with whom she had spent much time and who spoke to her of their pain. Through her gentle ways and clear understanding of their pain, Juliette was uniquely skilled in engaging with these women and asking them to speak of the scars left by the memory of the traumas they had experienced. The dissertation is intended as a legacy to her commitment and to honour the women's openness in sharing these in the hope that they will be read and that their quest for justice will be comprehended.

Luke has woven together Juliette's research and writing to make a complete and comprehensive text that should prove invaluable for future researchers who want to gain an applied understanding of the



Sepur Zarco trials and the women who participated in them in order to seek justice. As is mapped out in this dissertation, Juliette sought to share the layers of difficulties and challenges faced by the women because they are Maya Q'eqchi in a country which treats them as lesser as a consequence, but also means that they have a distinct perspective on what justice means to them as well as a distinct perspective on the harms they experienced. The aim is that this will form the basis of future research into this field.

There are ethical responsibilities to the work Juliette carried out which mean that she and the communities she worked with had a shared understanding that this work should be shared in the world as a repository for future research.

Padraig McAuliffe

This thesis shows Juliette's immense promise as a scholar. Research is something she embraced with the same openness as she brought to campaigning and teaching. Sadly, we'll never know what Juliette's future research would have led to. However, the early analytical work shows a strong ability to contextualise, synthesise and apply complex material in a field (transitional justice) that was entirely new to her. The fieldwork shows a tremendous ethnographic imagination that yielded qualitative insights into complex issues. Fully sensitive to the dangers of a Western academic speaking to the subaltern 'other', Juliette made no a priori assumptions about how her interlocutors would feel but her sympathies for women, indigenous communities and victims nevertheless shine through.

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## **Revised Thesis Structure**

The thesis structure included here is the most up-to-date version that Juliette had written for the chapters that she had completed in draft form. It has been updated to reflect the editions that have since been made to the thesis.

### **Abstract**

#### **Chapter One: Editor's and supervisors' introductions**

#### **Chapter Two: Theoretical Issues, Comparative Examples and Theoretical Approaches: Whose Truth and Whose Justice? Can Truth and Justice Ever Come from Above?**

This chapter will discuss the emergence of transitional justice scholarship and practice, focusing on key concepts, the development of the concept of transition, and transitional justice. It will focus on Latin America, key debates within the field, what concepts of justice are employed in 'transitional justice', and how these concepts have developed and changed over time. It will look at the emergence of victim centred discourse and ideas about victimhood, victim participation, voice and agency.

#### **Chapter Three: Theoretical Issues, Comparative Examples and Theoretical Approaches: Transitional Justice from Below**

This chapter will discuss research on transitional justice and gender, culture, indigenous and minority rights, and locality. It will evaluate feminist and other critical scholarship on transitional justice, including a brief historiography and the key concepts and critiques of feminist scholarship and other critical scholarship on transitional justice. It will introduce and discuss the concepts of intersectionality, indigeneity, decolonial feminism, and culture, in relation to law and transitional justice.

#### **Chapter Four: Research Methods**

This chapter explains the motivation for research and how I developed my research questions, the women and organisation's participation and protagonism in the Sepur Zarco trial, the goals of the women and the organisations in seeking formal legal justice, and the meanings of the outcomes of the trial for the women and the organisations. It also considers the difficulties and ethical issues in conducting the research. I reflect on my positionality and how this has affected data collection and analysis. I will also describe and provide justification for both the methodological choices made and the multi-sited and participatory ethnographic approach to research that I adopted. I also describe and comment on the specific methods of data collection: semi-structured interviews; focus groups;

archival and document analysis; participant observation during the legal process; and meetings and workshops with the survivors.

### **Chapter Five: Fieldwork Report**

### **Chapter Six: Informal Fieldnotes**

### **Interlude: Intersectionality and Transformative Reparations in Sepur Zarco Conference Paper**

### **Chapter Seven: The Search for Justice of the Women Survivors of Sepur Zarco**

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  - Appendix Six: Exhibition Materials
  - Appendix Seven: Link to Video Presentation
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## Chapter Two: Theoretical Issues, Comparative Examples, and Theoretical Approaches: Whose Truth and Whose Justice? Can Truth and Justice ever Come from Above?

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No queremos seguir siendo considerados como meros espectadores de nuestro destino. Queremos ser sujetos de nuestra historia, queremos contarla y escribirla de cara al futuro con la dignidad y autoridad que tiene todo ser humano de decir quién es, de donde vino y adónde va<sup>2</sup>.

Rigoberta Menchu  
(cited in Del Valle Escalante, 2008: 27)

### Introduction

Transitional justice is a relatively new field, which, from its origins in law, human rights advocacy, and political science, has developed rapidly over the past two decades to encompass a much wider range of disciplines and enquiries. The field has developed and expanded with such speed that it has been said to have already reached a stage of critical self-reflection; one scholar has, in fact, suggested that it is suffering from a 'premature mid-life crisis' (Bell, 2009: 13). In this respect, the meanings and purposes of justice in transition, and of transition itself, have changed considerably over the short lifespan of the field. The focus of attention has shifted from a predominant concern with elite-level bargains, state-building, and (inter)national level processes – which had as their conceived outcome the establishment of democracy – to concerns with the repairing of harms that victims, and societies, had suffered. These developments in theory and practice have been shaped by changing national and international dynamics, and, indeed, progressive understandings of them, which have come to provide greater space for victim participation within transitional justice processes. Victim advocacy has long played an important part in driving struggles for justice and redress, but the role that victims and communities are able to play in the process of transitional justice has only recently come to the fore.

In this chapter I will map out the development of transitional justice, focusing on the core concepts and main debates, and the contexts in which they have emerged, expanded, changed, and been challenged. Firstly, I will examine how a particular understanding of 'transition' and of human rights helped to shape the conceptual boundaries of transitional justice and the practices of human rights

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<sup>2</sup> We don't want to keep being considered mere spectators of our own destiny. We want to be subjects of our own story, we want to tell it and write it facing the future with the dignity and authority that each human being has to say who she is, where she comes from and where she's going.

activists. These understandings, in turn, influenced the justice claims made and came to shape how harms and the appropriate means of redress were conceptualised. Next, I will examine how the conceptualisation of harms and means of redress in transitional justice advocacy and practice shifted. In response to political constraints and opportunities, and the apparent limitations of transitional justice mechanisms, these conceptualisations expanded from a narrow focus on retributive justice and individualised harms to a much broader one that included legal, restorative, and social justice and which is now beginning to consider structural injustices (Andriu, 2010). Others analysing transitional justice processes and the influence of human rights discourses have examined alternatives to formal and state-based legal mechanisms, in particular the use of customary law to seek redress for harms. Scholars have also considered the role of victims within transitional justice processes, specifically the degree to which retributive processes are appropriate in meeting their needs and the meanings and forms that justice is able to take.

### **Transitions, Human Rights and Justice Claims**

Transitional justice is a term used to describe the judicial and non-judicial measures taken to deal with human rights abuses committed during a period of authoritarian rule or armed conflict, and the field of study of those measures. While a number of scholars, perhaps most notably the legal scholar Rudi Teitel (2003), contend that the international trials held after the Second World War represent the first phase of transitional justice, others (see McAuliffe, 2011; Andriu, 2010) argue for its much later emergence, within a context that Huntingdon (1991) has described as the ‘third wave of democratisation’. In her genealogy, transitional justice advocate Paige Arthur (2009: 327-8) traces the origin of the term – in particular, the understanding of transition – and argues that, while the Nuremberg and Tokyo tribunals set a strong precedent, the actors involved may not have shared the same understanding of their desired outcomes with Teitel (2003) and other transitional justice scholars: namely, facilitating democratisation.

According to Arthur (2009: 324), the term and its accompanying field emerged in the late 1980s and early 1990s, from the interactions of human rights activists, lawyers, legal scholars, policymakers, journalists, donors, and comparative politics experts, out of a concern with the practical, ethical, and legal issues raised by the recent collapse of authoritarian regimes, particularly in Southern Europe and Latin America. While some new governments – notably that of Argentina in the early 1980s – proceeded with the prosecution of former members of the military, others – e.g. Chile, Uruguay, and

Guatemala – granted amnesties to former dictators and other actors within the military and/or armed groups<sup>3</sup>.

Concerns with how best to deal with past violence in such a way as to address questions of justice and strengthen new democracies were discussed at a series of conferences held throughout the late 1980s and early 1990s, and the subsequent articles and books that were published (Arthur, 2009: 323-5). Arthur (2009: 322) notes that the case of Argentina ‘loomed large’ within discussions at the first of these conferences, held at the Aspen Institute, Maryland in 1988. Following some highly-publicised trials, and the publication of a Truth Commission report, the government stopped new prosecutions under heavy pressure from the military, passing two laws in 1986 and 1987 to prevent further prosecutions; furthermore, a later government pardoned those already serving prison sentences (Arthur, 2009: 325). Discussions at the Aspen Institute conference revolved around the question of whether, and how, new governments should respond to human rights violations committed under previous regimes:

Whether there was an obligation under international law to punish violators of human rights; whether there was a minimal obligation of states to establish the truth about past violations; whether ‘discretion and prudence’ should play a role in making decisions about justice measures; and how specifically to deal with human rights abuses by military authorities (Arthur, 2009: 352).

Discussions at the conferences represented attempts by policy makers, lawyers, and human rights activists to systematise knowledge and develop an intellectual framework that would consider how best to deal with the practical, legal, and ethical issues associated with democratisation (Arthur, 2009: 325). The series of conferences culminated in the seminal Salzburg conference of 1992, entitled *Justice in Times of Transition*, which endeavoured to define the best way to organise a transition from dictatorship to democracy (Andriu, 2010: 2).

Arthur (2009: 321) argues that the conference debates, and the development of the conceptual boundaries of the field to which they contributed, were shaped by contemporary understandings of transitions to democracy and observes that particular justice claims emerged from, and were legitimated by, this paradigm. The concept of a ‘transition to democracy’ from an authoritarian regime was a new one that, nevertheless, became a dominant way of understanding the political changes that were taking place throughout the 1980s and 1990s. The paradigm emerged from studies conducted

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<sup>3</sup> See Laplante (2009) for a discussion on the manner in which victim support groups challenged these amnesties, many of which were eventually overruled by the InterAmerican Court on Human Rights.

by political scientists, who analysed and compared transitions in more than thirty countries throughout Southern Europe, Latin America, East Asia, Africa, and Eastern Europe during the 1970s, 1980s, and 1990s.

This literature is too vast to fully explore here, however some early studies deserve brief mention<sup>4</sup>. Firstly, the Transitions Project, begun in 1979 and sponsored by the Latin America Programme of the prestigious Woodrow Wilson International Centre for Scholars, explored the (then) recent movements away from authoritarian rule in Southern Europe and Latin America, which became framed as ‘transitions’. Their studies were subsequently published in the four volume *Transitions from Authoritarian Rule* (1986), edited by O’Donnell, Schmitter, and Whitehead (Lowenthal, 1986: viii). O’Donnell et al. (1986) describe the onset of political democracy – framed as the presence of elections and oppositional rights – as the outcome of a process of negotiations and pacts between actors, principally the military and business and political elites. In the case of Latin American transitions, O’Donnell (1986b: 11-14) argues that the absence of more formal pacts weakens the prospects for democracy, reasoning that pacts are important for the stability of new democracies. In addition, O’Donnell et al. (1986) describe and compare the different types of authoritarian regimes and the transitions that followed, distinguishing between *reforma* – a negotiated transition and the accompanying process of political and legal-institutional reforms – and *ruptura* – the overthrow or military defeat of a regime. In each of the chapters, presented as case studies on particular countries, the authors consider the multiple factors that have caused or influenced each transition or collapse, describe the legal-institutional changes that have been implemented, and distinguish between the installation and consolidation of democracy, ending with a discussion on the prospects of this last.

In another influential study, Huntington (1991) describes a ‘third wave of democratisation’, which places the collapse of authoritarian regimes in their historical context. This third wave, according to Huntington, began in 1974 in Southern Europe, moved to Latin America and parts of Asia and Africa in the 1980s, and ended with the collapse of communism in Eastern Europe. Similar to O’Donnell et al. (1986), Huntington (1991: 7-13) adopts a procedural definition of democracy and argues that such a definition facilitates a more objective comparative analysis. Huntington (1991: 208-279) too analyses political change as a process of negotiation and compromise among political elites. In this respect, he distinguishes between different regime types, the transitions that followed, and their influence on democratisation and the prospects for consolidation, finishing with an examination of the potential problems that could lead to reversals.

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<sup>4</sup> Guatemala’s military-led transition and ‘democratisation through peace’ will be discussed in a later chapter (Jonas, 2000: 9).

This form of analysis was not without its critics. MacEwan (1988: 120), for example, criticises the restricted concept of democracy that is adopted in the studies carried out by O'Donnell et al., one that is limited to open elections and oppositional rights. He also criticises the focus on elite actors, particularly the influence of 'hardliners' and 'softliners' in the military, which ignores the importance of the actions of the popular classes (MacEwan, 1988: 117). Furthermore, MacEwan (1988: 120) finds issue with O'Donnell's (1986b: 10) argument that there is a necessary 'trade off' between the installation of political democracy, which is to be prioritised, and the reduction of socioeconomic inequalities, which, according to O'Donnell, must wait. This critique supports Arthur's (2009) argument that the transitions paradigm legitimised and prioritised certain justice claims, centred on the violation of political and civil rights, over those claims that were based on the violation of social and economic rights, thus reinforcing a focus on legal-institutional rather than socioeconomic changes.

Arthur (2009: 341-2) points out that the political changes that took place within different historical contexts were considered under different lights, meaning that different justice claims came to the fore. In postcolonial Africa, for example, a different paradigm, and thus a distinct set of justice claims, predominated. Decolonisation there was described as a 'transfer of power', so dealing with past injustice meant something very different. The Ugandan academic Mahmood Mamdani (2001) has highlighted the changes that occurred within understandings of the impact of colonialism on African populations:

We were convinced that the impact of colonialism on our societies was mainly economic. In the decade that followed African political independence, militant nationalist intellectuals focused on the expropriation of the native as the great crime of colonialism (2001: 651).

Rather than push only for transitions to democracy, leaders advocated transitions toward socialism, in order to take economic power back from foreign companies, governments, and individuals (Arthur, 2009: 341-2). In this context, social justice and economic rights were prioritised, distinct from the justice claims legitimated and prioritised within later transitions to democracy.

As Arthur (2009) points out, the decolonisation of Africa and Asia is often overlooked within discussions on the emergence and development of transitional justice, despite the fact that it may have had an important influence. While a number of transitional justice scholars (Andriu, 2010; Laplante, 2009; Teitel, 2003) have argued that the Cold War prevented the development of international accountability following the Nuremberg and Tokyo trials (and it is likely that Cold War tensions did, in fact, problematise its development), they fail to consider the influence of



decolonisation. Arthur (2009: 342) argues that the interests of some of the world's powers in the years following decolonisation may account for the interruption in the development of the internationalisation of justice after Nuremberg, despite the systematic repression against civilian populations during the 1940s and 1950s in a number of formerly colonised countries, including Madagascar, Kenya, Indochina, and Algeria. Arthur (2009: 342) contends that in these, and other, cases the lack of international accountability lies in the fact that these powers (such as France) feared that their soldiers would be tried for violations committed in their former colonies, a petition demanded by many at the time. During the Russell Tribunal of 1967, for example, Jean-Paul Sartre (1968, cited in Arthur, 2009: 342) voiced this claim when discussing why a Nuremberg-style trial had not been established to try members of the French government following the Setif massacre in Algeria in 1945. Arthur (2009: 342) concludes that, since ex-colonial powers continued to play strong economic and military roles in their former colonies, the introduction of accountability measures would have proved difficult.

The legal scholar Balakrishnan Rajagopal (2002: 173), who examines the influence of Third World social movements on the development of international law, has also pointed out the problems inherent in a narrow focus on the Cold War and the term 'post-Cold War era':

It is symptomatic of a narrow vision of history which takes the Cold War as the most era-defining event of world history during the second half of the twentieth century. It could easily be argued instead that the end of formal colonialism is easily the most significant such moment.

Nevertheless, some years later, transitions to democracy had become the common way to describe these political changes. By 1994, for example, Bernhard (1994: 50), in his review of the volumes published by Huntington and others that analysed democratic processes, commented:

Within the sub-discipline of comparative politics, 'transitions to democracy' has become a new and important approach for understanding political change (perhaps supplanting older approaches, such as revolution, crisis/breakdown, coup d'état, and political development).

According to Guillhot (2002, cited in Arthur, 2009: 338), the new approach, which he described as the 'comparative analysis of change', had emerged following the delegitimisation of structural theories and other grand narratives of the 1970s, particularly modernisation theory, dependency theory, and world systems theory:

Grand theorising had thus to be replaced by a more sectoral and policy-oriented approach, whereby social change would no longer be an autonomous and all-encompassing phenomenon but could be seen as an outcome dependent upon the specific strategies and choices of a distinct political elite (Guilhot, 2002: 235).

The idea that democracy is an outcome that can be established through a process of elite bargaining and legal-institutional reforms, rather than long-term socioeconomic phases, also underpins transitional justice discourse and practice. This is particularly true as it extends into peacebuilding, although, as will later be discussed, this idea has been contested and challenged. In this regard, transitional justice mechanisms have been conceptualised as a way to establish democracy.

### **The Influence and Growth of the Human Rights Movement**

Arthur (2009: 339-40) argues that an ideological shift in favour of human rights, the growth of human rights movements, and the global decline of the radical left during the 1970s and 1980s all helped the transitions to democracy paradigm to become normative and influenced the early, and narrower, conceptual boundaries of transitional justice.

Throughout Latin America, both under authoritarian regimes and during transitions, the left had begun to use the discourse of democracy and human rights, rather than that of class oppression (Arthur, 2009: 339; Barahona de Brito, 1999: 147-8). Discussing the disenchantment of the Latin American Left with socialism following the military coups and authoritarian rule of the 1970s, Argentine sociologist Ronaldo Munck (1990: 114) comments that ‘the struggle against military rule had centred largely around the issue of human rights, a defensive politics which took over from the vision of a socialist alternative’. In a similar vein, O’Donnell (1986b: 17) argued that the:

Discrediting of the recent authoritarian experience – as well as of the armed forces... together with the discrediting of the discourses and groups that propose an immediate and violent leap forward to some form of socialism, has made possible the sort of shift in outcome [political democracy] I am suggesting here.

Democracy became a desirable goal for many in the countries undergoing political change (Arthur, 2009: 340). O’Donnell (1986b: 17) also observed that the (then) recent emergence of democracy discourses was a new and important development, commenting that ‘never has the ideological “prestige” of political democracy been higher in Latin America than now’.

The literature that analyses the development of the human rights movement in the 1970s, 1980s, and 1990s is too extensive to adequately review here<sup>5</sup>; however, it can be said that the ideological shift discussed above was both shaped by and helped the development of a global human rights movement, which, in turn, influenced transitional justice discourse, practice, and advocacy. Barahona de Brito (1999: 147) describes how, within Latin American countries experiencing authoritarian rule, the relatives of those who had been detained and disappeared organised and campaigned for their return. These groups were particularly visible in the Southern Cone during the 1970s and gained significant influence at the international level, above all in Europe and the U.S. Within countries under authoritarian regimes, human rights organisations worked to combat official denial about human rights violations, to raise awareness, at the international level, about the violations of authoritarian regimes, and to call for other governments, the UN, and the Organization of American States to take action against repressive governments (Barahona de Brito, 1999: 153).

During the 1980s, the focus of the movement changed; following processes of democratisation, Latin American human rights organisations began to call for new governments to hold to account those responsible for human rights violations (Barahona de Brito, 1999: 153). In this respect, the Catholic Church also proved crucial for the development of Latin America's human rights movement and later played an important role in calling for accountability, especially in Brazil, Chile, Peru, Mexico, and Central America (Barahona de Brito, 1999: 147). In Guatemala, for example, the Catholic Church formed its own truth commission, ostensibly in response to the perceived weakness of the UN Commission for Historical Clarification, which was not permitted to individualise responsibility (see Quigley, 1999: xvi).

During this period, the women's rights movement in Latin America also expanded and, according to Barahona de Brito (1999: 157), the rights of women became an important campaign issue throughout the 1990s, building on the work of NGOs focusing on women's rights that had emerged in the 1970s and 1980s<sup>6</sup>. Women's rights groups dedicated themselves to a number of key issues, including conflict-related violence against women, custodial violence and the use of rape as a form of political terror, domestic violence and sexual assault, access to justice, and the reform of discriminatory legislation and practices (Barahona de Brito, 1999: 157). Furthermore, Barahona de Brito (1999: 155) observes that indigenous rights movements also developed and expanded, in particular during the 1990s, and

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<sup>5</sup> See Barahona de Brito (1999) and Sikkink (1996) for more in-depth analyses.

<sup>6</sup> See also Jelin, 1996.

began to raise complex questions for democratisation processes, as will be discussed in later chapters<sup>7</sup>.

Arthur (2009) has argued that the increased use of rights discourse, the expansion of the human rights movement, and changes in human rights practices toward greater accountability, alongside the new political context and the accompanying transitions paradigm, shaped the initial contours of transitional justice discourse and practice. In particular, she argues that these developments helped to legitimise claims to justice that prioritised a certain set of legal-institutional reforms and responses, which included the investigation of human rights abuses and the prosecution of the perpetrators, the reform and purging of abusive state security forces, and moves toward greater levels of transparency with regard to other justice claims that called for social justice and redistribution (Arthur, 2009: 321). Areas such as social and economic rights, gender equality, and indigenous rights, all of which would require distinct policies and reforms, were made less visible and appeared less pressing, a detail that may have been due to the relative absence of feminist and other critical perspectives. The ‘trade off’ that O’Donnell (1986b: 10) describes above, however, would later be contested, as transitional justice moved from its initial historically exceptionalist origins to the mainstream (McEvoy, 2007: 412).

Just as the narrow framework that initially underpinned transitional justice – political democracy, transition, and human rights – was shaped by the new political context, the transitions paradigm, human rights practices, and the core concepts of transitional justice itself have since been challenged, reinterpreted, and shaped by subsequent political developments. Transitional justice has moved from the margins to become a central policy issue and, within this process, its earlier limitations have been exposed (McEvoy, 2007). As an example, the very meanings of ‘transition’ and ‘justice’, and the previously narrow framework within which they were used, are now contested by feminists and advocates for broader social justice, participatory democracy, and indigenous rights. What follows is an examination of how the concepts, goals, and practices of transitional justice have broadened, diverged, and changed.

### **Early Development, Approaches and Debate**

In the 1990s, the narrow transitional justice framework and the transitions paradigm began to expand to include different concepts of justice and different transitions. The establishment of democracy remained a fundamental objective of transitional justice mechanisms, in particular during the early 1990s, but, as the decade progressed, the focus began to shift toward the role of the international

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<sup>7</sup> See also Stavenhagen, 1996.

community and concerns with the effects of transitional justice on victims and society. The conceptualisation of harm and means of redress came to expand through the experiences of transitional justice mechanisms in the second half of the decade. Debates challenged whether new democracies should seek accountability for the human rights abuses committed by prior regimes and, if so, how they should do so. In this regard, international developments, particularly the wars in the former Yugoslavia and Rwanda and the end of apartheid in South Africa, added to the experiences of these processes and expanded earlier understandings.

McAuliffe (2011: 139) contends that discussions during the early 1990s centred on the 'stability versus justice debate', which had its origins in discussions at the Aspen Institute conference of 1988. The original form of this debate assumed more narrow boundaries; justice was conceptualised as retributive for the perpetrators of crimes and tried in domestic, rather than international, tribunals (see Orentlicher, 1991; Roht-Arriaza, 1990). As commented above, the understandings and contexts of transitions from authoritarian rule shaped discussions. Political scientists, legal scholars, policy makers, and human rights advocates debated whether or not new governments should prosecute or grant amnesty to former leaders and members of militaries responsible for human rights violations and whether such measures would benefit new democracies or place them at risk (Arthur, 2009; Laplante, 2009). Scholars warned that attempts to hold state agents from previous regimes to account so soon after transition could endanger the stability of new democracies and even cause authoritarian reversals (Huntingdon, 1991; O'Donnell et al., 1986; Zalaquett, 1992). This approach has since been described as minimalist (Olsen et al., 2010) or realist (McAuliffe, 2011; Rimmer, 2013) by contemporary scholars.

The debates adopted both legal and political arguments for dealing with past human rights violations, although it was not immediately clear to policy makers, scholars, and activists whether or not there was an international legal obligation to prosecute (Arthur, 2009). Orentlicher (1991: 2540) argued that international law imposed significant responsibility on national governments to investigate allegations of serious human rights violations – described as torture, extra-legal killings, and forced disappearances (although she did not mention sexual abuse) – and to prosecute those responsible. Similarly, Roht-Arriaza (1990) argued that there was an international legal obligation to punish perpetrators and concluded that the domestic amnesty statutes passed by several Latin American governments (including the Guatemalan) were illegal under international law.

Orentlicher (1991) and Roht-Arriaza (1990) argued that prosecutions should be undertaken to deter future abuses; Roht-Arriaza (1990: 462), in particular, reasoned that with 'no fear of retribution, each new regime can again succumb to the same repressive behaviour'. Both contended that international

law should be developed to facilitate prosecution and that the international community should work to hold governments accountable for human rights abuses. This approach has since been described as maximalist (Olsen et al., 2010), idealist (McAuliffe, 2011), or legalist (Harris Rimmer, 2013).

Idealists, such as Orentlicher (1991: 2541) and Roht-Arriaza (1990: 509), argued that prosecutions could help the transition to democracy, by strengthening the rule of law and asserting sovereign powers over the military and former rulers. Roht-Arriaza (1990: 509) also maintained that prosecuting would help to clarify the historical record, provide redress to victims through the punishment of perpetrators, direct feelings of vengeance toward 'more socially acceptable channels', and provide information for relatives of the disappeared.

These positions reflect the dominant conceptualisations of justice and transition at this time. Trials were widely perceived to be the most effective measure for transitional justice by scholars and policy makers, whereas truth commissions were regarded as second best (Arthur, 2009; McAuliffe, 2011; Orentlicher, 1991). Further measures, such as compensation for victims and their relatives and the evaluation and reform of abusive security forces, were also discussed, but, as with truth commissions, were not considered an appropriate substitute for trials (Roht-Arriaza, 1990). The arguments in favour of holding trials centred on the use of punishment as a form of retribution and as a means to deter future abuses (see McAuliffe, 2011; Orentlicher, 1991; Roht-Arriaza, 1990; 2006). The argument for deterrence has since been widely contested (Guyura Binder, 2013; McAuliffe, 2012).

The argument of the realists, centred on political constraints, held sway during this time. A study conducted by Olsen et al. (2010: 56), which compared multiple transitional justice processes in 161 countries between 1970 and 2007, suggested that political constraints, or the perception of them, prevented trials from being held in the majority of cases. The authors found amnesties to be the most common transitional justice measure, followed by 'truth commissions that delivered impunity' (McAuliffe, 2011: 27). Olsen et al. (2010: 56) observed that, overall, the trial of state agents was more likely to occur following a clean break with authoritarian rule, which was less frequent at this stage, in countries with a history of democratic rule. Nevertheless, they point out that, since new democracies tend to move cautiously, it is difficult to assess whether they would be threatened by proceeding too far too quickly; they do, however, note that their findings suggest that the fear of spoilers may not constrain the choice of transitional justice pathways as much as the literature suggests (Olsen et al., 2010: 5). In this regard, McAuliffe (2011: 27) argues that stability, rather than 'justice', as it was conceptualised at the time, became the macro-level policy and contends that it would remain the dominant norm.

McAuliffe (2011: 24), however, also argues that, despite the continuation of some debates on ‘stability versus justice’, there was an emerging consensus that opposed wholesale impunity (also Olsen et al., 2010; Roht-Arriaza, 2006). By the time of the seminal ‘Justice in Times of Transition’ conference, held in Salzburg in 1992 in order to attempt to define the best way of organising the transition from dictatorship to democracy, it was clear that a distinct shift from acquiescence to assertiveness had occurred (Andriu, 2010: 2). Orentlicher (1993: 250) argued that:

At the policy level, the international human rights community has moved from a widely-shared position of deference to the judgements of transitional governments to a generally assertive stance opposing wholesale impunity.

During these years the conceptual framework centred on transitions from authoritarian regimes, with a focus on retributive justice for a narrow range of human rights violations; in this respect, the conceptualisation of harms and means of redress was relatively limited<sup>8</sup>. A growing consensus on the need to seek accountability, with the support of the international community, helped to focus the debate on which transitional justice mechanisms should be adopted, although political constraints would continue to limit actual transitional justice practice.

### **The Development of International Criminal Law and Restorative Approaches**

Throughout the 1990s, the international community became increasingly involved in the development of transitional justice. In part, this had to do with the changing political context, in which civil conflict and the subsequent peace processes predominated, rather than previous elite-led transitions from authoritarian rule. These changing contexts, the increasing internationalisation of transitional justice, and debates on what form accountability should take began to focus attention on the very purpose of transitional justice itself, including what could be achieved through different mechanisms, and redirected the lens onto a consideration of the victims and society, the harms that they had suffered, and the ways in which redress could be provided. The concept of restorative justice entered into the debate and began to pitch truth commissions against trials (McAuliffe, 2011; Roht-Arriaza, 2006).

The increasing preference for accountability, and the involvement of the international community, meant that transitional justice measures became ‘routinely written into peace agreements’ (Bell, 2009: 122). As an example, a Guatemalan Peace Accord signed in 1994 established the Historical Clarification Commission (see Quigley, 1999: xvi). McAuliffe (2011) observes that transitional justice advocates were also able to convince donors to fund transitional justice measures. Importantly,

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<sup>8</sup> A later chapter will consider how this narrow framework has since been challenged by feminist scholars.

Laplante (2009) reveals that victims' interests were increasingly taken into account, partly due to the struggles for justice of victim groups throughout Latin America who successfully challenged amnesty laws.

McAuliffe (2011: 28) argues that, from the mid-1990s, discussions within the academic literature on transitional justice shifted from the 'binary choice of justice or impunity' to those centred on another series of binaries: trial versus truth commission, 'truth versus justice', or restorative versus retributive justice (see also Laplante, 2009; Roht-Arriaza & Mariezcurrena, 2006). According to McAuliffe (2011), unlike previous cases, such as those of Argentina and Bolivia, in which both trials and truth commissions were held, the advocates for either trials or truth commissions subsequently came to believe that the decision was between one and the other. Gutman and Thompson (2000: 22), for example, argued that truth commissions 'sacrifice the pursuit of justice as usually understood for the sake of promoting other purposes, such as historical memory' and that 'trading criminal justice for a general social benefit requires a moral defence' (see also Kritz, 2002). With regard to the former Yugoslavia, senior officials of the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993, deliberately blocked a cross-community Bosnian proposal for the establishment of a truth commission, whereas in South Africa, criminal prosecutions and punishment were identified with revenge, retribution, retaliation, and vindictiveness in both the national constitution and by Desmond Tutu, who himself preferred a reconciliationist model (McAuliffe, 2011: 33).

In fact, the ad hoc tribunals for both the former Yugoslavia (the ICTY) and Rwanda (the International Criminal Tribunal for Rwanda, or ICTR, established in 1994), which took place simultaneously, and the South African Truth and Reconciliation Commission (the SATRC, established in 1995) were at the centre of those debates (McAuliffe, 2011: 26). As the decade progressed, the perceived successes and limitations of each came to inform debates on the use of different models and on concepts of justice, particularly as the goals shifted from the facilitation of transitions to their management and increased attention was paid to the social impact of trials and truth commissions (McAuliffe, 2011: 26).

The establishment of these ad hoc tribunals reinforced the idea that criminal justice should be pursued in the event of mass atrocities and affirmed the principle that accountability was a concern of the international community (Roht-Arriaza, 2006: 6). According to Roht-Arriaza (2006: 6), a fundamental reason for the establishment of the ICTY was as a deterrent for ongoing atrocities. The establishment of these tribunals also meant that justice, in the form of trials, became a less illusory prospect (McAuliffe, 2011: 30). Both the ICTY and the ICTR were influential in the development of transitional justice and the debates that surrounded it. Roht-Arriaza (2006: 6) described their statutes and rules of evidence, procedure, and verdicts as 'milestones in the development of international criminal law'.



Both tribunals helped the development of jurisprudence on cases of genocide and crimes against humanity (McAuliffe, 2011; Roht-Arriaza, 2006). The perceived success of these tribunals also built momentum that led to the creation of the International Criminal Court (McAuliffe, 2011: 39-40). In this respect, transitional justice advocates played an important role in the development of international criminal institutions and, with it, the development of international law (McAuliffe, 2011).

The SATRC, together with Archbishop Desmond Tutu, was also influential in the development of the field, helping to shift the focus from retributive to restorative justice, to victims and society. Desmond Tutu and others argued that the mandate of reconciliation, an offer to victims of the opportunity to forgive, was a form of restorative justice. Asmal et al. (cited in Guttman & Thomson, 2000: 25) contend that the aim of the SATRC should be understood as the 'achieving [of] justice through reconciliation' and that it promoted an 'enriched form of justice'. Furthermore, Hayner (2001: 25) has argued that the SATRC retained the most complex and sophisticated mandate of any truth commission to that time and included subpoena powers and the right to grant amnesty. It was also more participatory than earlier truth commissions and embraced the procedure of public hearings (Hayner, 2001: 41-2). Whereas previous commissions had sought to uncover the human rights abuses that repressive governments had attempted to hide, the SATRC aimed to provide a voice to the victims (Roht-Arriaza, 2008: vii). Nevertheless, the purportedly more victim-centred approach of the commission, which offered to restore dignity to, and allow the healing of, victims, presented both positive and negative outcomes: in many cases, victims were said to have felt relief after testifying; in others, they were re-traumatised (Guttman & Thomson, 2000: 26-31). Furthermore, many South Africans were opposed to the granting of amnesty in exchange for perpetrator testimonies (Guttman & Thomson, 2000: 26-31).

The language of reconciliation and restorative justice also began to creep into the tribunals. Teitel (2003: 81) describes what she calls Phase II of transitional justice processes – post-Cold War, prior to the turn of the century. During this phase, unlike the Nuremberg trials, a 'jurisprudence of forgiveness and reconciliation' emerged (Teitel, 2003: 81). Flecher and Weinstein (2002: 578-9) argue that 'events of the last decade suggest that many diplomats and human rights advocates conceive of international criminal trials as the centrepiece of social repair', and that 'social reconciliation' has become part of the mandate of these proceedings. They note that the statute for the Rwanda tribunal explicitly states that, through criminal trials, the court 'would contribute to the process of national reconciliation' (cited in Flecher & Weinstein, 2002: 579). On the other hand, the ICTY statute claims that the purpose of its work is to 'bring justice' to the perpetrators and 'contribute to the restoration and maintenance of peace' (cited in Flecher & Weinstein, 2002: 579). The International Criminal Court links the prosecution of grave crimes to the 'peace, security, and well-being of the world' and to ending

impunity for, and ensuring prevention of, such crimes (cited in Flecher & Weinstein, 2002: 578). Furthermore, the connection between prosecutions and social reconstruction has been made explicit in the statements of diplomats. Flecher and Weinstein (2002: 579) argue that this represented an expansion of the mandate of tribunals, since the goals of the Nuremberg and Tokyo trials were the punishment of perpetrators.

It can be argued that the transition to democracy paradigm became challenged at this stage, as the nature of transitions changed from the previous pacted handovers from authoritarian to democratic rule to the termination of civil conflict and the onset of peace (McAuliffe, 2011: 34). Arthur (2009: 360) argues that these transitions presented a different set of dilemmas and brought distinct justice claims to the fore:

The practical dilemmas actors face in peace-building can be quite different from those involved in the instauration of democratic citizenship and the transformation of an abusive state security apparatus. Justice claims in such contexts are much more likely to revolve around reintegration of ex-combatants, ethnic cleansing, war crimes, internal displacement, property restitution, power sharing, wealth sharing, and claims for self-determination.

The term post-conflict justice was adopted by some scholars during the early 2000s and became popular for a time (see Bassiouni, 2002; Boraine, 2004). According to McAuliffe (2011: 34), however, the attempt to replace the term transitional justice was unsuccessful and presented its own problems; he continues that, ultimately, the dilemmas faced in both forms of transition were not that radically different.

The context of war, in particular where ethnicity and culture played a role in the conflict, did, however, shape how harms and the appropriate means of redress were conceptualised and how justice claims became legitimised. This context also influenced the mechanisms chosen to pursue: where there was a clean break due to the overthrow of previous governments, more opportunities for prosecution were opened up (Olsen et al., 2010: 56); where there was a negotiated transition from war to peace, the loss of power, or reduced influence, of members of the former regime and the increased involvement of the international community underpinned a preference for trial (McAuliffe, 2011: 35).

McAuliffe (2011: 35) argues that, by the end of the 1990s, the debates were, to some extent, resolved; truth commissions and trials were seen as complementary and the use of multiple mechanisms seen as best practice<sup>9</sup>. These forms of complementarity could be seen in practice much earlier in Argentina

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<sup>9</sup> See also Roht-Arriaza, 2006: 8.

then, later, in Guatemala, where both the UN and the Catholic Church truth commissions were used to support prosecutions. The Spanish judge, Baltasar Garzón, who initiated the prosecution of Pinochet using the principle of universal jurisdiction, and who requested his extradition in 1998, relied upon Chile's truth commission report to build the case against him and even cited the report in the arrest warrant (Hayner, 2001: 38). A year after the publication of the UN Historical Clarification Commission report in 1999, Rigoberta Menchú made a complaint in Spain against the former General, and then President of the Guatemalan Congress, Efraín Ríos Montt, due to his involvement in atrocities committed in the early 1980s; Menchú submitted the UN report as evidence (Hayner, 2001: 49).

The debates on whether trials or truth commission better served the purpose helped challenge the earlier narrow conceptual boundaries and broadened the framework of transitional justice, which began to include restorative rather than retributive concerns and to consider transitions from war, in particular ethnic conflict. The lens shifted from the more restricted focus on nation states and the domestic transitional justice processes of the early 1990s to the development of international law and tribunals, which became increasingly concerned with victims and society. This was a trend that would continue after the turn of the century.

### **Transitional Justice in the Twenty-First Century: Expansion beyond Binaries**

Moving into the twenty-first century, the existing concepts of justice, conceptualisations of harm and means of redress, and the transitional paradigm were again contested and adapted by feminists and advocates of social justice and indigenous rights, as well as scholars and practitioners in the field. Transitional justice mechanisms have now been used in new, non-transitional contexts and, as a result of ongoing critiques, the understandings of them that predominated during earlier stages have expanded and diversified. Within this context, different justice claims, based on social, economic, and cultural rights, are becoming visible.

In addition, some of the binary divisions that previously structured understandings of transitional justice have begun to break down. Roht-Arriaza (2006: 11) argues that transitional justice processes can no longer be mapped in two dimensions: truth commission/trial, since the debate has largely been resolved; or national/international, since there is more interaction between national and international institutions and hybrid institutions have been developed. Furthermore, while, on the one hand, the internationalisation of justice has continued with the establishment of the International Criminal Court in 2002, and the continued involvement of the UN and other international institutions (Andriú, 2010: 2), on the other, a tendency has developed for what McAuliffe (2011: 62) has labelled the increased localisation of transitional justice research and practice. In this respect, McGregor (2008:

47) has described international law as a 'tiered process', which includes local, national, and international processes.

Studies of the ad hoc tribunals for the former Yugoslavia and Rwanda have continued to influence the development of the field, although many of these studies point to their limitations, in both quantitative and qualitative terms (see Aukerman, 2002; Drumbl, 2000; Fletcher & Weinstein, 2002). Experiences during the 1990s have illustrated the limitations of transitional justice mechanisms in dealing with mass atrocity:

Experience since 1989 demonstrated that such intractable difficulties did not admit of facile resolution. No state had ever undertaken a process of trial that has prosecuted more than a fraction of those culpable. No truth commission was able to disclose what happened to a majority of the victims or secure itself from revisionist attack. No reparations process could adequately compensate more than a fraction of victims, no lustration process could reconcile sufficient punishment with the smooth operation of the apparatus of the reforming state. To the suffering of individuals and the destruction of a wider society, transitional justice can only approximate a response, an illusory closure (McAuliffe, 2011: 50).

Scholars called for the use of more than one mechanism, recognising the limitations of an approach that focused only on one, and highlighted that transitional justice mechanisms are not mutually exclusive (see Clark, 2008; Drumbl, 2000: 1225-6; McAuliffe, 2011: 55). The Rule of Law and Transitional Justice Report (UN, 2004: 17) argued that justice, peace, and democracy 'are not mutually exclusive objectives, but rather mutually reinforcing imperatives' and reasoned for the inclusion of civil society and victims in future discussions. In contrast to the minimalist and maximalist approaches described above, the International Centre for Transitional Justice (the ICTJ) advocated a holistic approach that would combine various transitional justice measures. It was argued that singular mechanisms cannot address the range of problems faced by a society following atrocities, due to the large number of victims, the effects on a traumatised society, and the weakness of legal systems, and that such mechanisms work more effectively in combination:

Without any truth-telling or reparation efforts, for example, punishing a small number of perpetrators can be viewed as a form of political revenge. Truth-telling, in isolation from efforts to punish abusers and to make institutional reforms, can be viewed as nothing more than words. Reparations that are not linked to prosecutions or truth-telling may be perceived as 'blood money' – an attempt to buy the silence or acquiescence of victims. Similarly, reforming institutions without any attempt to satisfy victims' legitimate expectations of

justice, truth and reparation is not only ineffective from the standpoint of accountability, but unlikely to succeed in its own terms (ICTJ, 2009: 2).

McAuliffe (2011: 50-5) argues that the introduction of a more holistic approach, the increased focus on victims and civil society, the influence of a wider range of disciplinary perspectives, and growing critiques of the limitations of current theory and practice led to a dramatic expansion of the scope of transitional justice research and practice, or what Gready (2005: 7) described as the 'do everything, engage everyone' era. The expansion of transitional justice showed itself in five key developments: firstly, the development of theory and practice dovetailed with a consensus on holism; secondly, there was an increase in utilitarian justifications for trials; thirdly, the field expanded into non-transitional contexts; fourthly, there was a greater focus on localised processes; and finally, attention to structural injustice was heightened (McAuliffe, 2011: 51).

Nevertheless, mechanisms such as trials, truth commissions, reparations programmes, and lustration continued to be those most predominantly used and new developments in theory and practice were essentially centred upon them (McAuliffe, 2011: 51). What is more, the condition of victims and society continued to feature prominently in the development of theory and practice and scholars began to consider their distinct experiences of transitional justice processes, which included the harms they had suffered, their justice claims, and possible means of redress.

### **Broadening the Focus of Theory and Practice**

From an early focus on elite actors and legal-institutional reforms, the gaze of transitional justice had shifted to consider, to a greater degree, the victims and societies affected by violence. Although they had not been entirely absent from transitional justice discourse, particularly during the second half of the 1990s, assumptions about their interests and needs had underpinned earlier discussions. Two principal concerns were increasingly raised in discussions on the need to improve theory and practice: how to best support victims and redress the harms that they had suffered; and how to best incorporate other actors and society as a whole (McAuliffe, 2011: 52-3). As Andriu (2010: 3-4) observes, the goals of transitional justice became more ambitious, 'nothing less than the transformation, or the regeneration, of a whole society... [which] involves political, economic, cultural, sociological, and psychological actions', including prosecutions, truth commissions, lustration, reparations, public apology, memorials, and amnesty.

Simplistic ideas about the benefits that trials and truth commissions could bring victims and societies began to meet with a number of critiques. McEvoy (2007: 437-8), for example, has argued that it is important to ask '*whom* and *what* transitional justice is for', particularly with regard to criminal trials.

He points out that typical responses, such as the idea that trials bring justice to victims, as the ICTY argued, or that they hold the perpetrators accountable, fail to consider the complex set of victims' needs (2007: 437-8). Although some protective measures, such as witness protection and counselling, were put in place by previous tribunals, it seemed that there existed an instrumentalist attitude toward victims as a means to achieve successful prosecutions (McEvoy, 2007: 437-8).

As will be discussed in more detail below, feminist legal scholars and political scientists, among others, have criticised the lack of a gendered perspective with respect to the treatment of victims in international and domestic trials, alongside other issues such as the conceptualisation of harms. Deficiencies were also found in claims that trials could contribute to social repair or reconciliation (see Clarke, 2008; Fletcher & Weinstein, 2002). Furthermore, truth commissions were criticised for re-traumatising victims, for not attempting to challenge local power relationships, and for assuming that universal truths could be applied to different experiences and interests, which could be used to form a common narrative of conflict (Roht-Arriaza, 2006: 5)<sup>10</sup>.

These criticisms of earlier mechanisms led to the development of more sophisticated theory and practice, and both the UN and the ICTJ published guides that systematised the knowledges produced and made recommendations about best practice. According to McAuliffe (2011: 52), through these developments, victims gained a more prominent role in transitional justice processes, became conceptualised as survivors with agency, and there began calls for transitional justice mechanisms to become more victim-centred. Rama Mani (2007: 23), for example, called for:

An inclusive, flexible, sensitive, survivor-oriented form of reparative justice, rather than one-shot, politically-charged and emotive single mechanisms, i.e. either truth and reconciliation or trials alone.

The UN (OHCHR, 2006; 2008) published a series of rule of law tools, or guides on best practice, for the domestic prosecutions of crimes under international law, truth commissions, and reparations programmes, which illustrate a more sophisticated understanding of social justice and of victims' rights and needs. As an example, the rule of law tool on prosecutions included guidelines for making the process of seeking justice a meaningful experience for victims; in this regard, it suggested that they be involved in the process and advised that staff awareness training be provided on gender and race issues (OHCHR, 2006: 17-18). Furthermore, the rule of law tool on reparations included a chapter on gendered approaches (OHCHR, 2008: 36-9), while that of truth commissions called for victim-

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<sup>10</sup> See also Guttman & Thomson, 2000.

centred consultation (OHCHR, 2006: 7). Truth commissions established after the end of conflict in Sierra Leone, Liberia, and Timor-Leste included gender perspectives within their mandates (ICTJ, 2008a: 2). Members of the commissions travelled to those countries with women's groups to solicit women's views (ICTJ, 2008b: 2). The International Criminal Court (ICC) also enabled victim participation and developed trust funds for victims, although the extent of their participation remains a contested issue and the trust fund has been under-resourced (McGregor, 2008: 71).

McAuliffe (2011: 52) argues that the justice paradigm that became dominant in the early part of the millennium was restorative, and now focused on the family unit and local community, as well as the individual. The effort to involve actors other than the victims and perpetrators, in order to facilitate social reconstruction, led to calls for the development of more participatory approaches that focused on local communities and wider society. Lundy and McGovern (2008: 112), for example, argue for a participatory community-based approach that allows for local people to be listened to and their needs and interests to be taken into account. They highlight a grassroots, community-led, truth-recovery project in Northern Ireland that, over several years, helped with the resolution of conflict (2008: 118). Connecting the redress of harm to the social fabric of communities became a further concern. In this regard, Halpein and Weinstein (2004: 562) have argued for the promotion of empathy to facilitate reconciliation:

The health effects of intra-ethnic conflict include hatred and fear among neighbours and friends who have become enemies. The dehumanisation of specific groups through concomitant stereotyping does not stop when conflicts end. The inability to see former enemies as real people impedes reconciliation... To reverse the destruction of social and familial networks that normally sustain health and well-being, a process of rehumanisation must occur. We suggest that the promotion of empathy is a critical component of reconciliation.

The focus on social repair and restorative justice also began to include memory projects, such as monuments and museums, along with reparations programmes and public apologies, all of which had taken place in practice but that had been marginalised in the transitional justice literature (Andriu, 2010). Furthermore, the rationale for criminal justice also began to shift.

### **Criminal Justice: From Retribution to Social Benefits**

Criminal justice increasingly became thought of as possessing wider social benefits and impacts. The UN Rule of Law and Transitional Justice Report (2004: 38) lists the objectives of trials as 'securing justice and dignity for victims, establishing a record of past events, promoting national reconciliation,

re-establishing the rule of law, and contributing to the restoration of peace'. As McAuliffe (2011: 56) points out, during the early 1990s human rights lawyers, such as Orentlicher, had argued for the punishment of individuals based on existing legal standards. The reasoning for criminal accountability, however, gradually gave way to arguments promoting the social benefits of prosecution and revealed a belief that the courts could transform national political culture.

McAuliffe (2011: 56) explains that the reasoning for seeking accountability through criminal justice processes began to shift. Former rationales based on retribution, on the idea that those who commit crimes deserve to be punished (see Aukerman, 2002: 61), gave way to utilitarian rationales that argued that criminal justice processes should contain socially useful goals, such as rehabilitation, deterrence, and expressivism, the idea that sentencing and punishment express disapproval and hold symbolic significance (see Sloane, 2007: 42). Sloane (2007: 44), for example, claims that international criminal tribunals can be more effective in achieving the goals assigned to them, by focusing on their expressive capacity and publicly condemning acts deplored by international law. In a similar vein, Aukerman (2002) examines the theoretical framework that underpins domestic criminal justice and compares it to the context of transitional justice. She argues for non-retributive approaches, since a retributive focus within transitional justice can lead only to selective prosecutions and punishments are never able to equal the crimes committed. Aukerman (2002: 95) also claims that a common crime paradigm that focuses on individuals is less useful than one that focuses on societies, since, in the context of transitional justice, the purposes of prosecutions such as 'deterrence, rehabilitation, restorative justice, and communication/condemnation/social solidarity are primarily about societies, not individuals'.

### **Non-Transitional Contexts**

The transitions paradigm has recently been challenged through the use of mechanisms such as truth commissions, special tribunals, and lustration in non-transitional contexts, which, nevertheless, continue to be described as transitional justice (McAuliffe, 2011: 59). McAuliffe (2011: 59-60) describes three areas in which transitional justice mechanisms have been used outside of the transition to democracy paradigm: firstly, transitional justice in mature democracies, such as processes in long-established Western democracies that aim to address historic injustices against marginalised groups; secondly, those within civil-civil transitions in which there is a significant change in the political system between one civil democratic government to another; and thirdly, those between authoritarian regimes in which there is no democratic change<sup>11</sup>.

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<sup>11</sup> Authoritarian regimes in Chad and Ethiopia, for example, have also used transitional justice processes as



Justice claims in Western democracies, however, have been made less visible by the transitions paradigm, through their failure to consider the harms produced by structural injustice and, arguably, by the assumption that liberal market democracies are the desired end-point of transitions, rather than diverse societies with troubles of their own. Balint et al. (2014: 195), for example, point out that, rather than being perceived as potential subjects of transitional justice, with injustices from their own problematic pasts to repair, Western liberal democracies continue to be positioned as the actors that can best support transitional justice processes in post-conflict nations. Nevertheless, they argue that:

The flexibility and potentiality of transitional justice as a broader justice model makes it an attractive approach for addressing the historical injustices of settler colonialism that to date have not been addressed as harms (2014: 196).

In this regard, transitional justice mechanisms have been used to address historical injustice in Canada and Australia (Balint et al., 2014: 195-6). In Canada, for example, a truth and reconciliation commission investigated the forced assimilation of indigenous children in church-run Indian Residential Schools; using the findings, the government awarded a settlement package to the survivors (ICTJ, 2008; McAuliffe, 2011: 60). Similarly, Australia conducted a truth commission inquiry into the separation of Aboriginal and Torres Strait Islander children from their families, subsequently paying reparations for specific colonial injustices in various jurisdictions and issuing public apologies (Balint et al., 2014: 195-6).

Transitional justice mechanisms and discourses have also been used by governments undertaking reforms in what McAuliffe (2011: 61) has described as civil-civil transitions, such as the termination of Partido Revolucionario Institucional (Institutional Revolutionary Party, PRI) hegemony following the 2000 elections in Mexico, in which the centre-right Partido Acción Nacional (National Action Party, PAN) party, led by Vicente Fox, came to power. Nevertheless, Acosta and Ennelin (2006: 94), in their study on the 'Mexican solution' to transitional justice, regard the former PRI government, and its monopoly of power, as an authoritarian regime and conceptualise the change of government as a transition to democracy, a point that illustrates the lack of agreement and conceptual clarity about the nature of a transition. Acosta and Ennelin (2006: 94) argue that, since the transition, respect for human rights has become a legitimate political claim and an obligation of the government. However, they also found that the Special Prosecutor's Office, established in 2002 to investigate human rights abuses, in particular forced disappearances during the country's 'dirty war', has made slow progress

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political tools, in order to distinguish themselves from their predecessors, confer legitimacy on their government, and consolidate power without undergoing a process of political reform (McAuliffe, 2011: 61-2).

thus far, due, in part, to the continuing influence of the PRI (2006: 104-14). Furthermore, a proposed truth commission, promised as a campaign pledge, was later shelved.

### **Increased Localisation**

The focus on elite bargains and the nation state meant that little attention had been paid to the impact of violence and the appropriate means of redress at the local level; neither had research examined the impact of transitional justice mechanisms at this level (McAuliffe, 2011: 62)<sup>12</sup>. Roht-Arriaza (1996: 98), for example, argued that greater attention should be paid to local-level processes, since it is the level at which most people experience violence and its aftermath, especially in rural societies. In its transitional justice report of 2004, the UN (2004: 17) called for ‘respect for local ownership, values, and traditions’. Similarly, McEvoy (2007) argues that the legal institutions associated with transitional justice processes should work in conjunction with the local or indigenous practices that comply with basic human rights standards<sup>13</sup>. Importantly, Roht-Arriaza (2006: 12) claims that local-level initiatives have changed the concept of reconciliation, from a code word for impunity, much as it was in the early stages of transitional justice in Latin America, or as an automatic by-product of other processes, to a more complex set of phenomena with its own demands and time frames. Additionally, McEvoy (2007: 423-4) has criticised the tendency to see transitional justice as a state-centric and top-down process and notes that, even where the State has perpetrated extreme violence, as in the case of Colombia, ‘strengthening’ the State is often proposed as an important part of conflict resolution.

Increasingly, scholars have instead called for the adoption of a wider perspective that considers independent initiatives arising from the local level, as well as top-down state-level and internationally driven proposals (Arriaza & Roht-Arriaza, 2008: 144; McEvoy & McGregor, 2008). In the case of Guatemala, Arriaza and Roht-Arriaza (2008: 144) point out that, despite national-level transitional justice mechanisms, including two truth reports, a number of domestic trials, and a reparations programme, efforts have not translated into changes in lived experience and perception. They argue that this is true for two principal reasons: the lack of socioeconomic justice; and the fact that national-level initiatives are insufficient to capture the meaning of the conflict that took place for people living in specific local areas, since their experience varied greatly from that of those living elsewhere in Guatemala (2008: 144).

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<sup>12</sup> See also McEvoy, 2007; McEvoy & McGregor, 2008; Shaw & Waldorf, 2010.

<sup>13</sup> As an example, customary legal practices, such as *gacaca*, have been used in Rwanda instead of formal prosecutions for lower-level perpetrators. These practices will be discussed in a later chapter.

Similarly, Gonzalez (2009: 295) has criticised the existing research on the Guatemalan civil conflict for its failure to take into account regional complexities. She points out that researchers have predominantly focused on the human rights abuses that took place during the first half of the 1980s. This loses sight of an interpretation of the violence that is inherent in an entire system of domination and obscures an analysis of the manner in which local and national powers functioned during the whole of the war and transition period. Gonzalez (2009: 297) argues that it is important to be able to understand how the conflict was experienced and understood by people within affected regions. Accordingly, she has worked on a reconstruction of the local history of a Maya K'iche town alongside local inhabitants, using oral histories and written documents. Gonzalez (2009: 297) maintains that local histories allow attention to be paid to the agency of the Mayan people, whose capacity to take action and make choices has often been ignored by approaches that describe social change in rural communities in terms of external causes and who have, therefore, been relegated to the category of submissive victims.

## **Conclusion**

In this chapter, I have examined the development of transitional justice advocacy and practice and considered the manner in which its originally narrow conceptual framework has opened out. Particular understandings of transition, harms, and forms of redress had initially legitimated a quite limited set of justice claims, based on the violation of civil and political rights. However, as transitional justice gradually became more internationalised, and the context of transition changed from the cessation of authoritarian rule to the dissolution of conflict, more opportunities became available to hold international trials, above all in the former Yugoslavia and Rwanda. The nature of conflict and the narratives of ad hoc tribunals, in particular the SATRC, began to focus attention on victims and society, which allowed for the emergence of concepts of restorative justice. A previous focus on elite bargains and the State gave way to an emphasis on victims, perpetrators, and those in between, and produced a therapeutic and religious discourse centred on healing, social reconstruction, and reconciliation. However, assumptions about the needs and best interests of victims and society, and about harms and appropriate means of redress, met criticisms and were challenged by advocates of social justice and indigenous rights, as well as feminists, a development that will be discussed below. The ongoing experiences, and studies of, ad hoc tribunals also came to reveal failures, interpretations of which were described as the need to further develop theory and practice. A continued focus on victims and society, a concern with addressing the roots of specific conflicts, and a growing recognition of the intractable nature of the problems that were faced shaped a more holistic approach to development and allowed social justice concerns to enter the frame. This expanded the scope of transitional justice

and, as will be discussed in the following chapter, helped to make justice claims, based on feminist and indigenous conceptualisations of harms and means of redress, more visible.

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## Chapter Three: Theoretical issues, Comparative Examples and Theoretical Approaches: Transitional Justice from Below

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### *Editor's introduction*

*Transitional justice is a broad term that has been implemented in different ways since its adoption in the 1990s as a mode of reconciling societies with entrenched divisions. As the particularities of these divisions vary, the models differ greatly. In addition, where it has been adopted, transitional justice should be seen as a process rather than a set of precise guidelines. This chapter considers some key examples of transitional justice that have received scholarly attention in order to better understand the form that is being employed in Guatemala. Learning from international examples, Guatemalan activists and NGOs have attempted to produce a form of transitional justice from below. In part, this recognises the disproportionate numbers of indigenous people who have been subject to violence in Guatemala and provides an opportunity for them to participate fully in the ways that justice is formulated.*

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### **Justice from Below**

Roht-Arriaza (2006: 12) argues that local level initiatives have changed the concept of reconciliation. During the early stages of transitional justice in Latin America, reconciliation was often a code-word for impunity or a by-product of other processes, such as truth-knowing; as the concept matured, it came to embrace a more complex set of phenomena with its own demands and time frames (Roht-Arriaza, 2006: 12)<sup>14</sup>.

Although, by the late 1990s, a number of scholars had argued that international, rather than domestic, tribunals provided a more effective approach to transitional justice (e.g. Cassese, 1998; Cisse, 1999) – and the UN had itself taken a localised approach in places such as Cambodia (see Mydens, 1999; Schabas, 1999) and Rwanda (see Kamatali, 2003)<sup>15</sup> – scholars increasingly began to criticise ad hoc tribunals for their distance from those directly affected by violence. Drumbl (2000: 1259), for example, criticised the establishment of the ICTR in Arusha, Tanzania, because of its distance and, thus, inaccessibility for local populations in Rwanda. Reasons given were the fact that proceedings may not

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<sup>14</sup> See Skaar (2012) for a discussion on researching reconciliation and conceptualisation as a process.

<sup>15</sup> The UN initially insisted on the need for international oversight of the tribunal set-up and that it be based outside of Cambodia. Cambodia opposed this commission, but expressed willingness to prosecute through a domestic process (Drumbl, 2000: 1230). Similarly, the Rwandan government objected to the establishment of the ICTR outside of the country, ostensibly because it would have little local impact and would, therefore, not contribute to reconciliation (Kamatali, 2003: 118).

be diffused in the local media and that they would be conducted in a language the Rwandan people could not understand, in both their foreign and technical nature (Drumbl, 2000: 1259).

Similarly, Clark (2008: 334) points to widespread criticism of the distance of international war crime tribunals from local populations, in both a geographical sense and in the sense that the complexity of their proceedings may render them incomprehensible. In the Rwandan context, Drumbl (2000: 1262) argues that local and restorative processes may have been more effective than retributive justice, in terms of both the prevention of future violence and in facilitating reconciliation, through local reintegration, public discussion and debate, and story-telling. He maintained that local *gacaca* proceedings would be more meaningful than those conducted internationally.

The focus on restorative justice, growing criticism of international tribunals, and support among scholars, donors, and international institutions for more localised transitional justice mechanisms lent support to an increasing adoption of what have been variously described as traditional, customary, informal, or indigenous justice processes, in order to prosecute 'lower-level' offenders for war crimes throughout countries in the Global South, in which pluralistic legal practices continue to be used. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* report (UN, 2004: 12) states that:

Due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their often-vital role and to do so in conformity with both international standards and local tradition.

In Western Europe and North America, the search for a justice mechanism that is able to complement a punitive approach has generated renewed interest in traditional non-state systems for dealing with crime. In Australia, New Zealand, Canada, and the United States, traditional justice systems that belong to the aboriginal heritage have also recently been revived. Furthermore, an interest in restorative justice programmes is on the rise in other Western nations, although based on a more progressive and contemporary philosophy of justice than on forgotten local traditions. An example is the use of victim-offender reconciliation programmes, a formula that has predominantly been used to handle minor crimes, although initiatives in contexts of conflict, such as that of Northern Ireland, have also tried to extend the concept (Huse, 2008: 20-21).

It should be noted that the adoption of customary law as a means of fostering forms of accountability for those indicted for genocide and other violations of international law was, in many cases, due to the widespread difficulties of dealing with such large numbers of perpetrators (McAuliffe, 2013). This was particularly true in Rwanda, where the decision of the government to prosecute all those accused

of genocide, and the low capacity of both domestic courts and the ICTR to prosecute such a large number of people, led to the creation of *gacaca* courts (Kerr & Mobek, 2007: 171; McAuliffe, 2013). To highlight these difficulties, in 1994, 130,000 suspects remained in prison awaiting trial and eight years later only 5,000 had been released (Kerr & Mobek, 2007: 171).

A further reason for the adoption of traditional justice mechanisms is their sheer prevalence throughout the world. The UN estimates that such mechanisms are used to resolve as much as ninety percent of conflict in countries that maintain elements of customary law (Kerr & Mobek, 2007: 152). The continued prevalence of these mechanisms highlights the problems inherent in the application of an idealised justice model, and the concepts of justice that are included within, to post-conflict societies, without taking into consideration the local context (McAuliffe, 2013: 261). Furthermore, McAuliffe (2013: 259) claims that arguments in favour of local mechanisms have often been presented through the lens of the normative Western restorative justice framework and contends that a reason for the interest in such mechanisms lies in a dissatisfaction in the West with state-centred retributive approaches. He reasons that the use of such mechanisms, and the turn away from a liberal theorising of reconciliation toward indigenous restorative ideas based on local practices, is centred on ambitious ideas of substantive social transformation; in this respect, he continues, criticisms can be directed at the fact that the rationale for such mechanisms is founded in aspirational rather than realistic goals (McAuliffe, 2013: 262). McAuliffe (2013: 120) also questions the extent to which ideas of reconciliation should be transformed, from those which focus on national processes to those which see reconciliation as something that should occur at the local level, between members of a community.

Although these mechanisms are often described in the transitional justice literature as restorative, they often retain both restorative and retributive components (Kerr & Mobek, 2007: 153; Waldorf, 2005: 422); they have also included punitive measures involving, in some cases, physical punishment (McAuliffe, 2013: 264). Generally, these mechanisms have been cited as a means to resolve conflicts, crimes, and disagreements – such as marital disputes and domestic violence, gender and familial concerns, localised violence, and land, inheritance and other financial issues - at the community level. These processes are often mediated by elders and other respected members of the community and may be administered by village or tribal councils, NGOs, or other local governmental bodies (Kerr & Mobek, 2007: 153-4). In such cases, retribution varies considerably, but can include public humiliation, communal labour, the payment of fines, or physical punishment; typically, the punishment does not include incarceration (Kerr & Mobek, 2007: 154). More often than not, the perpetrator is a member of the community that tries the case and punishment, therefore, is often conceptualised as a means for that perpetrator to serve the community and to make reparations (Kerr & Mobek, 2007: 154).

In this respect, McAuliffe (2013: 264-5) points out that the main concern in these models of justice is often the stability and well-being of the community as a whole, rather than that of the victim, as is the case in Western models of restorative justice. This means that traditional mechanisms can be coercive toward the victim, as community harmony often assumes alternative meanings to those imagined by Western scholars and practitioners. McAuliffe (2013: 264) argues that, in these cases, an emphasis on forgiveness asks more of the victim than of the offender. This may mean that the victim is obliged to forget past violence in order to achieve a 'pretended peace', whereby relationships are not repaired and disputes are not resolved and in which there is essentially a superficial reintegration of offenders into the community (McAuliffe, 2013: 264).

Kerr and Mobek (2007: 154) point out that there exist very different definitions of justice within communities that adopt traditional justice mechanisms that do not conform to a Westernised view of justice. They also follow McAuliffe (2013: 264) in highlighting that, within these understandings, crimes are often framed with regard to their effect on the community rather than on the individual (Kerr & Mobek, 2007: 154). While elements of these mechanisms persisted under colonial rule throughout Africa, Asia, and Latin America, the post-colonial landscape has seen their heightened use, in particular during periods of conflict and authoritarianism. Kerr and Mobek (2007: 154) emphasise three main reasons for this: firstly, formal judicial systems were perceived to be unfair, corrupt, or used as tools in the systematic abuse of populations; secondly, they frequently broke down as a result of conflict; and thirdly, they were often inaccessible due to geographical distance, the terminologies used in proceedings, or the resources needed to access them.

In many countries that were attempting to leave colonialism behind, such as South Africa and Bolivia, traditional or customary laws became recognised by the State and referred to in new constitutions. In the case of other African countries, such as Ethiopia and the Ivory Coast, customary laws became codified within the formal legal framework (Kerr & Mobek, 2007: 154). For Kerr and Mobek (2007: 157), however, the inclusion of customary laws within more formal systems presents a series of potential drawbacks, in particular surrounding questions of legitimacy and accountability. In this regard, their inclusion often reflects the weakness of more formal legal systems rather than their strength and, although it is often assumed that they provide them with greater authenticity, this is not necessarily the case (Kerr & Mobek, 2007: 157).

Local leaders do not always enjoy the legitimacy that they are assumed to have and traditional mechanisms are often not accountable (McAuliffe, 2013: 264). Questions also surround the impartiality of these trials; solutions may be arbitrary and differ between similar cases due to a higher level of subjective decision-making throughout the process (Kerr & Mobek, 2007: 158-9).



Furthermore, punishments often contradict international human rights laws and standards. This is particularly true in the case of women's rights. Kerr and Mobek (2007: 159) give the example of situations in which the perpetrators of rape are forced to marry the victim and pay compensation to her family; in other cases, women have been blamed and punished or killed for 'dishonouring the family'. Related to this last, Kerr and Mobek (2007: 159) note that there is a tendency within many traditional justice mechanisms to exclude women from the decision-making process, which often leads to a bias against them.

However, Kerr and Mobek (2007: 159) maintain that not all traditional justice mechanisms violate human rights standards and cite the examples of Peru, Bolivia, Ecuador, and Colombia as countries that have successfully integrated traditional mechanisms while, at the same time, respected fundamental human rights. They argue that these cases demonstrate the need for firm linkages with more formal justice systems, in order to facilitate accountability and oversight; they continue that, in this respect, victims should be able to access both the traditional and formal systems (Kerr & Mobek, 2007: 161). On the other side of the coin, a number of scholars have criticised mechanisms of state control, organisation, and oversight, arguing that they, in fact, cause problems in terms of legitimacy, through their potential use as a political tool to avoid the prosecution of allies and to produce a particular set of 'truths' (see Allen, 2006; de Brouwer & Ruwebana, 2013; Huyse, 2008; Igreja et al., 2008; Ingelaere, 2008).

The literature also raises the potential issue that there may be a number of different traditional structures existing side by side within a national territory. Kerr and Mobek (2007: 162) argue that this can become a problem where traditional justice mechanisms sanction the use of retributive justice, due to potential disagreements in the use of punishment, and is less of an issue where they promote restorative processes, in which commonalities are often found between the different traditions.

The limited reach of traditional justice mechanisms has also been described as problematic. More often than not, these mechanisms retain jurisdiction only within a localised area, over those residing in that area, and in regard to crimes committed there (Kerr & Mobek, 2007: 162; McAuliffe, 2013: 264). Kerr and Mobek (2007: 162) argue that these limitations could translate into a strength, as such mechanisms could lead to a more robust process of reconciliation and reintegration at the local level.

In addition, it has been claimed that members of the formal justice system – lawyers, judges, prosecutors, magistrates, and government officials – often view traditional justice mechanisms negatively and, as such, are hostile to their use. In the Congo, for example, Kerr and Mobek (2007: 162-3) argue that those working within the formal system demonstrate opposition to the use of traditional mechanisms, as they believe that they represent a regression in the advance toward a

'modern' legal system, that they obstruct development, and that they drain resources from the formal justice system<sup>16</sup>.

On the other hand, traditional systems also retain advantages over more formal ones, in that they are often quicker to prosecute, operate with lower expenses, and are more accessible and inclusive, being held as they are in local communities (Kerr & Mobek, 2007: 164-5). In this respect, they are also more culturally relevant; where the formal legal process can seem alien, traditional mechanisms are based on and reflective of local norms and customs (Kerr & Mobek, 2007: 165). The use of traditional mechanisms means that local people are able to 'see an immediate and direct effect of the process of justice and reconciliation', while formal processes are 'often far removed from the local communities and often lack an efficient feedback mechanism whereby local communities can be informed about the progress of the process of justice' (Kerr & Mobek, 2007: 166). Kerr and Mobek (2007: 166) argue that traditional justice mechanisms may also be perceived to be 'entirely in the ownership of the local population, whereas international and hybrid or internationalised courts have much more limited local ownership'. Even so, where extensive international contributions have supported their establishment, local ownership may remain lacking. Kerr and Mobek (2007: 166) explain that local ownership has shown to be 'crucial for the successful outcome of any process that involves international intervention at any level'. Citing, in particular, the example of Mozambique, they conclude that traditional mechanisms have had greater success in facilitating reconciliation where they have tried more minor crimes; in this respect, they are not well suited to dealing with crimes against humanity, war crimes, and genocide (Kerr & Mobek, 2007: 167).

The widespread perception that much violence is horizontal in form, that it takes place between fellow citizens within localised contexts, lends support to the important role that traditional justice mechanisms are able to play. However, McAuliffe (2013: 264-5) argues that most violence is vertical in nature, stemming from above and outside and crossing the boundaries to situate itself within local communities. In this respect, conflicts are often fought between ethnic, religious, or linguistic groups who do not inhabit the same region or who do not share common socio-cultural bonds, elements that are often vital for traditional justice mechanisms to function. Traditional mechanisms have struggled to deal with these cases (McAuliffe, 2013: 265).

### **Tradition-Based Systems**

*Editor's note: Amongst the many indigenous communities in Guatemala there is a strong tradition of the enforcement of justice at a group or community level. With little faith in the national legal*

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<sup>16</sup> See also Huyse (2008) for a similar analysis on the case of Burundi.

*frameworks, these traditions have developed and strengthened over time. When looking to create a new justice mechanism these practices have been called upon and integrated in the Guatemalan form of transitional justice.*

Initial concerns that traditional justice mechanisms would not follow due process and could, therefore, potentially serve to violate human rights gave way to more enthusiastic support following the demonstrated success of tradition-based systems such as the *Gacaca* in Rwanda, the *Matu Oput* in Uganda, the *Fambol Tok* in Sierra Leone, and the *Nahe Biti* in Timor-Leste. In this regard, Drumbl (2000: 1264) argues that ‘processes based on local culture and regional practice may create a greater sense of familiarity among victims than the potentially alienating procedure of trials’. Furthermore, he maintains that these processes are able to ‘empower victims, involve bystanders, and possibly rebuild these fragmented communities’, since ‘judging’ is undertaken by members of the very communities in which crimes have taken place through publicly-held discussions that are accessible to all members of the community (Drumbl, 2000: 1264). Citing the example of Rwanda’s *gacaca* trials, he points out that ‘tribunals could consider more flexible remedies such as community service, apologies, rituals, and public shaming’ (Drumbl, 2000: 1264-5).

In contrast to the late 1990s and early 2000s, during which human rights groups raised concerns about the use of traditional mechanisms, by the mid part of the 2000s, following demonstrable successes, they had gained such a level of acceptance that their use became written into peace agreements, as was the case of Uganda in 2007. In this regard, Huyse (2008: 1) writes that ‘the explicit reference to traditional justice instruments in the context of peacemaking and justice is innovative. It is one of the strongest signs of the rapidly increasing interest in the role such mechanisms can play in times of transition’. As such, truth and reconciliation commissions have also included the use of traditional mechanisms in Liberia and Sierra Leone (Huyse, 2008: 12).

These developments gave rise to a gradual paradigm shift within the field. Scholars, activists, and practitioners pointed to the cultural and geographical foundations of more formal legal processes and questioned whether they were the most appropriate mechanisms to use within non-Western societies. Desmond Tutu, chair of the South African Truth and Reconciliation Commission, argued that Western-style justice is not compatible with traditional African jurisprudence as it is too impersonal. The African view of justice, he states, is aimed at:

The healing of breaches, the redressing of imbalances, the restoration of broken relationships. This kind of justice seeks to rehabilitate both the victim and the perpetrator, who should be given the opportunity to be reintegrated into the community he or she has injured by his or her offence (cited in Huyse, 2008: 5).

Surveys conducted among victims of human rights violations in Uganda, however, suggest that they had mixed views on the use of transitional justice mechanisms, including amnesties, domestic and international prosecutions, and truth commissions. As an example, one survey showed support for traditional approaches, but also extensive support for holding perpetrators of grave human rights abuses accountable (Huyse, 2008: 20). Such views highlighted the problem of setting traditional and formal justice mechanisms in binary opposition to one another.

Huyse (2008: 5-6) maintains that the problem of binary opposition is, in fact, conceptually false since, in practice, a number of different mechanisms are often used that combine elements of both approaches. The idea that such opposition exists has roots in earlier conceptualisations of what exactly traditional mechanisms comprised, in which there was a tendency to essentialise, to idealise their benefits, and to downplay any potential weaknesses (Huyse, 2008: 6; McAuliffe, 2013: 264). However, Huyse (2008: 7) highlights the case of Rwanda's *gacaca* system to reveal that traditional mechanisms were often far from perfect. Widespread problems with the establishment and administration of *gacaca* courts, as well as a failure to achieve many unrealistic and overambitious objectives, has led, Huyse (2008: 7) explains, to the adoption of more 'realistic, empirically based assessments of the potential role of traditional mechanisms within the broader reconciliation and transitional justice policy framework'.

The language employed to discuss how transitional justice is adapted to different contexts requires some reflection on what language is used about originary cultures. It is now widely accepted that processes such as (de)colonisation, modernisation, and civil conflict have significantly altered the meanings of traditional justice mechanisms in Africa (Huyse, 2008: 6-7). Kerr and Mobek (2007: 153) argue that there are problems with using terms such as 'traditional' and 'customary', as tradition and custom are not static concepts. Furthermore, many supposedly traditional or customary mechanisms were shown to have been created, or reinvented, following the end of colonialism. In this regard, Alie (cited in Huyse, 2008: 7) explains that 'the term "traditional", with its Eurocentric connotations, tends to suggest the existence of profoundly internalised normative structures'. It also refers to patterns that are embedded in seemingly static political, economic, and social conditions. However, Alie (cited in Huyse, 2008: 7) continues, 'it must be borne in mind that African institutions, whether political, economic or social, have never been inert. They respond to changes resulting from several factors and forces'.

Nevertheless, the use of other terms has also shown to be problematic. For example, those such as 'informal' or 'non-state' may be misleading; once certain mechanisms are used as part of the transitional justice process, they naturally become more formal and can even become included in

domestic legal systems, be modified by the State, and become subject to state oversight (Huyse, 2008: 8; Kerr & Mobekk, 2007: 153). Issues with the use of certain methodologies also arise; as Huyse (2008: 7) explains:

Many questions of a methodological nature appear, such as how to avoid ethnocentrism in developing the key notions that will guide the analysis and whether it is at all possible for Western observers to interpret these phenomena in a basically sound way.

In this regard, Huyse (2008: 8) argues that there is a strong tendency to romanticise in European and North American academic and NGO communities.

More than just discursive issues arise here. Language barriers can present a significant problem, since not all concepts necessarily translate easily, thus distorting an understanding of the justice attained. Allen (2006: 76-7) points out that in Uganda, for example, there has been much confusion over the use of the term 'reconciliation'. In the local Achioli language, the word for 'amnesty' and 'forgiveness' are the same, a case that has led to the belief that the Achioli people retain an extraordinary capacity to forgive and that their system of justice is based on the concept of forgiveness. Allen (2006: 76-7) explains:

The Christian organisations and the 'traditional' leaders were especially prone to confuse the two ideas, even arguing that there is an Achioli system of justice based on forgiveness which is superior to mere conventional law-making and enforcement. Rather naively, many NGOs have taken this at face value.

When using words such as tradition and custom, it is with an awareness that these are not easily understood across all situations and come burdened with historic violences. That being said, because of its recurrence in the literature, this is the terminology that will be employed in the dissertation.

### **Communities and Individuals as Instruments of Reconciliation**

Huyse (2008: 10) argues that there are two general objectives of transitional justice that relate to the level of individuals and communities: healing the wounds of victims and survivors; and restoring broken relationships between members of a group or between communities. At the national level, there exists the general objective of preventing the recurrence of conflict, usually through the creation or strengthening of institutions and appropriate processes (Huyse, 2008: 10). Many commentators argue that traditional mechanisms are well placed to help achieve these goals (see Alie, 2008; Huyse, 2008; Igreja & Dias-Lambranca, 2008; Latigo, 2008). Their studies cite the cases of Mozambique, Sierra Leone, and Uganda as examples in which traditional or indigenous mechanisms have helped with processes of healing of victims, social repair, and the prevention of future violence. In this regard,

Huyse (2008: 11-13) claims that traditional mechanisms have been able to help to achieve many of the instrumental goals of transitional justice, such as reconciliation, accountability, and truth telling.

Furthermore, Huyse (2008: 15) argues that traditional mechanisms may be better suited to dealing with the grey areas of transitional justice, such as atrocities committed by child soldiers, than more formal trials, based as they are on the binary of guilty or innocent. Here, Huyse (2008: 15) maintains that the communal dimension of traditional mechanisms may be more appropriate where guilt, punishment, victimhood, and reparation are perceived as collective, as in many African societies, and where they can be hybridised, invented, or reinvented in the context of transitional justice. In this regard, Ingelaere (2008: 53) explains that:

The strength of traditional justice mechanisms probably lies in the fact that they function in line with the socio-cultural habitat of the population in their daily activities. This may not be seen as an effective way of dealing with the past from the perspective of a human rights body, but it is the way of the local population, partly out of necessity, partly out of choice.

The attempts made in Rwanda to respond to community and individual needs have proven instructive for other models of transitional justice elsewhere, including Guatemala (see, for example, Hinan, 2010).

### **Addressing Structural Concerns**

Transitional justice, human rights, and the rebuilding of the nation-state can more productively be viewed as sites of struggle between different groups than as a mechanical process through which certain mechanisms produce or consolidate elements such as democracy, reconciliation, truth, and social and structural justice.

In this regard, concerns with how best to deal with structural injustice and, therefore, to address many of the roots of conflict were included in transitional justice debates, which began to touch upon the issues of social, economic, and cultural rights. Miller (2008: 266), for example, argues that transitional justice research and practice has historically excluded issues of economic inequality, structural violence, redistribution, and development. She claims that these issues have been made invisible either through being ignored altogether, through their treatment as contextual background issues rather than as central concerns, or through being reduced to 'a narrowed discussion of reparations' (Miller, 2008: 266). Miller (2008: 266) claims that the cost of ignoring these issues is threefold:

(1) an incomplete understanding of the origins of conflict; (2) an inability to imagine structural change due to a focus on reparations; and (3) the possibility of renewed violence due to a failure to address the role of inequality in conflict.

Louise Arbour (2007: 3), previous UN High Commissioner for Human Rights, has argued that transitional justice must not only address the crimes and abuses committed during conflict, but should also address the human rights violations 'that predated the conflict and caused or contributed to it'. Arbour contends that this will serve to expose or make visible 'a great number of discriminatory practices and violations of economic, social, and cultural rights'. At present, she points out, the concept of justice centres on addressing the violation of civil and political rights, based on a framework of dispute resolution (Arbour, 2007: 4). She argues that the broader objectives of transitional justice, however, should focus on social transformation and the prevention of conflict and, referring to Guatemala as an example, identifies the links between the abuse of civil and political rights and social, economic, and cultural rights violations (Arbour, 2007: 8).

In this regard, the Commission for Historical Clarification in Guatemala (CEH, 2001) notes that 'political violence was... a direct expression of structural violence'. Arbour (2007: 9) also points out that social and economic human rights violations, such as the burning of houses, destruction of food crops, forced displacement, and starvation caused by restrictions on aid, are used as instruments of war in the same manner as murder and rape; she claims that it is therefore wrong to prioritise the protection of some rights over others. Arbour (2007: 14-15) argues that it is fundamental that these crimes be investigated by truth commissions and that resolutions be offered in their recommendations. In some cases, it is advised that crimes be prosecuted by national and international criminal courts and that, in others, claims are dealt with in non-criminal contexts, in courts designed to protect basic human rights, such as the Inter-American Court on Human Rights. Citing the Plan de Sanchez ruling in Guatemala (see GHRC, 2011), she reasons that reparations programmes can also be used to redress the violation of social, economic, and cultural rights by joining 'property restitution' with 'land reform programmes' (Arbour, 2007: 17-18). In conclusion, Arbour (2007: 26-7) argues that 'there is significant potential to expand the scope and reach of transitional justice in order to address the root causes of conflicts and the related violations of all rights in a more comprehensive manner'<sup>17</sup>.

On the other side of the coin, however, Roht-Arriaza and Orlovsky (2009: 172-3) contend that 'development-as-reparations also undermines the ability of reparations to function as state acknowledgement of wrongdoing'. In this regard, the debate over reparations can work to preclude or obscure any larger political debate that should be had over redistribution. Reparation programmes are inherently divisive, pitting individuals and groups against one another in the struggle over who receives compensation and how much. Such conflict can inhibit collective political action against the successor regime to advance more rightful economic policies (Miller, 2008: 284-5). In Peru, for

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<sup>17</sup> See also de Greiff (2009) for an analysis of the links between transitional justice and development.

example, ‘many victims prioritised needs over damages [which] suggested they were not satisfied with a reparations model that returned them to the *status quo ante* – an inequitable *status quo* that had contributed to the conflict’ (Laplante, 2009: 90). Furthermore, Waldorf (2012: 171) argues that transitional justice should not directly address past socio-economic wrongs, pointing out that transitional justice processes already struggle to ‘deliver on the original promises of truth, justice, and reconciliation’. He also highlights the contentious nature of these debates and points out that ‘the extent to which poverty, inequality and economic, social and cultural wrongs drive armed conflict is highly debated among social scientists’ (Waldorf, 2012: 175).

Conspicuously absent from many of the debates is any mention of the stated wants of the victims supposedly served by transitional justice (see Nee & Uyin, 2010; Shaw & Waldorf, 2010; Weinstein et al., 2010). When asked, many victims understandably prioritise their present economic needs. An attitudinal survey of victims in Nepal, for example, found that they listed their immediate needs as compensation (24%), education (17%), housing and clothing (12%), and employment (8%); locating the disappeared (7%) and punishing perpetrators (3%) featured as more minor concerns (ICTJ, 2008; Robins, 2009). It is clear from these figures that victims favoured reparative and distributive justice over the retributive. Waldorf (2012: 175) points out that surveys in a number of other countries, such as Kenya, Uganda, and Congo, show similar results. Waldorf (2012: 175) concludes that:

These findings suggest that everyday injustices rooted in historical inequalities may be as important, if not more important, for many survivors than the extraordinary injustices of gross human rights abuses. Or as one young Rwandan genocide survivor put it, ‘we’ve got used to the genocide; it’s daily life that’s the problem’.

For Waldorf (2012: 175), the strongest rationale for the role of transitional justice mechanisms in addressing socioeconomic imbalances is in situations in which these priorities reflect the needs and wants of victims and survivors. He warns, however, that transitional justice mechanisms may not be practically suited to address such wrongs. Examining the work of truth commissions and reparation programmes, he describes the practical problems that have often arisen when attempts have been made to redress wider social and economic inequalities (Waldorf, 2012: 178-9).

Mamdani (2000: 179), for example, famously criticised the South African Truth and Reconciliation Commission (SATRC) for not treating as victims the 3.5 million individuals who underwent forced removals. The SATRC’s narrow focus on the perpetrators of extra-judicial killings, disappearances, and torture let apartheid’s many beneficiaries off the hook all too easily. As Mamdani further commented, ‘whereas the focus on perpetrators fuels the demand for justice as criminal justice, that on beneficiaries shifts the focus to a notion of justice as social justice’ (in Torpey, 2006: 55).



Related to this last, the UN Office of the High Commissioner for Human Rights (OHCHR, 2008: 11-12) has pointed out that the recommendations of truth commissions 'are often ignored, not because they are unworkable, but because those commissions are inherently weak institutions with short life-spans'. The office (OHCHR, 2006: 9) also warns against the inclusion of economic crimes in the mandate of truth commissions, arguing that this may serve only to make the mandate too broad and unworkable. Furthermore, Waldorf (2012: 177) points out that the International Centre for Transitional Justice 'has recommended that successor regimes deal with economic crimes outside truth commissions'.

*Editor's note: Juliette continues her draft outline for this chapter with some substantial quotes by Waldorf (2012) that indicate the direction she planned to take her own conclusion of the ideas reviewed above. I include the first of them here for the reader, as it provides a breakdown of the difficulties of using transitional justice mechanisms to mediate socio-economic injustices.*

As the discussion above demonstrates, there are enormous practical difficulties with having transitional justice mechanisms tackle historically constructed socio-economic inequalities. First, those mechanisms are already over-stretched and under-funded. Reparations programmes, for example, do not have the funds to cover victims of massive economic and social wrongs and are unlikely to acquire such funds (de Greiff, 2009: 40). Second, there is a danger of raising already inflated expectations of what transitional justice mechanisms can accomplish. Truth commissions have already suffered self-inflicted wounds by over-promising reconciliation. Third, transitional justice mechanisms have a relatively short life-span during periods of political transition. By contrast, the remedying of socio-economic injustices is a long-term political project (Waldorf, 2012: 179).

As I will explore in the following chapter, these processes have come full circle, and the justice claims of colonised people are now returning to the fore. These claims pay greater attention to the victims and survivors of human rights violations.

### **Expanding the Scope of Transitional Justice**

The expansion of transitional justice into new contexts, the increasing number of goals, and further developments in theory and practice have not, however, allayed criticisms of the core ideas and practices that have predominated. In this regard, criticism has arguably accompanied the development of the field since its conception. Nevertheless, a number of scholars are now pointing to the onset of a current phase of increased self-criticism and doubt, as the field of transitional justice has started to become more mainstream. McAuliffe (2011: 5), for example, describes the trend in

current scholarship as ‘a post-euphoria era of doubt’, in which scholars, activists, and funding agencies question the claims made by transitional justice advocates. Bell (2009) has mentioned that transitional justice is undergoing a mid-life crisis, while O’Rourke (2013) describes how contemporary feminist scholarship on transitional justice manifests disillusionment with strategies of prosecution vis-à-vis the lack of human rights outcomes for women. In the following section, I will discuss a range of feminist and other critiques of the field in more detail and consider, in particular, feminist engagement with transitional justice.

*Editor’s note: What these examples show is that transitional justice is not a definitional category. Instead, it is a process that takes into account community and individual needs and local characteristics, both legal and historical. The way transitional justice was employed for the Sepur Zarco trial in Guatemala reflected a careful engagement with local communities and interests in order to engage individuals in the process and give them ownership over the legal process.*

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### **Researching the Struggle for Gender Justice from Below**

My research methodology aims to incorporate insights from legal anthropological and socio-legal approaches, as informed by intersectional and de-colonial feminist perspectives, using a multi-sited and activist ethnography. There are a growing number of research studies that aim to evaluate whether transitional justice mechanisms are able to work and that try to understand their broader social impacts. There is also a small but growing literature on how best to research transitional justice mechanisms and a widening debate on the manner in which to conduct research into, and evaluate the impact of, these mechanisms.

Reiter (2017: 269) argues that transitional justice can be evaluated at three distinct levels: the micro, or individual, level; the meso, or institutional, level; and the macro, or national, level. At the micro level, researchers study how people experience and perceive transitional justice efforts. Examples would include an examination into whether victims consider that justice has been served following a trial or whether they feel a process of healing has taken place, after having participated in the process (Reiter, 2017: 270). At the meso level, researchers may attempt to examine the successes of transitional justice measures, such as trials or truth commissions, which may significantly vary in quality. Some trials, for example, may end with a verdict while others may fail to draw to a close (Reiter, 2017: 270). Reiter (2017: 270) argues that the goal at this level is to assess whether or not transitional justice mechanisms were able to operate as intended and achieve their stated objectives:

The success of a trial can... be partially measured by whether the prosecution was completed, a verdict was rendered, and a sentence was imposed. Others would go even further to define

success as guilty verdicts only, and measure that success by the extent of the sentence, viewing long prison sentences as a better outcome than 'slaps on the wrist' in the form of fines or short jail time.

Nevertheless, through the use of strategic litigation, guilty verdicts may not mean that prosecutions have been entirely successful, since it is often undertaken to achieve broader social goals, such as altering the narrative, changing understandings and interpretations within the legal processes, achieving legal precedent, and reforming legal procedures. Its use also raises questions about procedural justice, such as minimising gender and racial bias, avoiding re-victimisation, and supporting the participation of victims.

At the macro level, researchers and practitioners study the longer-term impacts within a given country, such as analysing whether countries that pursue transitional justice mechanisms are more peaceful or democratic than similar countries that do not. As Reiter (2017: 270) states, those involved in an analysis at this level 'want to know if these mechanisms achieve larger, long-term goals such as peace and reconciliation'.

Researchers have adopted a variety of research methods at these three levels. At the micro level, they have conducted interviews, focus groups, and surveys of victims, perpetrators and members of society as a whole in places where transitional justice has been pursued, in order to gauge their perceptions of events and to understand individual experiences (Reiter, 2017: 270). Stepakoff et al. (2014), for example, conducted interviews with witnesses after they had testified, using a narrative approach to interviewing. At the meso level, through an analysis of institutions or certain transitional justice mechanisms, such as trials or truth commissions, researchers have collected detailed information on specific legal proceedings, laws, programmes, and institutions related to transitional justice (Reiter, 2017: 271). Finally, at the macro level, researchers have conducted qualitative country case studies to compare those that have and have not pursued transitional justice mechanisms. They have also conducted quantitative analyses of larger country datasets, using statistical techniques to control the differences and similarities between cases and so isolate the effects of transitional justice (Reiter, 2017: 271).

Although researchers have used a variety of different methodologies, there has been a prevailing tendency in the field of transitional justice to favour quantitative, larger-scale surveys in order to gain insights into the strategies and mechanisms that address the needs of victims (Viaene, 2010: 65). Surveys have been used to learn about the experiences of those affected by human rights violations, to reveal the extent of victimhood or to identify victims in specific cases, and to learn about the preferences and priorities of victims, so that transitional justice mechanisms may better address their

needs (Reiter, 2017: 271). Broader surveys have also been carried out over an extended period of time in post-conflict societies, in an attempt to assess the impact of transitional justice on reconciliation and to gauge societal attitudes about national and regional identities (Reiter, 2017: 271).

The adoption of these methodologies reflects a broader trend in the use of quantitative approaches to study global phenomena, such as research conducted in the field of human rights, and to ignore the potential insights that more in-depth qualitative approaches may offer (Merry, 2017: 156). There are, however, a number of problems with relying heavily on quantitative approaches to research, in particular because, within societies emerging from processes of mass violence, people 'have historical reasons not to trust any exercise that resembles official information gathering' (Shaw, 2005: 6). Furthermore, although quantification can be a powerful tool, it is subject to power imbalances at the global level and relies on technologies and methods that are not equally available to all (Merry, 2017: 156). Merry's (2016, cited in Merry, 2017: 156-7) ethnographic study of the process of quantification in global governance, within the field of human rights, showed that the production of indicators is shaped by those who have the power to define the terms of measurement, to pay for data collection and analysis, and to disseminate the findings. Her study reveals inequalities in the power to influence the formation of indicators, in particular between the Global South and Global North.

Importantly, Viaene (2010: 65) points out that concepts such as justice, reparations, truth recovery, and reconciliation may be understood very differently in culturally diverse non-Western societies. In relation to this, however, in order to assess the impact and effectiveness of transitional justice, it remains important to understand what the concept means to local people living in communities affected by violence. A number of scholars argue that it is important to consider and to understand local and individual ideas of concepts such as peace, reconciliation, apology, and reparation, in order to be able to better assess the effectiveness of transitional justice mechanisms (Reiter, 2017: 274; Viaene, 2010). Merry (2017: 141) also maintains that it is essential to examine local-level ideas, experiences, and practices in order to understand how ideas and laws related to human rights have an effect in local communities.

To investigate these issues, in-depth and intensive methodologies, such as ethnographic research, focus groups, interviews, and participatory action research, may be required. Ultimately, in order to truly understand the needs and priorities of victims, and to grasp how transitional justice mechanisms resonate in specific societies, researchers need to immerse themselves in local contexts (Reiter, 2017: 272). A number of researchers have used ethnographic practices when researching transitional justice mechanisms in order that a local perspective permeate their analyses (see Robins, 2012; Sandford, 2003; Viaene, 2010).

### **Feminist Research in Transitional Justice**

Much of the critical feminist scholarship on trials and legal processes has taken place at some point within the field of the micro and meso levels. Many scholars, for example, have looked at the functioning of institutions such as the ICTY and the ICTR, at specific cases within them, and at the experiences of women survivors who have testified (see Mertus, 2004; Nowrojee, 2005; Sharat, 2016). Sharat (2016: 43) conducted interviews and semi-structured questionnaires with two target groups: court members of the ICTY and the War Crimes Chamber (WCC) in Bosnia and Herzegovina, survivors of rape and sexual violence who testified in the ICTY and the WCC, or both; and NGO personnel working with survivors, including legal and mental health professionals, academics, journalists, and members of international organisations working with both courts. She also conducted trial monitoring. Sharat (2016) used both qualitative and quantitative approaches and her methodology varied with each specific group.

Earlier feminist scholarship was primarily based on doctrinal analysis (the study of law-as-text), on examining the statutes created to prosecute wartime sexual violence through the ICTY, the ICTR, and the ICC, and on investigating the definitions of sexual violence and rules of evidence. The central objectives of this scholarship looked to determine whether there was a gender bias contained within them and whether these processes could lead to the re-victimisation of women survivors, due to the manner in which the laws had been drafted. Feminist researchers also looked at the judgements and judicial decision-making within the ICTY and the ICTR and, more recently, in Sierra Leone, as well as the discourses and narratives that surrounded the processes.

Furthermore, participatory action research and creative methodologies have been used by feminist researchers in the field of transitional justice, in particular in psychosocial work with survivors in Guatemala (see Crosby & Lykes, 2011). In this sense, studying the protagonism, agency, and experiences of women survivors and their allies, and the meanings and outcomes of the Sepur Zarco trial for them, involves research at both the micro and meso levels. Nonetheless, my focus remains trained more on the micro level. I have taken a feminist approach to this research, which I will discuss in a subsequent chapter. In the following section, however, I will discuss the use of a multi-sited ethnographic approach.

### **Using a Multi-Sited Ethnographic Approach**

My research aims to critically assess local practices of transitional justice mechanisms and their impact at the community level, since the practice and theory of transitional justice evolves in relation to the context within which it takes form (Balasco, 2013: 205). The research also aims to understand the

needs and priorities of the women survivors. In order to do so, I have taken a multi-sited ethnographic approach, incorporating insights from legal anthropological and socio-legal approaches. Both approaches are able to offer a contextual analysis of law that illustrates ‘the effects that economic, social, and political processes have in establishing different legal relations among individuals and social groups’ (Griffiths, 2005: 113).

Ethnography is a ‘particular mode of attentiveness that entails, but is not defined by, spatial proximity to the object of study’ (Harvey, 2005: 130). It can be described as a ground-level method of immersion that not only involves extended participant observation, but also takes form as a theoretical, methodological, and political approach:

Ethnography is a sensibility that goes beyond face-to-face contact. It is an approach that cares – with the possible emotional engagement this implies – to glean the meanings that the people under study attribute to their social and political reality (Schatz, 2009: 5).

Ethnography has been used as a systematic method for examining the micro-processes of human rights discourse, practice, and consciousness, in order to understand how human rights ideas and laws are having an effect in local communities (Merry, 2017: 141). Merry (2017: 141) argues that attention should be paid to:

The use of human rights language, to practices of activism and network creation among advocates working on different issues, and to the conditions under which individuals adopt a sense of self that includes the entitlements and rights offered in the human rights system, focusing on interactions and actors as well as the structural, social, cultural and historical context of action.

Ethnography examines people’s practices, the way they talk about their social world, their meanings and modes of discourse, and the social structures within which they live and work, their social networks and institutions. Furthermore, it tries to understand individual action, patterns of behaviour, and the structural conditions within which they occur, which requires its embedding within larger frameworks of structure and meaning (Merry, 2017: 141).

This implies that identities, culture, and social structures are important in the study of transitional justice and its ability to contribute to social change and the rebuilding and democratisation of war-torn societies. This means looking at the influence of culture, social structure, and identity on survivor participation, agency, and protagonism within both the legal process and the broader struggle for justice and redress. It also means looking at the protagonism of other actors within the process, namely NGOs, witnesses, and international organisations, such as the UN. Importantly for this

research, the ethnographic approach proposes an examination of the community-level impacts of the transitional justice process in relation to factors such as culture, social structure, and identity.

Although ethnography traditionally involved the researcher and, therefore, the research becoming embedded within one site, more recently a number of researchers have adopted a multi-sited ethnographic approach (e.g. Merry, 2017; Sider, 2013; Viaene, 2010; Weber, 2010). The idea of a 'multi-sited ethnography' was first described by Marcus (1995) in 'Ethnography in/of the World System', as a way in which researchers could 'examine the circulation of cultural meanings, objects, and identities in diffuse time-space' (1995: 96). Multi-sited ethnography, therefore, examines both the immediate social space of an individual or group and the larger system within which it exists (Merry, 2017: 142). According to Merry (2017: 142), this approach is particularly suited to studying the influence of the human rights system:

Since its discourses and practices simultaneously act in local spaces and circulate globally. Indeed, the influence of human rights in local spaces depends on the awareness in these spaces that human rights are rooted in global ones.

The fact that multi-sited ethnography focuses on 'the way ideas and practices circulate among local situations' and that human rights ideas 'must be translated into terms that make sense in particular situations' makes it a suitable approach to studying transitional justice in a local context (Merry, 2017: 145).

### **Using a Feminist Approach**

Although there is no agreed feminist methodology, a feminist approach often implies a critique of objectivity and of the supposedly detached, value-free research traditionally advocated (Edwards, 1993: 183). This approach has variously been described as 'the privilege of partial perspective', 'situated knowledge', or 'standpoint epistemology' (Haraway, 1988). Within this, feminist research often focuses on women's lives and experiences, particularly those most marginalised within a society.

Edwards (1993: 183) argues that there are three interlinked principles embedded in feminist approaches to research, which are important to adhere to throughout each stage of a research project. Firstly, feminist research implies a belief that 'women's experiences, varying according to ethnicity, social status and so on, are important and that, to understand them, women's lives need to be addressed in their own terms' (Edwards, 1993: 183). This means understanding that there is a relationship between what goes on in the idiosyncrasies of women's lives at the personal level and the way that society is structured at the general level. Secondly, according to Edwards (1993: 183-4), feminist research must aim to provide explanations of the elements of women's lives that are useful

to them as a tool for improving their situations; in this regard, feminist research must ensure that women's experiences are not objectified and treated as mere research fodder. Thirdly, a feminist approach considers that the researcher is a central part of the process and, therefore, her own feelings and experiences should be analysed as an integral part of the research. This may be done in two ways:

On an intellectual level, the researcher should make explicit the reasoning for the procedures she used in carrying out her research. In addition, on what is often called a 'reflexive' level, the class, sex, race, assumptions, and beliefs of the researcher must be available for scrutiny and must be explicated in terms of their effects upon the research and upon analysis (Edwards, 1993: 183-4).

Earlier feminist researchers argued, or assumed, that there is a 'cultural affinity between women interviewers and the women they are interviewing because they share a subordinate structural position by virtue of their gender' (Edwards, 1993: 184). Feminist interviewers have also argued that women researchers, in particular feminist researchers, have a 'special, sort of non-hierarchical woman-to-woman link with their female interview subjects' (Edwards, 1993: 184). Following this, however, Edwards (1993: 184) explains that:

[If] we accept that there are structurally-based divisions between women on the basis of race and/or class that may lead them to have some different interests and/or priorities, then what has been said about woman-to-woman interviewing may not apply.

Furthermore, these opinions have been criticised by black and women-of-colour feminists, in particular that universal experiences of oppression based on gender allow white, middle-class, first-world feminists to escape a critique of their involvement in other hierarchical relations of power based on race and ethnicity. The idea that there can exist non-hierarchical linkages glosses over our complicity in the social consequences of extant power relations and the privileges that we have been able to obtain from them. No matter how unwilling we are to receive these benefits or however much we attempt to avoid complicity within oppressive social structures, we must be conscious that they exist as real, a fact that should make us necessarily uncomfortable.

Additionally, the feminist researcher must recognise that they 'bring their own life experiences to the research' and that they themselves structure what the research is about (Edwards, 1993: 185). These life experiences are shaped not just by gender, but also by overlapping hierarchical power relations based on ethnicity, social class, sexuality, ability, and status in a way that cannot be separated into neat, unidimensional categories. Edwards (1993: 185) notes that, in her own research, the responses of interviewees were 'part of an interactive process of the interview with me, and affected by their



perceptions of me and of the research'. This meant that implicitly understood categories such as race and class made it inevitable for both the researcher and the subject to 'place' each other within the social structure, a practice that inevitably had a bearing on the nature of the relationship between them (Edwards, 1993: 187-8). This is particularly true of ethnographic research, in which there are much greater differences between researcher and participant, as the researcher may not 'fit' within the social world of the participant and may have to work harder to explain and justify their presence (Goffman, 2014: 233-5).

### **Postcolonial Feminisms and Intersectionality**

Postcolonial and de-colonial feminists have criticised the tendency within legal discourse and feminist politics in the international human rights arena, in both the West and in the Developing World, to promote an 'authentic victim subject while advocating for women's human rights' (Kapur, 2002: 2). Kapur (2002: 2) argues that 'the international women's rights movement has reinforced the image of the woman as a victim subject, primarily through its focus on violence against women'. Such discourse has, for the most part, been produced by Western feminist scholars. Mohanty (2003: 447) is a forceful critic of this discursive colonisation:

I wrote 'Under Western Eyes' to discover and articulate a critique of 'Western feminist' scholarship on Third World women via the discursive colonisation of Third World women's lives and struggles. I also wanted to expose the power-knowledge nexus of feminist cross-cultural scholarship expressed through Eurocentric, falsely universalising methodologies that serve the narrow interests of Western feminism.

Instead, postcolonial and de-colonial feminist scholars have called for the decolonisation of feminist scholarship and theory and have argued, as Mohanty (2013: 967) articulates:

Against a scholarly view from above of marginalised communities of women in the global South and North, calling instead for attention to historical and cultural specificity in understanding their complex agency as situated subjects.

This means that cross-cultural feminist academic production must be 'attentive to the micro-politics of context, subjectivity, and struggle, as well as to the macro-politics of global economic and political systems and processes' (Mohanty, 2003: 447).

In this regard, my own methodology is informed by the work of Bueno-Hansen (2015), who uses a de-colonial intersectional analytical approach to examine transitional justice mechanisms in Peru, looking, in particular, at the Peruvian Truth and Reconciliation Commission and the work of feminist and human rights organisations working with Quechua speaking *campesinas* (peasant women).

The research adopts a de-colonial and intersectional analysis to consider how interlocking forms of oppression interact and come to influence and constrain women survivors' participation in the struggle for truth and justice, as well as how they shape the justice claims that arise in specific social, cultural, and gendered realities. The analysis, therefore, considers a number of factors, including ethnicity, language, culture, gender, age, geography, and social class, and examines how they were affected by, and affected, the internal armed conflict and the legacy of colonialism, which caused a specific constellation of harms to the Mayan Q'eqchi *campesinas* who are now seeking justice. De-colonial feminism is used to understand both the roots of the violence and the ways that the colonial relations of exploitation and domination function and persist into the present day. In this respect, Bueno-Hansen (2015: 3), citing Lugones, explains that, 'de-colonial feminisms aim toward full recognition of all by overcoming the "complex interaction of economic, racializing and gendering systems"'.

The combination of an intersectional analysis with de-colonial feminisms facilitates a greater understanding of the Guatemalan context. The research, therefore, aims to historically situate the multiple forms of gendered and racialized violence, the reasoning that sustains it, and the difficulties in seeking to redress this violence, all of which are related to the legacy of colonialism in Guatemala. In conducting this research, I have aimed to adopt a playful, reflexive stance and to practice 'world travelling'. This requires an understanding that I am just another person in the worlds of the subjects that I am travelling to and an appreciation of who exactly it is possible for me to be in these worlds. This entails cultivating a playful attitude:

Playfulness is, in part, an openness to being a fool, which is a combination of not worrying about competence, not being self-important, not taking norms as sacred and finding ambiguity and double edges a source of wisdom and delight. So, positively, the playful attitude involves openness to surprise, openness to being a fool, openness to self-construction or reconstruction and to the construction or reconstruction of the 'worlds' we inhabit playfully (Lugones, 1987: 17).

It also means cultivating a de-colonial intersectional analytic sensibility, paying attention to local categories and structures that may not fit with those that I am familiar thinking of and in, and taking note of how those that seem familiar to me are interpreted and lived locally. It also means being sceptical about my own knowledges and understandings, woven as they are by my particular experiences.

### **An Engaged, Activist Ethnography**

In recent years, interpellations of anthropological research from different sectors have asked what kinds of knowledge are produced by ethnography and to what ends or purposes. Sieder (2013), for example, asks how the line between that which is considered 'legal' and 'illegal' is constructed and by whom. Specifically, we must ask what the role of the ethnographer is in these processes of negotiation and the construction of legal and political imaginaries. Where exactly do we focus our ethnographic gaze and to what ends? And, furthermore, what methods and tools can we use?

Ethnographers undertaking research with indigenous movements have argued for an explicitly engaged activist stance (Sieder, 2013). At its best, ethnography is a way of narrating everyday lived experience, of trying to grasp people's understandings and practices and the connections that they make between them. In this regard, it underlines the importance of history and context and the ways in which they shape people's perceptions, epistemological frames, and options. However, it is also a means of witnessing and accompanying, with all the obvious opportunities and dangers that this entails for both the researcher and their informants (Sieder, 2013). There are a number of ethical and political challenges posed by this type of collaborative research, taking place as it does within shifting fields of inter-legality and fragmented sovereignties marked by multiple inequalities, racism, violence, and impunity. The discussion below, therefore, asks questions of the relationship between ethnography and socio-political action in such contexts and of the challenges that confront the researcher in mediating the line between academic production and political engagement.

Here, I refer primarily to collaborative ethnographic research with indigenous people's social movements in Latin America, which specifically aim at documenting and amplifying existing and emergent forms of counter-hegemonic political and legal agency. I also explore the subjectivities and processes that underpin such agency. Work of this kind involves an explicitly engaged stance from the researcher, who situates her individual project within the demands of indigenous movements and the broader collective endeavour, and aims to generate knowledge in order to transform social realities. In this respect, the collaborative engagements that the researcher develops with organisations and communities involve the coming together of their shared political concerns.

Engaged ethnography combines careful, fine-grained, qualitative empirical participant-observation, critical social theory, and other, more self-evidently collaborative research methods and outputs, such as workshops and the production of videos and popular education materials. Such scholarship aims to provide insights into the ways in which the workings of power, history, and transnational forces affect indigenous people's lives and shape different processes of resistance and adaptation (Hale, 2008; Stephen, 2007). Like all good ethnography, engaged ethnography aims to place the actors and their

understandings of the world at the centre of analysis. However, it also privileges a support of their collective aims and objectives, dialogue, and the co-production of knowledge. Research of this kind can contribute to validating alternative epistemologies or ways of being in the world and understanding them as situated ways of theorising social realities. It can also directly contribute to efforts to defend indigenous people's individual and collective rights and interests. In this regard, much legal anthropology produced in Latin America in recent years has explicitly adopted a politically aligned or engaged stance in support of the collective rights of indigenous peoples, including their autonomous exercise of authority and justice and the advancement of the claims of marginalised groups within indigenous collectives, such as women (Chenaut et al., 2011; García, 2002; Halkyer, 2004; Martínez, 2004; Sánchez, 2010; Sierra, 2004; Terven, 2009).

### **Conclusion**

As mentioned above, feminist researchers argue that feminist research can never be neutral. Edwards (1993: 183), for example, maintains that:

The aim of a feminist inquiry must be to provide explanations of women's lives that are useful to them as an instrument to improve their situations. An aim of such research is therefore to ensure that women's experiences are not objectified and treated merely as research fodder.

Similarly, DuBois (cited in Kenedy Bergen, 1993: 203) contends that feminist researchers:

Must actively participate in the struggle for women's emancipation. This involves 'passionate scholarship' in which researchers are allied with those being studied and work with great devotion to eliminate oppressive social structures and relationships.

However, it is also important that white feminist researchers from the Global North are aware of the dangers that such 'passionate scholarship' carries with it. We must fight against the possibility of falling into the trap of the white saviour. We must, furthermore, maintain a sensitivity in relation to the production of the Third World Woman within our research. My hope is that by positioning myself in solidarity with the survivors and accompanying them in the process in which they are engaged, the research can be shared so that others may learn from their struggle and that, in some way, I may be able to support the women in achieving their objectives.

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## Chapter Four: Research Methods

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Through travelling to other people's 'worlds' we discover that there are 'worlds' in which those who are the victims of arrogant perception are really subjects, lively beings, constructors of vision even though in the mainstream construction they are animated only by the arrogant perceiver and are pliable, foldable, fileawayable, classifiable.

Maria Lugones (1987)

### Introduction

This chapter provides an overview of the fieldwork undertaken so far and a methodological discussion on the feminist, participatory, and ethnographic approach that I have used. My research has been conducted over eleven non-consecutive months in Guatemala, most of the time being based in Guatemala City. The chapter begins with a reflection on the influence of my prior experiences living in Guatemala, on the motivations for the research, and on the development of my research questions and approach. I then review the stages of my research and my approach during each of them, starting with my attendance at the Sepur Zarco trial in February of 2016 and the reparations hearing in March of that same year. After this, I discuss my follow-up fieldwork, which began in October of 2016 and lasted a period of nine months. I then consider how I developed my research questions and explain the methodological choices that I made at each stage. I also examine the difficulties that I encountered and the issues that arose during the early and later stages of my research, including the question of access and the subject positions adopted and ascribed to me in different sites.

### What I Set Out to Research, How and Why

My research project specifically examines the Sepur Zarco trial that undertook to prosecute wartime sexual and domestic slavery against a group of Mayan Q'eqchi women and which represents the first time internationally that sexual and domestic slavery has been prosecuted in the national court of the country where the crimes took place. My choice of research questions and locations were directly informed by my prior experiences living and working in Guatemala. From January to April of 2004, I volunteered as a human rights accompanier with the organisation Acompañamiento Internacional Guatemala (International Accompaniment Guatemala, ACOGUATE), alongside some of the Mayan survivors of the genocide. My experiences illuminated a number of issues which have shaped my research focus: transitional justice viewed critically 'from below', or through the justice claims, participation, and experiences of a specific group of victims and the non-state organisations supporting them. The experience also highlighted other important issues, particularly the issues of victim organisation and protagonism in attempting to speak out about, remember, and seek accountability for atrocities committed against their loved ones and themselves. These issues are

central to my research and will be examined in more detail in a later chapter. The experience also helped me to learn about the contextual issues that have proved important for my research project, namely the local realities for indigenous communities in Guatemala that shape and constrain victim participation - in particular inequalities based on illiteracy, economic marginalisation, and geography - and which draw attention to the fact that support is needed to facilitate victim participation.

My later experiences in another region of Guatemala have also informed the research questions, my approach to the research, and the choice of locations. From 2008 to 2014, I lived and worked at the Escuela de la Montaña, a rural non-profit Spanish language school. The school was located in the Boca Costa, a coffee growing area on the pacific slopes of Quetzaltenango. Living among the communities of former permanent workers on the coffee plantations gave me a different perspective from my first experience and starkly illuminated the regional differences throughout Guatemala, as well as some of the social impacts of its neo-colonial extractive economy. The communities that I lived alongside were formerly *mozos colonos*, or share croppers, who had been born and grown up on nearby coffee plantations, where they had also then lived and worked with their families. However, many of the workers and their families lost their homes and permanent jobs as a consequence of organising to demand pay owed and better conditions on the highly exploitative plantations; many others because of the coffee crisis of the later 1990s and early 2000s, which led to further labour disputes and job losses on the plantations affected by the plunge in coffee prices. Further up the slopes, towards the city of Quetzaltenango itself – or Xela, as it is popularly known from its name in Mayan Quiche – lived small communities of Mayan Mam families who, due to previous migration to the US, had been able to buy their own land and now ran small farms producing vegetables on the fertile volcanic slopes.

The socioeconomic differences between the families in this highland area and those in the neighbouring Boca Costa were visible in the land itself. The Boca Costa landscape is made up of huge extensions of land, planted with coffee and shade trees and typically owned by much wealthier *ladino* families with primary residences in the capital or in Antigua. The *altiplano*, or highlands, on the other hand, is made up of much smaller plots, planted with a variety of vegetables and the ubiquitous maize, alongside which live the owners, possibly with an absent husband or son who has migrated to the US to earn the money with which to buy the land. The difference was such that the men in the communities in which I lived would go up to these smallholdings on a daily basis and seek day labour there, as, depending on the season, there was more work and it was better paid than on the coffee plantations.

The experiences of life on the plantations and of the Guatemalan Civil War, among other issues, would be shared with the foreign language school students at weekly conferences, which I would interpret

from Spanish into English. This greatly enriched my knowledge and understanding of the issues affecting people in the region.

The perspective that I brought to my fieldwork was undoubtedly shaped by my prior experiences in Guatemala, perhaps as much as my experiences and positionality as a white European woman. The experience of being in the Guatemalan countryside has sensitised me to a number of issues, which I will discuss in more depth below, but which include: the cultural differences between the urban-metropolitan centre of the country and the smaller communities in the countryside; the structure of land ownership and its gendered, class-based, and ethnic dimensions; the difficulties for rural Guatemalans caused by the centralisation of resources and services; and the gender issues that affect rural women. It is because of these experiences, and the manner in which they shaped my interpretations and perceptions during fieldwork, that, following Bueno-Hansen (2015), I have included geography as part of the intersectional analysis. The experiences also considerably helped with an understanding of local knowledges and in building contacts within Guatemala.

In particular, living in Guatemala during the 2013 Rios Montt trial also helped to shape my choice of question and approach. I followed the news about the trial closely and would share it in a weekly round-up and discussion session at the language school I worked at. During the trial, the testimonies of the Ixil women survivors who testified about their experiences of rape and sexual (and reproductive) violence seemed to make a significant impact, in particular throughout social media and alternative news sources, but also within the mainstream media. Reading about the trial also highlighted key issues for my own research. Above all, it signalled the idea that the prosecution of wartime sexual violence committed against indigenous women, by the Guatemalan military, in a Guatemalan court, adopting the strategic use of the legal process by survivors and human rights and feminist organisations, could be a means of asserting and validating historical truths, breaking silences, and combatting sexual violence. I will return to these issues in greater depth below.

The experience also drew my attention to important contextual issues, including the highly contested nature of truths from the Civil War period and attempts to prosecute members of the military for the crimes committed, the unfolding and politicised nature of transitional justice processes in Guatemala, and the ongoing weaknesses of the legal system. Additionally, it highlighted the fundamental role played by survivors and human rights and feminist activists in the search for truth and justice and pointed to some ideas about the meanings of this process.

I had also read about the Sepur Zarco case while in Guatemala. Although there was little coverage in the mainstream media, unlike in the 2013 Rios Montt genocide trial<sup>18</sup>, the newly-emerging alternative media<sup>19</sup> had begun to report on it and there appeared one short article in the national *Prensa Libre* newspaper, which reported on the women anonymously giving their video testimonies in 2012.

Not long after my return to the UK in 2014, I was fortunate enough to be able to meet María, then director of the Unión Nacional de Mujeres Guatemaltecas (UNAMG)<sup>20</sup>, who spoke about the Sepur Zarco case at the *Guatemala: No going back! Impunity, Resistance, and International Solidarity* one day conference held in London at the Amnesty International Human Rights Action Centre on 31<sup>st</sup> May 2014. The conference was organised by human rights and solidarity organisations<sup>21</sup> and dealt with the challenges facing Guatemalan social movements, including those facing human rights organisations seeking to prosecute former members of the military.

The following section briefly provides an outline of the background and rationale for the research. Following this, I set out the methodology that I have used and explain how I proceeded with data collection, along with the difficulties and issues that arose. The chapter ends with a brief discussion of the future direction of the research.

### **Background and Rationale for Research**

Gendered violence, including sexual violence, was committed on a large scale during the Guatemalan Civil War, mostly against Mayan women. According to the Comisión para el Esclarecimiento Histórico (Historical Clarification Commission, CEH), 88.7 percent of rape victims were Mayan women (see CEH, 1999, cited in Caxaj Alvarez et al., 2017: 11). However, sexual violence was under-documented and not investigated to the same depth as other crimes, neither by the UN-led truth commission nor the Catholic Church's truth commission, and neither commission provided recommendations for the Guatemalan State with regard to sexual violence (Aguilar & Mendez, 2006: 7; Diez, 2006: 5).

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<sup>18</sup> The trial was also covered by an English language website set up for the purpose and live streamed.

<sup>19</sup> The legal process was first reported in Plaza Pública, a new alternative news website.

<sup>20</sup> UNAMG is part of the alliance of organisations supporting the women survivors and was taking part in the prosecution as a civil party under the *querellante adhesivo* (complementary prosecutor) mechanism in the Guatemalan penal code, which allows interested parties, such as individual victims or organisations, to launch a criminal prosecution or to join one started by an MP or the Public Prosecutor's office as a *querellante*. A *querellante* can help with the investigation and request the inclusion of evidence (Article 116, Guatemalan Penal Code).

<sup>21</sup> The organising committee for *Guatemala: No Going Back!* was formed by members of the following organisations: Amnesty International UK, Banana Link, Central America Women's Network (CAWN), Guatemala Solidarity Network (GSN), Latin American Mining Monitoring Programme (LAMMP), Peace Brigades International (PBI), and the Trade Union Congress (TUC).



Moreover, despite some success in prosecuting serious human rights abuses, wartime sexual violence remained in complete impunity in the Guatemalan courts (Diez, 2006; Mendia Azkue & Guzman Orellana, 2012). Speaking out about sexual violence was difficult for many survivors, particularly Mayan women, due to the stigmatisation, shame, feelings of being partly to blame, and the painful memories that it brought up. Nevertheless, in cases where there was a witness testimony, either from the survivor or another witness, sexual violence was not included in many of the cases that were under process in the Guatemalan courts in the late 1990s and early 2000s, due to a belief that it would weaken the credibility of the witness for other crimes or a belief that it would be impossible to prosecute without forensic evidence (Diez, 2006: 85).

In addition, after the war, gendered violence continued to be a serious problem, in particular physical and sexual violence<sup>22</sup>. After the Peace Accords were signed, feminist organisations had campaigned for legislative change and other reforms, in order to facilitate the investigation and prosecution of violence against women and to change perceptions of gendered violence and the State's response to it. The campaign did achieve legislative change, but the rates of violence against women remained extremely high, as did impunity for that violence. The failure to sufficiently investigate and prosecute wartime sexual violence was seen as contributing to the normalisation of this violence:

A heavy silence has fallen regarding this human rights violation... This silence has fomented impunity of these crimes and legitimated this type of violation of women's human rights as something that is not very important and even as something that is normal (Fulchiron, 2004: 13).

The silencing effect of wartime violence may have been particularly strong in indigenous communities. According to Brynton-Lykes (cited in Putnam et al., 2008: 45), Mayan groups had effectively been 'silenced' as an oppressed population and have been allowed neither tolerance nor a voice from the dominant culture for expressing their suffering. In this context, breaking the silence was seen as imperative by feminist organisations.

However, the research literature revealed that many feminist legal scholars had become disillusioned with attempts to prosecute wartime sexual violence (see O'Rourke, 2011: 5-11). The literature focused on international tribunals, in particular the International Criminal Tribunal on the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which had initially been hailed as a success and as a breakthrough for ending impunity for sexual violence. Reasons for their

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<sup>22</sup> According to a report published by Medicine Sans Frontier (2011: 7), sexual violence is 'one of the most worrying, most common and least attended humanitarian problems in the country'. Medicine Sans Frontier began a specific project to care for victims of sexual violence in 2007 (MSF, 2011: 7).

disillusionment were given as the very low level of convictions, concerns about re-victimisation, doubts that women survivors were being allowed to tell their own narratives, and reservations that testifying could really strengthen women's agency.

Similar concerns were being raised in the recent literature on transitional justice that dealt with victims in general, about whether they could really benefit from transitional justice mechanisms and about their ability to participate in the process. Victim participation was considered to be important, but there seemed to be little consideration of what participation meant in concrete terms for specific groups of people. On the one hand, there was a tendency in the research literature to consider victims as a homogeneous group and a similar tendency in the feminist literature to consider women as such. On the other, the smaller literature that was available on indigenous and minority peoples, from a transitional justice point of view, had failed to consider a gendered perspective and focused mainly on the use of traditional justice mechanisms in Africa.

I realised that an analysis of the Sepur Zarco trial, the first time that sexual and domestic slavery was to be prosecuted in the national court of the country where the crimes took place, could help to shed light on some of these questions. The survivors, fifteen Mayan Q'eqchi women from Sepur Zarco and the surrounding communities in the Polochic Valley, had formed a legal association, the Jalok U Collective (or Change of Face Collective in the Q'eqchi dialect), in order to participate in the legal proceedings, with the support of the organisations that constituted the Alianza Rompiendo el Silencio e Impunidad (Breaking the Silence and Impunity Alliance, hereafter Alianza). However, they faced a number of difficulties, including legal and political challenges, but also inequalities based on geographical, cultural, linguistic, socioeconomic, and gendered hierarchical structures, which the Peace Agreement, signed in 1996, has failed to undo. They also faced risks to their security, re-victimisation, and discrimination as Mayan women in a country in which racism and misogyny are all too common.

Nevertheless, seeking justice via the formal Guatemalan legal system was hugely important to the women survivors and the organisations accompanying them. I recognised that the objectives, both of the women and of the organisations supporting them, which may differ significantly, arose from specific gendered, socio-political, historical, and cultural realities, which could not be assumed by a white European feminist. Thus, the research project specifically examines the justice claims of the women survivors of Sepur Zarco, including their protagonism, and seeks to understand the nature of the harms done to them, from an intersectional and decolonial perspective. In addition, it investigates the strategies used by the Alianza and the women survivors in overcoming the numerous obstacles that they faced, the extent to which they have been able to achieve their objectives, and the work of

each of the organisations, both in the legal process and in the wider struggle for truth and accountability, when considering violence against women. It also seeks to uncover the meanings and purposes of seeking legal justice in a Guatemalan court.

In this regard, justice assumes many meanings and forms. Andrieu (2010: 4) distinguishes between legal justice, defined as ‘prosecuting the perpetrators and re-establishing the rule of law, [and] reforming the security and judicial systems’; restorative justice, defined as ‘gathering the truth about the past, healing victims and rebuilding communities through reconciliation and collective memory’; and social justice, defined as ‘settling the economic, political and social injustices that may have created the conflict and defining the basis of a just, stable society (reparations, financial or symbolic, affirmative action programmes, gendered approaches, development, etc.)’.

My research, although focused on the Sepur Zarco trial, ostensibly a form of legal justice, also considers the restorative and social dimensions of justice, since trials may also be a strategy, albeit imperfect and potentially flawed, for gathering the truth about the past, healing victims, contributing to collective memory, rebuilding communities, and seeking reparations and gendered justice. The organisations and the women survivors have described the legal process as contributing to a number of the above goals, including those attributed to restorative and social justice. I will comment on this in more detail below.

In the next section I describe how I have developed my approach to the research and the specific methodology I have used.

### **Cultivating a Decolonial Intersectional Analytic Sensibility**

My methodology is informed by the work of Bueno-Hansen (2015), who adopts a decolonial intersectional analytical approach to examine transitional justice mechanisms in Peru. In particular, she looks at the Peruvian Truth and Reconciliation Commission and the work of feminist and human rights organisations working with Quechua-speaking *campesinas*.

In this regard, my research uses a decolonial and intersectional analysis to consider how interlocking forms of oppression interact, shape, and constrain the women survivors’ participation in the struggle for truth and justice, as well as influencing the justice claims that arise in specific social, cultural, and gendered realities. The analysis considers a number of factors, including ethnicity, language, culture, gender, age, geography, and social class, and examines how they may have compounded the effects of the internal armed conflict and the legacy of colonialism and caused specific harms to the Mayan Q’eqchi women who are seeking justice. Decolonial feminism is used to understand both the roots of the violence and the ways that colonial relations of exploitation and domination function and persist

into the present day. Bueno-Hansen (2015: 3) writes that ‘decolonial feminisms aim toward full recognition of all by overcoming the “complex interaction of economic, racializing, and gendering systems”’.

The combination of an intersectional analysis with decolonial feminisms facilitates a greater understanding of the Guatemalan context. The research, therefore, aims to historically situate the multiple forms of gendered and racialized violence, the reasoning that sustains it, and the difficulties in seeking to redress it, and connects them to the legacy of colonialism in Guatemala.

In the next section, I describe how my observation of the trial has informed my data collection and research questions. I also reflect upon my observation of the trial, my approach to data gathering, and the difficulties that arose during the process.

### **Reflections on Data Collection: Multi-Staged, Multi-Sited and Iterative Approach**

The research uses a participatory and iterative ethnographic method, in which the earlier stages inform the later stages of the research. I have adopted a multi-sited and feminist approach, which has meant that I have immersed myself in research conducted at different sites and cultivated an awareness of my own positionality in the field and the subject positions ascribed to me in these sites.

### **Sites and Stages of the Research**

The preliminary stages of the fieldwork included observing the Sepur Zarco trial, attending the reparations hearing and the press conferences organised by the Alianza, and reading the publications produced by the Equipo de Estudios Comunitarios y Acción Psicosocial (Community Studies and Psychosocial Action Team, ECAP) and UNAMG that resulted from their investigations, alongside articles about the trial published in the Guatemalan press and alternative media. I also met with staff of the three organisations of the Alianza to discuss the proposed research in more detail.

The next stage was for me to return and begin observing activities related to the Sepur Zarco trial and the work of the organisations involved. Once I felt that I had a better understanding of how the legal and reparations process had advanced since I had left, as well as the different roles of each of the organisations, their ways of working, and the key staff involved with the case, I began to organise interviews. I first spoke to the staff, since I felt that they would have more experience with being interviewed and that it would help me to develop my own interviewing skills. After then getting to know the women survivors, and visiting their communities, I began to conduct interviews with them there. For the final two stages, I had planned to conduct focus group sessions with the women, community leaders, and young members of the community and to provide feedback on my initial analyses; however, I was not able to do this on my second visit.

In the following sections I describe my observation of the trial and the follow-up fieldwork.

### **Attending the Trial**

Towards the end of January 2016, I flew out to Guatemala to observe the Sepur Zarco trial, which was due to start on 1<sup>st</sup> February. The trial was to be heard by the same panel of judges who had heard the Ixil genocide case against Rios Montt. Two former members of the military were being prosecuted for subjecting a group of Mayan Q'eqchi women to sexual violence and sexual and domestic slavery, for the forced disappearance of their husbands, and for the murder of one of the enslaved women and her two young daughters during Guatemala's Civil Conflict.

Although I had previously contacted the organisations working with the women about the research, for ethical reasons I did not approach the organisations during the trial. I also did not plan to meet with the directors of the organisations before or during the trial, as I was conscious that it would be a stressful and hectic time for them, that their time and energy would be focused on the trial itself, and that they would not have the time to discuss the research with me. For ethical reasons, neither did I approach the women survivors before or during the trial, as I imagined that they had more than enough to cope with. At this stage, I instead focused on gathering data that was already in the public domain, the daily public hearings and the press clippings and media sources to which I had access. After the trial I was able to meet with the staff of each of the organisations to discuss the proposed research. However, I did not interview the staff or the women survivors at this stage, as I remained waiting for ethical approval and was, therefore, not ready to conduct interviews.

I was able to observe the whole of the trial and both of the press conferences organised by the organisations. During the trial, I made extensive notes, which focused mainly on the legal proceedings, the arguments and testimonies, expert witness reports, and other evidence that was presented. I also paid attention to the interactions and behaviours of the lawyers of the prosecution and the defence, the judges, defendants and witnesses, the staff of the organisations, and the women survivors, as well as others within the courtroom.

I also read newspaper reports of the trial and found some Guatemalan TV news programmes online. However, I was not able to watch TV in my hostel, which limited my access to the media. My understanding of the legal proceedings was greatly enhanced by reading trial summaries, written primarily by Jo Marie Burt and published online by International Justice Monitor. Although I was able to follow, and make notes on, most of the debate, I found it harder to follow some of the legal arguments made by the prosecution and defence lawyers. They frequently cited Guatemalan and international law, mentioned specific articles of the Guatemalan penal code, procedural code, and

other cases, most of which were unfamiliar to me. However, I was able to supplement my notes with a number of sources, mainly the detailed written summaries, but also audio recordings of parts of the trial made by the Federación Guatemalteca de Escuelas Radiofonicas (Guatemalan Federation of Radiophonic Schools, FGER) and video excerpts produced by UNAMG, who filmed the trial in order to livestream it. I also followed the twitter feeds #juiciosepurzarco and #SepurZarco and blog posts by Guatemalan solidarity organisations and alternative news sites, mainly Plaza Publica, Nomada, Prensa Comunitaria, and Medios Independientes Guatemala. I wanted to understand the discourse and, furthermore, follow what was happening outside the courtroom. Just before the trial, for example, a right-wing military veteran's association, the Asociación de Veteranos Militares de Guatemala (Military Veterans Association of Guatemala, AVEMILGUA) tried to recruit former members of the civil defence patrols from Sepur Zarco and neighbouring communities and succeeded in recruiting one of the male witnesses.

The trial lasted for the whole of the month of February. First, the prosecution presented their evidence. Q'eqchi men who lived in Sepur Zarco or neighbouring communities testified to the forced disappearances, domestic slavery, and torture committed by the Guatemalan military at the Sepur Zarco and Tinajas military bases. Some of the men had been tortured, while others had suffered the forced disappearance of fathers and brothers. The men testified in Q'eqchi and their testimonies were translated by an interpreter provided by the civil parties, not the Guatemalan State. From what I understand, the civil parties to the prosecution had requested the use of their own interpreters, as they were known and trusted by the witnesses. Some of the witnesses testified with the support of a psychologist from ECAP, who sat at their side while they gave their testimony.

Two Q'eqchi women also testified directly in court as witnesses for the prosecution. One of the women testified about the sexual violence that she and her daughter were subjected to by soldiers at the Sepur Zarco military base. However, she had been unable to form part of the collective of women survivors and was, therefore, only able to take part as a witness rather than as a member of the group. Unlike most of the women survivors, she did not wear a woven scarf over her head to protect her identity. The other Q'eqchi woman witness, who also did not wear a woven scarf, described the killing of her daughter, Dominga Cuc, and her two granddaughters in 1982. Her daughter, her daughter's husband, and their two young daughters were detained and held at the Sepur Zarco base at the same time, where her daughter was repeatedly raped. Her son-in-law was later taken to the Pataxté military base, where he was tortured by the soldiers, although he was eventually allowed to return home and survived. He also gave witness testimony for the prosecution.

Most of the live witness testimony was presented within the first two weeks. During this time, video testimony from the women survivors was also presented, including that of Doña Magdalena Pop, who passed away in 2013. The video testimonies of four men were also presented. In the videos played in the courtroom, for security reasons both the women and the men that testified on camera had their faces covered by woven shawls. Unlike in the case of the women survivors, however, there seemed to be little mention of the fact that the men also had their faces covered in either the Guatemalan mainstream or social media. This may have been because the men with woven shawls covering their faces were not physically present. In contrast, the reasons for the women covering their faces were widely debated, in particular on social media.

The trial was, at times, quite tense and there were apparent power struggles in the courtroom. The defence used many tactics to try to stop or delay the legal proceedings, particularly on the first day. The defence lawyer of Reyes Girón, one of the accused, continually objected to the presentation of the women survivors' testimonies via pre-recorded videos, arguing that the women were present in court and should, therefore, testify directly or be required to submit to cross-examination during the trial. The video testimonies had, however, already been admitted at an earlier stage, without objections by the defence, and Guatemalan legal procedure does not permit the reopening of a previous process that has already concluded.

Power struggles were particularly apparent on the first day, when defence lawyer Moises Galindo repeatedly interrupted and argued with the presiding judge, Yassmin Barrios, and refused to accept either her or the other woman judge as being competent enough to hear the trial. Curiously, Galindo explicitly said that there was enmity between him and the *juezas*, or female judges; the third judge was male. Galindo's conduct in the courtroom was brash, rude, and appeared to be intentionally provocative. In contrast, the prosecution lawyers were polite and deferential to the judges. Yassmin Barrios also spoke in polite, measured tones and showed great patience, being careful not to show any reaction to the provocative behaviour of Moises Galindo. Although I had read accounts of similar bad behaviour in the Rios Montt trial, both in the media and on the website that provided daily summaries in English, it was still quite shocking to me to observe this type of behaviour from the defence lawyers, in particular Moises Galindo. It was unlike the behaviour I had grown accustomed to in Guatemala. My prior experience of working with Guatemalans was that Guatemalan social relations required a great deal of formality and courteousness and the showing of respect to those in positions of authority.

### **Being Visible at the Trial and Building Contacts: Benefits and Potential Costs**

Attending the trial each day meant that I was soon able to recognise each of the prosecution lawyers, the interpreters for the prosecution, the defence lawyers, and the defendants. I usually sat near to the front of the courtroom, in order to be able to hear and see well. Further back, the echo in the courtroom made it difficult for me to understand. Sitting near to the front, however, also made me more visible, including in photographs and videos of the trial that appeared in the Guatemalan media. This offered some advantages; above all, when I returned to Guatemala to complete my fieldwork, I was somewhat familiar to the staff of the organisations.

However, I also realised that, if I could easily recognise the defendants and legal teams, they too would be able to recognise me. The courtroom, although full during the first few days, was only partly full for much of the trial and there were few foreigners in attendance. I found myself reluctant to look at the side of the defence, as I did not want to catch the eye of either of the defendants. This was partly to avoid attracting their attention, or the attention of their relatives and supporters. I was aware that former members of the military were present on several days, including Ricardo Mendez Ruiz, a well-known right-wing figure and one of the founders of the Guatemalan Foundation against Terrorism, a far-right pro-military organisation<sup>23</sup>. I spotted Mendez Ruiz on several occasions and he gave interviews to the media, alleging that the panel of judges were not impartial and that the trial was flawed.

Going to the trial each day meant that I was also able to recognise other attendees, including international observers and the staff of the organisations mentioned. There was a sense of community among those who attended to show support for the women survivors and a common desire to avoid the relatives and supporters of the defendants, including their lawyers, in order to avoid giving the impression that we supported the defence. I found that it was fairly easy to talk to the people sitting next to me after we had seen each other several times in the courtroom. When the guilty verdict was read out, many people embraced one another, wept, and cheered.

I generally did not speak to Guatemalans about the trial unless I knew them. This was partly because I felt that it was safer not to do so. I was aware that some Guatemalans deeply resented the fact that a number of foreigners supported the prosecution of former members of the military. In fact, there were daily protests outside the courtroom, attended by a small number of supporters of the military. The head protestor, a man in his fifties, would hold a megaphone and shout to all of those queuing

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<sup>23</sup> Mendez Ruiz was himself a former member of the military. His father was implicated in the CREOMPAZ case (see NISGUA, 2016), in which around 600 human remains had been unearthed. His father had passed away just days before the arrests of former members of the military were made in that same case in early January.



along the exterior wall and railings waiting to pass through the first security check. He claimed that the crimes the military were accused of committing were fictional, that the witnesses were lying in order to get money and land, and that the witnesses were, in fact, being duped by the NGOs, who were becoming rich through the international aid money being sent to them for the prosecutions. He would also make various comments about foreigners whenever he spotted one of us in the queue, such as foreigners should not intervene in Guatemalan affairs and that foreign NGOs had been duped into supporting guerrilla groups, who were continuing the civil conflict by prosecuting former members of the military.

Overall, observing the trial helped me to get to know the key actors and to understand the events, the legal arguments and discourses, some of the issues faced by the women and the organisations, and, more widely, the issues that affect the development of transitional justice and gender justice in Guatemala. It also helped to develop my research questions and to start building a network of contacts.

In the following section I will describe how I developed the subsequent stages of research during a nine-month follow-up visit.

### **Becoming Embedded within UNAMG and Starting Documentary Study**

I returned to Guatemala in the October of 2016 and spent the first few weeks re-establishing the contacts I had made. After meeting with Aurora, the new director of UNAMG, it was agreed that I could go into the UNAMG offices to read the documents related to the trial and that I could observe workshops with the women, subject, of course, to their consent. I began to go to the UNAMG offices on an almost daily basis from November 2016 onwards. At first, I felt out of place; nevertheless, the staff were very welcoming and gave me a space at which to sit and read the expert witness reports, the sentence, and the Spanish transcripts of the women's testimonies. There was no transcript of the trial itself, however, and I was not able to access the audio recording of it, which was on several CDs.

The UNAMG staff included one of the lawyers who had previously worked with *Mujeres Transformando el Mundo* (Women Transforming the World, MTM). I would often ask her questions about the legal process to clarify my understanding of judicial decisions that had been made and other aspects of Guatemalan law. I would also ask about the development of the reparations process and other issues. Furthermore, staff openly discussed their work and difficulties while I was in the office. In particular, dealing with international funding agencies took up a lot of their time, above all when accounting for funding and making grant applications.

As a result of regularly going to their offices, I became embedded in UNAMG. My objective was to work collaboratively with all three organisations, in order to propose research that would be useful to them and to develop a manner of working with the women – including what questions to ask them – that would be suitable and fit in with their own ways of working. I had first approached UNAMG due to having prior contact with the director and a shared mutual acquaintance and because of their experience working with researchers. I had also approached them because they were a civil party in the trial and so had many of the trial documents available. This was because one of the trial lawyers moved from their position at MTM to a similar one at UNAMG. They were also the most open and accessible to me; although other organisations welcomed me and my research, they were perhaps less approachable due to the lack of a mutual acquaintance and having had less prior contact with me, as well as further constraints on their time, a problem that was also faced by UNAMG.

Being affiliated with UNAMG meant that I was able to visit their offices daily for the first couple of months and continue with frequent visits after this period, mainly to read the trial documents. Nevertheless, UNAMG made me feel very welcome and even gave me a computer space at which to work while I was there. They also invited me to their staff meetings and other events. I, in turn, tried to help out with some things to repay their generosity, as I was afforded an enormously privileged space from which to learn. I was not invited to the meetings that were held between the directors of the three organisations of the Alianza, but I was able to attend two or three national-level reparations meetings, or *mesas de diálogo*, with UNAMG staff.

Being affiliated with UNAMG had a number of further advantages. I was able to gain an ‘insider’s’ view from the perspective of one of the three organisations of the Alianza and learn about how they organised and worked. This meant that I could easily find out about, and attend, activities organised by the Alianza, in particular those events organised by UNAMG. My affiliation also helped me to approach potential interviewees and, above all, meant that I could meet the women survivors and observe UNAMG’s workshops with them.

However, being affiliated with UNAMG meant that the organisations and the women also viewed me as being ‘with UNAMG’. My original intention had been to work equally with the women and the three organisations of the Alianza, but time constraints, and possibly being identified as ‘with UNAMG’, limited this. Relationships between the three organisations were, at times, strained, with most of the tension existing between MTM and UNAMG. The conditions under which the three organisations of the Alianza worked – high pressure, limited funds, precarious work conditions dependent on international aid money, extremely demanding workloads, and the stressful nature of the work – meant that there was limited time to devote to relationship building and maintenance. This has meant

that maintaining an alliance of three different organisations, each with their different identities and working practices, has, at times, been a strain, something that was apparent while I was there.

Being affiliated with UNAMG was a time-consuming process and meant being based in the capital city. I had originally planned to learn some Q'eqchi and, although I was able to learn a few phrases, I did not have time to take classes and study the language. Being based in Guatemala City gave me greater access to the organisations' offices and staff, but meant that I was not immersed in the communities and had no opportunity to practice the little Q'eqchi that I had learnt. In fact, it took some time for me to be able to organise a visit to the women's communities, as I was dependent on UNAMG in this regard.

### **Documentary Study**

During and after the trial, I gathered the material relating to it that was available online, including mainstream and alternative media articles, radio, press, and TV interviews with staff of the organisations and the women survivors, and some short films and photographs. I read newspaper articles and watched documentaries and news programmes that were available online. This material will be used to supplement the analysis, since it has been produced in a specific context and for specific reasons.

Once back in UNAMG's offices in Guatemala City, I read and made notes on a number of documents relating to the trial. I read the sentence and tried to summarise it for UNAMG, as it was over five-hundred pages in length. I also read the transcripts of the women's video testimonies, in Spanish as they were not made available in Q'eqchi. Furthermore, I read studies produced by ECAP, UNAMG, and others about wartime sexual violence and looked at their training guides for teaching women about their rights and for working with survivors of sexual violence. I looked at the press clippings gathered by UNAMG, who had also monitored the reporting of the trial. Throughout my reading, I identified themes that emerged to help me to develop interview questions, which were also informed by the research questions and methodology.

### **Participant Observation**

I observed a number of events and activities relating to the trial and the work of the organisations. My goal was to understand the broader context of the justice claims and to follow the development of the appeals and reparations processes. I observed and made notes on several Sepur Zarco appeals hearings. I also observed hearings at the intermediate stage of another legal process prosecuting wartime sexual violence and the forced disappearance of a child, the Molina Theisson case. This was to give me a broader perspective and allow me to learn about the intermediate phase in the

Guatemalan legal process. Attending these hearing meant that, once more, I would have to walk past the protestor who I had seen on many occasions shouting outside the courtroom during the Sepur Zarco trial<sup>24</sup>. This helped to illustrate the polarised and contested nature of seeking justice for crimes committed by the military and also showed that, as a foreigner, I was perceived to be supporting the victims and even, according to the claims of the supporters of the defendants, interfering in Guatemalan affairs.

I also observed press conferences, workshops, meetings, and public demonstrations, including the *Ni Una Menos* protest against femicide that was held shortly after I arrived, a pan-Latin American day of protest organised by Argentinian feminists, as well as press conferences and protests for International Women's Day and the 20<sup>th</sup> anniversary of the Peace Accords. Most of these events were held in the capital city, but I was also able to attend events in the region where the women lived. I went to a forum on violence against women organised by ECAP and the Guillermo Torrell Foundation (FGT), a *campesino* organisation, with support from UNAMG, and to protest on the International Day Against Violence Against Women, both of which took place in El Estor on the 24<sup>th</sup> and 25<sup>th</sup> November 2016. I participated in an event in Cobán, organised with the women survivors to share their experiences of taking part in the trial. A number of communities around Cobán are also seeking justice for forced disappearances and other atrocities committed at the CREOMPAZ military base. I also observed and took part in the commemoration of the Panzos massacre on the 29<sup>th</sup> of May and several other events to commemorate the one-year anniversary of the sentence, which were held both in the capital city and in Sepur Zarco. Most of the events and activities that I observed were with UNAMG, particularly during the first few months. Being affiliated with them meant that I could stay informed about their activities; however, it also meant that I was not always aware of the activities of the other organisations.

I observed three workshops that UNAMG had organised with the women survivors. The workshops that were held at this stage were of a different nature to the ones organised in the years leading up to the trial, which had focused on women's rights and the legal process. In contrast, the later workshops were intended to respond to the women's health needs and their desire to improve their economic situation. The workshops were taken by a Q'eqchi naturopath who was part of the Mayan women's collective Grupo de Mujeres Mayas Kaqla, an organisation that seeks to reaffirm Mayan

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<sup>24</sup> Unbeknown to him, he earned a nickname for himself as 'El Gritón', the loudmouth. He seemed to become more aggressive as the Molina Theisson case progressed. Furthermore, relatives of the five members of the military who were on trial would show up and shout aggressively at anyone that they recognised as foreign or affiliated with the human rights organisations. The staff of the organisations did not respond to the provocations and would try to avoid the relatives of the defendants, as did I. The Guatemalan police made no attempts to intervene.

culture while also challenging the constrained gender roles assigned to Mayan women. She taught the women to make herbal medicines and shampoos and to carry out therapeutic massage. The objective of the workshops was to help the women to access alternative medicine, in the hope that they would be able to make the products both for their own use and to sell. The workshops were conducted entirely in Q'eqchi, unlike those on women's rights, which had taken place with an interpreter.

Although the content of the workshops was, therefore, not completely clear to me, I was able to observe the friendships and interactions between the women, the UNAMG staff, and the workshop leader. They also provided an opportunity to meet and get to know the women in a more relaxed setting. Despite language differences, many of the women were interested in my research and seemed pleased to meet me. They were amused at my attempts to speak a few phrases of Q'eqchi. At the end of the first workshop that I observed in early December, there was a celebratory dance for the women, being, for them, the third and final one of the year. Amid laughter, the women invited me and the other UNAMG staff to dance to the traditional marimba music with them.

UNAMG also organised several protests, forums, and campaigns on women's rights, alongside other women's rights organisations. My time there coincided with the 20<sup>th</sup> anniversary of the Peace Accords, so a number of meetings and forums were organised around this theme. The forums analysed the extent to which the agreements that dealt with reforms to advance indigenous and women's rights had been implemented and, where reforms were lacking, what could be done to pressure the government to implement them. Relatively little had been achieved by successive governments in this regard since the peace agreements were signed. I decided that, in order to get to know the wider context, it would be worth my going along to observe and, if required, to help at these forums. I also helped UNAMG to collate and edit a preliminary publication, with contributions from each of the organisations that had been involved in the process. UNAMG had previously published two short books that examined the rights granted to women by the Peace Accords and the progress made since, one on the tenth and one on the thirteenth anniversary.

I took part in three national-level meetings, *mesas de diálogo*, between different government departments and UNAMG and MTM staff, which discussed the reparations process. Although the women survivors had attended some of these meetings, they were not present at the ones that I attended. These meetings were conducted in Spanish in Guatemala City, which made it difficult for the women to participate. I also observed two meetings between MTM and the women, which took place in El Estor and in Sepur Zarco, and an event organised by MTM to present a report into the social and economic situation of Sepur Zarco and neighbouring communities. I also took part in a workshop organised by ECAP with the children of the women survivors and of other witnesses and another held

by ECAP with women community leaders, which included some of the women survivors. Furthermore, I observed other activities organised by the Alianza, held both in Guatemala City and in Sepur Zarco, to commemorate the anniversary of the sentence and a prize giving ceremony, at which the women were awarded medals by the Archbishop's Human Rights Office.

### **Interviewing**

Reading the documents, carrying out participant observation, and attending the hearings helped me to identify potential interviewees and to formulate interview questions. In total, I carried out more than thirty interviews with staff members of the supporting organisations, UNAMG, ECAP, and MTM, with the women survivors, the public prosecutor, one of the lawyers, the interpreters, and an anthropologist who produced one of the expert witness reports. I also interviewed the staff of other supportive human rights and victim organisations, such as the Coordinadora Nacional de Viudas de Guatemala (Guatemalan Widows' Organisation, CONAVIGUA), the Centro para la Acción Legal en Derechos Humanos (Centre for Human Rights Legal Action, CALDH), the Fundación de Antropología Forense de Guatemala (Guatemalan Forensic Anthropologist Organisation, FAFG), as well as staff of the Maya Programme of the UN High Commission on Human Rights.

### **Interviewing NGO Staff, Interpreters and Expert Witnesses**

I started the interviews with the staff of the organisations that were supporting the women survivors. In general, I interviewed the staff at the offices of their respective organisations. However, I interviewed regional staff in their homes in Sepur Zarco, El Estor, or Guatemala City. I conducted the interviews in Spanish and audio recorded them, all except for a small number in which the participants preferred me taking notes. I used a narrative approach when interviewing staff members. I started by asking them how they had begun to work with the organisation and with the women, in order to situate them within a process that had been going on for some time. This helped me to develop the questions to ask in later interviews. Some of the staff had begun working at their organisation just before the start of the trial, while others had been there for many years. Interviewees were selected and interviewed according to their role in the legal process and, more broadly, their work with the women. I tried to interview all of the key staff members and to focus questions according to their area of expertise, their experiences, and their observations. My objective was to learn about the work of each of the organisations and certain fundamental aspects of the legal process, as well as staff members' views on, and understandings about, the women's participation.

I asked questions about a number of themes, including the development of women's agency, how women were treated in the legal process, and their experiences with discrimination, re-victimisation,

and re-traumatisation. I also asked about the staff member's own work, and that of their organisation, in relation to the Sepur Zarco case, what they had observed and learnt within this context, their observations on the trial, the obstacles faced and how they had been overcome, and what they felt had been achieved in general. I also asked for clarification on decisions that had been made, specific events, and aspects of the legal process. I kept questions open-ended, in order to allow the person being interviewed the opportunity to give their own account alongside the narrative of their organisation, and asked follow-up questions about pertinent things that they had said, to get more detail or to clarify certain points. After the first few interviews, I began to ask whether there was anything further that they wished to add, providing additional space in which interviewees could tell me about any aspects that they considered important.

On the whole, I felt comfortable interviewing staff members, having met most of them previously. In this regard, my affiliation with UNAMG helped greatly. I was, however, concerned about their limited time; although they were more than willing to be interviewed, in some cases interviews had to be repeatedly rescheduled, as staff could not make the date that had been arranged.

### **Interviewing the Women Survivors and Visiting their Communities**

I had originally hoped to work with the women mainly as a group and to hold focus group sessions with them, so that they could reflect upon the legal process, the reparations ordered by the court, the actions taken, and what the next steps would be. This would have allowed me to follow a participatory action approach to the research, in which I could have found out the actions to be taken next and whether there was anything that I could help with. I had also hoped to hold focus group sessions or conduct interviews with young members of the communities and community leaders. However, the organisations that had acted as gatekeepers for me did not have the time to help organise this. I found that it was less onerous for them that I observe their activities and interview their staff and the women separately. I did not visit Sepur Zarco until the end of February, when I was able to travel with the staff of the Alianza to attend the commemorative activities organised for the anniversary of the sentence. This was because they had expressed concerns about my safety were I to go alone and because of the difficulties in finding my own way there from Guatemala City, since the community was remote and transport connections were not straightforward.

In the end, I was able to visit three times, in February, April, and June, staying for a few days on the first two visits and for over a week on the final one. I visited each of the communities where the women lived, since most do not live in Sepur Zarco but in neighbouring communities. The visits enabled me to observe some community events that were connected to the process, all of which took place in Sepur Zarco, including the commemoration of the sentence and the opening of a mobile

health clinic. In June, I took part in a mural painting activity organised by the Ministry of Culture as part of the reparations process. However, I was not able to observe any of the community-level reparations meetings, since they took place infrequently and it was difficult to find out when they were.

I interviewed the women during the second two visits to Sepur Zarco, in April and June of 2017. After getting to know them better, I went to their communities and visited their homes to interview them with the help of UNAMG's interpreter, a Q'eqchi woman from El Estor who had worked with UNAMG and the women for over five years. Visiting the women in their homes helped me to understand more about their lives. The locally-based staff of the organisations also conduct home visits, so my method was not so different from their usual practices.

The women responded positively to the visits and seemed glad to be receiving a guest. Some of the women live some distance from Sepur Zarco and, therefore, receive few visits. It is difficult for the non-local staff of the organisations to visit the women in their homes. Getting to Sepur Zarco is a long and exhausting journey from Guatemala City and, because of the distance, it is expensive to get there in hired transport, the way that UNAMG and MTM staff tend to travel there. When the staff visited, they seemed to go only as far as Sepur Zarco. Some of the women's homes can only be reached on foot and the heat and humidity make the walk exhausting.

I noticed that the staff from Guatemala City tended not to stay in the communities when they visited, which may have had to do with the basic living conditions, which included washing outside at a stone sink with no privacy, as well as their limited time. However, I was privileged enough to have the time to stay in the communities and I was already accustomed to the basic conditions because of my previous experience in human rights accompaniment. In fact, I had to convince the Director of MTM that I preferred to stay in the community, rather than a hotel, when I attended the activities that took place in Sepur Zarco.

Furthermore, the workshops organised by UNAMG were normally held in El Estor and the staff and the women stayed in a hotel there. Although I sensed that the women enjoyed the opportunity to get together and travel outside of their communities, much of their participation with the organisations required them to travel long and tiring distances; El Estor, for example, is a five-hour journey from Sepur Zarco. I stayed in the community when I could, however, as I felt that it was the best way to learn about their lives and it avoided the women having to travel.

However, being the only white and non-indigenous person there, I was obviously foreign and so caused a bit of a spectacle in the communities. On one occasion I was accompanied by a crowd of



curious children to one of the women's houses. I worried whether I was making the women more visible by publicly visiting them in their homes; however, the women had already spoken publicly within their communities, following the sentence and at the anniversary event, and had participated in a number of other events. Furthermore, the interpreter with whom I worked, who had many years of experience working with UNAMG and the women, did not seem to believe it was a problem.

### **Approach to Interviewing the Women**

For ethical reasons, I did not ask the women to repeat their stories of harm to me. I wanted to avoid re-victimising them and, furthermore, their ordeals were not the subject of the research. Instead, I took a narrative approach and chose to frame the questions in such a way as to focus on their protagonism in the struggle for truth and justice. I wanted to understand how they came to be involved in the trial, what taking part meant for them, whether they felt they had been discriminated against, how they came to form the Jalok U Collective, their decision making during the legal process, and whether they had the support of family members during the trial. This last was because I was aware that ECAP had worked to support the women's grown-up children and to organise them so that they could, in turn, support their mothers. ECAP also supported the women in telling their children about the rapes that they had suffered; although some of the children had witnessed these horrific incidents, some had not known that their mothers had suffered rape before the trial took place. I also asked the women how they felt about the reparations process and what reparations were a priority for them and their communities. As an example, Sepur Zarco does not have land tenure, while two of the other communities do; the difference in situation had an obvious influence on how land tenure was perceived as part of the reparations process.

Before starting the interviews, my interpreter, who often visited the women in their homes, would chat with them in Q'eqchi. The women would decide where we would sit, sometimes outside of their home, offer us a seat, at times displacing a family member from one of the few chairs so as to offer me the best seat. They would also offer us a hot drink and sometimes food. As Bergen (1993: 206-7) has said about her own interviews, having them take place in the women's homes helped to give the women agency in the context of the interview, since:

Each woman determined the general rules of the interaction, such as where we would talk, where we would eat and so on. This was an important element in establishing an interactive relationship because, rather than taking a passive role, and following my lead, each woman played an active role as hostess. The role of hostess was important because it was a familiar one to the women (who were in an unfamiliar position of interviewee) and one in which they were successful.

I would always say one or two expressions in Q'eqchi, which would greatly amuse the women, either because of my disastrous pronunciation or the ridiculousness of a white foreigner speaking Q'eqchi. They would also encourage me in saying words and expressions in Q'eqchi, as one would with a young child, and sometimes asked me questions in the language, only to laugh at the puzzled expression on my face or my attempt to guess the right answer.

Being in their homes helped me to see their living conditions and home life, which was of great importance in placing their words within the context of their everyday lives. It also meant that the interviews were occasionally interrupted by family members. I would, however, check with the woman being interviewed and the UNAMG interpreter as to whether it was suitable to continue and neither ever seemed concerned enough to stop the interview. As stated above, I also avoided questions about the women's experiences during the war or any other questions that might upset them. The women had already spoken in public about testifying at the trial and some had been interviewed by journalists.

### **Interpretation and Language Issues**

Although I had initially planned to learn Q'eqchi, I decided that I would work with an interpreter for any interviews or focus group sessions. This was because I felt that, due to the sensitivity of the research and the likelihood that my Q'eqchi would not be proficient enough to conduct interviews, an interpreter would do a better job than me. I planned to work with an interpreter who already knew the women and who worked with one of the organisations, since I felt that this was the sound ethical choice. My affiliation with UNAMG gave me the opportunity to work with their interpreter, whom I had met on several occasions at workshops and events. The opportunity to interview all of the women arose during a period in which there was a hiatus in UNAMG activities, due to a lack of funding. This meant that the interpreter had not made any home visits for some time. This was an important part of her job, but it depended on funding and any other activities that were planned. She encouraged me to accompany her and interview the women, as she was not involved in UNAMG activities at that moment and the women had been calling her to ask about the situation and whether anything was planned.

I decided to interview her before interviewing the women, because she could then provide me with feedback on the interview process, my questioning, and any other issues. I interviewed her in her home and, seeking feedback on the questions asked and the interview process, she said that she thought it acceptable. The next day we travelled together to Sepur Zarco, taking a five a.m. bus. The journey on public transport was very different to my previous visit in February, when I was able to get a lift with a UN staff member in his four-wheel drive vehicle. The Polochic Valley is part of Guatemala's

tropical lowlands. Many of the roads are not paved, or only partially, which makes travelling slow, bumpy, and, in dry season, extremely dusty. The journey to Sepur Zarco from El Estor is over five hours long and tiring in such sticky heat.

During the interviews with the women, I would check the questions with the interpreter, in order to avoid upsetting the women. I had kept the questions simple in an attempt to elicit a narrative of how and why the women had decided to seek justice. However, certain questions relied on particular concepts that I had not fleshed out. Some were also difficult to translate into Q'eqchi. Questions about discrimination elicited a particular set of answers about the defendants' family members, rather than the answers that I had expected. This made me realise that I would have to go through the interviews again with the interpreter. I had audio recorded most of the interviews and plan to sit with the interpreter and ask her to listen again, in order to identify whether anything has been missed and to discuss any interpretation issues. I also plan to seek feedback on my analyses and observations and, if possible, hold some focus group sessions with the women to verify my interpretations of the data.

*Editor's note: Although the chapter ends in a fairly abrupt manner, the relative completeness of it suggests that Juliette only planned to expand on the conclusion having returned from Guatemala to tie up the loose ends that she discusses.*

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## Chapter Five: Fieldwork Report

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### Introduction

In mid-February of 2004, I was sitting outside of Don Miguel's house with my fellow companion, Jasmine. We were in a remote community in Quiche, in the indigenous majority Western Highlands, working as volunteers with an accompaniment organisation. Our job was to visit people in communities at risk of repressive violence, because they were witnesses in a genocide case against a former military dictator. We would visit the witnesses and their families, who lived in several different communities in the mountains, and write a monthly report on the human rights situation in the area in which we worked.

I had decided to do this work because, the previous summer, a survivor of a massacre in Rio Negro, Rabinal, had come to Liverpool to speak about his experiences of the Guatemalan war (1960-1996) at a conference organised by UK-based Central America solidarity organisations. Don Francisco spoke about the worst years of the war (1978-1984), which included the period during which the UN-led Truth Commission concluded that acts of genocide had been committed (CEH, 1999: 41). At ten years of age, he had witnessed the murder of his two-year-old brother. The only reason that he had survived the massacre was because one of the civil defence patrollers, who had taken part in the massacre, had decided to take Francisco with him as a servant, but refused to take his younger brother.

As we sat outside of Don Miguel's two room wooden and concrete house, facing out onto a hilly maize field, he came over to us with some rectangular pieces of white cloth. He wanted to ask for our help with an important task. It was not long until the National Day of the Victims, the 25<sup>th</sup> February, a date that had been declared after the signing of the Peace Accords in 1996 to dignify the victims of the war, one of the many recommendations of the UN-led Truth Commission. To commemorate this year's victim's day, the organisation he was a part of had proposed that each family should sew or write the names of the family members killed in the war on white cloth. The pieces of cloth would then be sewn onto huge banners made of colourful woven material, of the kind typically worn as skirts by Mayan women, with one banner for each department of the country. The banners would be carried by survivors of the war at the annual march in Guatemala City. Although it was unlikely that Don Miguel would take part in the march himself, since he lived a two-day journey from the capital, it was important that the names of his lost loved ones appear on the banner. Don Miguel explained that, since no one in the community could write, there was no one that could write the names of their relatives. Could we, he asked, write the names of those killed?

We agreed, although I felt a huge sense of responsibility, in particular to write clearly and to get the details correct. We had to write the names of five people, the community that they were from, the date that they were killed, their ages, and the fact that they had been killed by soldiers. Although I can no longer remember all of their names, I recall that, of the five, three were members of the same family. They were a mother, Juana, who was around thirty years of age, her ten-year-old son, and her four-year-old daughter, massacred by soldiers in 1982 in a small community near to the one in which we were sitting. For some reason, writing out the names and personal details of those killed seemed to bring home the reality of what had been done to them; the fact that none of their relatives could write their names seemed to compound the injustice.

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My experiences volunteering from January to April 2004, with the accompaniment organisation ACOGUATE and alongside some of the Mayan survivors of the genocide, illuminated a number of issues that have shaped my research focus: transitional justice viewed critically ‘from below’, through the justice claims, participation, and experiences of a specific group of victims and the non-state organisations supporting them. My research project specifically examines the Sepur Zarco trial prosecuting wartime sexual and domestic slavery against a group of Mayan Q’eqchi women and which represents the first time worldwide that sexual and domestic slavery has been prosecuted in the national court of the country in which the crimes took place.

The issues that I point to in the vignette, in particular victim organisation and protagonism in seeking to speak out about, remember, and seek accountability for atrocities committed against their loved ones and themselves, are central to my research and will be examined in more detail in a later section. Through the vignette I also highlight some of the contextual issues that are important for my research project, namely some of the local realities for indigenous communities in Guatemala that shape and constrain victim participation, in particular inequalities based on illiteracy, economic marginalisation, and geography, and which mean that support is needed to facilitate victim participation. In addition, through telling this story I seek to locate myself, and some of my prior experiences in Guatemala, within the research process and, therefore, to present the thorny issue of representation by a ‘literate’ outsider – in this case myself, writing the names of indigenous victims killed, in order to help a relative assert the truth of what happened and to demand accountability in a distant centre of power.

The discussion that follows describes the progress of the research project up to the present. The next section introduces the research topic and explains how I conceived the project, presenting some of the rationale that underpins it. Following this section, I provide a brief description of the analytical approach and methodology used and a commentary on data collection. The report then briefly

introduces the alliance of Guatemalan NGOs supporting the women survivors and their communities. In order to contextualise the women survivors' struggles for truth and justice, the report then provides a socio-historical description of the Polochic Valley, in which the communities where the women live are located, and of the Sepur Zarco community itself. After this, I present the emerging themes from the interviews and participant observation, with a tentative analysis that examines the perspectives of the women survivors and their allies on their experiences and their participation in the Sepur Zarco trial and the responses of the Guatemalan State to their justice claims. The report ends with a short note on the future direction of my fieldwork.

### **Introduction to the Research Topic**

This section begins with a second vignette of a later, but related, experience, in order to both illustrate the unfolding nature of transitional justice in Guatemala and the change in context from the early 2000s, in particular with regard to the prosecution of gendered violence, in order to help frame and introduce the specific focus of my research: the justice claims and protagonism of the women survivors of Sepur Zarco and the work and goals of the supporting organisations in the case.

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Nearly ten years after volunteering with the accompaniment organisation, I was back in Guatemala, although this time based in rural Quetzaltenango, amidst small *campesino*, or peasant, communities and large coffee plantations. I was working at the rural branch of a Spanish language school that had been created in 1988 to help raise awareness about what had happened during the war and what was still going on. The work included interpreting the summarised news stories of the week. The main story was the 2013 Rios Montt genocide trial<sup>25</sup>. It was the first time worldwide that genocide would be prosecuted by the national court of the country in which the crimes took place, and the first trial in Guatemala that prosecuted such a high ranking, and still politically powerful, former member of the military.

The newspapers reported daily on witness testimonies and on the defence lawyers' many attempts to stop or delay the legal proceedings, including attempts to remove the panel of judges who, unlike other judges, could not be bought or threatened<sup>26</sup>. Newspapers also reported on attitudes to the trial, including in the Nebaj area, part of the Ixil triangle where the witnesses were from. The newspaper that we mostly relied upon for our news reports, simply because it was the only paper distributed

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<sup>25</sup> Efraín Ríos Montt was a former general and dictator who took power through a coup d'état in 1982. There was a surge in massacres after he took power.

<sup>26</sup> After hearing witness testimony for the genocide case on behalf of the Spanish National Court in 2008, Justice Eduardo Cojulún began to receive death threat (Human Rights First, 2008: 4).

nationally with in-depth reporting, took a conservative line, arguing that the trial was polarising the country, including in the Ixil region (see Figueroa, 2013), and questioning whether Rios Montt was well enough to stand trial. Nevertheless, it reported the prosecution witnesses' painful testimonies of the atrocities that they had suffered and survived.

Although it had taken many more years than I had expected, the fact that the trial was taking place at all seemed incredible, both to me and to my more sceptical Guatemalan friends and colleagues. Despite years of delays, political challenges, and concerns about the risk of interference under the government of Otto Perez Molina<sup>27</sup>, reforms made under the previous government of Álvaro Colom, proposed by the then newly-created Comisión Internacional Contra la Impunidad en Guatemala (International Commission Against Impunity in Guatemala, CICIG)<sup>28</sup>, had facilitated the prosecution. In particular, the appointment of Attorney General Claudia Paz y Paz, the creation of special *Tribunales de Mayor Riesgo*<sup>29</sup>, and the CICIG's attempt to fix the Ministerio Público, the Public Ministry<sup>30</sup>, had helped to make the trial possible. The genocide trial was taking place in High Risk Court A, presided over by Dr Yasmin Barrios, a woman who firmly refused to allow the many, sometimes ridiculous, delaying tactics employed by the defence<sup>31</sup>.

On the eighth day of the trial, ten Mayan Ixil women testified to the mass rapes of young women and girls – themselves or their relatives – by the Guatemalan military, between 1982 and 1983. They gave their testimonies wearing *rebozos*, brightly coloured traditional woven shawls, over their heads, in order to protect their privacy (Roberts, 2013). Outside, women's rights activists from the movement We the Women sang and held flowers in support of the Mayan Ixil women testifying in court (AP,

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<sup>27</sup> Otto Perez Molina, President of Guatemala when the trial was taking place, stated publicly that he did not believe that a genocide had taken place and that the trial threatened to destabilise the country (See Burt, 2013). Perez Molina is a former general who had been in charge of what the military named the 'Ixil triangle', made up of three small Maya Ixil towns, during the 1980s, when the genocide took place. He was himself implicated in the genocide by a prosecution witness during the 2013 Rios Montt trial (Burt, 2013). He is now in prison awaiting trial on corruption charges during his time as President.

<sup>28</sup> The UN International Commission against Impunity in Guatemala, tasked with investigating clandestine groups, organised crime, and corruption, which started work in 2008.

<sup>29</sup> High Risk Courts were created by a bill passed by Congress in 2009 (Cardona cited in Open Society Initiative, 2016: 43-7; CICIG, 2009). They were installed to try cases of narco-trafficking, organised crime, and the international crimes committed during the war. They provide greater security for judges, have jurisdiction over the whole of the country, and their judges have greater experience and expertise in international law.

<sup>30</sup> The Public Ministry is responsible for investigating and prosecuting crimes in Guatemala. One of the stated goals of the first CICIG Commissioner, Carlos Castresana, was 'dismantling the structures within the Public Ministry that made successful prosecution of influential people almost impossible' (Open Justice Society Initiative, 2016: 41).

<sup>31</sup> On the morning of the first day of the trial, Rios Montt replaced his lawyers. The new legal team then argued that the trial should be temporarily suspended to allow time for them to prepare (Maclean, 2013). Also, on 18<sup>th</sup> April 2013, when the trial appeared to be getting near to the closing arguments, the entire six-person defence team left the courtroom in protest and against the orders of the presiding judge (see Open Justice Society Initiative, 2013: 10).

2013). Supporters also hung banners outside the courthouse and placed photos of women killed during the armed conflict along an altar of dried flowers, with candles and the word *Justicia*, or justice, spelled out (Roberts, 2013). The participation of Mayan Ixil women survivors of sexual violence in the trial seemed to represent a broader struggle for justice for Guatemalan women victimised and killed during the war. It also appeared to represent the telling of a historical truth that had been kept silent. In a statement given to the press, one women's rights activist declared that:

Sexual violence was used as a weapon of war to disarm the communities and kill the seed. We are here to support the victims, we recognise their bravery in breaking the silence about the sexual violence suffered (Sandra Morán cited in AP, 2013).

Several weeks later, Rios Montt was found guilty of genocide and crimes against humanity. During the sentencing, Judge Barrios said that women were raped as part of the systematic and intentional plan to destroy the Ixil ethnic group by exercising violence on women's bodies, as a way to destroy the social fabric and, thereby, destroy the Ixil population. The tribunal also noted that sexual violence had caused pain and suffering, the trauma of which many of the women still experienced, and that this kind of violence had an inter-generational effect, pointing out that women reproduce life as well as culture (Burt, 2013).

As a Guatemalan friend pointed out to me, however, in the end Rios Montt only went to prison for a few days. Although he was found guilty of genocide and crimes against humanity and sentenced to eighty years in prison (fifty years for genocide and thirty years for crimes against humanity, to be served consecutively), just ten days later, part of the trial was annulled by the Constitutional Court<sup>32</sup>. Later, the whole trial was annulled and the date for a new trial set for 2015.

Like a novel that never ends, the trial has since started, stopped, restarted, and stopped over and again. The 2013 trial, and subsequent annulment, revealed the strengths and weaknesses of the Guatemalan legal system, above all the fact that it was still subject to the influence of the most powerful<sup>33</sup>. Less than a year after the annulment of the Rios Montt trial, in 2014 President Otto Perez

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<sup>32</sup> On 20<sup>th</sup> May 2013, in a polarising and divided 3-2 ruling, the Constitutional Court overturned the verdict and annulled the final days of the trial, sending it back to where it was on 19<sup>th</sup> April. In its resolution, the Court did not acknowledge that this would undo the verdict and send the trial into disarray. It did not even acknowledge that a verdict had, in fact, been issued (Open Justice Society Initiative, 2013: 17).

<sup>33</sup> Two days after the verdict, military families marched in support of Rios Montt, in front of the Matamoros military base where he had been sent to serve his sentence. The same day, the powerful business association Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations, CACIF) called for the verdict to be overturned. CACIF rejected the tribunal's legal reasoning, saying the intention to commit genocide had not been adequately demonstrated, charged the tribunal with violating due process and other procedural guarantees, and insisted that the sentence was politically motivated, fuelled polarisation, and undermined the rule of law in Guatemala (Burt, 2013).



Molina removed the Attorney General Claudia Paz y Paz before the end of her term. Paz y Paz had been spearheading changes in the Ministerio Público and had worked to reduce impunity both for atrocities committed during the war and for contemporary crimes. Furthermore, the presiding judge who had heard the genocide case, Yasmin Barrios, was sanctioned by the Colegio de Abogados y Notarios de Guatemala, the Guatemalan Lawyer and Notary Association (FIDH, 2014). In addition, the Guatemalan Congress, led by former major Otto Perez Molina, declared that there had been no genocide. It seemed as if a backlash was starting.

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The 2013 Rios Montt genocide trial, and the discourses that surround it, are linked to, and have influenced, the 2016 Sepur Zarco trial in a number of ways. This is one of the reasons that I have included the above account. The women from Sepur Zarco attended some of the trial hearings as part of a community of Mayan women survivors of sexual violence from different regions and linguistic groups. The vignette highlights some of the key issues for my research. In particular, it signals the beginning of the prosecution of wartime sexual violence committed against indigenous women by the Guatemalan military in a Guatemalan court. It also indicates the strategic use of the legal process, by survivors of the war and human rights and feminist organisations, as a means of asserting and validating historical truths, breaking silences, and combating sexual violence. I will return to these issues later in this section.

The vignette is also intended to point to other important contextual issues, including the highly contested nature of truths from the civil war period, attempts to prosecute members of the military for their crimes, the unfolding and politicised nature of transitional justice processes in Guatemala, and the ongoing weaknesses of the legal system. Additionally, it highlights the role played by human rights and feminist activists and survivors in the search for truth and justice and points to some ideas about the meanings of this process.

I will now turn to a consideration of the background and rationale for the research, beginning with a contextual discussion of the prosecution of wartime sexual violence.

### **Background and Rationale for Research**

During the Rios Montt trial, the testimonies of the Ixil women had seemed to make a significant impact, particularly on social media and alternative news platforms, but also in the mainstream media. However, it was not the first time that Mayan women had testified about their victimisation during the Guatemalan civil war. By 2013, another legal process was under way, although, as yet, it had received little news coverage. After taking part in the 2010 Tribunal of Conscience, fifteen Mayan

Q'eqchi women decided to seek justice for the sexual violence committed against them at the Sepur Zarco military base and for the forced disappearance of their husbands in 1982 (UNAMG, 2016). In 2011, a criminal complaint was made and in 2012 the women gave their testimonies in video-taped evidentiary hearings before one of the high-risk courts.

I read about the case while working in Guatemala and, not long after my return to the UK in 2014, I was fortunate to be able to meet the then director of the Unión Nacional de Mujeres Guatemaltecas, the National Union of Guatemalan Women (UNAMG)<sup>34</sup>, who spoke about the Sepur Zarco case at the *Guatemala: No Going Back! Impunity, Resistance and International Solidarity* one day conference, held in London at the Amnesty International Human Rights Action Centre on 31<sup>st</sup> May, 2014. The conference was organised by human rights and solidarity organisations and dealt with the challenges facing Guatemalan social movements<sup>35</sup>.

On 1<sup>st</sup> February 2016, the Sepur Zarco trial began. Two former members of the military were being prosecuted for the wartime sexual and domestic slavery and sexual violence against the group of Mayan Q'eqchi women, the forced disappearance of their husbands, and the murder of one of the women who had been enslaved and her two young daughters. The trial was to be heard by the same panel of judges who had heard the Ixil genocide case against Rios Montt, despite attempts by the former base commander's defence lawyer to recuse the judges at the last minute, once the trial date had been set<sup>36</sup>.

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<sup>34</sup> UNAMG is part of the alliance of organisations supporting the women survivors and were taking part in the prosecution as a civil party under the *querellante adhesivo* mechanism in the Guatemalan penal code, which allows interested parties, such as individual victims or organisations, to launch a criminal prosecution or to join one started by the Ministerio Público, the Public Prosecutor's Office, as a *querellante*. A *querellante* can help with the investigation and request the inclusion of evidence (Article 116, Guatemalan Penal Code).

<sup>35</sup> The organising committee for the conference was formed by members of the following organisations: Amnesty International UK, Banana Link, Central America Women's Network (CAWN), Guatemala Solidarity Network (GSN), Latin American Mining Monitoring Programme (LAMMP), Peace Brigades International (PBI), and the Trade Union Congress (TUC).

<sup>36</sup> Moises Galindo, who defended Reyes Girón in the Sepur Zarco trial, who was one of the team of lawyers that defended Rios Montt in 2013, and who himself is a former member of the military currently being investigated for money laundering (see Castañón, 2017), alleged that there was enmity between himself and the two women judges, dating back to the Rios Montt genocide trial. However, the Supreme Court denied the recusal motions that he filed against Yasmin Barrios and Patricia Bustamante. Galindo then filed a writ of *amparo*, a writ of protection of constitutional rights, before the Constitutional Court, on the basis that the judges who would hear the trial were not impartial because of the alleged enmity. The *amparo* was rejected in provisional form before the trial started. Despite this, on the first day of the trial, Moises Galindo continued to try to use legal motions to recuse the judges and, thereby, further delay the trial, a strategy that human rights organisations have described as *litigio malicioso*, or malicious litigation. As of the present date, the Constitutional Court's highest chamber has not yet emitted a final resolution on the writ of *amparo*. If the Constitutional Court rules in favour of this *amparo*, it could annul the Sepur Zarco trial and force a repeat of the whole trial, just as happened in the genocide case against Rios Montt (Burt & Estrada, 2017a; 2017b).

In February and March 2016, I observed the Sepur Zarco trial and the reparations hearing<sup>37</sup>. While it is not within the scope of this report to provide commentary on the trial, some of the themes that I discuss below have emerged from both the trial and the fieldwork I am currently conducting. It is important to note that a number of expert witnesses drew attention to the gendered psychological and cultural impacts of the violence committed towards the women, their families, and their communities and provided insights into how that violence, forced labour, and the destruction of homes and crops have been interpreted by the women and other community members. These insights have informed both my approach to the research and my research questions.

My prior experiences of living in Guatemala and of attending the trial made me aware of the importance of seeking formal legal justice for gendered violence and for the grave human rights abuses committed during the war. Gendered violence, including sexual violence, was committed on a large scale during the Guatemalan civil war, mostly against Mayan women. According to the CEH, 88.7 percent of rape victims were Mayan women (cited in Caxaj Álvarez et al., 2017: 11). However, sexual

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<sup>37</sup> The women survivors are seeking collective reparations for their communities through the Guatemalan legal system, which allows reparations to be sought and awarded at a hearing that can be held on the third day after the conclusion of a trial in which the defendant is found guilty and there is an identifiable victim (article 124 of the Penal Procedural Code, on the right to dignified reparation, introduced in 2011 by Decree 7-2011. See López Hernández, 2017). The reparations hearing for the Sepur Zarco case was held on 2<sup>nd</sup> March 2016; the Guatemalan Supreme Court ordered the payment of both individual and collective reparations to be made to the women and their communities. At the hearing, the court ordered that the two former members of the military were liable for paying the individual reparations, sums of money to be paid to each of the women. In the Guatemalan Penal Code, article 112, a person who has been found guilty of a crime is liable for paying the damages to the victim. This means, however, that the individual reparations are unlikely to be made, since one of the two former members of the military does not have the resources to pay the sums ordered and it will be extremely difficult to make the other comply with the court order. During the reparations hearing, the lawyers acting on behalf of the women survivors tried to get the Guatemalan State to assume responsibility for the financial reparations. They argued that the State should be included as a *tercero civilmente demandado*, or third party to the case (article 135), in order to force the State to assume responsibility for paying the damages, arguing that the State was ultimately liable. However, a loophole in the Guatemalan Penal Procedural Code had meant that the attempts to include the State as a party to the case failed. At the reparations hearing, the court ruled that it was too late to include the State as a party to the case, arguing that the stage at which this should have been done had already concluded and it was not possible to return to an earlier stage of the proceedings. However, at each of the earlier stages of the legal process, when lawyers acting for the women survivors and the supporting organisations had tried to add the Guatemalan State as a party, the judges had ruled that it was not the correct stage at which to add the State as a party. The law itself is unclear in this regard; it was recently reformed, and an earlier article removed, which has left in doubt the correct stage for adding parties who may also be liable. Procedurally, it is not possible to return to an earlier stage of a process in the Guatemalan legal system and, therefore, it is now too late to add the State as a party. Nevertheless, the court ordered that the State is responsible for collective reparations, which include the building of a health centre (see below in this report) and a high school. There are other routes available to seeking reparations for war crimes in Guatemala. There exists a national reparations programme, created as one of the recommendations of the UN Truth Commission, to pay out reparations for victims of the war, however there are a number of problems with the functioning of the programme. I will comment on this below. Another possible route would be through the InterAmerican Court on Human Rights, however that would require the exhausting of the Guatemalan legal process and would, therefore, take an extremely long time. Nevertheless, other women survivors from other regions of the country who are supported by UNAMG are pursuing reparations through this route.

violence was under-documented and not investigated to the same extent as other crimes, both by the UN-led Truth Commission and the Catholic Church's Truth Commission; neither commission provided recommendations for the Guatemalan State with regard to sexual violence (Aguilar & Méndez, 2006: 7; Diez, 2006: 5).

Moreover, despite some success in prosecuting some serious human rights abuses, wartime sexual violence had remained in complete impunity in the Guatemalan courts (Diez, 2006; Mendia Azkue & Guzmán Orellana, 2012). Speaking about sexual violence was difficult for many survivors, in particular Mayan women, due to the issues of stigmatisation, shame, feelings of being partly to blame, and the painful memories that it brought up. Nevertheless, in cases where there was witness testimony from the survivor or another witness, sexual violence was not included in many of the cases that were underway in the Guatemalan courts during the later 1990s and early 2000s, due either to the belief that it would weaken the credibility of the witness for other crimes or that it would be impossible to prosecute without forensic evidence (Diez, 2006: 85).

In addition, after the war, gendered violence continued to be a serious problem, in particular physical and sexual violence<sup>38</sup>. After the signing of the Peace Accords, feminist organisations had campaigned for legislative change and other reforms, to facilitate the investigation and prosecution of violence against women and to change perceptions of gendered violence and the State's response to it. The campaigning did achieve legislative change, but the rates of violence against women remained extremely high and there was widespread impunity for this type of violence. The failure to properly investigate and prosecute wartime sexual violence was seen as contributing to its normalisation:

A heavy silence has fallen regarding this human rights violation... This silence has fomented impunity of these crimes, and legitimated this type of violation of women's human rights as something that is not very important and even as something that is normal (Fulchiron et al., 2009: 3).

The silencing effect of wartime violence may have been particularly strong in indigenous communities. According to Brynton-Lykes (cited in Putnam et al., 2008: 45), Mayan groups had effectively been 'silenced' as an oppressed population and have been offered neither a voice nor tolerance from the majority culture for expressing their suffering. In this context, breaking the silence has been seen as imperative by feminist organisations.

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<sup>38</sup> According to a report published by Médecins Sans Frontières (2011: 7), sexual violence is 'one of the most worrying, most common and least attended humanitarian problems in the country'. Médecins Sans Frontières began a specific project to care for victims of sexual violence in 2007 (MSF, 2011: 7).

However, the research literature also revealed that many feminist legal scholars had become disillusioned with attempts to prosecute wartime sexual violence (see O'Rourke, 2011: 5-11). The literature focused on international tribunals, in particular the International Criminal Tribunal on the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), which had initially been hailed as successes and breakthroughs on ending impunity for sexual violence. Reasons for the disillusionment included the still low levels of convictions, concerns about re-victimisation, worries that women survivors were not being allowed to tell their narratives, and doubts about whether testifying could strengthen women's agency.

Similar concerns have been raised about victims in general in the recent literature on transitional justice, about whether they could really benefit from transitional justice mechanisms, in particular trials, and about their ability to participate in the process. Victim participation was considered to be important, but there seemed to be little consideration of what that participation meant in concrete terms for specific groups. There was a tendency in the research literature to consider victims as a homogeneous group and a similar tendency in the feminist literature to consider women as such. On the other hand, the smaller literature that is available on indigenous and minority peoples with regard to transitional justice has also failed to consider a gender perspective and focused mainly on the use of traditional justice in Africa.

I realised that an analysis of the Sepur Zarco trial, the first time that sexual and domestic slavery was to be prosecuted in the national court of the country in which the crimes took place, could help to shed some light on these questions. The survivors, fifteen Mayan Q'eqchi women from Sepur Zarco and the surrounding communities of the Polochic Valley, had formed a legal association, the *Jalok U* Collective, Change of Face in Q'eqchi, in order to be able to participate in the legal proceedings, with the support of the organisations that constituted the Alianza Rompiendo el Silencio e Impunidad, the Breaking the Silence and Impunity Alliance, hereafter known as the Alianza. However, they faced a number of difficulties, some of which have been detailed above regarding politico-legal challenges, but also inequalities based on geographical, cultural, linguistic, socioeconomic, and gendered hierarchical structures, a reality that the signing of the Peace Agreement in 1996 has failed to undo. They have also faced risks to their security, re-victimisation, and discrimination as Mayan women in a country in which racism and misogyny are all too common.

Nevertheless, seeking legal justice in the formal Guatemalan legal system was clearly important to the women survivors and to the organisations accompanying them. I recognised that the reasons for seeking justice, the objectives of the women and of the organisations, which did not always align, arose from specific gendered, socio-political, historical, and cultural realities that could not be

assumed by a white European feminist. Thus, the research project specifically examines the justice claims of the women survivors of Sepur Zarco and their protagonism, and seeks to understand the nature of the harms done to them from an intersectional and de-colonial perspective. In addition, it investigates the strategies used by the Alianza and the women survivors in overcoming the numerous obstacles that they faced, the extent to which they can achieve their objectives, and the roles and work of each of the three organisations in the legal process, in the wider struggle for truth, and in seeking accountability for violence against women. It also seeks to uncover the meanings and purposes of seeking legal justice in a Guatemalan court.

The following section introduces the Alianza and briefly provides an outline of the three organisations and their roles and involvement in the process. An account is then provided of the proposed methodology and how I have proceeded with data collection, followed by an ethnographic description of the area surrounding Sepur Zarco, the community itself, and the neighbouring communities. The report then looks at some of the themes that have emerged from an initial analysis and ends with a brief discussion of the future direction of the research.

### **The Alianza and its Role in Breaking the Silence**

In the early 2000s, feminist and human rights organisations began working to break the silence that surrounded wartime sexual violence committed against women in Guatemala. In this regard, an alliance was formed between the community psychology organisation Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP), which worked with both male and female survivors of grave human rights abuses, and the Guatemalan feminist organisation Unión Nacional de Mujeres Guatemaltecas (UNAMG), alongside individual feminists. The alliance was called the Consorcio ‘de víctimas de violencia sexual a actores de cambio: la lucha de las mujeres por la justicia’, the ‘from victims of sexual violence to agents of change: women’s struggle for justice’ consortium. The work of breaking the silence meant identifying women survivors of wartime sexual violence, investigating and documenting this violence, and providing survivors with the support to be able to speak about their experiences. It also meant creating supportive spaces in which women survivors could meet one another, learn about their rights, and receive psychological support, in order to facilitate their healing and to ‘change from the condition of victims to social subjects in search of justice’ (Alvarado Chavez, 2017: 7).

This work was undertaken between 2003 and 2008 and led to the publication of a book in 2009. The book, *Tejidos que Lleva el Alma*, Weavings that Bear the Soul, was the result of investigations into wartime sexual violence committed against Mayan women from four different linguistic groups in three areas of the country. The investigations, and subsequent publication of the book, were intended

to contribute to the construction of the collective historical memory of Mayan women in Guatemala, in order to facilitate 'individual and collective self-affirmation and to construct ourselves as subjects of our own history, as women' and to 'break the silence and make the personal political, as a path towards gender justice' (Fulchiron et al., 2009: 6-7).

Although the Consorcio was dissolved in 2008, ECAP and UNAMG continued working with the group of around one hundred Mayan women survivors in the three regions. In 2009, they formed a new alliance with a feminist lawyers' organisation, MTM, which was called the Alianza Rompiendo el Silencio e Impunidad, the Breaking the Silence and Impunity Alliance, in order to organise a symbolic tribunal (Mendia Azkue & Guzmán Orellana, 2012: 13). The Tribunal of Conscience, held in Guatemala City in March of 2010, was organised with the objectives of giving women survivors a space in which to tell their truths, of breaking the silence about wartime sexual violence in Guatemala, and of demonstrating that it was possible to prosecute this violence, among others (Mendia Azkue & Guzmán Orellana, 2012: 16-18). Women survivors from several different parts of the country gave their testimonies before four Judges of Conscience<sup>39</sup>.

The Alianza has since continued working to support the women survivors of Sepur Zarco, who decided to seek justice in the national courts after having participated in the Tribunal of Conscience. During the legal process and the preparation for the trial, each organisation assumed different responsibilities, according to their specialisms in psychological support, women's rights, campaigning, and Guatemalan law. This was further defined and formalised after the Alianza adopted the strategic litigation approach in 2012. I will discuss this in more detail below.

### **Research Methodology**

The research methodology is informed by the work of Pascha Bueno-Hansen (2015), who uses a decolonial intersectional analytical approach to examine transitional justice mechanisms in Peru, looking, in particular, at the Peruvian Truth and Reconciliation Commission and the work of feminist and human rights organisations with Quechua-speaking *campesinas*.

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<sup>39</sup> The judges were four women who were also survivors of sexual violence or who were deeply committed to the struggle against sexual violence. They were: Juana Méndez, a Guatemalan Mayan woman who was the first survivor of sexual violence to successfully prosecute a member of the Guatemalan state security forces for raping her while in police custody; Gladys Canales, a Peruvian woman who was unjustly detained for eight years during the Fujimori regime and who is now president of the Coordinadora Nacional de Mujeres Afectadas por el Conflicto Armado Interno (CONAMUACAI), the National Coordinator of Women Affected by the Internal Armed Conflict; Teddy Amin, a Ugandan woman from the north of the country who works to obtain justice and reparations for women affected by the armed conflict there; and Shihoko Niikawa, a Japanese woman who took part in the First Tribunal of Conscience against gendered violence held in Tokyo in 2000 (see Mendia Azkue & Guzmán Orellana, 2012: 18).

The research uses a de-colonial and intersectional analysis to consider how interlocking forms of oppression interact with, shape, and constrain the women survivors' participation in the struggle for truth and justice, as well as the manner in which they influence their justice claims, which arise within specific social, cultural, and gendered realities. The analysis considers a number of factors, including ethnicity, language, culture, gender, age, geography, and social class, and examines how these factors have both compounded the effects of the internal armed conflict and the legacy of colonialism and caused specific harms to the Mayan Q'eqchi women who are seeking justice. De-colonial feminist analysis is used to understand the roots of the violence and the ways that colonial relations of exploitation and domination function and, indeed, persist in the present day (Bueno-Hansen, 2015: 3). Citing Lugones, Bueno-Hansen (2010: 3) explains that 'de-colonial feminisms aim toward full recognition of all by overcoming the "complex interaction of economic, racializing and gendering systems"'.

The combination of an intersectional analysis with de-colonial feminisms facilitates a greater understanding of the Guatemalan context. The research, therefore, aims to historically situate the multiple forms of gendered and racialized violence, the reasoning that sustains it, and the difficulties of seeking to redress this violence, all of which are related to the legacy of colonialism in Guatemala. The research aims to critically assess the local practices of transitional justice mechanisms and their impacts at the community level, since the practices and theories of transitional justice evolve in relation to the contexts in which they take form (see Balasco, 2013: 205).

In practice, incorporating de-colonial feminism and an intersectional perspective in the research has meant that, during data collection and its analysis, I have sought to pay close attention to the specific context and the factors that influence the actions and discourses of the different actors, both within the legal process and the wider struggle for justice. For example, it is important to consider the interacting influence of the gender, age, and indigeneity of the women survivors, their identities as mothers and grandmothers, and wider cultural understandings of older indigenous women. The women are now mostly in their sixties and seventies and both they and the organisations working with them often express the fact that they may not live much longer; this is partly due to contextual factors in Guatemala, such as lower levels of life expectancy in indigenous communities and general perceptions of age and vitality. People in their sixties and seventies are perceived as older and more fragile in Guatemala than those of a similar age in the UK. Specific contextual factors also come to bear on these perceptions, in particular the women's health problems and the fact that one of the group tragically passed away a few years before the trial was held, although her video-taped testimony was presented in court.



Paying close attention to these factors helps to frame the discourses and the actions of the women and the organisations. The women have spoken about justice as a legacy to pass down to their children and grandchildren and that they are seeking it so that they will never have to suffer that same violence. They also state that, although they themselves will not stand to benefit from the collective reparation measures, since it will take a long time to achieve them, at least their children and grandchildren will. They have, however, affirmed that they want to see collective reparations being fulfilled within their lifetimes. Furthermore, during the legal process, the organisations began to refer to the women survivors as '*las abuelas de Sepur Zarco*', the grandmothers of Sepur Zarco, a title that confers respect, since indigenous elders are figures of esteem and older women are not sexualised.

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Data collection techniques include primary document analysis, archival research, interviewing, and participant observation during workshops, meetings, and other activities with the women survivors routinely organised by the organisations UNAMG, ECAP, and MTM. It follows that the research uses a participatory and iterative approach, in which the earlier stages of research inform the later stages. The preliminary stages of the fieldwork included observing the Sepur Zarco trial, the reparations hearing, and the press conferences organised by the Alianza, and reading the publications produced by ECAP and UNAMG that resulted from their investigations, along with articles about the trial published in the Guatemalan press and alternative media. I also met with staff of the three organisations of the Alianza to discuss the proposed research in more detail.

On my return to Guatemala in October 2016, I began reading documents from the trial, such as the sentencing report, expert witness reports, the transcripts of the women's testimonies, and conducting participant observation of the activities and meetings held with the women survivors, some of which had been organised by the Alianza as a whole and others specifically organised by one of the organisations. I have thus been planning the participant observation in conjunction with the organisations and survivors. I have been working mostly with UNAMG and have observed a number of activities and meetings that they have held with the women survivors, along with other activities that they have organised in order to offer context. I have also observed the appeals hearings<sup>40</sup> and several intermediate stage hearings of another case of grave human rights abuses committed during the conflict, which includes sexual violence and forced disappearance<sup>41</sup>.

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<sup>40</sup> In addition to the writ of *amparo*, which remains pending resolution, three appeals were presented to the High-Risk Appeals Court by the defence lawyers of the two military officials. These appeals were unanimously rejected in a hearing on the 19<sup>th</sup> July and the Court upheld the Sepur Zarco judgement. There is not the scope to comment on the hearings in detail here. See Burt and Estrada (2017b) for a discussion on the 19<sup>th</sup> July hearing.

<sup>41</sup> The Molina Theisson case prosecuted the forced disappearance of fourteen-year-old Marco Antonio Molina

I have also gathered radio, press, and television interviews with the staff of the organisations and the women survivors, as well as alternative media articles about the trial, or relating to the case, and some short films and photographs. This material will be used to supplement the analysis, since it has been produced in a specific context for certain reasons.

Reading the documents, conducting participant observation, and attending the hearings have all helped me to identify potential interviewees and to plan interview questions. To date, I have carried out more than thirty interviews with the staff members of the supporting organisations, UNAMG, ECAP, and MTM, and with the women survivors, the public prosecutor, one of the lawyers, the interpreter, and an anthropologist who produced one of the expert witness reports. I have also, where appropriate, interviewed the staff of other supportive human rights and victim organisations, such as the Coordinadora Nacional de Viudas de Guatemala (CONAVIGUA), the Guatemalan National Widows Organisation, the Centro para la Acción Legal en Derechos Humanos (CALDH), the Centre for Human Rights Legal Action, the Fundación de Antropología Forense de Guatemala (FAFG), the Guatemalan Foundation of Forensic Anthropology, and with staff of the Maya Programme of the UN High Commission on Human Rights. I have also made three visits to Sepur Zarco and neighbouring communities in which the women live, observing activities and conducting interviews there.

Observing activities and conducting interviews with the women survivors has required that I travel long distances, since I am based in Guatemala City, where the organisations are located. This has been a challenge, but it has also provided an insight into some of the difficulties faced by the women survivors in seeking justice and by the organisations in supporting the struggle of the women, since both the survivors and the staff of the organisations frequently make the same long and tiring journey. Organising interviews and conducting the research in a participatory manner has also presented a challenge at times, mainly because the staff of the organisations, although enthusiastic about and supportive of the research, are incredibly busy. This has meant that I have had to be highly flexible, since interviews and meetings have often had to be rescheduled at the last minute or started much later than planned.

With this in mind, the next two sections look at the communities and the region in which they are located. Both sections provide historical and socio-political descriptions of the region in order to better situate the justice claims and the difficulties that have been faced in resolving them.

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Theisson and the rape and torture of his sister while in detention in a military base.

### ***Territorio Cuerpo-Tierra, or Body-Land Territory, and the Continuum of Violence in the Polochic Valley***

During the Sepur Zarco trial, one of the expert witnesses described how war leaves its mark on the land, a mark that can still be traced over thirty years later. The witness, Elis Gabriela Mendoza Mejia, a forensic architect, described the process of mapping scorched earth and military occupation with satellite imagery and scanning equipment<sup>42</sup>. She also described the importance of the memories of community members in detailing the structure of the military detachment and its interior<sup>43</sup>.

Invasion, colonisation, and the concentration of land ownership also leave a clear mark on the land and the lives and bodies of those subjected to it. The link between colonisation, the struggle to hold on to and claim land, and the violence unleashed upon communities was continually made throughout the Sepur Zarco trial by expert witnesses and revealed in some of the women's testimonies. The Nahua had named the region Tezulutlán, Land of War, in recognition of the fierce resistance of the Q'eqchi to Spanish colonisation; the Spanish later renamed the land Vera Paz, True Peace, after pacifying the region through the missionary work of Fray Bartolome de las Casas (Wilson, 1995).

The concept of *territorio cuerpo-tierra*<sup>44</sup>, or body-land territory, is often used by the organisations, in particular UNAMG, to refer to the symbolic linkage between territories and bodies, above all the intimate connection that exists between the invasion, colonisation, and dispossession of territories and female bodies. To understand the justice claims of the women of Sepur Zarco, the multiple forms of violence they suffered and what justice means for them, it is important to socially, historically, geographically, and culturally situate their struggle for an accountability for, and the recognition of, the harms done to them, their families, and their communities, and for redress of those harms.

I contend that justice claims are culturally and contextually located, and viewed through the lens of the present. If transitional justice is to take seriously the issue of survivors' interests and needs, it must consider local realities, experiences, and knowledges. To illustrate, the following section provides a socio-political and historical description of the journey through the Polochic Valley, where the communities of the women survivors are located, to the community of Sepur Zarco. After this, a brief description and history of Sepur Zarco is provided.

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<sup>42</sup> Used to identify areas where vegetation had regrown following deforestation.

<sup>43</sup> From trial notes and Sentencia C-01076-2012-00021 (2016: 146-150).

<sup>44</sup> According to the indigenous Guatemalan community feminist Lorena Cabnal (2015), the concept comes from the slogan 'our body-land territory is not for sale, but is to be reclaimed and defended'. The slogan emerged in the context of the community struggle to defend the Xalapan Mountains against the claims of a mining corporation, alongside the broader struggle against mining and sexual violence. It later became a political category adopted by Guatemalan community feminism to refer to the symbolic linkage between women's bodies and land (Cabnal, 2015).

## The Journey to Sepur

The journey from Guatemala City to Sepur Zarco reveals a landscape that is deeply inscribed with the historical and contemporary processes that have marked the communities in which the women survivors live. The landscape is dominated by plantations and a nickel mine, interspersed here and there with small communities. It is a journey that I have made twice now, and the staff of the organisations and the women survivors countless times, when travelling to and from workshops and forums. From Rio Dulce to El Estor, where a number of workshops and a public forum have been held with the women survivors, is a journey of about an hour and a half, through which the potholed and partially-paved road passes plantation after plantation. A green feathered sea of African palm stretches to the horizon, scattered with sugar and banana plantations, cattle ranches, and small patches of land that home the clusters of characteristic wooden or bamboo thatched palm huts that make up the communities here. In this area, part of the fertile and mineral-rich Polochic Valley, there is a cyclical pattern of land concentration in the hands of wealthy families and corporations<sup>45</sup>, the simultaneous dispossession of Q'eqchi agricultural communities amidst their struggles to hold onto the land, followed by a series of violent evictions and efforts to reclaim the land lost:

‘That’s where the eviction took place’, Katalina told us, pointing to the police patrol car parked on a side road to the right that leads into a vast area of grassland, part of it planted with African palm trees, still shrub-sized. ‘The police have been there since then’. I was travelling with UNAMG staff to a workshop with the women survivors. The eviction had taken place about three weeks earlier<sup>46</sup>. Katalina was passing by that day and had called the UNAMG office to let them know. I remembered the palpable anxiety in the office and the feeling of helplessness at being so distant. Andrea had pointed out that the police and military, often also involved in evictions, could be very violent to the families being evicted and, on occasion, had physically and sexually assaulted some of the women.

Even the road bears the marks of recent history. A large percentage of the traffic on the partially-paved road to El Estor is made up of heavy vehicles, heading to and from the Compañía Guatemalteca de Níquel, the Guatemalan Nickel Company (CGN), now owned by the Solway Investment Group (see Russell, 2017: 4)<sup>47</sup>. The damage that they have done to the road is clearly visible, worst of all on the

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<sup>45</sup> Since 2005, there has been a process of ‘re-concentration’ among the already huge landholdings; since 2013, most of the agricultural land has been owned by two companies: the Chabil Utzaj, currently owned by the Sugar, Energy and Rum Corporation (SER); and the palm oil company, NaturAceite (Hurtado Paz y Paz, 2014: xxi).

<sup>46</sup> The eviction took place on the 25<sup>th</sup> October. Eighty-eight families were evicted from the plantation (Prensa Latina, 2016).

<sup>47</sup> CGN was owned by Skye Resources between 2004 and 2008, then Hudbay Minerals between 2008 and 2011. Hudbay bought Skye in 2008, including all of its assets and liabilities. In 2011, Hudbay sold CGN to the Solway

sections that are not paved. The presence and influence of the mine is palpable and extends beyond the land that they own. At the start of one of the paved sections a sign reads in Spanish, 'Work Conducted by CGN', indicating that the paving of the road was funded by the company<sup>48</sup>. Some distance on, another sign by the roadside reads in Q'eqchi and Spanish: 'If we women have the land, our families will have food, health, and life. FGT' (Fundación Guillermo Toriello)<sup>49</sup>.

From El Estor to Sepur Zarco, a journey of three to four hours, the landscape is similarly dominated by plantations, described locally as *monocultivos* or monocultures, and the CGN. The processing plant of the mining company lies a short distance from El Estor. The smoke from the towers can be seen from the municipal centre of the small town. The CGN, or rather Hudbay Minerals, the company that formerly owned it, is being sued in the Canadian courts by a group of Mayan Q'eqchi women who were raped during the violent eviction of their community in 2007 by a combined force of police, military, and private security (Russell, 2017). The women, along with the widow of Adolfo Ich, who was killed by security guards during an attack on his community in 2009, and German Chub, who was shot by the head of security in the same attack and left paralysed, decided to pursue justice in the court of the country in which Hudbay Minerals is based (Russell, 2017). The women's testimonies formed part of the 2010 Tribunal of Conscience. Their testimonies were included in the Tribunal to illustrate what the Alianza have described as the continuum of violence against women and girls<sup>50</sup>.

A short distance from the processing plant is a collection of palm-thatched wooden and bamboo huts, on land that I have been informed belongs to the mining company. Beyond them, the landscape is made up of palm plantations, cattle ranches, and small communities until one arrives at the small town of Panzos. The town was the site of a 1978 massacre, in which fifty-three Q'eqchi *campesinos* were killed, according to CEH investigations (Sanford, 2003: 85)<sup>51</sup>. The massacre, committed by the

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Investment Group, a private international mining and metals group located in Switzerland (Russell, 2017: 4; Solway Investment Group, 2016a). The mine started to function in August of 2014 (Solway Investment Group, 2016b).

<sup>48</sup> On the Solway Investment Group website, the company boasts that it invests in the development of social infrastructure in its areas of operation in Guatemala, by 'repairing municipal roadways... constructing a multipurpose community centre... [making] donations to local schools and pharmacies, supporting sports programs, and sponsoring training programs for local midwives and farmers'. This has not prevented numerous protests about the presence of the company. Protests intensified in the area in May of this year, after it was discovered that Lake Izabal, which lies just below the CGN processing plant, had been polluted so badly that the fish were dying, putting the livelihoods of local fishermen at risk. The source of the pollution is not currently known, but local residents suspect the mining company (Stewart, 2017).

<sup>49</sup> The Fundación Guillermo Toriello is an organisation that promotes community development, citizen participation, access to land, and women's rights. They organised an event in El Estor for the International Day Against Violence Against Women, at which the women survivors of Sepur Zarco spoke.

<sup>50</sup> This is another concept that is frequently employed by the organisations of the Alianza and is revealed in the words and actions of the women survivors of Sepur Zarco. It is one that I will discuss in more detail below.

<sup>51</sup> The number is contested and it has been thought that over 100 may have been killed (Sanford, 2003: 88).

Guatemalan military on the 29<sup>th</sup> May 1978, marked the onset of the most violent years of the war, considered as between 1978 and 1984, when the UN-led Truth Commission concluded that ‘acts of genocide’ had been committed. According to local testimonies and the UN Truth Commission’s investigations, the Panzos massacre was the response of land owners and the military<sup>52</sup> to indigenous *campesino* organising so as to claim land<sup>53</sup>.

Just after leaving Panzos, the infamous Chabil Utzaj sugar refinery can be seen. In 2011, over the course of three days, violent evictions were carried out by police, soldiers, and private security, in order to forcibly remove 732 Q’eqchi families from twelve communities (OACNUDH, 2013: iii). One of the *campesinos* was killed and a number of others were injured during the evictions (OACNUDH, 2013: 19-22). The sugar refinery, however, no longer operates, since it went bankrupt.

Before reaching the next small town of Teleman, the plantation area of Chabil Utzaj can be seen, planted with sugar cane. The Chabil Utzaj plantation area includes the *finca* Tinajas. During the war, a military detachment was stationed there, which operated at the same time as the Sepur Zarco detachment. During the trial, a number of the women survivors testified, through pre-recorded video tapes, that their husbands had been taken there and tortured. None of them came back. Other witnesses for the prosecution testified that men captured by the military were taken to the Tinajas detachment and tortured. In 2012, an exhumation, ordered by the Public Prosecutor’s office, found the human remains of fifty-one victims, mostly men. They were, however, only able to identify two of the men, one of whom was the husband of one of the women survivors. Due to the heavy use of pesticides on the sugar plantation, the DNA of the bodies had deteriorated, making it difficult to match it to the local relatives of those disappeared. Nevertheless, the human remains were presented in court as evidence to demonstrate the use of extreme violence by the military.

On leaving Teleman, another part of the Chabil Utzaj plantation can be seen, this area planted with maize. It appears that the people there have managed to hold onto their land. The road from Teleman

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<sup>52</sup> It should be noted that, due to the forced recruitment of young Guatemalan men, the military included a large number of indigenous soldiers, including the Q’eqchi. There were Q’eqchi soldiers among those known to have committed atrocities in the Alta and Baja Verapaces and Izabal. The military sought to erase indigenous identity, rather than pitting one group against another, so indigenous soldiers began to identify primarily as soldiers, internalising racist stereotypes about indigenous people and behaving in brutal and discriminatory ways against other indigenous people, even those from the same Mayan ethnic groups (Vela Castañeda, 2016: 234).

<sup>53</sup> According to the CEH (cited in Paredes, 2006: 19), plantation owners had requested the presence of the military in May of 1978. The testimonies of those who survived the massacre tell that rumours began to circulate to get the *campesinos* to come to town: firstly, that there would be a *fiesta* on the 28<sup>th</sup> and 29<sup>th</sup> May; and secondly, that the mayor had the response of the Instituto Nacional de Transformación Agraria (the State Land Authority, INTA), to applications for land made by local land committees (Paredes, 2006: 21-3). For the CEH (cited in Paredes, 2006: 23), it was a case that illustrated the influence that landowners held on the Guatemalan State to resolve land conflicts in their favour, by getting the military to intervene.

to Sepur is also flanked by palm plantations for most of the hour and a half drive, again interspersed with small communities. Many of these plantations are owned by NaturAceite, including the Palestina plantation that was occupied by a *campesino* group on the 20<sup>th</sup> February of this year (Herrera, 2017). On the opposite side lies a community affiliated with the Turcios Lima Foundation, a *campesino* organisation named after the guerrilla leader of the same name. On my first visit to Sepur, I was told that its community members work on the plantation. It is clear that the palm oil company supports the community. The sign, which carries the name of the community and that of the Turcios Lima Foundation, also bears the logo and lettering of NaturAceite, as does the primary school. Eventually, the plantations give way to a series of small Q'eqchi communities, each with the characteristic wooden or bamboo housing and maize fields.

### **Sepur and the Surrounding Communities**

Sepur Zarco and the surrounding communities were established in the 1950s by Q'eqchi families fleeing from the terrible living conditions and extreme exploitation they had suffered on coffee plantations in the municipalities of San Pedro Carcha, Cobán, and Senahu (Hurtado Paz y Paz, 2014: 78). After the Agrarian Reform Law was passed in 1952 by the government of Jacobo Arbenz, which permitted the expropriation of uncultivated land from large estates and its redistribution to landless peasants, land committees were formed in the Polochic Valley and other parts of the municipality of Panzos (Paredes, 2006: 14)<sup>54</sup>. Indigenous communities in Panzos were granted 2,300 hectares of land; however, following the 1954 US-sponsored coup, the land was returned to the previous owners (Paredes, 2006: 14).

Nevertheless, the migrations of Q'eqchi families continued and intensified through the 1960s and 1970s, repeating the historic Q'eqchi strategy by which they sought refuge in the lowland areas. The families looked to identify land on which to plant maize and live autonomously, settling on that which they considered to be 'free' or 'without an owner', since it was forested land and thus not cultivated (Paredes, 2006: 14)<sup>55</sup>.

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<sup>54</sup> The law sought to end 'feudal property in the countryside' and develop capitalist methods of production (Article 1 of the Ley de la Reforma Agraria 1952, cited in Paredes, 2006: 12).

<sup>55</sup> In Q'eqchi culture, the act of clearing an area of land that was not being cultivated grants rights to cultivate the plot (Wilson, 1991: 42-3). However, the plot on which they settled had been registered in 1904 under the name of Luis G. Schlesinger, following an anomalous and potentially fraudulent process, according to the sociologist Laura Hurtado Paz y Paz (2014: 73-7). From the 1870s, a series of liberal governments in Guatemala began to expropriate land held by indigenous communities and the Catholic Church. Most of this land passed into the hands of foreign companies and German and Swiss settlers, particularly in the Alta and Baja Verapaz area (Hurtado Paz y Paz, 2014: 12-3; 25).

In the 1970s, Q'eqchi *campesinos* began applying for the legal titles of the land on which they were living (Hurtado Paz y Paz, 2014: 80). In 1972, the Instituto Nacional de Transformación Agraria, the National Institute of Agrarian Transformation, INTA, declared the area a colonisation zone and began to measure the land, opening up files for the communities seeking the legalisation of the land on which they had settled. This raised the *campesinos'* expectations that they would be able to legalise their land (Hurtado Paz y Paz, 2014: 84). It also seemed to confirm their belief that the land on which they had begun to cultivate had no previous rightful owner.

In 1978, *campesinos* from the whole region began to take possession of the land, while at the same time applying to legalise it (Hurtado Paz y Paz, 2014: 84). Tensions in the area increased after the aforementioned Panzos massacre on the 29<sup>th</sup> May 1978. Nevertheless, the *campesinos* increased both their efforts to legalise the land they had settled on as well as tree felling on that land so as to plant maize. Plantation owners, those with legal titles to the land or those who were occupying it in order to then acquire it, began to distrust the *campesinos*, some of whom were their own workers (Hurtado Paz y Paz, 2014: 80-1). Later that same year, plantation owners called upon the military to put a stop to the *campesino* land movement. Representatives and leaders of the communities were selectively detained by the national police and the military and were taken to military bases (Hurtado Paz y Paz, 2014: 81-2). In 1981, the military began to visit the plantations in order to monitor the situation; in 1982, they established a number of military detachments in the zone, including in Sepur Zarco and Tinajas, and commenced a campaign of massive and open repression against the inhabitants (Hurtado Paz y Paz, 2014: 83; Caxaj Álvarez, 2017: 12).

In that same year, 1982, men who were part of the land committees of the Sepur Zarco community and several other nearby Q'eqchi communities were detained and tortured by the military. Many of the men were then disappeared, including the husbands of the group of fifteen women survivors. The military also raped the women, burnt their homes and crops, and killed their livestock. Some of the women, alongside other community members, fled into the mountains with their children. They spent many years trying to survive there, fleeing from the continued persecution of the military. Due to the extreme conditions, most lost some of their young children.

However, many of the women were unable to flee. The military forced them to move near to the Sepur Zarco detachment, built in August of 1982 with the forced labour of local men. For six months, the women were forced to take turns in going to the Sepur Zarco detachment, make food for the soldiers, and wash their clothes in a nearby river. While working on and around the base, the women were systematically raped by the soldiers. Some were given contraceptive injections by army medics working at the detachment so as to prevent them from becoming pregnant. Although fifteen women



later made the legal complaint, it is thought that up to sixty women may have been victimised in this way (Rivera, 2016). The military detachment operated until 1988, at which time the local women were still forced to make tortillas for the soldiers using their own maize. Some of the rapes also continued up to this point. The Sepur Zarco trial, however, focused on the period between 1982 and 1983, since it prosecuted the former Base Commander in charge during this time, along with a former National Police Officer and Military Commissioner who had helped the military to identify many of the disappeared men.

The militarisation of the communities has had a lasting impact, since local men were also forced to patrol with the military as civil defence patrollers. This has caused profound damage to the social fabric and presented potential security problems for the group of women survivors. Today, Sepur Zarco is a community that seems to have been abandoned by the Guatemalan State. Until recently, in fact, many communities surrounding Sepur Zarco were literally not included on local authority maps. Most of the communities are situated on land registered as part of a privately-owned plantation, rather than under the names of community members or the community as a whole. This includes the community of Sepur Zarco, which complicates the construction of public buildings and the provision of services. The State is reluctant to fund the construction of public works without security of land tenure and, as such, the communities do not have electricity or adequate water provision.

Nevertheless, Sepur does have a primary school, a Catholic Church, and at least one Evangelical Church. La Esperanza and Pombaac, small communities situated close to Sepur, and where some of the women survivors live, also have primary schools. There is a middle-school building in Sepur Zarco but it is now closed, due to its state of disrepair and the failure of the government to provide funds. This means that few of the children study beyond primary school, as the transport and tuition costs to study in the nearest town are beyond the meagre incomes their families attain. Most of the families are dependent on subsistence farming and produce maize, beans, and rice. They sell the surplus to middle men, who arrive in trucks to transport it to market in Cobán, about two hours' drive away. Although they are surrounded by plantations, there is little work available. Cattle ranching requires very little labour, as does African palm production, except at harvest time.

Until recently, the schools were the only physical manifestation of the Guatemalan State. In February of this year, however, as part of the collective reparations ordered by the court, a mobile health clinic was brought to Sepur Zarco. The mobile clinic is an interim measure, since the Ministry of Health will not authorise the building of a permanent health centre, as ordered by the court, because the land does not belong to the community of Sepur Zarco. Before the arrival of the mobile clinic, access to basic health care was extremely limited. The nearest health centre was an hour and a half drive, on a

road that can become in-transitable in rainy season because it is not paved and with the only transport being by pickup truck taxi service in the morning. Most of the inhabitants of Sepur Zarco and the surrounding communities could not afford the Q30, approximately £3, return fare to the nearest health centre in Teleman, let alone the medicine they would need to buy.

According to the initial results of a survey conducted by researchers contracted by MTM, the forty-four communities that surround Sepur Zarco suffer similar conditions. At least a third of the families that live in neighbouring communities have had one family member disappeared; in Sepur Zarco this number rises to two thirds.

The community of Sepur and the nearby communities in which the women live – La Esperanza, Pombaac, and San Marcos – each have their own communal authorities, *Consejos Comunitarios de Desarrollo* or Community Development Councils (COCODEs), which are mostly made up of local men. There are also local representatives of a regional victim's organisation, the *Asociación de Víctimas, Viudas, Huérfanos y Desarraigados del Conflicto Armado Interno de la Sierra de las Minas* or Association of Victims, Widows, Orphans, and People Displaced by the Internal Armed Conflict in the Sierra de las Minas (AVIHDESMI), and, as part of the reparations process, *mesas comunitarias* or community dialogue tables, modelled on the *mesas de diálogo*, the national dialogue tables, which constituted meetings established after the trial and reparation hearing to help carry out the reparation process in dialogue with the relevant government departments. The purpose of the *mesas comunitarias* is to ensure local involvement in the process.

The following section looks at some of the emerging themes from the initial analysis that has been undertaken. The analysis examines how contextual and cultural factors have influenced ideas about truth-telling, justice, and protagonism.

### **Emerging Themes from Participant Observation, Document Analysis and Interviews**

In this section I will focus on some of the emerging themes from the initial analysis of the data gathered. In the participant observation process and in the interviews that I have conducted with the women survivors thus far, all of the women have stressed the importance of giving their testimony in court and several of the women have spoken about their hope that other women survivors of wartime sexual violence would come forward as a result. For this reason, the themes discussed below centre on the importance of truth-telling, the legal process, and protagonism for the women survivors.

### Truth-telling, Justice and the Legal Process

Xb,aan naq xraqe' li q'oq yiin, Anaqwank tiklaak chaq re li xsaqenil li yaal ut li tuqtqukilal.

Porque la noche se acabó, ahora empieza la luz de la justicia y la verdad.

Because the night has ended, now the light of justice and truth is beginning.

- Slogan created by victims and survivors of the political violence in the Sierra de las Minas and the Polochic Valley, who form part of AVIHDESMI (cited in Paredes, 2006: xxxiii).

One of the themes that emerges from the first interviews conducted with a number of the women survivors, from document analysis, and from the observation of activities organised by the different organisations of the Alianza is the importance that giving their testimony before the court holds for the women survivors, the importance of being listened to and having their truths recognised by the judges and those others present during the trial. Initial analysis of the interviews conducted with the women survivors and with one of the witnesses suggests that one of the meanings that the women attribute to justice is their ability to give testimony in a courtroom, to be listened to, and to have their truths validated and reconfirmed by the judges. The following extract, from an interview conducted with a woman survivor who did not form part of the group of fifteen but who gave her testimony as a witness during the trial, demonstrates this last:

(J): I wanted to ask you, how did you become part of the process of searching for justice?

(M): We began our group when women's group came here to see us, to see how we are, a woman who was also a widow, who also suffered in the war, part of CONAVIGUA. So, she asked how we were. I said, 'are we really going to stay as we are, with the pain, can we not search for justice?' That's what I said to myself, because we are widows, they killed my husband. There are more women, we got together, we met together there, and then CONAVIGUA began to guide us. I said, 'yes, we can search for justice, we are not going to keep quiet, we are not going to stay silent, neither am I going to die with the pain. I would like to see justice'. That's what I said. Why did I leave the women's group? I became ill. The other women invited me to the meetings but I didn't go. That's why I'm not part of the women's group here, because I got sick, I couldn't go anymore, but thanks to God I'm still alive and I'm still here struggling. That's why, when they invited me, when I went to give my testimony, I said, 'I can do it, I can still speak, I'm going to tell my story, because even if this is the only thing I do, I can die'. Because sadly we suffered, economically we suffered, we suffered because I realise that when my husband died, they took him, they killed him, they tortured

him, so I had no-one to help me. I was left to take care of my children, to go and cut firewood, to work alone. So, that's what I did<sup>56</sup>.

The women survivors interviewed so far have expressed that they felt that they were listened to. In this respect, telling their story and being listened to is closely linked to justice:

The judges listened to us. Thanks to God our testimonies got there. Now I'm very grateful. Now, with this, I'm happy, now that justice has come<sup>57</sup>.

In particular, the guilty verdict and the jail sentence have shown that they were listened to and believed, while the prison sentence shows that the court recognised the harms that were done to them, the seriousness of those harms, and that they themselves were not to blame:

We felt happiest at the point where the judges said the sentence, because at that point we became conscious of our struggle and I felt more at peace. Because then I heard how many years the guilty ones were sentenced to. Because when they had not yet been sentenced, we were not at peace, but when we heard or when I heard I felt more at peace because they are also paying for what they did to us<sup>58</sup>.

Also, both in the evidentiary hearing in which the women gave testimony and during the trial, the witnesses sat facing the judges and could, therefore, see that they were paying attention to them:

Yes, she listened, because it's the lady [judge]. I could just see her head like this [tilting her head to one side in order to demonstrate], so that means she was listening to me<sup>59</sup>.

The women have also referred to feelings of being supported by the people who attended the trial:

I saw that there was a lot of support for us. I saw a lot of people, fellow women [survivors] and also people from other countries. They were there supporting us. I felt relieved. I felt happy when I shared my testimony<sup>60</sup>.

On the other hand, declaring a trial null and void, as happened in the 2013 genocide trial, had the effect of making the Ixil women survivors who testified feel that they were not listened to or believed:

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<sup>56</sup> Interview conducted with a survivor in Sepur Zarco, 07-04-17.

<sup>57</sup> Interview conducted with a survivor in Sepur Zarco, 07-04-17.

<sup>58</sup> Interview with a woman survivor, cited in Caxaj Álvarez, Valey & Pérez Castellanos (2017: 64).

<sup>59</sup> Interview conducted with a witness in Sepur Zarco, 07-04-17.

<sup>60</sup> Interview conducted with a survivor in Sepur Zarco, 07-04-17.

Me siento muy enojada con el sistema de justicia que no cree en nosotras, está jugando con nuestros sentimientos, pero la ley si cree en los que hicieron el daño... me siento muy enojada con el sistema de justicia<sup>61</sup>.

### **Solidarity, Protagonism and a New Community of Women's Rights Defenders**

Many other Mayan women survivors who were part of the Consorcio, the earlier alliance between ECAP, UNAMG, and individual feminists, attended the trial, along with other Ixil women survivors. This was hugely important for the Q'eqchi women survivors, who have described their struggle for justice as 'opening the way' for other women to denounce the violence that was committed against them and to seek justice in the Guatemalan courts. Mayan women survivors who were part of the Consorcio and the Ixil women survivors have met at gatherings yearly or twice-yearly and have formed a new community in which they show solidarity and support one another. After giving their testimonies in the evidentiary hearing in 2012, the Q'eqchi women survivors attended the genocide trial in 2013, in which Ixil women testified about the sexual violence to which they were subjected (Caxaj Álvarez, Valey & Pérez Castellanos, 2017: 39). Afterwards, the Alianza and the organisations involved in the Ixil genocide case organised a gathering in which the Q'eqchi and Ixil women survivors were able to share their experiences of testifying. Furthermore, the Q'eqchi women were able to motivate the Ixil women to continue their struggle<sup>62</sup>.

It is important to be aware that protagonism takes different forms and develops in particular contexts. In this case, attending a trial in solidarity with other women survivors is a form of protagonism in demonstrating support, something that other survivors and community members can do. The legal process constrains who is able to be recognised as a victim and, thus, to make demands of the State. However, many other women, men, and their adult children from neighbouring communities have expressed that they too were victimised and suffered during the war, albeit in different ways to the women survivors of Sepur Zarco. This is a theme that I will develop below.

The presence of people from other countries was also important for the witnesses and the fourteen women survivors who had formed the Jalok U Collective, the legal association formed to enable victim participation as a civil party to the case:

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<sup>61</sup> I feel very angry with the justice system, as it does not believe in us, it is playing with our feelings. But the law does believe in those that carried out the damage... I feel very angry with the justice system - Quote from an Ixil woman in a group discussion organised by the Centro por Acción Legal en Derechos Humanos (the Centre for Human Rights Legal Action, CALDH): discussion circle seven, with women survivors of the genocide (cited in Pérez Sian, 2015: 45).

<sup>62</sup> Interviews conducted with staff from the organisations, various dates. See also Caxaj Álvarez, Valey & Pérez Castellanos (2017: 39).

Well, I felt happy to see people from other countries there, I felt safer. That's why I wasn't afraid when I went in there. I said, 'I'm not alone', and apart from that I asked God for strength. That's why I think God was with me when I was speaking<sup>63</sup>.

Also, the presence of one or two family members was important, particularly that of the women's children. This was facilitated by the work of ECAP, who had agreed with the women that it was important to involve their families. ECAP began to meet with the women's children, and the children of other witnesses, a year before the trial. Many of the children did not know that their mothers had been raped; it was important for them to know this before the trial and be given the opportunity to receive group counselling, both for their own wellbeing and in order for them to be able to properly support their mothers when the trial was held.

### **Truth-telling and Protagonism**

Truth-telling and giving testimony is an important form of protagonism for the women survivors for several reasons. The spoken word is particularly important in rural Mayan communities. In particular, the word of older members of the communities is deemed to be truthful, since they are community elders who are considered mature, respect-worthy, and 'too old to lie'<sup>64</sup>. Nevertheless, historically, Mayan women have been denied the opportunity to speak in public or to participate in community organisational structures, let alone to be able to do so in a formal space before powerful non-Mayan *ladinos* representing the Guatemalan State. Being permitted to speak in such a space is thus an exceptional opportunity. This space was also used in order to challenge the State to do something about the atrocities committed:

What is the law going to say about everything that happened to us? Is it going to stay as it is? Or will it do justice for all the harm they have done to us? For this reason, I have come here today<sup>65</sup>.

The women survivors also used the space to confront the perpetrators and to respond to accusations made by the defence lawyer of the former base commander that the women had prostituted themselves:

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<sup>63</sup> Interview conducted with witness in Sepur Zarco, 07-04-17.

<sup>64</sup> From observations and interviews conducted.

<sup>65</sup> One of the women witnesses, a survivor of domestic and sexual slavery, spoken to the panel of judges after giving her testimony.

Thank you, honourable judge, I have some words to say. We have come to tell the truth and we have told the truth. We are hearing that the men accused don't want to accept what they have done. I ask them, we ask them: where are our husbands? Today, we still don't know where they are. Why don't they tell us where they are? We have come to say our words before the law, it's not a game. That's why we say the truth, we never came to lie. That's why I'm not afraid to say my words. We are still suffering, but they don't want to give us our rights. We are illiterate women, but we know we have rights! I feel the suffering every day in my body. We here are the ones who have suffered... If we still had our husbands, what would we be doing here?<sup>66</sup>

For women survivors of grave gendered and racialised forms of violence, including sexual violence, being able to speak also represents the long struggle to overcome the immense pain from the memories that come to the surface, to be able to identify, to name, and to express the harm done to them and to their families, and to contest the idea that they could be in any way responsible. The women spoke as mothers whose children were forced to suffer and, in some cases, to die from the conditions in the mountains, as widows who were unable to bury their husbands. In this way, they were deprived of dignified motherhood and of dignified widowhood, of the ability to properly grieve and receive the support traditionally offered to widows, and of the respect they had formerly received as married women, since they were stigmatised as 'the soldiers' women' for working at the military detachment and for the sexual violence they had suffered.

The guilty verdict vindicated the women survivors, who had been stigmatised by members of their community. The arrival of a mobile health clinic is tangible proof of this verdict and provides evidence that the women survivors were seeking collective benefits for their communities, rather than individual benefits for themselves, something perceived negatively in small rural communities.

(J) Have you seen any change in the community since the sentence?

(M) Well, now they don't say anything. Maybe some in the community don't agree with what we did but, for me, well I don't care that they are there because everything we went to say was true. Now, well, they are... it seems there is more respect for us<sup>67</sup>.

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<sup>66</sup> Maya Q'eqchi woman survivor, representative from the Jalok U Collective on the final day of the hearing.

<sup>67</sup> Interview conducted with witness in Sepur Zarco, 07-04-17.

### **Future Direction of Research**

I intend to return to Guatemala after conducting data analysis, in order to receive feedback on my interpretations from the Alianza and the women survivors and to learn from their reflections and comments on my analysis. I also intend to revisit the interviews conducted with the women survivors, which are in Q'eqchi accompanied by a consecutive Spanish interpretation, alongside the interpreter, in order to look more closely at how certain concepts have been translated. If possible, I intend to visit the community of Sepur Zarco once more. The development and impact of the trial and the reparations process on the local communities is particularly interesting, since it reveals both the extent of change, the women's protagonism, and the factors that both facilitate and constrain them, including the involvement of the Alianza, local power dynamics, and the evolving meaning of justice.

If possible, I also intend to hold reflective focus group sessions with the women survivors, which I will organise with them, possibly alongside community leaders and young people. The focus group sessions will use creative methodologies to facilitate discussion and to allow both verbal and nonverbal forms of expression, using drawings, body sculptures, and other creative participatory methods. I have been seeking the advice and support of the organisations in both planning and conducting the focus group sessions, since they have been working with the survivors and their communities for many years and, thus, have expertise in supporting survivors.

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## Chapter Six: Informal Fieldnotes

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### **Editor's Introduction**

*This chapter aims to build an image of the context in which Juliette was conducting her research. It presents her fieldnotes on three separate events to which she was observer. The first describes a forum held in the town of El Estor on the 24<sup>th</sup> November 2016, to commemorate the victims of gender-based violence. It is the only section that contains a brief introduction written by Juliette, in which she details her intentions for recording her perspective of the events. The second illustrates a protest that took place in El Estor the day after the forum, on the 25<sup>th</sup> November 2016, to highlight the myriad interconnecting forms of violence to which Mayan Q'eqchi women have been, and continue to be, subjected. The third details a series of events held over three days between the 24<sup>th</sup> and 26<sup>th</sup> February 2017, to commemorate the sentencing of the Sepur Zarco case. It is by far the most detailed of the three sections and, as such, has been divided into two. Fieldnotes from the 24<sup>th</sup> and 25<sup>th</sup> February are presented in this chapter and describe the long journey from Guatemala City to the town of Sepur Zarco, a mass that Juliette attended on arrival, a meeting between the women and supporting organisations, a short trip to visit the mobile health clinic and, finally, a social event in the community. The final section, from the 26<sup>th</sup> February, has been removed and placed at the end of the following chapter six, as a way to close Juliette's thesis in her own words.*

*Juliette's comments and observations provide us with a more personal connection to what is already a deeply committed research project. As Juliette herself notes, they place her at a unique moment in Guatemala's history and so afford an exclusive glimpse that allows us to contextualise the broader setting within which the events that she was witness to were unfolding. They speak also of questions of reflexivity and offer insights into the practical issues that Juliette faced in conducting her research.*

*Furthermore, and importantly, these sections are highly relevant to understanding the direction that Juliette planned to take her analysis and, as such, provide a bridge between the theoretical chapters that precede and the following chapter that presents her own fieldwork. Although the preceding chapters illustrate the theoretical approach that would have directed this analysis, it is important to include her more informal comments that are presented in these notes, as they provide us with an indication as to how Juliette would have framed the fieldwork data that she collected and situated the voices of the Mayan women survivors and those supporting them within the broader theoretical framework.*

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### **Introduction to Fieldnotes on the El Estor Forum, 24<sup>th</sup> November 2016**

[The fieldwork notes] (describe) what happened during the day as accurately as I can. I take a 'who, what, when, where, why, how' approach and try to stick to facts to create a verbal snapshot of what happened. This includes noting direct quotes and snippets of conversations, text messages, filenames of voice recordings, and the photos I took.

I am aware that all fieldnotes are constructed and what we choose to take notes on are influenced by a range of factors; in this section I try to minimise that. My aim is to keep description separate from the analytical work for as long as possible, while recognising that these snapshots are just that, a glimpse of a point in time from a particular perspective, through a specific lens.

### **Fieldnotes on the El Estor Forum, 24<sup>th</sup> November 2016**

We are in the Coloseo, an open cement hall, with rows of chairs and a corridor through the middle. There is a line of tables at the front, covered in white and purple triangular pieces of cloth. There are two large banners at the front that hang down, with images of Q'eqchi women and slogans in both Spanish and Q'eqchi that speak of violence against women and women's rights. A Mayan Q'eqchi woman, Ana, in traditional dress, who works for the Guillermo Toriello Foundation, is directing activities with the help of some other women and two men. There are more slogans on paper on the walls and on the table. There are also paper flowers, butterflies, and other animals stuck around the room and on the tablecloth. Ana told me that she and her daughter stayed up late the night before to make them. There is also a large paper flower in front of the tables, between them and the first row of chairs.

Around one hundred Mayan Q'eqchi women are sitting in rows on the chairs, many with their children. A smaller number of women are helping to decorate the room. I try to help by putting out some chairs, but am mostly quite useless. Olivia and her daughter are busy helping too, alongside Gabriela from UNAMG. Gabriela is anxious about her bus ticket. Olivia's husband had offered to buy it for her. When the room is set up, we rush back to Olivia's house for a quick lunch, which her sister Maria and her twelve-year-old niece have prepared. They seem to do most of the cooking at the house.

When we get back to the salon, we sit down. Ana and María are leading the women participants in chanting slogans about women's rights and land evictions. Land ownership is a really contested issue here; the Compañía Guatemalteca de Níquel (Guatemalan Nickel Company, CGN), which was owned by Canadian Hudbay Minerals, and the sugar and African palm plantations all seem to periodically expand and encroach on community land. Just two weeks before, two communities were evicted from

a palm plantation by police and soldiers. The evictions were described as violent; the police and military used tear gas and burnt people's homes and possessions. They were, of course, armed.

The forum begins on time, amazingly for me, as I am used to things starting late. The first part is led by a Q'eqchi man. The women from the Sepur Zarco trial go up to the front of the room and form a circle around the giant paper flower, which is encircled by palm leaves and real flowers. Then the rest of the women get up and join the circle. I try to take pictures and end up standing on a chair to try to see better. Candles are lit around the flower. The man leads a brief reflection. It is all in Q'eqchi, with no translation. This is unfortunate for me, but I feel it is better for the women who, in other spaces, are always being translated and waiting for translations. Many of the women bow their heads in prayer. I think that I hear the man mention the names of the communities that were evicted, but I can't be sure.

Once the reflection is over, the women go back to their seats. The women who are organising the forum, Ana, María and some others, begin the event. Ana talks to the women and asks them for a minute of silence, followed by a minute of clapping. The idea is to commemorate women who have been victims of gender-based violence and to applaud their struggle against it. Ana provides an introduction in Spanish, which is translated by another woman into Q'eqchi. She provides the context and a short history about the 25<sup>th</sup> November, the killing of the three Mirabal sisters. She names a number of the communities of the women who are in attendance. She then introduces the first speaker, a ladino woman who works for the Defensoría de la Mujer Indígena (Ombudsman for Indigenous Women, DEMI), created as part of a commitment of the Peace Accords to support indigenous women. She apologises that she does not speak Q'eqchi and says she wishes that she could. Olivia translates. She says that she is a psychologist and works for DEMI. The office is in Puerto Barrios, a two-hour bus ride from El Estor. The speaker says that DEMI has a lawyer and can provide free legal advice to women who are suffering gender-based violence. She says that her message is that we, as women, have to empower ourselves so that there is no more violence. She says her talk will be about why people don't denounce violence against women, the different kinds of violence against women, and how to make a legal complaint.

The speaker asks what violence is. A woman answers in Q'eqchi. Oli translates, but she is standing at the front and translates just loud enough for the speaker to hear. The speaker says yes, that is violence, but violence is more than just killing someone. Miranda from UNAMG says that sexual abuse is also violence. The woman from DEMI proceeds to describe the different types of violence and the institutions to which victims can make a legal complaint.

*There follow some brief notes on the presentations that Juliette has not developed in depth.*

María spoke. She said that she wanted to finish with this, because there was nothing worse than this case of violence. The fact that the women dared to denounce those who caused so much harm, they are an example to us. We can denounce any kind of violence; we have to denounce.

A Q'eqchi woman in a red top spoke afterwards. She sounded angry and upset. The Sepur Zarco women survivors were wiping tears from their eyes as they listened to her. I asked Olivia what she said. Olivia said she felt both happy and sad. She was happy that the women had made a legal complaint and had demanded justice, that they were continuing to denounce justice. She said that her mother had suffered the same, but that she didn't survive. She said that she was sad she was unable to read and write and that this was a cause of the conflict. She said it was the first time she had spoken in public, but that seeing and listening to the Sepur Zarco women had given her the courage and strength to speak out. She said, 'I can't speak well, but I am speaking from the heart. I'm happy, but also weeping'.

María spoke again. She said that they were pleased that the Sepur Zarco women had accepted the invitation to speak. 'It's an honour to have them here. We decided to finish with this. They are the biggest example. They suffered all kinds of violence and the cruellest violence possible. This can't keep happening. They are here, they gave their testimony so that we don't allow it to continue. It was very important to have them here to share their experience. Sadly, it's a cruel and hard reality, but they denounced what happened so that others would not suffer the same. This is why we thank them. Justice was done, but it is not enough. They weren't the only ones responsible, there were others. It hurts to hear, to know this, but it's important to know in order not to repeat it'.

#### **Fieldnotes on the El Estor Protest, 25<sup>th</sup> November 2016**

El Estor town. At around 8 or 9am, Olivia, Natalia, Gabriela and I go to the assembly point for the protest, which is on the road that runs through the centre of El Estor, a small urban centre on the edge of Lake Izabal. There are concrete block houses and small shops spaced out, lining the road. There is a smallish group of Q'eqchi women there. We wait for more women to arrive. The two women from FGT who organised the forum yesterday are there with placards, card, pens, and the giant paper flower from that forum. We have brought the two placards we made last night and this morning.

Gabriela and Olivia suggested the slogans but both said that they were unable to write them on the card. I was surprised, as they are both literate; but I suspect that they lacked confidence with their literacy and the large lettering required. I said that I could do the lettering, since I had experience doing this from when I worked as a volunteer in a charity shop. However, we were all tired last night

and I only began to write the first of the two slogans suggested by Gabriela in pencil. Olivia had told me to leave it, as we were all so visibly tired. We had been watching the news coverage on violence against women. She told me that she was disappointed that 'la Mujer' did not win the US elections. It made me think about the symbolic importance of women in positions of power and how a woman in a high position traditionally held by men is interpreted as an advance for women's rights, even when that woman is from the elite. The next morning, I finished the first of the two placards, despite Olivia telling me not to bother. When I had finished it, she seemed really pleased and suggested a slogan for another placard. I wrote it out, feeling glad that I was able to help with something.

A pickup truck arrives with a megaphone, speakers and a microphone. This is used to drive at the front of the group of protestors. More women arrive in groups with their children. Eventually, there are around one hundred or so Mayan Q'eqchi women. Many hold placards in Spanish or Q'eqchi and others banners from yesterday's event. Ana from FGT organises and encourages the women to write their names on the paper flower. Some of the children also write names. The women at the front place a line of different coloured candles on the road and light them. During the protest, they pick up and carry the candles.

Once the protest starts, we walk extremely slowly along the road and around the town centre. The organisers are at the front and sides and take turns to speak on the microphone and to take photos. The Mayan Q'eqchi women participating in the protest are in smallish groups and we march, firstly, in two lines, then as a block. I also begin to realise that some of the slogans practiced yesterday are the same ones said today. The organisers take turns to say a slogan in Spanish or Q'eqchi, which the women participants then repeat. Also, some of the slogans that were written out on long pieces of card, and that were stuck on the walls yesterday, have been brought along today<sup>68</sup>.

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<sup>68</sup> Juliette has methodically written out many of the slogans that were seen and heard throughout the march. It, therefore, seems important that they are also recorded here. They are presented in Spanish with their English translation.

**Slogans written on placards:** 'Derecho a la salud' - The right to healthcare. 'Derecho a la educación' - The right to education. 'Amenazas de desalojos es violencia contra la mujer' - The threat of eviction is violence against women. 'No más desalojos' - No more evictions. 'El feminismo es una gran linterna. Su luz es la justicia que ilumina las habitaciones oscuras por la intolerancia, los prejuicios y los abusos por las autoridades, cuando no valorizan nuestros derechos. Barrio El Zapote, El Estor Izabel' - Feminism is a great lantern. Its light is the justice that illuminates rooms darkened by intolerance, prejudice and the abuses of the authorities, when they do not value our rights. Barrio El Zapote, El Estor Izabel. 'No más violencia contra las mujeres' - No more violence against women. 'Que se reconozca que las mujeres indígenas somos diversas' - Recognise that indigenous women are diverse. 'Respecto a nuestra madre tierra' - Respect our Mother Earth. 'Sabemos que la madre tierra es nuestra: donde podemos hacer nuestras vidas con nuestros hijos/as. Que tengamos donde vivir, cultivar nuestras siembras para sobrevivirnos. Aldea El Boquerón 2, presente' - We know that Mother Earth is ours: where we can make our lives with our sons and daughters. That we have where to live, to cultivate our land to survive. Aldea El Boquerón 2, present. 'Señor alcalde Rony Méndez de El Estor, Izabal, le suplicamos y le solicitamos que respete nuestros derechos como mujeres, basta con los engaños, dice que esta proyectando en

We pass by the market and finish at the municipal council building, which is by the side of Lake Izabal. Local residents, market sellers and shoppers stare as we pass by, but they do not interact with us. At the end, we remain standing outside of the municipal council and mayor's office. A number of women speak on the microphone in Q'eqchi and Spanish, including Ana and Olivia. Some ask the mayor and the woman in charge of the municipal women's office to come out and speak and listen to them. No one comes out, which could be seen as a snub, although the mayor is not there.

## Fieldnotes on the Commemoration of the Sentence, 24<sup>th</sup> and 25<sup>th</sup> February 2017

### Press Conference

I rush to the Hotel Panamericana. I am late today; I'm not sure what happened. Usually press conferences start half an hour late, so I hope it won't have started yet. Unfortunately, I am out of luck and it has already started. I place my recorder on the table at the front of the room, where the directors of each of the organisations are sitting: ECAP, Susana; MTM, Pilar; UNAMG, Aurora; and Doña D, president of the Jalok U committee. I feel guilty and awkward as usual, although it is a press conference and there are cameras recording, photographs being taken, and others are also recording.

nuestro municipio. Déjenos decir que no hay proyectos. Como mujeres tenemos derecho de exigirles los proyectos en nuestro bello municipio de El Estor, Izabal. Aldea El Boquerón 2' – Mr. Mayor Rony Méndez of El Estor, Izabal, we beg and ask that you respect our rights as women, enough deception, you say that you are creating projects in our municipality. Let us tell you there are no projects. As women we have the right to demand these projects in our beautiful municipality of El Estor, Izabal. Aldea El Boquerón 2. 'Si a la igualdad y equidad de género' – Yes to gender equality and equity. 'Si a una vida libre para las mujeres y niñas' – Yes to a life of freedom for women and girls. 'Los desalojos por el estado es violencia contra las mujeres. Mineras, palmeras, bananeras fuera de nuestro territorio' – The evictions by the State are violence against women. Mining, palm and banana companies out of our territory. 'Basta por los abusos contra nosotras las mujeres, sufrimos por los desalojos que las autoridades autorizan. Comunidad El Esfuerzo, Tunico' – Enough with the abuses against us women, we suffer for the evictions that the authorities authorise. Community El Esfuerzo, Tunico. 'Mujeres de Santa Rosita 6 de agosto presente' – Women of Santa Rosita 6 of August present.

**Slogans written on FGT banners:** 'Pongamos fin a la violencia contra las mujeres y niñas. Por las que están, las que no están, por las que peligran. ¡NI UNA MENOS! Por una vida digna para las mujeres y las niñas' – Let's put an end to violence against women and girls. For those that are here, for those that are not, for those that are at risk. Not one woman less! For a dignified life for women and girls. 'Foro municipal 2016 análisis sobre la violencia contra las mujeres y alternativas para la erradicación. En el marco del Día Internacional de la Eliminación de la Violencia contra las Mujeres. Jóvenes contribuyendo por una vida digna para las mujeres y las niñas' – Municipal forum 2016 analysis of violence against women and alternatives for its eradication. In the framework of the International Day for the Elimination of Violence against Women. Young people contributing for a dignified life for women and girls.

**Words spoken over the microphone:** We Q'eqchi women suffer violence, state violence. Despite the State promising, it does not listen to us. It does not provide the conditions for us to live. Health, education, housing and land. We are forced to get land upon which to live and they evict us violently using the police and army. Women and children are the ones who suffer the most from these violent acts, like in El Esfuerzo Tunico and La Esperanza Tunico, two communities recently evicted. They sow terror in the communities with the way they act. That is why today is important. The 25<sup>th</sup> November is not a party or a celebration. It is a day to commemorate our comrades that have been assassinated like animals. That is why we want justice.

## Casa de la Memoria

I go to UNAMG before the activity after lunch and I message Sara, a Swedish photographer who worked for ACOGUATE a few years before I did, to say I'll meet her there. I help carry prints and other items to the Casa de la Memoria.

## Journey to Sepur, Part One

I have been trying to arrange how to get Sara and I to Sepur. I have spoken to UNAMG and they have assured me I can travel with them. However, they are not sure if there will be space for Sara. I had tentatively asked if she could come and mentioned that she is a professional photographer. I hope that she can come, as she has had a lot of difficulty trying to document the case and she may be able to help UNAMG and the Alianza with her photography<sup>69</sup>. Following more brief conversations with Gabriela, I realise that UNAMG are not going for the whole weekend, just the Sunday, which is the anniversary of the sentence. I decide to try and find an alternative, since it would have meant missing the Mayan ceremony on the 25<sup>th</sup> and the mass to commemorate the victims. The 25<sup>th</sup> February is the day of the victims in Guatemala and, for several years, there has been a protest march organised in Sepur by local groups. When I was involved in human rights work, the march tended to take place in the capital, but this meant that those in remote regions could not take part.

I hear that the women are all going to back in a microbus that was hired to take them to the capital for the activities there, the press conference, radio interviews, and the activities in the Casa de la Memoria. I talk to Olivia at the press conference and she thinks that there may be space for me in the bus. We ask the driver, who confirms that there is a space. However, when I mention this later to Gabriela, she points out that MTM have hired the bus and that I should check with Pilar about whether I can go with the women. I speak to her after the event at the Casa de la Memoria and she says we may be able to go with someone else. She doesn't know what time he is leaving. She says she'll phone me in the morning to let me know. Olivia is going to travel with him, which seems to be a change of plan, since she was going to go with the women.

Sara and I decide that we will be ready for 10am, since we don't know what time we are leaving. We are a little uneasy about it all, as twice before I have been told that I can go to Sepur with UNAMG and at the last minute told that I can't. We have to go to UNAMG to wait for the *licenciado*<sup>70</sup>. Olivia calls me at 9.30am to tell me that the *licenciado* has called and is on his way to UNAMG. We rush there, only to find that he has not yet arrived. On the way we had joked that we would have to rush, because

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<sup>69</sup> Editor's note: This section is an example of Juliette's close working relationship with UNAMG that she had developed during her first PhD research trip to Guatemala in 2016. See also Chapters Four and Five.

<sup>70</sup> Those with a graduate degree.

of our northern European habits of having to be punctual, only to find that we have to wait an age. I introduce Sara to those in UNAMG that she didn't meet yesterday at the Casa de la Memoria.

We wait in UNAMG until around 12pm. Apparently, the *licenciado* had left something at home and had to go back for it. He had phoned Olivia to tell her. When he arrives, we introduce ourselves and he explains it again to us, a little sheepishly. It's a long journey to El Estor and he had wanted to leave earlier in order to get there before dark. We get in the car, which is a four-wheel drive SUV with a closed back section. I sit in the front. I recognise him from the *mesa de diálogo* I attended a couple of weeks ago. I ask him if he works for the government but he explains that he works for the Maya Programme of the UN High Commission of Human Rights. He has helped MTM in a consultancy capacity. I am really happy that we are travelling with him, because he is a good person to talk to about the case. I explain that I am researching the Sepur Zarco trial. Samuel tells us that, when he studied at the San Carlos University, he wrote his dissertation on human rights law. However, it was a struggle to have this area of law taken seriously and, furthermore, to get the university to accept his dissertation topic. I am incredulous and not surprised at the same time.

We start talking about the proposed reforms to the legal system and the rejection of the recognition of Mayan customary law by the Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (the Coordinating Committee of Agrarian, Commercial, Industrial and Financial Associations, CACIF) and dominant elites<sup>71</sup>. Samuel states that this is ridiculous; after all, it is simply a case of recognising that which is already carried out in Mayan communities. I ask why there is so much rejection of Mayan customary law. He tells me that he suspects the real reason is that the elite are afraid that it would lead to them losing control over the land upon which they own plantations and megaprojects and over the land upon which they want to build mines, hydroelectric dams, and plant cash crops.

He speculates that the death penalty, which has recently been a topic in the news following a wave of gang-related threats and attacks on hospitals, schools, and police stations, is a smokescreen and wonders what is really going on. We discuss the ownership of much of Guatemala's media and how one man, an extremely rich Mexican, owns many of the TV and radio stations. Nicknamed the 'Angel of Democracy', his son is on the run for corruption and embezzlement. Coincidentally, these TV channels and radio stations take a critical stance toward the CICIG and legal reforms.

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<sup>71</sup> *Editor's note: Indigenous conceptions of justice and the tensions between indigenous and 'Western' laws were a key focus of Juliette's research. She had been working on these conceptions from the start of her PhD (see Chapter Three). At the time of her death, Juliette had begun working on an article about Mayan Q'eqchi women survivors on justice and truth-telling in the Sepur Zarco trial. This article would have formed the basis of one of her fieldwork chapters. In the current format, Chapter Seven reflects her findings and observations in this area.*



I ask a lot of questions on the way, which he tries patiently to answer. I ask about the *mesas de diálogo*. Samuel thinks that they are going well. We discuss the complications of the land issue and he explains a little more, although he feels that there is a political will to resolve it and to gain land for the women of Sepur Zarco. The problem is locating the owners of the land, since Sepur Zarco is registered as a part of three different *fincas* (estates) that belong to three rich families. There are eight different owners who have inherited the land and need to be traced. MTM were able to trace one of the owners, a woman who lives in the US and said that she was moved by the story and was willing to sell her part of the land. Samuel explains that, in 2013, there was a change to the law regarding the requirements for granting public money for the building of schools, hospitals, etc. Mariela had explained to me previously that this was intended to prevent corruption by local mayors, since there were a number of fictitious works on which public money was spent but that were never built, in particular during the period of the previous government. A requirement is that all public works now have legal claim to the land on which the project is to be built. Samuel explains that the land in the area around Sepur Zarco was registered fraudulently, but that, since it happened over one hundred years ago, it is hard to resolve the issue.

The conversation turns to the discussion of some Dutch pro-choice activists who brought a boat to which women wanting to terminate a pregnancy can go and get a pill for an early abortion. Samuel is the one who brings it up. Sara and I have been following this on the news and one of Sara's Guatemalan friends was involved. I wonder whether Samuel has brought this up because he knows that we are involved with UNAMG, a feminist organisation, and that Sara and I are Europeans. Although the Dutch activists were initially allowed to harbour their boat, the Guatemalan government, under huge pressure from the conservative sectors and, in particular, the evangelical churches, withdrew the permission and sent the military to detain the women, which was a worrying development. Samuel doesn't give his opinion on abortion, but says that what the government has done is wrong, because unelected officials should not be allowed to form government policy. He also says that it is wrong to use the military to detain the women, who haven't broken any laws. We discuss religion and conservatism. I mention the issue of the *burkini* in France and Samuel is astonished that a European country would ban an item of clothing. He asks whether nuns have been banned from wearing religious clothing, a point that many have made, and I say that they haven't.

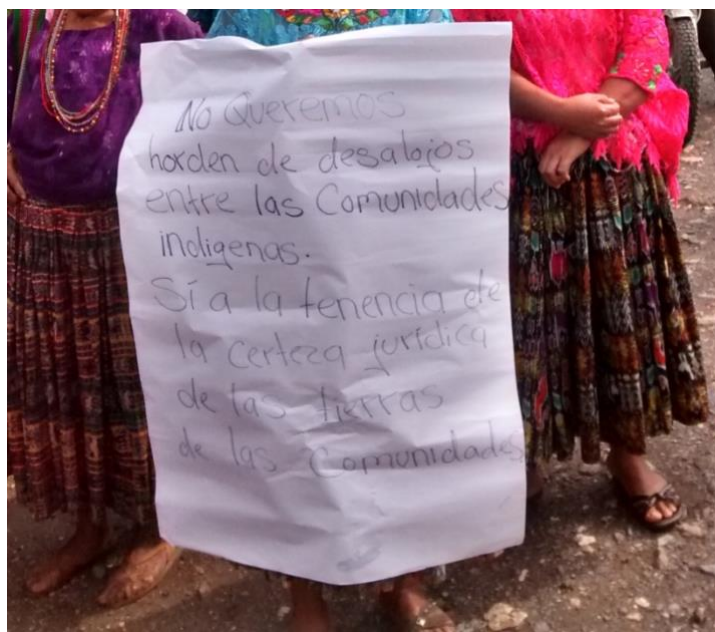
We stop to eat in Mariela's, where UNAMG stops, since Pilar recommended the place to Samuel. I get my usual frijoles negros parados with tortillas doradas, whole black beans with golden tortillas. The conversation inevitably turns to food, vegetarianism, and veganism. I am vegan and Sara is vegetarian, which is commented on when we order our food and explain that we don't eat meat and that I don't eat cheese or many other items on the menu.

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**Interlude: 'We don't want eviction orders against indigenous communities'**

*Editor's note: Juliette's account of her trip to Sepur Zarco illustrates her reflections on the socio-economic context of the area, which underlines the long historical roots of the violence against indigenous communities during the civil conflict. In these notes and in the fieldwork report, Juliette's observations associated the Sepur Zarco case with the struggle for land – also a key issue in the present day – and the nature of socio-economic struggles in rural Guatemala. She had been planning to write a context chapter on this topic after completing her final fieldwork trip, so this section gives a good idea of her perspective.*

*The image and text below appeared in the catalogue that Juliette had prepared to accompany an exhibition of photos about the Sepur Zarco case (see appendix six).*



**Figure One: 'We don't want eviction orders against indigenous communities.'**

This photo illustrates a major concern of the women survivors and community members. One of the biggest obstacles to the construction of the monument, high school, and health centre is that the land on which the village of Sepur Zarco is located is registered as belonging to a privately owned plantation.

The history of land ownership is complex in this region. There is evidence that some of the privately owned land was acquired fraudulently in a land registration process that started over 100 years ago. It has proved very difficult to resolve this issue and the negotiations are ongoing. The lack of security of land tenure for the Sepur Zarco community – like many other communities in the region – places them

in a situation of insecurity. Despite the fact that the Mayan Q'eqchi have always lived in this region, some of the neighbouring Mayan Q'eqchi communities live in fear of being evicted from the land they are living on. Periodically, some communities are evicted by force.

The photo illustrates the importance of, and the difficulties in, redressing historic injustices – since the land was originally the land of the Mayan Q'eqchi, and was taken from them by force – and how historical injustices are often bound up with more contemporary ones. The women's husbands were kidnapped and disappeared because they had attempted to legally register the land they were living upon and cultivating. Landowners denounced the men as 'subversives'. After kidnapping and disappearing the men, the military forced the women to work on the military detachment (which was constructed in the Sepur Zarco community). The women were forced to take turns to cook and clean, and were systematically raped while at the detachment.

One of the objectives for the women survivors in taking their case to court was to secure legal tenure of the land for the women, their families, and their communities. They depend largely on subsistence agriculture. Land is also important in cultural and spiritual terms for the Mayan Q'eqchi, who describe themselves as the 'Aj ral ch'och', or 'Children of the Land'. Yet the issue of land tenure may be the most difficult to resolve – and land tenure is not an issue that is clearly linked with the dominant conceptualisations of justice for international legal scholars and human rights activists. An "intersectional sensibility" (Bueno Hansen, 2015: 12)<sup>72</sup> is needed in order to broaden the gaze of transitional justice and international feminist and human rights activism and to help make visible issues such as these, which indigenous women survivors prioritise but which may not otherwise be perceived.

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### **Journey to Sepur, Part One, Continued**

As we pay for lunch, I spot the *Prensa Libre* newspaper. I flick through it and find a short article about the 'invaders' of the Panacte palm plantation in the Polochic region. The paper only contains the version of the story given by the NaturAceite company, who claim that they have tried to dialogue with the occupiers that, they say, are armed. I have read many stories like this in the *Prensa Libre*, who represent the point of view of Guatemalan business owners and members of CACIF. Stories about land invasions in this newspaper are often very one-sided; the occupiers are often presented as former plantation workers that have not been paid and are demanding their wages. Their arms are usually

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<sup>72</sup> Editor's note: Juliette elaborated on the concept of intersectionality in transitional justice in her LASA paper (Barcelona, May 2018) and in Chapter Three.

machetes, the tool used to work the land. However, when they are evicted, the police and military are heavily armed, use tear gas and are violent toward those occupying the land, often *campesino* families living from subsistence farming.

After lunch, we continue on our journey. Samuel tells us a little about the history of the Verapaz and Izabal region. Previously, it was called Tzulutlan, place of the jute trees. The Spanish renamed it Verapaz after they had taken control and were able to settle there, following a long period of conflict. The Catholic Church also played a key role in the colonisation of the area, converting indigenous people to Catholicism and forcing them to accept Spanish rule. Samuel says that all Mayan languages are descended from four families: Q'eqchi is from Quiche, for instance, whereas Ixil is from Mam.

We get to Rio Dulce and carry on to El Estor, where we are going to stay the night. The road from Rio Dulce to El Estor is only partially paved. The first part, from Rio Dulce, is full of pot holes. I mention that someone told me the reason is that part of the road belongs to the municipality of Livingstone and that the mayor focuses on the central areas. We reach the paved part of the road. A sign says that the paving of the road was funded by CGN, the mining company that was a subsidiary of Hudbay Minerals, who sold the company after members of several communities in the area were violently evicted in 2006 and 2007. During one of the evictions, one man was killed by a combined group of police, military and mining company private security; another was left paralysed and in a wheelchair. During another, several women from the Lote 8 community were raped by the combined forces. The company is being prosecuted in the Canadian courts. The testimonies of the women were part of the Tribunal of Conscience organised by UNAMG and the Alianza in 2010.

We pass a huge palm plantation on the right. I mention the article from the *Prensa Libre* to Samuel. We discuss the issue of evictions, occupations, and the lack of access to land for the majority of Guatemalans. Land has been a problem since the Spanish invasion, but it became worse during the period of liberal reform in the mid to late nineteenth century, when Guatemalan governments encouraged wealthy foreigners, particularly Germans, Swiss, and North Americans, to come and set up coffee plantations. Land that the Spanish crown had granted to indigenous communities and to the Catholic Church was sold at low cost to the new settlers. Many land disputes date from this period and the following decades. In particular, the fertile and mineral-rich Polochic Valley had a high number of land conflicts. Newer cash crops and commodities produced in the area include bananas, palm, and nickel. The impact is visible and dominates the landscape. As a palm plantation ends, a banana plantation begins. After the banana plantation is a large cattle ranch, followed by a sugar plantation.

On the left-hand side it is similar. Plantations and cattle ranches are interspersed with small communities whose residents live in palm-thatched bamboo huts on much smaller patches of land.

We pass a sign that reads, 'si las mujeres tienen la tierra, sus familias e hijos tienen alimentos y vida. FGT'<sup>73</sup>. FGT stands for Fundación Guillermo Toriello, one of the organisers of the event in El Estor on the 25<sup>th</sup> November. The land problem was never really solved. In fact, the issue of facilitating access to land was difficult even to include as a theme of the Peace Accords. The issue of land reform was blocked by CACIF. Guatemala's economy and the wealth of its small, European-descended elite is based mostly on agriculture and, more recently, megaprojects, such as mines and hydroelectric dams. As one of my interviewees stated, the waves of dispossession suffered by the indigenous majority were part of the same process of primary accumulation by the elite.

It is getting dark and Samuel has to phone someone in his office to say that he hasn't arrived yet. He explains that they are strict about timetables and he is not allowed to drive after 6pm. We stay in the Hotel Calle Real. I had wanted to stay with Olivia and travel early with her to Sepur tomorrow morning. In fact, this is what we had arranged and I had been looking forward to it; however, Pilar had booked us into the hotel without asking. On the way, she phoned Olivia to let us know. I was worried about the cost, as it is one of the more expensive hotels in El Estor. Pilar says MTM will cover the cost. Both Sara and I are concerned about this and feel that it isn't fair for the organisations to pay for us; however, Pilar says that it's fine. We accept, but feel guilty and I am disappointed not to be staying with Olivia and her family. Samuel is tired from the long drive. Sara and I decide to go out to dinner to a place I went when I was here for the forum.

### **Journey to Sepur, Part Two**

The next day, we are to continue on to Sepur. The plan is to go in convoy with MTM, who arrived in several vehicles late last night. Sara and I go for breakfast early, thinking that we will have to leave at 8am. Pilar had told us we would leave at that time and told Olivia to meet us at the hotel. We rush our breakfast and run back to the hotel, only to see that MTM are still having their breakfast. It takes at least an hour for everyone to get ready to leave. Sara, Olivia and I are a bit frustrated. We wanted to get to Sepur in time for the Mayan ceremony. It takes time to get the cars to move and Samuel has to go and get fencing material for the area in which the mobile clinic will be set up. Eventually, we set off.

I am excited to finally be able to go to Sepur. We have fewer conversations in the car on the way there. We pass the CGN refinery, with its tall towers puffing out smoke and lines of trucks outside. The road to Teleman is only paved on one side, which, unfortunately for us, is on the opposite side. I am glad that we are in a four-wheel drive. Last time I came this way, I took an early morning bus with staff

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<sup>73</sup> If women have the land, their families and children have food and life. FGT.

from ECAP and came back on the mid-afternoon bus. The heat was intense and the red dust inevitably drifted in through the bus's door every time that it opened and closed, as well as through a window that wouldn't shut. At times, we had to breathe in the dust, it was so thick. This time, we are in comfortable transport and protected from the heat. We pass the mining company refinery and see a collection of palm-thatched huts on land that probably belongs to the CGN. We continue on, passing a number of palm plantations, cattle ranches and small communities. We pass through the small town of Panzos, which is part of another municipality. Panzos is renowned for the 1978 massacre, described by Greg Grandin as 'the last colonial massacre'<sup>74</sup>, and one of the first that marked the start of the most violent years of the conflict, between 1978 and 1983, when the UN-led Truth Commission concluded that 'acts of genocide' had been committed. The Panzos massacre was the response of landowners and the military to indigenous *campesinos* organising to reclaim their land.

Just after we leave Panzos, we see the infamous Chabil Utzaj sugar refinery. In 2011, under the social-democratic government of Álvaro Colom, a violent eviction took place here to forcibly remove around eight-hundred *campesino* families. I ask Samuel about this and he tells me that the sugar refinery no longer operates. The refinery was set up with Nicaraguan capital. Supposedly, the land they were sold was state-owned, although there remain doubts as to who the real owners were. Just before we reach the next small town of Teleman, we see the plantation area of Chabil Utzaj. Part of the land is planted with sugar, but, as we leave Teleman, we see that another part has been planted with maize. Olivia tells me later that some people have reclaimed the land.

The road from Teleman to Sepur is also flanked by palm plantations for the majority of the hour and a half drive, interspersed with small communities. We see the sign for Panacte, the plantation that has been occupied, but we see no sign of the occupiers. On the opposite side, however, is a small community affiliated with the Turcios Lima Foundation, a *campesino* organisation named after the guerrilla leader Turcios Lima. On the 29<sup>th</sup> December, the day of the twentieth anniversary of the signing of the Peace Accords, their members marched through the historic centre of the capital – fifty- or sixty-men wearing outfits of red Che Guevara t-shirts, brown workman trousers and rubber boots, all carrying machetes and marching in military fashion. Gabriela had told me that they were *loco*, crazy, and thought that we should avoid them.

According to Samuel, the community and the Turcios Lima Foundation have reached an agreement with the palm oil company, NaturAceite. The company provides work – exclusively, according to Samuel – to the men of the community. In return, they help to protect plantation land and do not invade it themselves. It is clear that the company supports the community. The sign, which has the

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<sup>74</sup> See Grandin (2004).

community's name and that of the Turcios Lima Foundation, also bears the logo and lettering NaturAceite, as does the primary school. Samuel says that one of the complaints of the women of Sepur is that the plantation and the company that owns other plantations in the area does not give any work to their families. Later, I find out that one of the women's sons does work for the company; in fact, he seems to have a good job with them and, with the money earned, has been able to build two houses. When he built the second house, he moved in with his wife and children and left the first house to his mother. I meet him on a later trip when I visit Sepur to conduct interviews with Olivia. He told me that his mother was pregnant with him when his father was disappeared. He said that he felt he had to support his mother, because she was both mother and father to him when he was growing up.

### **Arrival at Sepur Zarco**

The plantation, and several others, give way to a series of small communities, which all have the same style of housing: walls made from wooden planks or bamboo and thatched or tin roofs. These houses have dirt floors and just two or three rooms. There are also one or two houses made from concrete block, which is a more expensive form of construction. We reach Sepur Zarco and immediately see the mobile clinic. It is a small caravan with two rooms. The whole convoy of vehicles stops and we get out to look at the clinic. The staff of MTM, the women from the donor organisation, Ana from FGT, Sara and I all have a look inside. There is a line of thirty to forty men with spades on the cleared land around the clinic, which was planted with maize last week but remains a large rectangle of red dusty earth. The land was cleared in just a week by men from the surrounding communities, in order to make space for the mobile clinic and, later, to build the permanent health centre, once the land tenure issue has been resolved<sup>75</sup>.

The man who was using the land as his work space generously agreed to find land elsewhere to plant, in order to make way for the clinic. The men are here today to construct the fence around the land, which will be of wooden posts and wire. First, however, a catholic priest must bless the clinic and the work that is to be done. The men gather round outside the clinic in a circle. The priest enters first and blesses it with holy water. The men bow their heads in prayer as the priest comes out. The priest leads a prayer. We accompany them for a short time, then get back into the vehicles. We are going on to the Catholic church to attend a mass for the victims. We have missed the march and Mayan ceremony because we left late. I feel a little frustrated, but not surprised. MTM are well-known for arriving late.

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<sup>75</sup> *Editor's note: The mobile clinic was part of the women survivors' demand for reparations, which was the result of a collective decision-making process. Chapter Seven elaborates on the reparations, illustrated by excerpts from interviews with the women survivors.*

Samuel drops us off by the church and goes to find somewhere to park. We can see the circle outside the church where the Mayan ceremony was conducted. We go into the church. It is fairly dark inside. Most of the women of the local communities are sitting on the left-hand side, their young children fidgeting or playing next to them. They are nearly all wearing traditional dress. The few men who are there sit in two or three rows on the right-hand side and do not have children with them. Behind and in front of the men are a few rows of women. There are, however, far fewer men than women; perhaps they are all working on the fence. At first, Sara, Olivia and I stand at the back. Olivia soon goes and stands next to Ana and they chat a while. I see the women survivors sitting on the right-hand side near the front. I go and greet them, repeating the only Q'eqchi phrase that I have learnt, 'ma sa laachol', which can mean 'how are you?', 'good morning' or 'good afternoon', according to the Q'eqchi survival guide that I have downloaded, written by a Peace Corps volunteer. I embrace each of the women, greeting them, and they reply smiling, 'sa linchol', 'I am well'. I sit with the women survivors.

At the front of the church there are candles on the floor, in the middle and to the front of the altar. The church building is of typical Guatemalan style, a squat and rectangular one-room building made of concrete block and plastered white, with wooden beams and a tin roof. The altar is on a level with the rest of the church. Benches are laid out for people to sit on and, at the front, there are red plastic chairs. Members of the community direct the service, which is to commemorate those who were killed and those disappeared during the conflict. When we arrive, an older man is directing the service in Q'eqchi. After a while, the staff of the organisations of the Alianza, Doña D of the Jalok U Collective, Olivia from Impunity Watch, and Ana from FGT are called to the front. Pilar, the director of MTM, and Rebeca, their leading lawyer, are the first to go forward. Staff of the other organisations are a little more hesitant; neither the director of ECAP nor the director of UNAMG are present, but Patricia and Ana go up to represent ECAP and Aurora to represent UNAMG. They each take turns to speak about the anniversary. They congratulate the women survivors on their struggle. Afterwards, two men perform a song. One plays guitar while the other sings.

After the mass, we attend a meeting that MTM have organised with the women at Don A's house. Pilar and Mariela head the meeting. Olivia and Alberto translate for them. Pilar wants to organise for the next day's protest march and celebration and also to give an opportunity to Radha, from the funding organisation, to ask the women questions about their life since the trial and impact that it has had. The meeting is in the Titanic, a specially constructed rectangular raised-wooden structure, which spans a stream. The floor is of wooden boards, the wall of wooden railings that reach my waist and the roof is thatched palm. There is a circle of chairs around the room. The first item to be discussed is which of the women would like to speak to Radha about the trial and the impact that it has had.



Alberto translates. The women discuss in Q'eqchi and then decide that Doña E, Doña M, Doña D, and Doña C will speak.

The next item is the walk the next day, which will finish at the clinic. Don A and Ana have planned some acts with the young people. Pilar says that MTM have brought white *huipiles* for the fourteen women survivors. The women will not go on the whole of the march, since it is a long walk and the heat is intense here. Instead, they will wait for the marchers at the market, where the military base was located before, and then lead the march from that point on. Pilar also says that, as part of the programme, the medals that the women were awarded last year in the capital will be publicly presented to them, along with the certificates that are now ready.

After this has been arranged, the next item to discuss is the reason why Doña F has been absent from some of the meetings and activities held recently. She didn't go to the celebration of the anniversary of the sentence. Pilar and Mariela are concerned about this. They had specifically invited Doña F to this meeting, to try and see what the problem has been. Pilar says that we all want Doña F to be part of the activities. She names various women and men who testified and says that it is important they come to the celebration tomorrow. Pilar says that if Doña F is upset about something, it is best that she comes so they can discuss the problem and sort it out.

Doña D says that Doña F was invited to come along to this meeting and the activities planned, but didn't want to attend. Doña D says that Doña F is upset because of rumours, but that it has been resolved. The rumour was that the women had received goods from an activity organised by UNAMG and that Doña F didn't receive any. However, this isn't true and the women have stated so. Doña D says that the group of women are annoyed with Doña F for not attending. As president, it is her duty to invite all the women. However, Doña D says that all have to attend and is annoyed at Doña F for not coming. At this point, Doña F arrives. She is the oldest of the women survivors, 76 years old, and is thin and frail. She also comes with one of her grandchildren. Pilar asks if she is upset about something and she replies that she is. She is visibly angry. The other women survivors seem amused. Doña D says that they are too old to be telling untruths. She wonders whether Doña F really wants to remain part of the group and keep attending activities or whether she has tired of it all. Doña F is angry and upset and says so. Pilar says that her presence is important for the group and that it is important she keep coming to meetings and activities; after all, she was part of the group of women involved in the legal process. Pilar asks Doña F to come tomorrow. The women reaffirm that they didn't receive goods from UNAMG and that Doña F should remain part of the group. Pilar and Mariela make a fuss of Doña F, embracing her. The meeting comes to an end and we stay sitting. The five women who have been nominated to speak to Radha stay and Radha begins to ask questions in English. These are

translated into Spanish by Fabian, who also works for the organisation, and then by Alberto into Q'eqchi. I think that this encapsulates the articulation of local, national and international actors and organisations in the process.

Radha: What have your lives been like since the trial?

Woman green *huipil*: there has been a huge change since that time. We are calmer, we do not feel fear, we feel safer. During the war, at times we ate, at times we didn't eat. We had to hide in the mountains, we had to protect our children. We ate once a day. There was a lot of fear. Now it's different.

Doña M: I think there has been a huge change. Now there is no fear. We feel better, our community has changed a lot. There is still a lot lacking, but we can see the first achievement, the clinic. However, we are not completely satisfied with this as it is. We will be satisfied when they have built the health centre and when it has staff and medicine. We won't benefit from these services; our children and grandchildren will be the ones who will.

Doña E: Firstly, we got attention from a lot of people who know our case and what happened. It's very important that people know. On a personal level, there have been important changes in my life. I have lost the fear of speaking. Before, I didn't know how to speak or contribute, give my opinion. Also, people are aware of what happened so we cannot repeat it. The State isn't doing what it did with us, this is an advance so it won't happen again.

Radha: Have you spoken to women in other communities who have gone through the same thing?

Woman green *huipil*: There are no others, we cannot speak to other women, as they haven't gone through the same process and they have a lot of fear and shame to talk about what happened to them.

Pilar: Doña D and Doña C went to Colombia to speak to women who have suffered. There have been exchanges with the women who testified in the Ixil genocide trial. Also, there was an interchange with the Molina Theisson family<sup>76</sup>. Little by little, there have been exchanges.

Doña M: Four women went to Colombia. They cried when they heard us. We were also sad when we heard what happened to them. For them, it's a big challenge to seek justice. We told them that it's not possible to do it alone, they need the help of organisations like those that helped us.

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<sup>76</sup> Editor's note: This sentence refers to the disappearance of fourteen-year-old Marco Antonio Molina Theissen in 1981. Juliette tweeted about Marco Antonio's mother's campaign to establish the 6<sup>th</sup> October as the National Day of Disappeared Children in Guatemala:  
<https://twitter.com/JemDoman/status/1047030039433424899?s=20>

Doña E: I took part in a forum in El Estor, with ninety women undergoing a process of strengthening themselves. The women were very sad to hear our stories. One woman cried deeply; she was from Rio Chiquito. Before all of this, I never spoke to anyone about what happened when my husband was disappeared, when my child died. I cried in front of my son. I felt sad. My son asked me not to leave him. I told him I would have to work on the military base. We spoke little about it. This has changed now. I have the confidence to talk about what happened.

Doña C: The change has been enormous, how we speak calmly. We are now seeing the fruits of all our work. I have said to my children and grandchildren, 'look, you will be able to enjoy these services when you get sick. I probably won't be able to, but you will'. I like to share my experience and strength with other women, but they don't have the courage to come and speak with us. We are not afraid of death now. I lived with this; I like to share it. There are a lot of women who have suffered. I remember that in El Estor, one woman cried a lot and said that what we suffered, she also saw and could testify to it.

Doña D: in our village, there are changes. They see us differently, they realise the importance of what we have achieved, they respect us, they believe us. A lot of people have heard about it on the radio, they have heard all about what happened in the trial. When they see us, they say we are the women who want to tell their stories. They know we had the courage to go and speak before the law. They value us.

Doña M: In Sepur, one change is that the community authorities now defend us, they now respect us. Someone went to give her testimony in favour of the military, to defend them. She had to use the clinic and the mayor told her off for giving false testimony in the trial. What we are seeing now is thanks to our work.

Radha: Thank you, you have great courage.

Doña D: I want to send out a big greeting. I'm very happy that you've come to visit and see how we live in these communities and see the changes. I hope you can accompany us when we achieve other changes. Tomorrow, there will be a big celebration and a lot of joy.

Pilar: The mayor may come. He helped to get toilets for the clinic and I want to ask him to build a monument. I want him to approach us and build it soon. It was supposed to be built in a year, but he hasn't even come to the meetings yet. I want to thank him and ask him to sort out the monument.

The meeting ends and we have lunch at Don A's house. Lunch is chicken broth. Sara and I ask for a bowl of just the broth and I add plenty of chile to disguise the flavour. MTM sit with the woman from London and explain the process since the trial, the *mesas de diálogo*, the struggle to implement the reparations, what each of the reparation measures are. A man from the same organisation translates

for her. The room is overflowing with people, all of whom are linked with the organisations. The women eat elsewhere.

We go to the clinic with the women. I think the idea is that they see the results of their struggle. They take turns to go inside and look. It's a photo opportunity for the staff of the organisations, with the women going up the narrow staircase, using the railings for support. Afterwards, they are instructed to line up outside for a photo.

The mayor arrives. People gather round him in a circle. He speaks to the group of men who have been building the fence. MTM staff are also there and they speak to him. At first, he speaks in Spanish and Olivia translates. Doña D begins to speak to him, followed by Doña M. Doña M begins to tick him off in Q'eqchi. Her tone is raised and sounds angry. 'We are tired...' she is saying. I am unable to make notes as people are speaking. I felt that it could be inappropriate. He begins to speak to the women in Q'eqchi. More and more people gather around. The mayor asks what time the events are tomorrow. Pilar says the clinic will be inaugurated after the march. Although the march is scheduled to start at 8 or 9am, she tells him it won't start until 10am. The inauguration of the clinic and the acts that the young people have prepared will be in the afternoon. The mayor of El Estor promises to attend, but says that he has to go to the capital and won't be able to come until 3pm.

After being berated by the women, the mayor says that he has heard a nearby community will be evicted. He is worried about it, because tear gas may harm the women and children – a slogan also used by the women marchers on the 25<sup>th</sup> November. He asks the MTM lawyers to do what they can to prevent it. He can't do anything to stop it, but the lawyers might be able to. He says that it generates fear and would be harmful. After he has left, Pilar says that as there are now around forty-five communities that stand to benefit from the mobile clinic and the educational infrastructure, the mayor will perhaps be more supportive of the reparation measures. After all, forty-five communities would represent a lot of votes.

MTM goes back to the hotel. Olivia, Sara and I go to Doña E's house, where we will stay the night. We are attacked by mosquitos while waiting to bathe. The only place to bathe is the large sink outside. Both Sara and I wash there. Sara stays in her clothes, which had become soaked with sweat. I have brought a sarong so I can wash underneath it. Doña E's seven-year-old grandson stares at me the whole time. While Olivia is eating, Doña E's son comes along. I think he lives in the house. He seems pleased to meet me and talks to me briefly in Spanish.

That night, we go to the Titanic. We have heard that the young people will be practising for the performance the next day. It's a hive of activity. Samuel, who is part of a small theatre group that has

worked with UNAMG and other organisations, is here. The Titanic has disco lights and loud music. Lots of teenagers are dancing, climbing up the wooden frame and performing flips, standing on top of each other. It's as if I have stepped into a Q'eqchi circus tent. Samuel tells us that every night the Titanic fills with teenagers, full of energy and enthusiasm. Earlier, the two young men who invited us asked if we would dance and we promised that we would. However, we are exhausted from the long journey and the heat of the day. We sit on chairs around the edge and chat to those next to us. I keep telling people I will dance a little later. I feel a bit lame and old. However, I am happy to see the energy and joy of the teenagers and older children that are there. After a while, we go to the fire, where more people are gathered around. A mixed group of girls and boys circle the fire, drumming and dancing. It is still sticky. I have learned the words for 'it's hot' and 'it's cold' in Q'eqchi.

After a while, a man who is a radio presenter and lives in Sepur calls us over. He wants us to speak to the whole group and tell them about ourselves, what we think of Sepur, and what we think about the performances. Sara doesn't want to speak, so I step up. I am used to speaking in public in these circumstances. At the school where I used to work in another part of Guatemala, I used to have to speak at public events and, when I was involved in human rights work in Chiapas, I had to publicly present myself and my fellow worker to the community. I always feel a little overwhelmed by it, but understand that public speaking is very important. In fact, many Guatemalans that I know, mostly members of small rural communities, were good at speaking publicly, something that always impresses me.

Just before we leave, Don A calls Olivia. He wants her to help with the slogans for the march tomorrow. They look at the slogans on the paper Don A has brought. Some are the same as those that they used for victim's day, he says. Olivia thinks they are fine. Don A says that he will go and copy the slogans early in the morning, before the march. He wants to do something to recognise the women, but says he needs a list of their names. Pilar promises that she will provide him with one. I feel uncomfortable; I remember in November last year when the mayor promised to give the women an award and had also asked for their names. Pilar reportedly agreed with the mayor that they would attend the event organised by his office for the 25<sup>th</sup> November and gave him their names without asking the women if it was fine to do so.

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*Editor's note: This section ends fairly abruptly and Juliette picks up the thread once more as she describes the events of the following day. As mentioned in the editor's introduction to this chapter, the section that follows has been removed and placed at the end of the following chapter six. The section describes a march to commemorate the sentencing that ends at the newly installed mobile health*

*clinic. It concludes with the inauguration of the clinic and an awards ceremony, in which the women survivors are presented with a certificate and medal for their commitment to the struggle that they have fought.*

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## **Interlude: Intersectionality and Transformative Reparations in Sepur Zarco**

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*This section is drawn from a paper that Juliette presented at the LASA conference that took place in Barcelona, Spain, in May 2018. Although Juliette did not intend for the presentation to be included in this form, she did plan to develop the ideas that it contains for inclusion as a Case Study Chapter. For this, it has been presented here as a short interlude, as it contextualises well the material that follows in Chapter Seven.*

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### **Introduction**

My research is centred on the Sepur Zarco trial prosecuting wartime sexual violence in Guatemala. Part of the research looks at the work of the organisations that are supporting the women survivors and what they can achieve by seeking legal justice. Two organisations took part in the investigation and prosecution of the crimes committed as civil parties and used the law as a tool for social change.

Today, I'm going to talk about the use of intersectionality theory, which was used as a form of legal analysis in the trial to bolster the demand for transformative reparations. Firstly, I'm going to look at the origins of intersectionality theory and how it can be applied to international law and reparations, in order to address conflict-related sexual violence. In particular, I will look at how intersectionality theory can be used to support the prosecution of wartime sexual violence and strengthen the case for transformative, rather than restorative, reparations. I will then provide some background to the Sepur Zarco case. Finally, I'm going to look at how intersectionality theory has been used in the case and raise some issues about its use in this particular case. I will finish by considering some ideas about transformation and how the transformation sought by the Alianza and the survivors' collective may be achieved. I argue that intersectionality theory can be used to successfully demand transformative reparations, but I will also point to some of its limitations.

### **Intersectionality, Violence against Women and the Law**

Law has historically relied on uni-dimensional and binary categories, which has made it blind to the particular forms of discrimination, oppression, violence and abuse perpetrated against specific groups of women, such as women of colour and indigenous women. In 1989 and again in 1991, legal theorist Kimberlé Crenshaw (1989; 1991) described the failure of law and of the feminist and anti-racist movements to recognise or understand the specific experiences of discrimination black women in a racist and sexist society, including the experiences of violence against women of colour. Crenshaw argued that 'the location of women of colour at the intersection of race and gender makes our actual

experience of domestic violence, rape and remedial reform qualitatively different than that of white women' (1991: 1245). Crenshaw also argued that there are interlocking structural causes that make certain groups of women particularly vulnerable to abuse and to inadequate interventions that fail to consider the structural dimensions of violence (ibid.).

Crenshaw focuses on cases of discrimination and intimate partner violence against women in the US, while my research considers gendered violence in the context of authoritarian regimes and armed conflict, which I will now focus on. In particular, it looks at conflict-related sexual violence, intersectionality, transitional justice and international law. Conflict-related sexual violence (CRSV) is defined as 'sexual violence occurring in a conflict or post-conflict setting that has a direct or indirect causal link with the conflict itself' (OHCHR, 2014: 2). Seeking full recognition and redress for CRSV and other forms of gendered violence committed during authoritarian regimes or armed conflict is made more difficult because of the tendency within law and the fields of human rights and transitional justice to construct this violence as individualised bodily harms, which obscures the structural and relational dimensions of this violence. Transitional justice also occludes interlocking structural and historical causes, because of its narrow focus on 'political' violence and because it posits a complete break between a period of 'conflict' and 'post-conflict'. Feminist scholarship on transitional justice has critiqued this narrow focus, pointing instead to a continuum of gender-based violence in war and in peacetime (see Boesten, 2014; Bueno-Hansen, 2015). An intersectional analysis can thus be a particularly useful tool in transitional societies, in order to reveal the structural causes of gender-based violence and the consequences of this violence for specific groups.

Intersectionality also has a practical use as a method of legal analysis, as it can be used to uncover specific harms in particular cases and to strengthen measures to redress these harms, including the use of reparation measures (Mackinnon, 2013). In the fields of transitional justice, human rights and, more broadly, international law, there is an emerging recognition of both intersectional discrimination and of the potential of intersectionality as an analytical tool that can help with the prosecution of gendered violence through international human rights and humanitarian law (see Davis, 2015).

### **Intersectional Discrimination, Conflict-Related Sexual Violence and International Law**

This is particularly the case with conflict-related sexual violence. The recognition of rape as constitutive of genocide in the International Criminal Tribunal for Rwanda, while not directly making use of intersectionality theory, implicitly recognised ethnic and gendered dimensions of the violence perpetrated against Tutsi women. An intersectional analysis is not only important in prosecuting CRSV, but also in designing reparations measures.



## UN Guidance on Reparations

The term 'reparation' refers to the measures adopted to redress harms resulting from crimes or breaches of state responsibility (Ní Aoláin et al, 2015: 99-100). In 2005, the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law. These Basic Principles and Guidelines describe different forms of reparation (Ní Aoláin et al, 2015: 118). These principles are: **restitution**, to 'restore the victim to the original situation' before the violations occurred; **compensation** 'for any economically assessable damage, as appropriate and proportional to the gravity of the violation,' including for physical and mental harm and for 'moral damage'; **rehabilitation**, including 'medical and psychological care as well as legal and social services', and which should avoid re-traumatisation; **satisfaction**, often in the form of apologies, the building of monuments, memorials, and the identification of commemoration dates to remember and to pay tribute to victims; and **guarantees of non-repetition**, including measures to prevent a recurrence of violations by avoiding impunity, establishing the rule of law and reforming legal institutions (Ní Aoláin et al, 2015: 119-122). Reparations may be in the form of large-scale administrative programmes or judicial reparations, which are ordered by a court after the prosecution of grave human rights abuses. In Guatemala, there have been both reparations through a large-scale administrative programme and through the legal process.

### Gendering Reparations: the Nairobi Declaration

After the publication of the Basic Principles, a transnational coalition of women's civil society organisations met to promote a gendered approach to their mandates. The coalition developed the Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation, which demands that policies and measures related to reparations 'must be explicitly based on the principle of non-discrimination' (Nairobi Declaration, 2007: 3). This means recognising the rights of women and girls to autonomy and participation in decision-making, so that women themselves decide what forms of reparation are best suited to their situation (ibid.). The Declaration also states that 'reparations must go above and beyond the immediate reasons and consequences of the crimes and violations; they must address structural inequalities that negatively shape women's and girls' lives' (Nairobi Declaration, 2007: 5; see also Ní Aoláin et al, 2015: 123). The Declaration criticises the restorative approach to reparations taken in the Basic Principles, because the traditional philosophical and legal standard of justice in reparations, 'restoring the *status quo ante*', is inadequate to address gender-based harms and 'could be contrary to the broader objectives of human rights treaties, if this meant

returning women to their prior unequal status' (Ní Aoláin et al, 2015: 122-3; see also Walker, 2016: 108).

### **Transformative Reparations and Conflict-Related Sexual Violence**

Since then, the UN Secretary General produced new guidance for CRSV, recognising that sexual violence can result from and perpetuate pre-existing structural subordination and discrimination and that these inequalities can also aggravate the consequences of the crime (OHCHR, 2014: 8). This stated that reparations for CRSV should 'strive to be transformative in design, implementation and impact', rather than try to restore the '*status quo ante*' (OHCHR, 2014: 1). Nevertheless, for reparations to be transformative they would need to take account of intersectional identities and interlocking structures that entrench inequalities based on gender, sexuality, ethnicity, social class and other factors.

### **Background**

In February 2016, Guatemalan Maya Q'eqchi women survivors and the alliance of organisations supporting them successfully prosecuted two former members of the Guatemalan military for domestic and sexual slavery, forced disappearance and murder in the Sepur Zarco trial. The trial marked the first time worldwide that a national court has prosecuted members of its own military for these crimes. Evidence given at the trial suggests that violence committed against the women and their families during the Civil War was linked to their attempts to settle on and get title to land that was also being claimed by the large plantation owners in the area. The landowners seem to have responded by denouncing the women's husbands (who were part of land committees) as 'subversives' to the military.

In 1982, the military kidnapped and disappeared the men, burnt down their families' huts, and forced their wives to work on the military detachment built in the Sepur Zarco community. The women were organised into shifts to cook the soldiers' food and wash their clothing. While at the base, the women were systematically raped. Some fled into the mountains to escape the violence, where they spent up to six years struggling to survive with little shelter or food. Many of their young children perished because of these conditions. The base remained until 1988. Local men suspected of being 'subversive' were also tortured there by the military.

I will now look at how the links were made in the trial by the prosecution between intersectional discrimination and conflict-related sexual violence and the use of rape as a weapon of war and genocide. During the trial, lawyers and expert witnesses pointed to the structural causes underpinning the violence and the interaction of racism, sexism and social class to help explain why the women, as

indigenous women and as the wives of the men who had been organising to claim land, were targeted by the military for sexual violence, including rape and sexual and domestic slavery.

Lawyers and several expert witnesses argued that the women's location at the intersection of gender, ethnicity and social class made them vulnerable to this violence and that they had been intentionally attacked in this way, in order to destroy the social fabric and culture of the Q'eqchi communities in which the women lived. In particular, in her testimony that gave a legal analysis of the gendered violence committed and how it fitted into the framework of international law, expert witness Paloma Soria drew on intersectionality theory (ICL, IHL, IHRL). She concluded that the sexual violence and other crimes committed at the military base were acts of genocide, as defined in the 1948 Genocide Convention, since they were acts committed with the intention to destroy, in whole or in part, the Maya Q'eqchi communities where the women and their families lived. These arguments held sway. The court recognised in its judgement that sexual violence was used as a weapon of war against the community of Sepur Zarco, in order to destroy its social fabric.

#### **Uncovering Causes, Specific Experiences and Harms**

During the trial, two expert witnesses also used intersectional analyses to uncover the specific harms and experiences of the women survivors. In particular, Professor of Social Anthropology Irma Alicia Nimatuj, in her expert witness report on cultural harms, described several specific cultural harms suffered by the women and their communities. These include: the **loss of huipiles**, which can be passed from mother to daughter and are unique works of art and family heirlooms; the **loss of the tradition of weaving**; the **loss of status, respect and of community support** that they would have received as mothers and married women and, in later life, as community elders; **damaged social fabric, community organisational structures and relations**, due to the legacy of violent militarisation; and the **inability to properly grieve their disappeared husbands or to perform the rites and show the respect traditionally owed to the dead**.

Other expert witnesses (without referring explicitly to intersectionality) referred to the women's multidimensional identities, the cultural, ethnic and gendered nature of the violence and harms and the interactions of racism and sexism as social structures that underpinned the violence, in particular Rita Laura Segato in her gender and anthropological expert witness report. Other witness reports, including psychologist Monica Pinzon, also documented numerous other harms suffered by the women, including physical health problems, psychological trauma, multiple and compounded socioeconomic losses - losses of land, homes, labour power for subsistence farming and income generation, and of access to education for their children, who had to work to help their mothers grow food to survive and maize to feed the soldiers.

Expert witnesses also described the specific experiences and understandings of harms rooted in their identities as indigenous women. In Q'eqchi, there is no word for rape. The anthropological linguistic report described how the word that the women most frequently used was *muxuc*, or profanation of the women's sacred bodies and of their relationship with the cosmos in their social, cultural and material reproduction of life. The expert witness reports on psychological and on cultural harms both described how the women had suffered from *susto*, or spirit loss, caused by the violence and terror that they suffered. These analyses were important in making the case for the reparation measures demanded.

### **Intersectionality and Reparations**

The reparation hearing was held three days after the guilty verdict. Lawyers relied upon the evidence of the specific experiences and harms suffered by the women and their communities to help make the case for transformative reparations.

### **Making the Case for Transformative Reparations**

Feminist lawyers used intersectionality theory to make the argument for transformative reparations and identified multiple dimensions of identity, including disability, age, religion and political affiliation. In practice, the main dimensions considered in the reparation claims were gender, ethnicity, culture and social class. Importantly, the women survivors' own demands were considered, based on their analyses of what they, their families and their communities needed. Lawyers argued that, for a measure to be considered transformative, it must, among other considerations, identify and eliminate factors that caused discrimination and adopt a gender perspective to consider the different impacts of the violence committed against men and women.

### **Recognising Individual and Collective Harms**

This also meant recognising the individual harms suffered by the victims that were documented in the trial, alongside the collective harms suffered, including damage to the social fabric and cultural losses. It also meant recognising the social, political and economic marginalisation experienced prior to the human rights violations as a contributory factor.

### **Community and Individual Needs**

Lawyers also argued that the court must consider community and individual needs, including: the needs of the communities to recuperate and dignify their culture; the need to carry out grieving processes in the case of forced disappearances; the victims' requests that the State publicly recognise

its responsibility; and the victims' need to feel that the harms have been repaired and to rebuild their lives at the individual, family and collective level.

### **Interpreting the UN Guidance**

Individual and collective measures were sought, using the Basic Principles outlined by the UN.

#### **Individual Measures**

The individual measures sought included: restitution, that the State continue with the search for the women's disappeared husbands and children; rehabilitation of physical, psychological and spiritual health (*susto*); compensation for the economic and moral losses caused, to be paid by the two men prosecuted; and guarantees of non-repetition, defined as the creation of the conditions for the empowerment and strengthening of the women survivors.

#### **Collective Measures**

The collective measures sought 'transformative restitution' that aimed to transform the structural inequalities that underpinned the violence. These measures focused on getting the State to provide the basic social and economic rights typically denied to indigenous communities in Guatemala, most notably land, healthcare, education, as well as workshops on Q'eqchi culture and materials and financial support for the women survivors' collective to help with the production of handcrafted products.

**Symbolic reparation measures** were also sought, based in a principle of '**transformative satisfaction**'. These were: that the sentence be translated into the twenty-four languages recognised by the State of Guatemala; that the State build a monument that represents the search for justice of the women survivors; that the Guatemalan president publicly apologise for the crimes committed; and the creation of a national day to commemorate victims of domestic and sexual slavery.

Finally, measures were sought based on a principle of 'transformative guarantees of non-repetition', which included changes to the training of the military to include a focus on women's human rights and on the laws that penalise violence against women and that the Sepur Zarco case be included in the school curriculum.

### **Discussion and Conclusion**

The sentence recognised the women's multidimensional identities, their specific experiences and understandings of the violence and harms suffered and the structural discrimination underpinning this violence. This was important in winning the reparation measures, of which the court awarded most of those demanded. The use of intersectionality theory helped to frame and strengthen the claim for

transformative rather than restorative reparations. The guilty verdict and reparations ordered by the court are a historic precedent in Guatemala and represent a huge step forward in the struggle for indigenous women's rights and in the struggle against impunity for sexual violence.

There are, however, two main difficulties. The concept of 'transformative' is rather vague (Walker, 2016). In practice, this may lead to reparation claims for social and economic rights, to which survivors are already entitled, such as education and healthcare. This raises a debate that likens reparations to development aid. The other is that the measures awarded made very weak provision on getting land titles for the community of Sepur Zarco. The court did not award land, but instead ordered that the State resolve the applications made for land by the women's husbands. The State has since rejected these applications and the women survivors and supporting organisations are negotiating with the government to resolve the issue. This has delayed the construction of a health centre, a high school and the monument. The failure of the Guatemalan State to resolve the issue of land ownership reflects the failure within the country to resolve the historic conflict over land caused by colonialism and colonial-like settlement and also a broader problem with transitional justice, which has not been developed to deal with these historical injustices.

### **Transformative Restitution**

#### **Individual Restitution:**

- to continue to search for those disappeared during the war.

#### **Collective Restitution:**

- **1. Land and Housing:** award a plot of land for each of the women and grant secure legal tenure for the whole community of Sepur Zarco. The court actually ordered that the Guatemalan State resolve the applications for land made by the women's disappeared husbands.
- **2. Healthcare:** a health centre for Sepur Zarco.
- **3. Education:** a bilingual (Spanish and Q'eqchi) high school in Sepur Zarco; scholarships for women and their teenage daughters (scholarships were awarded for three levels of education for the whole population of Sepur Zarco); improved infrastructure, furniture, equipment and a computer laboratory for the middle schools in Sepur Zarco that serve over twenty surrounding communities.
- **4. Cultural, Social and Economic Measures:** educational and cultural projects for women and youth to save the Q'eqchi culture and rebuild the social fabric; support the Jalok U collective with materials or financial support for the production of artisanal/handcrafted products made by the women.

**Transformative Compensation****Individual Compensation:**

- Valdez Assig, being responsible for the cases of forced disappearance, must pay a total of Q 2,717,835.29
- Reyes Giron, being responsible for the other crimes, must pay a total of Q 12,680,668.80.

**Transformative Rehabilitation:**

- Including medical and psychological care and legal and social services, all of which should avoid re-traumatisation.

**Transformative Satisfaction:****Collective Satisfaction:**

- Translate the sentence into the twenty-four languages spoken; build a monument; public apology by the president for the sexual violence and sexual and domestic slavery suffered by the women of Sepur Zarco; recognise the 26<sup>th</sup> of February as the 'Day of Victims of Sexual Violence and of Sexual and Domestic Slavery'; the Ministry of Education should include the Sepur Zarco case in the school curriculum and in textbooks; the Ministries of Education and of Sport and Culture should make a documentary film about the Sepur Zarco case.

**Transformative Guarantees of Non-Repetition****Individual Guarantees of Non-Repetition:**

- Create the conditions for empowerment and the strengthening of the victims.

**Collective Guarantees of Non-Repetition:**

- Training for the military on women's human rights and the legislation on the prevention of violence against women; the State should provide security measures for the staff of the organisations, the victims and their families.
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## Chapter Seven: The Search for Justice of the Women Survivors of Sepur Zarco

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### **Editor's Introduction**

*This chapter has been pieced together, principally, from transcriptions of the interviews that Juliette had carried out with the women survivors over the three periods that she was able to go to Guatemala to conduct first-hand fieldwork: from February to March 2016, to observe the Sepur Zarco trial; from October 2016 to September 2017; and, finally, from June to September 2018. In addition, it contains extended interview sections with representatives of the supporting organisations, a blog post and an article that Juliette published, and a further excerpt from her fieldnotes, all of which provide a contextual outline that frames the passages offered by the women survivors.*

*As Juliette had not begun to organise the first-hand material that she had gathered in any clear way, the structure that has been adopted loosely follows the line of questioning that Juliette pursues in each of the interviews with the women survivors and which is consistent throughout each of them. Moreover, the quotes have been selected according to patterns that emerge in the responses given by the women, decidedly pronounced given the closeness shared by the group throughout their search for justice. In this sense, the extracts come together to form a narrative that relates the entirety of the process, from their initial organisation as a group of women survivors through to their struggle to bring the reparation measures to fruition.*

*The chapter opens with extended interview excerpts from representatives of the supporting organisations that provide a background to the search for justice within the immediate post-conflict environment, the initial contact between the organisations of the Alianza and the women of Sepur Zarco, and their work together in bringing the case forward. There follow three sections in which the women survivors describe the start of their journey, their involvement in the Tribunal of Conscience, and their experiences of giving testimony during the trial. A blog post written by Juliette then provides a first-hand account of her attendance at the trial, before the women survivors offer their own considerations on the personal changes that they have experienced and whether they feel that justice has been served. An article that Juliette published in the Conversation affords further commentary on the Sepur Zarco trial, before the representatives of the supporting organisations present their own analysis of the verdict. Two sections then give the testimonies of the women survivors regarding changes that have taken place within their communities and their thoughts on the process of reparations following the conclusion of the trial. The chapter ends with an extract from Juliette's fieldnotes that recounts her experiences attending the commemoration of the sentence.*

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### **A Background Panorama as Told by Representatives of the Supporting Organisations**

After the signing of the Peace Accords, ECAP began working with women survivors of sexual violence committed during the internal armed conflict. The women began looking for the disappeared, their husbands, sons, and brothers. Two years later, UNAMG began to work with ECAP on psychosocial accompaniment and women's rights. This work began in 2003.

In 2010, the organisations organised a people's tribunal [the Tribunal of Conscience] as a symbolic act of justice. After this, the women decided to give their testimonies before the tribunal. There were different organisations involved in this tribunal, among them MTM. After eight years of working with the women and all that they had been through, the tribunal represented an opening to help the women share their testimonies and helped some of them to decide to file a formal complaint.

In 2011, the women filed this complaint. It was after the people's tribunal that the Alianza Breaking the Silence and Impunity was formed. This alliance pushed the case through the strategic litigation. After filing the formal complaint, the strategic litigation was implemented in 2012. The testimony of the fourteen women of Sepur Zarco was accepted. These proceedings resulted in the opening up of the trial in February 2016. This was a historic case of international importance.

Women survivors of sexual violence participated in the people's tribunal. Women of other regions participated, but it was the women of Sepur Zarco that decided to take their case forward. In February 2016, the trial took place over one month. The women were accompanied by the Alianza and the trial was carried out under strategic litigation<sup>77</sup>.

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The women wanted to bring the case to formal justice, but didn't know how to achieve it. ECAP was working with the women in the psychosocial aspect. It wasn't necessarily decided that Sepur Zarco was the group with which to go forward. We started listening to the testimonies of one-hundred women from different communities that were working in conjunction and what they presented in the Tribunal of Conscience, about eight groups of about one-hundred women. One of the groups presented eight testimonies at the tribunal. So, at that point Sepur Zarco was not a case *per se*. What they presented at the tribunal was an informal practice, not necessarily a formal process, of how this case would be tried and whether they were going to proceed to a formal penal process.

Basically, the reason it was decided that Sepur Zarco be brought to formal justice was following the symbolic proceedings that had classified the cases of these hundred women. The reason Sepur Zarco

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<sup>77</sup> Excerpts from an interview with Sulema, founder of UNAMG, 28.04.17.

was chosen was because that group of women had more determination to bring it to the formal justice system. Also, because the Sepur Zarco military base had more cases including women. They classified the cases by time, place, and how they happened, when, and what were the end results. When they carried out the symbolic Tribunal of Conscience proceedings, they did a symbolic verdict, an exercise, and this is what gave the women the desire to move forward. Of these hundred cases we have heard, more are being brought forward, but Sepur Zarco was done because of how many women were housed there and the desire of the women to move forward<sup>78</sup>.

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When they were presenting the litigation process, they thought that each of the women were going to have one sentence per person. Once they had presented, they learned that this could not happen, because it had to be seen as a crime against humanity. It had to encompass society as a whole. The reason that the other women's cases are being enticed forward to present to the formal judicial system is because of the acts of reparation that are being conducted. Also, in the way they are looking for each trial to be conducted, to be seen as sexual violence, sexual slavery, and domestic slavery. But this is where the tribunal said that we had to present the case as a whole and provide a timeline for when the acts were committed. So, it had to represent society in general and this is how it will be done going forward.

Each woman had a different case, a different story. For example, Doña F remembered what happened, described the facts, presented the case. This showed that they were crimes against humanity, but also, firstly, that it included sexual slavery, secondly, sexual violence, and, thirdly, domestic slavery. Finally, they took into account that it all began with the forced disappearances [of their husbands and partners]. When it was brought to the judge, it was determined that it would be prosecuted as crimes against humanity, due to the genocide. Genocide was then connected to sexual violence<sup>79</sup>.

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What is fundamental to keep in mind is that we are trying to support the recovery of the person. From the beginning, when the Alianza started, they put the women at the centre of every decision the organisations made, they made the women's demands or concerns guide the decisions. In that way it was strengthening. Also, society saw that the women were the most important conductors in making

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<sup>78</sup> Excerpts from an interview with Pilar, Coordinator of MTM, 05-02-17.

<sup>79</sup> Excerpts from an interview with Pilar, Coordinator of MTM, 05-02-17.

the case move forward. It was through their interests and desires that the organisations could work together to make it happen<sup>80</sup>.

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On one side, many say that it would not have happened without the women's bravery to go forward with the process, because it was not easy to confront a judicial system that is structured to allow impunity, especially in cases of sexual violence and violations committed during the internal armed conflict. The verdict is historic in that sense. The verdict has not gone through the full legal process, but the verdict itself is an important development for the women, the organisations, and internationally, because it has allowed sexual violence to be positioned as a crime in the past and to make a connection to continuing violence, something that is important for all women. The guilty verdict of the Sepur Zarco case is important not only from the point of view of justice, as justice is already comprehensive according to the cosmovision of the women, but for the organisations that are trying to make sure that the legal process is completely carried out<sup>81</sup>.

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### **The Testimonies of the Sepur Zarco Women Survivors: The Start of Their Journey**

*This section begins with a short fieldwork note that Juliette had written about an interview that she conducted in Sepur Zarco with one of the women survivors. It is presented here in full, to offer context as to the conditions in which the women live and, therefore, those in which Juliette carried out the interviews with them in their communities.*

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We sit in Doña A's house, Olivia (the interpreter), Doña F, and I. Like most of the houses here, it is made of wooden walls and bamboo, with a thatched palm roof. There are a couple of plastic chairs and a hammock. Doña F is in the hammock; Olivia and I are in the plastic chairs. Doña A is making tortillas, standing at a stove that is really just a raised-up open fire. In Q'eqchi, Doña A tells us that she has been making tortillas since she was very small. She chuckles. Olivia translates for me. Doña A points at a woven bag that is hanging up, full of maize cobs, and says how she went to harvest the maize earlier that morning. It is around 9am now. Doña A is in her seventies, small and slim with sharp bright eyes. She tells us that she lives alone. Doña F asks her what she does when she gets sick. She

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<sup>80</sup> Excerpt from an interview with Olivia and Beatriz of Impunity Watch, 05-02-17.

<sup>81</sup> Excerpt from an interview with Sulema, founder of UNAMG, 28.04.17.

replies that no one looks after her when she is sick. There is no one who can bring her food and drink. She only has a daughter who looks after her.

She starts putting the deep-red chilli powder, produced in nearby Cobán, into a bowl and mixes in some salt. She points to the chilli. 'This is my meat', she says. She explains that she has no money to buy meat. She takes a tortilla from the *coma*<sup>82</sup> and dips it into the bowl, spreading the mixture of chilli and salt on to it. Doña F leaves. Doña A tells Olivia that the price of maize is really low. The middlemen who arrive in large open trucks to buy the maize are not paying much at the moment.

I remember that she was a witness in the trial and ask if I can interview her. She agrees. A few weeks ago, she appeared in a TV programme, Sin Filtro. MTM facilitated their arrival. I mention that I saw her on the programme. She seems pleased, although she herself did not see the programme. It seems that she does not have a TV, although she says that one of her children does and lives nearby. We begin the interview.

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We began the group when another group of women came here to visit us, to see how we were. One of the women, who is also a widow and suffered during the armed conflict, and who is part of CONAVIGUA, asked us how we were. I said, 'will it be that we remain with this pain, will it be that we cannot search for justice?' Because we are widows, they killed my husband. There are more women and we all got together there. So, CONAVIGUA began to orientate us. I said that yes, we can seek justice, we are not going to keep our mouths closed, we are not going to remain silent, neither am I going to die with this pain inside. I want to see justice, that is what I said<sup>83</sup>.

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Fifteen years ago, we began to seek justice. Firstly, we organised ourselves here in the community. When ECAP and UNAMG came, they found us here [and got us] to participate in a workshop. That is how we began. When we began, we started to talk among the women. We began to talk and to say, 'how can it be that we cannot tell our story?' Because, in reality, we saw how women live in poverty and extreme poverty. 'Will it be that we are going to organise? Will it be that we can tell our story?'

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<sup>82</sup> A smooth, flat, round griddle typically used throughout Central America.

<sup>83</sup> **Interview Doña A, 07-04-17:** Iniciamos el grupo cuando un grupo de mujeres vinieron aquí a visitarnos, a ver como estábamos. Una señora que es viuda también y también sufrió del conflicto armado, es parte de CONAVIGUA, nos preguntó como estábamos. Yo dije, '¿será que vamos a quedar con este dolor? ¿será que no podemos buscar justicia?' Porque nosotros somos viudas, mataron a mi esposo. Hay más mujeres y nos juntamos allí. Entonces, CONAVIGUA nos empezó a orientar. Yo dije que sí podemos buscar justicia, no vamos a quedar calladas, nos vamos a quedar en silencio, tampoco voy a morir con el dolor. Yo deseo ver justicia, eso dije yo.

That is what we started to say among the fifteen women that were there. One of the women died during the process. That was how it began and that is how we started to tell our story<sup>84</sup>.

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Little by little, we began to share, to recount what I had lived through. I shared with them (CONAVIGUA) that I no longer have children, that they died on the mountain. Also, that I lost my husband, I lost my house, everything that I had lost. So, I told CONAVIGUA little by little.

Little by little, I began to tell; little by little, they began to get it out of us. They did not get it out of us in one go, that we have to tell our story, but they told us that little by little. I said one word and began to cry and, afterward, they said, 'cry all you want, get it all out'. So, I got it all out, I cried, I could not stop my pain. Not like now, we have gone to different places a lot of times to tell our story. So, it is easy for me to tell my story, because little by little I am forgetting [my pain], although not a lot, because there is always pain<sup>85</sup>.

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Well, we did a lot of things, training, in order to prepare us well. So, we went to Sololá town, they made us draw, we drew our children, we drew the soldiers. They taught us and prepared us well, so that we could tell our things.

We were all afraid that things would repeat themselves, we were afraid that they would say that we provoked them. That was the fear, but little by little we began to tell our story. It is not easy to tell our story, it is difficult. So, we began to tell it little by little. We did not begin to tell it just like that. That was our fear, that the story would repeat itself again. Well, we said that we have to tell our story, we

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<sup>84</sup> **Interview Doña B, 06-04-17:** Bueno, hace quince años hemos empezado para buscar por la justicia. Primero, nos organizamos aquí en la comunidad. Cuando vinieron ECAP y UNAMG nos encontraron, participar como en un taller. Así iniciamos. Cuando iniciamos, sí empezamos a platicar entre mujeres. Empezamos a hablar, empezamos a decir, '¿cómo es que no podemos contar nuestra historia?' Porque en realidad miramos que las mujeres vivimos la pobreza y la extrema pobreza. '¿Será que nos vamos a organizar? ¿Será que podemos contar nuestra historia?' Eso empezamos a decir entre las quince mujeres que había. Una durante el camino se murió. Así fue como inició y así empezamos a contar nuestra historia.

<sup>85</sup> **Interview Doña F, 07-04-17:** Poco a poco, empezamos a compartir, a contar lo que viví. Yo les compartí con ellos (CONAVIGUA) de que ya no tengo hijos, se murieron bajo de la montaña. También, perdí a mi esposo, perdí mi casa, todo lo que había perdido. Entonces yo les conté poco a poco a CONAVIGUA... Poco a poco empecé a contar, poco a poco nos empezaron a sacar. No nos sacaron así de un solo, que tenemos que contar nuestra historia, sino poco a poco nos decían. Yo una palabra decía y yo lloraba y después nos decían, 'lloren todo lo que quieren, desahoguen'. Entonces yo me desahugué, lloré, no pude detener mi dolor. Como ahora, hemos ido en diferentes lugares, ya muchas veces a contar nuestra historia. Entonces es fácil que yo cuente mi historia, porque ya poco a poco me está olvidando, aunque no mucho, porque así siempre hay un dolor.

have to describe what we lived through, what we suffered. Thank God we had that support at that moment<sup>86</sup>.

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### **The Testimonies of the Sepur Zarco Women Survivors: The Tribunal of Conscience**

*Editor's note: In supervisory meetings, Juliette explained that one of her findings was that the 2010 Tribunal of Conscience should be understood as a fundamental step towards the women speaking out in public and participating in the justice process. Indeed, the interview excerpts above and below reflect how this process helped the women speak about what happened and made it possible for them to testify during the 2016 trial. This point would have been a significant argument in the planned chapter on indigenous conceptions of justice and truth-telling.*

I participated in the Tribunal of Conscience, I participated there and it was when the process began. I felt happy to begin the process, because I saw that there were many organisations that were supporting us. I felt happy, because I thought that we were going to achieve justice, because people came to visit us from other countries as well. So, I felt happy. I said that yes, we are going to succeed, because we have a lot of support from these organisations. We are not alone; we are in contact with other organisations. Because of this I felt alive... In the Tribunal, we did not all speak, but we were represented by Doña C, who spoke on our behalf<sup>87</sup>.

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Well, in the Tribunal only one of our group spoke. She did not show her face and no one could see who was speaking. So then, it was the first time that we began the process of the search for justice.

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<sup>86</sup> **Interview Doña D, 08-06-17:** Bueno, es que un montón de cosas hicimos, capacitaciones, prepararnos bien. Entonces fuimos, llegamos a Sololá, nos pusieron a dibujar, nos dibujamos nuestros hijos, dibujamos los militares, nos enseñaron bien y nos preparamos bien para que nosotras podíamos decir las cosas... Buenos, todas tenemos temores de que se vuelva a repetir, tenemos miedo que lo que vamos a hacer nos van a decir que nosotras provocamos. Ese es el miedo, pero poco a poco empezamos a contar nuestra historia. No es fácil con contar nuestra historia, es difícil. Entonces empezamos a contar poco a poco. No es así de repente empezamos a contar. Ese es nuestro temor, que se volviera a repetir otra vez. Bueno, dijimos que tenemos que contar nuestra historia, tenemos que contar lo que vivimos, lo que sufrimos. Gracias a Dios, el apoyo que teníamos en ese momento.

<sup>87</sup> **Interview Doña H, 17-04-17:** Yo participé en el Tribunal de Consciencia, yo participé ahí y fue que empezó el proceso. Pues, yo sentí contenta al iniciar el proceso, porque yo vi que ahí hay muchas organizaciones que nos están apoyando. Yo me sentí contenta, pensé que vamos a poder lograr la justicia, porque vinieron también a visitarnos de otros países. Entonces yo sentí contenta. Dije que sí, vamos a lograr, porque tenemos mucho apoyo de parte de las organizaciones. No estamos solas, sino que estamos en contacto con otras organizaciones. Por eso que sentí animada. En el Tribunal, no hablamos nosotras, pero dimos una representación que iba a hablar por nosotras Doña C.

So, I saw that there were a lot of people, there were a lot of organisations that supported us. Because of that I was happy to begin the process.

In the first place, I was sad, I did not know what was going to happen, what would occur. At the same time, I felt that I needed to cry. I was there crying at that moment, listening to the stories of the women survivors, what was happening. I was listening because they gave us an earpiece, so I was listening to everything and, yes, I was crying. It is not easy [to hear] what I was hearing. I was remembering everything that had happened.

Well, on seeing the other organisations, I said that we have support there. They came from other countries that had also suffered armed conflict. They told their stories. So, I said, 'it is not only in Guatemala that there has been conflict, it has also happened in other countries'. Other women also came to the meeting, so I saw that it was not only me that was fighting, not only me that suffered from the conflict. There were more of our sisters present there. So, I livened up to continue following the road on the search for justice<sup>88</sup>.

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### **The Testimonies of the Sepur Zarco Women Survivors: Giving Testimony During the Trial**

They prepared us, we were in preparation for about two years, because it is not easy to come and tell our story, as years have passed since it happened. Little by little I remembered what I was going to say. Yes, they began to prepare us, to get rid of our anxiety so that we were not going to suffer from fear there. They taught us many things and they prepared us really well.

I felt good at that moment, because I saw that the judge listened to us. I said, 'I am going to tell my story, the moment has arrived, I am not going to die with this story [untold], I have to tell it. Although I felt a little sad, remembering all that I had lived. So, I said, 'God will help me, God wants me to tell

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<sup>88</sup> **Interview Doña F, 07-04-17:** Pues, en el Tribunal solo una compañera habló. No mostró la cara, tampoco se vio quien es que estaba hablando. Ahí pues, primera vez que iniciamos con el proceso de búsqueda de justicia. Entonces vi que había mucha gente, había muchas organizaciones que nos apoyaban. Entonces por eso ya estaba contenta por iniciar este proceso... En primero lugar, estaba triste, no se que iba a pasar, que iba a suceder. Al mismo tiempo me dio un sentimiento de llorar. Ahí estaba llorando en ese momento, escuchando la historia de las compañeras, que estaba pasando. Yo escuchaba porque nos dieron una radio en el oído, entonces estaba escuchando todo y sí estaba llorando. No es fácil, lo que se oyó. Estaba recordando todo lo que había pasado... Bueno, al ver otras organizaciones, dije yo ahí tenemos apoyo. Llegaron también de otros países que también habían sufrido el conflicto armado. Contaron su historia. Entonces, dije yo, 'no solo aquí en Guatemala pasó el conflicto, también pasó en otros países'. También llegaron otras mujeres de la reunión, entonces vi que no solo yo estaba luchando, que no solo yo sufrí del conflicto. Había más compañeras que estaban presentes ahí. Ahí me animé de continuar de seguir el camino de búsqueda de justicia.

my story, my pain'. That is what I said to myself. So, thanks to God, I had no fear in that moment, because I asked God's help to be able to tell my story. So, because of that I felt good telling my story<sup>89</sup>.

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I feel happy. I went to unburden myself, to tell my story. Back then, when I saw that there was a lot of support for us, I saw a lot of people. Sisters and also foreigners were there supporting us. I felt relieved and I felt happy when I shared my testimony.

I feel happy on seeing our sisters from other countries that were there and I feel more protected. Because of that, I was not afraid when I was in there (the courtroom). I said, 'I am not alone'.

There were some male comrades that left in tears. Not me, I left happy, as if I had gone to unburden myself there. I told my whole story and I did not feel anything. They asked me how I felt, whether I felt pain. I told them no, I am fine, because I have just told my story<sup>90</sup>.

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In the first place, I prepared myself to talk. I said that I was going to tell my story, because it is what I lived through. What I went to say is not a lie. Everything that I lived through is sad, I was crying up there, because I had to tell my whole story, all that I lived through, everything that happened, all that I lived through in the mountains, how many children I lost in the mountains. So, that is what I said, I said it all, because I remember my whole story. So, that is what I went to say. That is what I said before the tribunal<sup>91</sup>.

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<sup>89</sup> **Interview Doña F, 07-04-17:** Nos capacitaron, estuvimos como dos años en preparación, porque no es fácil de pasar y decir nuestra historia, porque ya tiene años de haber pasado. Yo poco a poco estoy recordando lo que voy a decir. Sí, nos empezaron a capacitarnos, a quitar el miedo, que no vamos a sufrir un miedo ahí. Nos enseñaron muchas cosas y nos prepararon bien bien... Yo sentí bien en este momento, porque yo vi que la jueza nos escuchó. Dije yo, 'voy a contar mi historia, llegó el momento, no me voy a morir con esto mi historia, sino que tengo que contar. Aunque sentí un poco triste, porque recordando todo lo que viví. Entonces, dije yo, 'Dios me va a ayudar, Dios quiere que yo cuente mi historia, mi dolor. Eso es lo que dije entre mí. Entonces pues, gracias a Dios no tuve miedo en ese momento, porque yo pedí mucho a Dios que yo podía contar mi historia. Entonces, yo por eso llegué y me sentí bien al contar mi historia.

<sup>90</sup> **Interview Doña A, 07-04-17:** Yo me siento feliz. Yo me fui a desahogarme, a contar mi historia. En aquel entonces, cuando yo vi que había mucho apoyo para nosotras, vi mucha gente, de ahí las compañeras mujeres y también internacionales estaban apoyándonos. Yo me sentí aliviada, me sentí contenta cuando yo compartí mi testimonio... A mí me pongo contenta a ver las compañeras de otros países que estaban allí y me siento más protegida. Por eso, no tuve miedo cuando yo pasé allí. Dije yo, 'no estoy sola'... Hay unos compañeros hombres que sí salieron llorando. Yo no, yo salí contenta, como si fuera a desahogarme ahí. Dije toda mi historia y no sentí nada. Me preguntaron como siento, si tengo dolor. Yo les dije que no, estoy bien, porque yo ya conté mi historia.

<sup>91</sup> **Interview Doña H, 17-04-17:** Yo sí, me preparé para, primer lugar, hablar. Dije que yo voy a ir a contar mi historia, porque es lo que viví. No es una mentira lo que yo fui a decir. Todo lo que viví es triste, yo estuve llorando ahí, porque tuve que contar toda mi historia, todo lo que yo viví, todo lo que pasó, todo lo que vivía en la montaña, cuantos hijos perdí en la montaña. Entonces, eso es lo que dije, yo dije todo, porque tengo presente



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For me, when I was in the trial, in the debate, I was happy. Equally, on hearing all the witnesses, those that came to support us. They told the truth, all that we suffered. Because we also had to look for witnesses from here, because we know them all very well, who they are and what they saw. So, we asked and they wanted to go and share the truth. If we had not looked for witnesses, maybe the judge would still have believed everything that we told. Also, the expert opinions gave weight [to our case]. They also investigated, they carried out a thorough investigation with us. All that they said is true. At the start, we were afraid, because we could see all of the military personnel there, threatening us with their stare. And they looked at us as if we were lying and that made me a little afraid. But afterwards I saw that the judge supported us, admired us, despite us not being able to speak Spanish, but we got to trial<sup>92</sup>.

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My testimony, I went to give evidence in advance of the trial. It is true, the judge listened to us and asked us if we were willing to tell the truth, if we were going to lie. Well, anyway, they have to pay, there has been a crime [committed]. I was never going to go and lie, never going to sit down and lie, to tell lies. It is all true, what we lived through. It is painful to tell my whole story. This is what I said, 'I did not come to lie, I came to tell the truth, what we lived through'. For me, what I felt was something really serious, what we lived through at that time. I replied to the judge, I told her that yes, all that I am going to tell is the truth, all that I lived through, all that I suffered, because I will not tell even one lie in my testimony. And here I am now to tell my story.

For me, during the trial I also felt pain, being sat in front of the defendants, those that harmed us. They were fine sat there, they were eating. But my relatives, my husband, who knows where he is, where he remains now. So, I was sat there, but I was crying<sup>93</sup>.

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toda mi historia. Entonces, eso fue lo que yo fui a decir. Eso es lo que conté ante el tribunal.

<sup>92</sup> **Interview Doña C, 06-04-17:** Para mí, cuando yo estaba en el juicio, en el debate, estaba contenta. Igual, al escuchar a todos los testigos, los que llegaron a apoyarnos. Dijeron la verdad, todo lo que sufrimos nosotras. Porque también tuvimos que buscar testigos de aquí, porque nosotras conocemos muy bien los de aquí, quienes fueron, quienes nos vieron. Entonces nosotras buscamos y ellos quisieron ir, compartir la verdad. Si no hubiéramos buscado testigos, tal vez nos hubiera también creído la jueza todo lo que nosotras hablamos. Igual, nos dieron peso los peritajes. También investigaron, hicieron una buena investigación con nosotras. Todo lo que dijeron es verdad. Al principio, tuvimos miedo porque al ver a todos los militares ahí, amenazándonos con la mirada. Y nos miraban como que nosotras estábamos diciendo una mentira y eso me causó un poquito de miedo. Pero ya después, miraba que la jueza nos tenía apoyo, nos tenía admiración, a pesar que nosotras no podemos hablar español, pero llegamos al juicio.

<sup>93</sup> **Interview Doña E, 06-04-17:** Mi testimonio, el anticipo de prueba fui a contar. Es cierto, la jueza nos escuchó y nos preguntó si nosotras estamos dispuestas a decir la verdad, si vamos a mentir. Pues, de todos modos, hay que ir a pagar, hay un delito. Yo nunca voy a ir a mentir, nunca voy a sentarme a mentir, a decir mentira. Es toda

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Well, I did not feel anything there. I just saw that there was a lot of support. At the same time, the process began in our case, but what was waiting for us was gossip. 'They are liars', many things that they said about us. So, that was what most worried me. Yes, I felt nervous and worried. Yes, I was scared as well, because it is not easy being in front of a tribunal, in front of an authority figure and tell my story.

Well, when it was my turn to talk in front, when the trial was over, I had courage, I had to tell what they did [to us]. How could they not accept their crimes? Why did they have them up there? So, I said to them, 'if you do not accept your crimes then bring our husbands back to us alive, all of us that are here, us fourteen. Bring them back alive. Where did you leave them, then? Show us. Then you can go free. But if you will not bring them, if you will not show us, you have to go and pay for your crimes'. And it is true what we lived through, what we suffered as women<sup>94</sup>.

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I felt good [giving evidence in advance of the trial], I felt happy, because I saw that the judge supported us. At no point did she reject us or discriminate against us, but was happy there listening to us. Although we live in a rural area, she accepted us as we are. So, for me, I saw that there would be results in our case.

At the sentencing I was happy, because I saw that we had the support of the judge. Although my sisters were sweating. Will there be a sentence or not? I did not cry; Doña F was crying but not me. I said that yes, there will be, I hope that there will be justice. I did not even think anything else; I was sure that there was going to be a sentence. Some of the sisters did doubt whether there would or would not

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la realidad lo que vivimos. Es un dolor a contar toda mi historia. Eso dije yo, 'no vine a mentir, vine a decir la verdad, lo que se vivió'. Para mí, lo que sentí es algo bastante serio, lo que vivimos en ese momento. Yo le respondí a la jueza, le dije que sí, es cierto todo, lo que voy a contar es la verdad, todo lo que viví, todo lo que sufrí, porque ni una mentira voy a decir en mi testimonio. Y aquí estoy ahora contar mi historia... Para mí, durante el juicio es un dolor también que yo sentí, estando sentada en frente de los capturados, los que nos hicieron el daño. Ellos están bien sentados ahí, están comiendo. Pero mis parientes, mi esposo a saber dónde estará, dónde se quedó. Entonces yo estaba sentada allí, pero estaba llorando.

<sup>94</sup> **Interview Doña D, 08-06-17:** Bueno, yo no sentí nada allí. Yo solo miraba que había mucho apoyo. Pero al mismo tiempo, ahí inició el proceso en nuestro caso, pero lo que nos esperó era chisme. 'Son mentirosas', muchas cosas que se dijo con nosotras. Entonces eso es lo que más me preocupó esto. Yo sí me sentí nerviosa y me sentí preocupada. Sí me dio miedo también, porque no es fácil estar enfrente de un tribunal, en frente de una autoridad y contar mi historia... Bueno, cuando a mí me tocó hablar ahí adelante enfrente, cuando ya se finalizó el juicio, que yo tenía coraje, yo tenía que decir lo que hicieron. ¿Cómo que ellos no aceptaban sus delitos? ¿Por qué los tenían allí? Entonces yo les dije, 'entonces si no aceptaban sus delitos, entonces que traigan vivos nuestros esposos, las que estamos aquí, las catorce. Que traigan vivos. ¿Dónde los dejaron entonces? Que nos enseñen. Así saldrán libres. Pero si no nos han traído, si no nos enseñan, entonces tienen que pagar sus delitos'. Y es cierto lo que vivimos, lo que sufrimos nosotras como mujeres.

be. What if there is no sentence? And after the judge had spoken, when the sentence was given, I was happy with the sentence<sup>95</sup>.

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### Postcard from Guatemala

*Editor's note: Juliette had drafted this blog post in March 2016 to be published on the University of Liverpool news website. The webpage is no longer available.*

We are here, opening the way for other women who have suffered rapes and massacres to come forward. It's not only we the Q'eqchi people [who have suffered this], there are others in Quiche, Solola, Chimaltenango, Huehuetenango... we want others to come forward too.

One of the Mayan Q'eqchi women survivors, speaking in court after the panel of judges delivered the verdict<sup>96</sup>.

### Juliette Doman in Guatemala City

It's been an emotional past four weeks, here at the Palacio de Justicia (home of the Guatemalan Supreme Court of Justice) in Guatemala City. I've been observing a trial prosecuting a former lieutenant and a military commissioner for domestic and sexual slavery as crimes against humanity, and also murder and forced disappearance. The trial represents a huge breakthrough for women survivors of wartime sexual violence in Guatemala. Most of the sexual violence, which was perpetrated against Guatemalan women on a mass scale during the war, has remained in impunity. The trial is also historic, since it is the first time worldwide in which sexual and domestic slavery are prosecuted in the national court of the country where the crimes took place.

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<sup>95</sup> **Interview Doña J, 07-06-17:** [Con el anticipo de prueba] yo me sentí bien, me sentí contenta, porque yo vi que la jueza nos apoyó. En ningún momento nos rechazó, nos discriminó, sino estuvo contenta ahí escuchándonos. Aunque vivimos en el área rural, nos aceptó tal como somos. Entonces, para mí, vi que iba a haber resultados en nuestro caso... En la sentencia estaba contenta, porque vi que teníamos apoyo por la jueza. Aunque mis compañeras sudaban. ¿Qué tal si va a haber sentencia o no? Yo no lloré. Doña R estaba llorando, pero yo no. Dije que sí va a haber, ojalá sí va a haber justicia. Ni siquiera pensaba nada, estaba segura de que sí iba a haber sentencia. Unas de mis compañeras sí dudaban si iba a haber o si no iba a haber. ¿Qué tal si no va a haber sentencia? Y después que la jueza dijo, después cuando ya fue la sentencia, yo me quedé contenta con la sentencia.

<sup>96</sup> **Juliette's original footnote:** Notes from trial observation. All quotes have been translated by myself from Spanish, after being interpreted in court from Maya Q'eqchi into Spanish by an interpreter.



**Figure Two: Two Nobel Laureates from the Nobel Women's Initiative: Rigoberta Menchú, from Guatemala, and Jody Williams, from the US, attending the trial. Guatemala City, February 2016.**



**Figure Three: Video testimony is presented to the court. Guatemala City, February 2016.**





**Figure Four: Human remains are exhibited as evidence during the trial. The defence lawyers (standing centre) and judges (sitting further back) look at them. Each of the boxes holds one or two of the exhumed victims. Guatemala City, February 2016.**

It hasn't been easy to listen to many of these painful memories – and I can't imagine how difficult it must have been for the women survivors. Nevertheless, it is good to see that the trial has been held and that many people have come to observe it. I did human rights work here twelve years ago, with survivors of the genocide from a different region. There was a great silence when I was here and you could not speak about the war or politics with most ordinary Guatemalans (unless you knew them reasonably well). It is still a difficult topic and the genocide and atrocities are often still denied, even in national newspapers. One of the most positive things I observed was the presence of Guatemalan university and high school students, and many women and men from different Mayan communities, who came to observe and show solidarity.

The lowest point of this trial was near to the end. In his closing arguments, the lawyer defending Esteelmer Reyes Giron (the former lieutenant who had been in charge of the base) accused the women survivors of lying to the court. Worst of all, he argued that, rather than being victims of rape, and sexual and domestic slavery, the women survivors had probably prostituted themselves to the soldiers on the base and had washed the soldiers' clothes and made food in return for money. One of the survivors, the representative of the women's association Collective Jalok U (Change of Face in Q'eqchi) responded:

We have come to tell the truth and we have told the truth. We are hearing that the men accused don't want to accept what they have done. I ask them, we ask them: where are our husbands? Today we still don't know where they are. Why don't they tell us where they are?<sup>97</sup>

The court was completely full on the final day of the trial. There was a tense silence in the courtroom as we waited for the judge to read the verdict. Both of the accused were found guilty of crimes against humanity. The former lieutenant was also found guilty of the murders of a woman and her two young daughters, and the former military commissioner was found guilty of forced disappearance of several of the women's husbands. It was an incredible moment; tension gave way to cheers and clapping, and the women survivors raised their hands.

### **Seeking Justice through the Eyes of Non-Western Communities**

Being in Guatemala and observing the trial has helped me to understand both the atrocities committed and the search for justice at a deeper level. I'm interested in examining the legal processes and the struggle for justice from an intersectional perspective – taking gender, ethnicity, culture and social class, among other factors, as starting points for analysis. The ways in which harms are experienced and understood, and the ways in which justice is conceptualised, depend heavily on cultural and social realities. The Guatemalan legal system and Guatemalan law is based on US and European systems, and thus influenced by Western liberal philosophy, as is international law. Harms are conceptualised as individual harms to individual persons. However, other cultures conceptualise harms differently, and in ways which are difficult to express in law. Expert witnesses brought by the prosecution have helped the court understand some of these different understandings and experiences and to make visible harms that would otherwise be hidden.

For example, according to one of the expert witnesses, an anthropologist that specialises in linguistics, there was no word for rape in the women's language, Mayan Q'eqchi, before the internal armed conflict. However, the word *muxuk* which translates as profanation of the natural, spiritual and sacred world, was adapted by the survivors to describe how the women interpreted their harrowing experiences: the profaning of women's (sacred) bodies and women's lives, spiritually and socially. Harm was also done to the women's families and communities: the rapes and forced disappearances damaged the social fabric of the communities and caused secondary traumatisation within the families of the victims. In addition, because the women were blamed for the rapes and were stigmatised by their communities, their relationships within their families and their communities were damaged and the women lost the community positions and the respect that they had previously had.

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<sup>97</sup> Notes from trial observation.

Another harm done was the burning of the women survivors' houses, food crops and all their possessions, by the soldiers. This harm is deeper than an economic loss. The traditional *huipils* (woven blouses) that were among the possessions burnt are imbued with cultural and social significance, and would often be passed down from mother to daughter, and grandmother to granddaughter. The loss of these *huipils* signifies a cultural loss to the women's families and the whole community. However, the law falls short in defining these losses and does not fully encapsulate the harm done, from the perspectives of those who have suffered these losses.

My research is focused on examining the women survivors' experiences of and agency in the process of seeking justice, including the trial, and the role of the survivors, women's and human rights organisations who are seeking to transform the legal process from an exclusionary system to one that is more open to women who are seeking justice for gender based violence, especially women from marginalised groups. I will return to Guatemala later in the year, to reflect on and learn from the struggle for justice and on experiences and participation in the legal process with the organizations and women survivors. There are many other cases of sexual violence perpetrated by state security forces and there are other groups of Maya women survivors who have come forward and who have been following the Sepur Zarco trial. It is hoped that, after hearing about this trial, more survivors will be able to break the silence too.



**Figure Five: Juliette as an observer during the Sepur Zarco trial. Guatemala City, February 2016 (photographer unknown).**

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### The Testimonies of the Sepur Zarco Women Survivors: Conceptions of Justice

I said that I was going to tell, because justice needs to be done. So, I went to tell my story, so that justice can be done. And, thanks to God, we achieved it, because I also saw that the judge that listened to us supported us, listened to our story. So, I said, 'I trust her, because yes, there will be justice'. So, thank God, we got to those who harmed us. They are in prison now paying for their crimes, for the harm that they did us. So, you have to say that, for me, yes, I feel happy and yes, the tribunal listened to us.

I felt happy being in the trial, because, I said, 'I hope that we are going to achieve justice'. It is true, everything they did. They burnt my house, I stayed in the streets. So, I said, 'they are going to eat in jail, not like the life of my husband that they cut [short]'. For me, it is good that they have gone, that justice has been done. That is what I hoped for. It is true, I always cry when I tell my story, because it is not easy telling a painful story. It always affects us. Also, because of the conflict, my parents died. Maybe they got scared, right, that made them ill. So, I always remember, I always get sad when remembering all of my story. So, during the trial I was happy when it was taking place, because I went to tell my story. 'I hope that they do it [find them guilty]', that is what I said. I do not think that my word is something to play around with, what I said, because it really was my story<sup>98</sup>.

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Well for me, what I felt in the moment the sentence was passed was that I was happy, because there was a lot of support for us. I saw that the tribunal was full, some people had to stand, they did not manage to get a space, to support us. The majority [of people] that were there were those that were supporting us. So, I felt happy to see that we were not alone. It is true, we all shared the happiness.

It is true, to get where we did is not an easy thing; it is hard, because we were all tired, as the whole month we were sat there suffering thirst and hunger. For me, I was also happy that the judge read out

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<sup>98</sup> **Interview Doña J, 07-06-17:** Dije que yo voy a contar, porque se tiene que hacer justicia. Entonces, yo fui a contar mi historia, para que se haga la justicia. Y gracias a Dios lo logramos, porque yo vi también que la jueza que nos escuchó nos apoyó, nos escuchó nuestra historia. Entonces, dije, 'yo confío en ella, porque sí va a haber justicia'. Pues gracias a Dios, llegamos a quienes nos hicieron el daño. Están en la cárcel ahora pagando sus delitos por el daño que nos hicieron. Entonces, hay que decir que, para mí, sí me sentí contenta y sí nos escuchó el tribunal... Yo me sentí contenta al estar en el juicio, porque, dije yo, 'ojalá que vayamos a lograr la justicia'. Es cierto, todo lo que hicieron. Quemaron mi casa, me quedé en la calle. Entonces, dije yo, 'ellos se van a comer en la cárcel, no como la vida de mi esposo la cortaron'. Para mí, está bien que se vayan, que se haga justicia. Eso es lo que esperé. Es cierto, siempre lloro cuando cuento mi historia, porque no es fácil de contar una historia dolorosa, porque siempre nos afecta. También, por el conflicto se murieron mis papas. Tal vez se asustaron, verdad, encontraron enfermedad ahí. Entonces, siempre me recuerdo, siempre me pongo triste al recordar toda mi historia. Entonces, durante el juicio yo estaba contenta cuando se estaba haciendo, porque yo fui a contar mi historia. 'Ojalá que lo hagan', eso es lo que decía. Yo creo que no es un juguete mi palabra, lo que dije, porque era verdaderamente mi historia.



the sentence quickly, so we were not there for a long time and that helped us to be able to come back, to return to our homes<sup>99</sup>.

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Little by little we lost our fear. Before, when we still had not begun [the process], we were afraid to talk, we were ashamed to speak, to tell our testimony, but afterwards no. It took away the fear of speaking. Now, I can speak with a calmness<sup>100</sup>.

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Yes, there has been a change in me, personally. Before, when I spoke, my heart began, as if it wanted to leave [my body]. Now, I am relaxed when I speak, as if I am empowered. I can express myself; I can give my opinions. So, I have already overcome a lot. There is already a change in my life... So, for me, I set myself down and I feel happy, everything we have been through. We are always well beloved, I know that very well, for the struggle that we have shared through our story<sup>101</sup>.

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For me, the change that I have seen personally is that I have no fear of talking, of telling my story. Wherever they take me, 'let's tell it'. That is, I know that yes, we have a right to participate, that is where I am going [with this], the same as the men, they say. Thank God that I got rid of the fear. Maybe before yes, I was afraid. What if it all happens again if I talk. But, thank God, no. Now I am not afraid of talking, because of the process that we have gone through, because we have told our story many times. It is true, we have a right to talk, to decide, and to participate. So, that is the change that has occurred for me personally<sup>102</sup>.

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<sup>99</sup> **Interview Doña F, 07-04-17:** Bueno, lo que yo sentí en este momento de la sentencia, para mi yo estaba contenta, porque había mucho apoyo de nosotras. Yo vi que se llenó el tribunal, algunas se quedaban paradas, ya no lograron lugar, por apoyarnos. La mayoría que estaban ahí son los que nos estaban apoyando. Entonces, para mi yo sentí contenta de ver que sí no estamos solas. Esa alegría compartíamos nosotras, es cierto... Es cierto, llegar ahí no es cosa fácil, es difícil, porque todas estamos cansadas, porque todo el mes estuvimos ahí sentadas aguantando sed y hambre. Para mí, es una alegría también que la jueza dictó rápido la sentencia, entonces ya no nos dejó mucho tiempo ahí y eso nos favoreció a nosotras para poder venir, regresar a nuestro hogar.

<sup>100</sup> **Interview Doña E, 06-04-17:** Poco a poco perdimos el miedo. Antes, cuando todavía no ha llegado eso, teníamos miedo de hablar, teníamos vergüenza de decir, contar nuestro testimonio, pero ya después no. Nos quitó el miedo de hablar. Ahora yo hablo con una tranquilidad.

<sup>101</sup> **Interview Doña B, 06-04-17:** Sí, hay un cambio en mi persona. Antes, cuando yo hablaba, empieza mi corazón, como que quisiera salir. Ahorita ya me pongo tranquila de hablar, como ya me empoderé. Ya puedo opinar, ya puedo dar mis opiniones. Entonces ya superé bastante. Ya hay un cambio en mi vida... Entonces, para mí, como que me pongo en mi lugar y me siento contenta, todo lo que hemos pasado. Siempre somos bien queridas, yo sé muy bien, por la lucha que hemos compartido en nuestra historia.

<sup>102</sup> **Interview Doña H, 17-04-17:** Para mí, el cambio que he visto en mi persona es que no tengo miedo de hablar, de contar mi historia. Dondequiera que me lleven, 'vámonos a contar'. O sea, yo sé que sí tenemos derecho a

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I feel happy at achieving justice, because I know that it is a right that I had, that I had to tell my story. I have listened to the radio of my children and they said that we now have the right as women to tell our story. We do not have to remain silent any more. Neither are we going to be receiving violence as women. This gives me a great deal of pleasure, that we are now advancing the [struggle of] women<sup>103</sup>.

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What I felt personally is that, thanks to God, the tribunal listened to us. Yes, we have a right to speak, to vent. I thought that I would not be able to arrive [at the end], because I was afraid at the start. But not anymore. So, when the sentence was over, I said, 'I arrived at the end', and that made me happy. So, I felt a change in that I could tell and retell my story. 'Yes', I said, 'I have a right to be listened to, that they will listen to me'.

So, I felt good, although a little sad at the same time, because we told our story, what we did, how we got there. We have all suffered the same story, how we suffered, and it always brings up feelings of pain. So, I felt that. I am happy to see the sisters that want to continue this process<sup>104</sup>.

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It is about sharing our experiences, sharing the struggle that we have had in the process. It is true, it is not something short, it takes time and that is what we want to share with our other sisters.

Now, what I mean is this, yes, we demanded justice and it was done, the same as the reparations. We are waiting for help, that they help us, because we have a lot of economic necessities and whatever

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participar, voy por eso, igual que lo hombres, dicen. Gracias a Dios que se me quitó el miedo. Tal vez antes sí, tenía miedo. ¿Qué tal si vuelva a pasar otra vez si voy a contar? Pero, gracias a Dios, no. Ahora no tengo miedo de hablar, por todo el proceso que hemos pasado, porque muchas veces hemos contado nuestra historia. Es cierto, tenemos derecho de hablar, decidir y participar. Entonces, eso es el cambio en mi persona que me ha hecho.

<sup>103</sup> **Interview Doña D, 08-06-17:** Yo me siento contenta a lograr la justicia, porque yo sé que es un derecho que yo tenía, que tenía que contar mi historia. Yo porque he escuchado en la radio de mis hijos, decían que ahorita tenemos todo el derecho a las mujeres de contar nuestra historia. No tenemos que quedar calladas. Tampoco vamos a estar recibiendo violencia encima de nosotras las mujeres. A eso también me da mucho gusto pues, que nosotras ya estamos avanzando las mujeres.

<sup>104</sup> **Interview Doña F, 07-04-17:** Lo que sí sentí de mi persona es que gracias a Dios escuchó el tribunal. Sí tenemos derecho de hablar, desahogarnos. Es que pensé que no iba a poder llegar, porque dije yo que tenía miedo al inicio. Pero ya no. Entonces, cuando se culminó la sentencia decía yo, 'llegué hasta el final', y me puse contenta. Entonces, me sentí un cambio, así pude contar y contar mi historia. 'Sí', dije yo, 'yo tengo derecho de que escuchen, que me van a escuchar'... Entonces, me sentí bien, aunque a la vez triste, porque contamos nuestra historia, que hicimos, como llegamos ahí. También tenemos la misma historia que sufrimos, como sufrimos nosotras, y siempre nos provoca sentimientos de dolor. Entonces, eso sentí yo pues. Me alegro ver las compañeras que quieren continuar este proceso.

else to have a dignified living space. But I do not know if we will see it [carried out], if we will experience it, because it is a very slow process, everything to do with reparations now<sup>105</sup>.

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## The Conversation

*This article was first published in the online news platform The Conversation on April 16<sup>th</sup> 2018.*

### How Indigenous Women Who Survived Guatemala's Conflict are Fighting for Justice

In February 2016, Guatemalan women survivors and the alliance of organisations supporting them successfully prosecuted two former members of the Guatemalan military for domestic and sexual slavery in the ground-breaking Sepur Zarco trial. The trial marked the first time a national court has prosecuted members of its own military for these crimes. It was an historic achievement in the fight to stop violence against women and secure justice for wartime sexual violence.

And yet, two years later, the Guatemalan government has not carried out most of the collective reparation measures ordered by the court. In large part this is because the main cause of the violence – a dispute over land that historically belonged to the Mayan Q'eqchi people – has still not been resolved, even centuries after it began.

Mayan communities were first displaced by Spanish colonisation starting in the 16<sup>th</sup> century, and then displaced again in the mid-to-late 19<sup>th</sup> and early 20<sup>th</sup> century. Keen to attract foreign investment, the Guatemalan government encouraged European settlers to establish plantations on land expropriated from Mayan communities and the Catholic Church. To this day, many Mayan people do not have title to the land they live on, much of which is dominated by plantations growing coffee, sugar, bananas and palms for oil.

But they have been fighting back. I myself have been following the struggle centred on the dusty north-eastern village of Sepur Zarco – a case that pulls together all the threads of what has happened in Guatemala in the last several decades.

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<sup>105</sup> **Interview Doña G, 06-04-17:** Es de compartir nuestras experiencias, compartir la lucha que hemos tenido en el proceso. Es cierto, no es así de corto, llevó tiempo y esto es lo que queremos compartir con las otras compañeras... ahorita lo que voy es este, sí exigimos que llegara justicia, sí se hizo y con la reparación también. Esperamos una ayuda, que nos ayuden, porque tenemos mucha necesidad económicamente para cualquier cosa para tener una vivienda digna. Pero no sé si vamos a ver, si lo vamos a probar, porque es muy lento el proceso, toda nuestra reparación ahora.

## The Long Haul

Local indigenous people have been campaigning to settle on and get legal title to unused land in Sepur Zarco since the early 1950s when the social democratic government of Jacobo Arbenz passed a law to redistribute uncultivated land from the largest landowners to landless peasants. The land concerned included unused land held by the United Fruit Company, a US banana company with close links to the Eisenhower administration – the company disputed the compensation offered to it by the Guatemalan government, and demanded a much larger sum.

In the end, the land reform was stymied by a CIA-sponsored military coup in 1954. That coup in turn sparked Guatemala's bloody civil war, which lasted until 1996. A post-war UN-led Truth Commission Report concluded that during the conflict, an estimated 200,000 people were killed or disappeared, that rape was commonly used as a weapon of war, and that the Guatemalan State bore responsibility for the majority of the atrocities. It also concluded that agents of the State committed acts of genocide, since 83% of their victims were Maya and most of the conflict's 626 documented massacres were of Mayan communities.

Most of these massacres were committed in 1982-83 under the 17-month rule of recently deceased dictator, Efraín Ríos Montt. Ríos Montt took power in a coup, and was then removed by another. He was eventually prosecuted by the Guatemalan Supreme Court in 2013 and found guilty of genocide and crimes against humanity. His trial featured testimonies of rape and sexual violence committed against Mayan Ixil women, which were included to show that sexual violence was part of the genocide.

However, just ten days after his verdict, the Guatemalan Constitutional Court annulled the trial on procedural grounds after sustained pressure from powerful sectors of Guatemala's economy and society.

At the time of his death, Ríos Montt was once again being prosecuted for genocide – but this time the trial was taking place with special provisions made to allow for his diagnosed dementia. Ríos Montt was in office during the time that the crimes committed at the Sepur Zarco base were committed, but he was not prosecuted for those crimes in the Sepur Zarco trial.

The violence committed against Sepur Zarco's women and their families seems to have been a response to their attempts to settle on and get title to the land, particularly in the late 1970s. According to an expert witness in the Sepur Zarco trial, Juan Carlos Peláez Villalobos, the military was called in and the indigenous peasant farmers were denounced as 'subversives'.

Women survivors also pointed to the link between the attempt to get land titles and the violence committed against them and their husbands. 'The landowners gave them [the military commissioners] a list of names of men to disappear,' said one of them in her video testimony to the court. 'They said we were troublemakers.'

After kidnapping and disappearing the men and burning down their families' huts, the military forced their wives to work on the military detachment built in the Sepur Zarco community, in 1982. The women were organised into shifts to cook the soldiers' food and wash their clothes. While at the base, all of them were systematically raped.

Some women fled into the mountains to escape the violence, where they spent up to six years struggling to survive with little shelter or food. Many of their young children perished because of these conditions. The base remained until 1988. Local men suspected of being 'subversive' were also tortured there by the military.

### **No Justice without Reparations**

In February 2016, the Guatemalan Supreme Court ruled that two former members of the military were guilty of forced disappearances and crimes against humanity in the forms of domestic and sexual slavery and the murders of one of the women enslaved on the base, along with her two young daughters. The court also held that the Guatemalan State had to provide collective reparations for the benefits of the village of Sepur Zarco and surrounding villages.

The measures would provide basic social and economic rights frequently denied to Guatemala's indigenous and rural communities. They also include the construction of the first local high school, a health clinic and a monument to the women's husbands – but the State will not start the building work so long as Sepur Zarco's people don't have legal title to the land.

The Sepur Zarco case shows how seriously a community can be affected for decades, even centuries, by multiple overlapping injustices – from colonial-era crimes to more recent human rights violations. Resolving the resulting problems has proven hugely difficult. But after more than 30 years, the women and supporting organisations – the National Union of Guatemalan Women, Women Transforming the World and the Community Studies and Psychosocial Action Team – are determined to achieve the restorative justice that they have been struggling for all this time.

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*Editor's note: The Conversation article included a photo of a banner about reparations. It was taken by Juliette in Panzos, Alto Verapaz, Guatemala on the 29<sup>th</sup> May 2017, during the annual march to commemorate the Panzos massacre of 1978. The text below is an extract from the catalogue that Juliette had prepared to accompany an exhibition of photos about the Sepur Zarco case (see appendix six). Juliette explained to Marieke that this banner was key in the collective, community-based approach to reparations, which allowed the women and their grandchildren to express what they wanted to achieve.*

### **What Does Justice Mean?**

These photos (below) were taken at the annual march to protest and commemorate the Panzos massacre, which was committed on the 29<sup>th</sup> May 1978 and marked the start of the worst years of the war and the start of more intense military repression in the region where the women survivors live. The photos show different sections of a banner made with the women and other community members, with the support of ECAP (Equipo Comunitario de Acción Psicosocial - Community Psychosocial Action Team). The banner illustrates the women's story and long struggle for justice.



**Figure Six: Historical memory of suffering and survival. Panzos, Alta Verapaz, Guatemala, May 2017.**

This is the first section of the banner. The far-left section represents the atrocities committed against the communities, showing a palm thatched hut on fire and a military helicopter flying overhead, and showing darkness over the community. The right-hand section shows the start of the long struggle to overcome the suffering and search for truth and justice – the community is in light, and there are Mayan ceremonies to the Tzuul taq'a (Mountain Lords), represented by the circle with a fire, and the candles. Traditionally the Mayan Q'eqchi have a close relationship with the Tzuul taq'a, and conduct

ceremonies to ask for permission and support for important events and actions. Conducting Mayan ceremonies to ask the Tzuul taq'a for support was an integral and very important part of the struggle for justice for the women. The banner also shows the mountains and a river, illustrating the local landscape.



**Figure Seven: Legal justice. Panzos, Alta Verapaz, Guatemala, May 2017.**

This is the middle section of the banner. It represents the trial and shows the courtroom where the trial was held, complete with the panel of judges (centre), defence (left), prosecution (right), the table for witnesses, the media and audience. Formal legal justice was important for the women, partly as a form of recognition of the crimes committed against them, their families and their communities. The women have stated that it was also important that those responsible be punished for their crimes.

Below is the third section of the banner. It shows the collective reparations measures chosen by the women survivors, and which were ordered by the court at a reparations hearing held three days after the conclusion of the trial. The reparations measures depicted here are the construction of a



monument for the women's disappeared husbands (since they have been unable to locate their remains and give them a dignified burial), the construction of a high school for their grandchildren and the youth of the communities where the women live and other neighbouring communities to attend, and the construction of a health centre – described by the women as a hospital – for the women's own communities and neighbouring communities. The reparations process is ongoing and progress on these measures has been very slow, however the women, the organizations and community leaders meet periodically with representatives of Guatemalan government ministries to discuss and agree on how the measures should be implemented.



**Figure Eight: Collective Reparations. Panzos, Alta Verapaz, Guatemala, May 2017.**

*Juliette's transcribed comments on the third part of the banner during a guest lecture for the module LATI209 Globalisation and Development in Latin America (29<sup>th</sup> November 2018):* "This banner was made by a group of women and their grandchildren. The women are survivors of atrocities committed during the Guatemalan civil war. This is what my research is about, I'm researching the women's struggle for justice. They prosecuted four men [...] for the forced disappearance of [the women's] husbands, and domestic and sexual slavery committed against them by the Guatemalan military. [...] The banner is their vision for the development of the community where they live. What you can see painted on the banner is what they demanded after the trial. The Guatemalan State is responsible for providing reparations, so these are some of the reparation measures that the women have demanded from the Guatemalan State. This is their vision for their communities, so this is a very different starting point from the often top-down approach of economic policies; this is the bottom-up vision and ideas



of indigenous women who live in the countryside in Guatemala. You can see the pink building that says *Hospitalito* on the banner. It's a health centre and there's also an ambulance, there's a school. You can also see a white document which represents land titles; you can see a basketball court. You can also see a candle and *monumento*. The monument and the candle represent the struggle and the importance of commemorating those people who died during the war. The women's husbands were kidnapped and disappeared, and also other members of the community, so having the monument, having regular activities to commemorate them is very important too. You can also see a couple of doves, which represent peace, and you can see the mountains, so I think this is a good starting point for looking at gender and development".

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### **An Analysis of the Verdict as Told by Representatives of the Supporting Organisations**

The legal proceedings within the judicial system have their complications, but there have been advancements in the reparation measures. The legal process hasn't yet been completed, but there has been progress with the different institutions and ministries that are in charge of carrying out the reparation measures. This puts pressure on them and we have looked to create political will, even though the sentence hasn't reached its final process. We can see that the women are already elderly, so they can't wait another five years for the reparation measures to begin. So, MTM is pushing reparations forward and advancements have been made to move forward and achieve this.

Through the experience we have with other cases, we estimate that the time needed for the verdict to reach its final stages is one to three years, depending on the malicious strategy of the defence team. This depends on the team realising the different resources they have to appeal within the judicial system. The appeal that the defence team has presented has been for Reyes Girón and what has been presented is more to do with procedure than substance. This has been the case from the beginning. The lawyer of Reyes had personal issues with Judge Barrios and from the beginning she said that she couldn't hear the case because of the problems between them. This happened before it went to the trial court. It went to the high court and the high court said she should hear the case. But now, following the verdict, he is using the same strategy of conflict of interest in order to challenge her, saying that the judges should not have heard the case. This is the strategy they've been using. They have not appealed the reparation measures; this is important, because they appealed the verdict and the problems with the tribunal, but not the reparations. We think this is positive, something we can look to in the reparation process. There are government institutions that need to fulfil the reparation measures.

The verdict is condemnatory against the accused and three days later, in accordance with the penal code, they had to carry out a dignified reparations hearing. This process of reparations, through the work carried out in the Alianza, with the women and with women from other regions, has always been part of the process. Part of the strategy has also been to have the women say what they wanted, what they felt. They wanted to assure in the tribunal that it would never happen again. It was through this work that the reparation measures were constructed. It wasn't just the sixteen measures that were granted, the women asked for more measures. The tribunal issued the sixteen that were granted in the sentence. We see them as falling under five categories: access to health, access to education, to land, to continue with the search for their husbands and the issue of historical memory, as it is important not to forget, that others should know.

Access to health has been one of the most important areas. As you saw, the sexual violence and everything they have lived through has damaged their health. Thirty years ago, they didn't have access to healthcare, so it was one of their priorities. Through all the work that has been done, there is currently a functioning mobile clinic in the community of Sepur Zarco. This was something that was done in parallel to the administrative process that is still being carried out. It is an interim measure, done in parallel to what the health ministry will eventually fulfil. But the mobile clinic is there, it is something that has been expedited.

One thing that has held some of the institutions back is that the land where the Sepur Zarco community is located does not hold a title. It is a private plot of land and this is something that has limited the ability of this group of institutions that are focused on land issues to make progress. Despite the limitations, all of the institutions that are concerned with the issue of land, the ministry in charge of measuring the land, the different institutions, have been going to the meetings, they've been participating, they've done investigative work to find out about the people who currently own or have inherited the land. However, issues around land are historical problems in Guatemala that aren't going to be solved in a year.

Not having legal title to the land has limited public investment in land issues, but there have been advancements in other areas. There have been advancements made in visualising and publicising the case. We see this as a historic moment. Decisions were made in the national courts, in the human rights arm of the presidency; reparations were ordered from those institutions. So, the Guatemalan State had to do this, but these reparations were done through national justice processes and they have a collective vision, they are trying to transform communities, which is something unique to this process. This is important, not only for the work we are doing, but it sets a precedent. The process that we are in now, the appeals process, is part of this. One of the ways that the institutions try to

wash their hands and not continue the process is to say that the verdict hasn't been finalised. This is continuing. They say that if it is appealed and the whole process is overturned then the reparations will also be overturned, but we are not in agreement. We don't believe that the verdict would be overturned. It is a kind of threat so as not to make reparations, that instead they could be making public investment. So, that there are no titles to the land, that there could be appeals, are essentially excuses that public agencies are using to not go forward.

Part of our communications strategy was to get the message out that there had been violations of human rights. Also, we wanted to share that we are continuing with the work, continuing to work on the land titles, which is the biggest challenge facing us. All of the other reparations, although slowly, they are advancing. There is a mobile clinic, the Ministry of Education is beginning to pay attention, but now Sepur Zarco is part of their planning process.

Also, the women continue to demand, despite their tiredness. It is not something that affects them, to continue to demand that the State fulfil the reparation measures. It helps to have a protagonist role in the communities. They are not women who fear; the opposite, they are women who demand. This is relevant, as there are different strategies by which the Sepur Zarco case has advanced<sup>106</sup>.

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### **The Testimonies of the Sepur Zarco Women Survivors: Changes Within their Communities**

Yes, there have been changes. After all this, when they still had not given the sentencing, they criticised us when they saw us, when we left [the house]. 'There they go, those old ladies, to meet up again. There they go again. Who knows what they are looking for?' they said to us. They criticised us, they said things to us, but we did not give it much importance. But after the sentence, they heard about the reparations that were going to come, that they were not only for us women, but they saw that there is the clinic. Now they do not say anything, they say, 'how could they remain silent? It is true what they are saying, it is true. Now what they say is true, all that they lived through, the whole story of the women, the history that they lived'. Before yes, they criticised us. Not any more, now they do not say anything. Now they support us<sup>107</sup>.

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<sup>106</sup> Excerpts from an interview with Sulema, founder of UNAMG, 28.04.17.

<sup>107</sup> **Interview Doña B, 06-04-17:** Sí hubo cambios. Después de esto que todavía no se ha dado la sentencia, nos criticaban cuando nos miran, cuando salimos. 'Ahí van las viejas a reunirse otra vez. Allí van otra vez. ¿A saber que están a buscar?' nos dicen. Nos criticaban, nos decían cosas, pero nosotras no los importantamos. Pero después de la sentencia escucharon con la reparación que iba a venir, que no solo si estamos para nosotras, pero vieron ahí está la clínica. Ahorita ya no dicen nada, ya dicen, '¿cómo que se quedan calladas? Es cierto lo que están diciendo, es cierto. Ahorita lo que dicen es cierto, lo que se vivió, toda la historia de las mujeres, toda la historia lo que vivieron'. Antes sí, nos criticaban. Ahorita ya no, ya no nos dicen nada. Ahorita nos apoyan.

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Throughout the journey we suffered discrimination and rejection toward us from the other women. So, for me, I feel bad, I feel sad, because they said to us, 'here come the women again. These women want husbands, that is why they go out searching'. We only listened; we did not respond a word. It is true, it is sad what they said, everyone spoke badly of us, we who are fighting.

Before, they discriminated against us, when they said, 'there goes the gang again, there go the volunteers'. When the men ran into us out on the street, they made fun of us. Well, now there is more respect. When we hear now in the community that they say, 'thanks to you all who went to trial'. Now they are more grateful and they respect us more<sup>108</sup>.

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For me, in my community, well yes, they listened, but they did not say anything, as if nothing had happened. It is true, the whole community here suffered from the conflict, but no one said anything. Well, the thing that they say now, 'the women rose up and now they are listened to'. 'I think that they have a right to be listened to', they said<sup>109</sup>.

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### **The Testimonies of the Sepur Zarco Women Survivors: The Reparation Measures**

We organised among us all, we met in an assembly and said that we have to now form a committee that can back us in this [reparations] process. If not, how will we do it all, if they asked us to be organised. So, we are going to say that yes, here we have the support that will go and represent us in each of the meetings that are important. So, because of this we organised ourselves, because of this Doña D was chosen as president. We said that this will back us up in the meetings, but I do not know

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<sup>108</sup> **Interview Doña I, 17-04-17:** Lo que encontramos durante el camino es la discriminación y el rechazo hacia nosotras a las otras mujeres. Entonces, para mí, me siento mal, me siento triste, porque nos decían, 'ahí vienen otra vez las mujeres. Esas, maridos quieren, entonces por eso salen a buscar'. Nosotras solo escuchamos, no respondemos con ninguna palabra. Es cierto que es triste lo que nos decían, todos hablaron mal de nosotras, las que estamos luchando... Antes nos discriminaban, cuando decían, 'ahí va la cuadrilla otra vez, ahí van las voluntarias'. Cuando nos encuentran en el camino hay hombres ahí, se burlan de nosotras. Pues, ahorita ya hay más respeto. Cuando escuchamos hoy en la comunidad nos dicen, 'gracias a ustedes que llegaron al juicio'. Ahorita son muy agradecidos y nos respetan más.

<sup>109</sup> **Interview Doña F, 07-04-17:** Para mí, en mi comunidad pues sí escucharon, pero no dijeron nada, como que no hubiera pasado nada. Es cierto, toda la comunidad aquí sufrió el conflicto, pero no dijeron nada. Solo lo único que ya dicen pues, 'las mujeres ya se levantaron ahora y son escuchadas'. 'Yo creo que ellas tienen el derecho de que sean escuchadas', nos decían.

how we are getting on now. Because we are clear that the lawyers paid our legal status, so that we are endorsed as an organisation<sup>110</sup>.

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We organised ourselves, they told us that we had to organise, to look for someone to represent us when there is a debate. So, we organised, we looked for one of the sisters to represent us in the name of everyone. If we had not formed this Board of Directors, maybe we would not have been able to do anything, because it is all legal, that is what they ask for, that is what they demand. And yes, we presented what they asked for<sup>111</sup>.

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The main thing that we have now are the reparation measures. We have to insist, we have to insist toward the government. Recently, at the end of last month, I went to participate in a meeting. So, I went to talk, I went to insist that the members of the State speed up our demands. Because they already told us, they already pledged and they have to comply. So, this is the work of the collective now. Now, we have not had any meetings, maybe because there have been other activities, but maybe, what I think, is that we have to meet up again soon to talk, because we have to insist too<sup>112</sup>.

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Now, what we are thinking about are the reparation and compensation measures. With the clinic, it is true, we have that need, but also, in our case, we already know that we have a need for compensation. But that is in general, for the whole community, for all the communities. For us, we now realise that maize is very cheap. We cannot buy anything with the money. I can sell it all and I am

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<sup>110</sup> **Interview Doña F, 07-04-17:** Entre todas nos organizamos, en una asamblea nos reunimos y dijimos que tenemos que conformar un comité que nos respalde en este proceso [de reparaciones]. Si no ¿cómo vamos a hacer? Si nos piden que estemos organizadas. Entonces, vamos a decir que sí, aquí tenemos el respaldo, nos va a ir a representarnos en cada una de las mesas que es importante. Entonces por eso nos organizamos, por eso Doña D se quedó como presidenta. Dijimos que eso nos va a respaldar en la mesa, pero ahora no sé cómo vamos. Porque tenemos claro que las abogadas pagaron personaría jurídica, para que nos avale que hay una organización.

<sup>111</sup> **Interview Doña C, 06-04-17:** Nosotras nos organizamos, nos dijeron que tenemos que organizarnos, buscarnos quien nos va a representar cuando va haber el debate. Entonces, nosotras nos organizamos, buscamos una misma compañera que nos va a representar a nombre de todas. Si no hubiéramos formado esta junta directiva, entonces tal vez no hubiéramos podido hacer nada, porque es según la ley, eso es lo que piden, eso es lo que exigen. Y nosotras sí lo presentamos.

<sup>112</sup> **Interview Doña D, 08-06-17:** Lo más fuerte que tenemos ahora es las medidas de reparación. Tenemos que insistir, tenemos que insistir al gobierno. Yo hace poco, como al final del mes pasado, yo fui a participar en una mesa. Entonces yo fui a hablar, fui a decir para insistir a los miembros del Estado que agilicen nuestra demanda. Porque ya nos dijeron, ya nos comprometieron que tienen que cumplir. Entonces, eso es ahora el trabajo del colectivo. Ahorita ya no hemos tenido reuniones, tal vez porque hay otras actividades, pero tal vez lo que yo pienso es que luego otra vez tenemos que reunirnos para decir, porque nosotras tenemos que insistir también.

still without anything. I have nothing in the house to last the day. Because of this, we should really have said something to the judge, some recognition for each family so that they can get through the day. We should have done this before; we should have asked for this before. Now, we cannot talk about it, because all the reparations are already written down<sup>113</sup>.

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Well, the reparations are going really slowly, I do not really know. Until now, we have not had a meeting, we do not know what is happening, we have no news. Furthermore, MTM, that is, Doña Pilar does not come anymore. This is my question, my doubt; I do not know if they are participating in meetings there or why they have abandoned us like they have. Is it that we had the sentencing and then they abandoned us? I did not want that, that the organisations would abandon us, because it is true that we have fought, but we have not even seen any projects. For example, we live in a community and we have nothing and we only live in poverty. That is what I say, then, that hopefully the government, even if at least they only give us some food parcels, in exchange for everything that we lost during the armed conflict. We have not even received anything.

Hopefully the government recognises all of the reparations, that they respond to everything we asked for. It is true, it is not only for us, but it is for everyone. So, I hope that they support us in all of this<sup>114</sup>.

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We the women have to demand that they give us the reparations, everything that we have lost. It is true, maybe we are not going to enjoy [the reparations] one day. I feel that I am not going to enjoy [reparations for] all that we have lost, because I feel bad, I feel sick. When I feel bad, my back hurts a

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<sup>113</sup> **Interview Doña I, 17-04-17:** Ahora, lo que pensamos es sobre la reparación y el resarcimiento. Con la clínica, es cierto, esa necesidad tenemos, pero también en nuestro caso tenemos una necesidad, ya sabemos, que es el resarcimiento de nuestro caso. Pero eso es en general, para todo el pueblo, para todas las comunidades. Para nosotras ahora, nos damos cuenta que muy barato el maíz. No compramos nada con el dinero. Puedo vender todo, me quedo sin nada. No tengo nada en la casa para pasar el día. Por eso nosotras hubiéramos dicho mejor a la jueza para algo, algún reconocimiento para cada familia con tal de pasar el día. Eso hubiéramos hecho antes, eso hubiéramos pedido antes. Ahora ya no se puede hablar, porque ya está escrita toda la reparación.

<sup>114</sup> **Interview Doña H, 17-04-17:** Bueno, la reparación va muy lento, pues no sé. Hasta ahorita ya no hemos reunido, no sabemos que es lo que está pasando, no tenemos noticia. Además, MTM, o sea Doña Pilar ya no viene con nosotras. Eso es mi pregunta, mi duda, no sé si están participando en reunión allá o por qué nos abandonaron así. ¿Será que solo hicimos la sentencia y luego nos abandonaron así? Eso no quería, que se nos abandonaran las organizaciones, porque es cierto hemos luchado, pero ni siquiera hemos visto algún proyecto así. Por ejemplo, nosotras vivimos en una comunidad y no tenemos nada y solo vivimos en la pobreza. Eso lo digo, pues, que ojalá de que el gobierno, aunque sea por lo menos víveres que nos den, a cambio de todo lo que hemos perdido durante el conflicto armado. Ni siquiera hemos recibido nada... Ojalá que reconozca el gobierno toda la reparación, que responda con todo lo que pedimos. Es cierto, no solo es para nosotras, sino que es para todos. Entonces, ojalá que nos apoyen con todo eso.

lot when I am in bed. So, that is what we demand, that reparations come soon, all that we asked for. What is left now is to demand the government that reparations come soon.

Now I am worried, as if we have been abandoned by the organisations, because no one comes to visit us anymore. What is going to happen? Are we going to carry on or not? This is my worry. Are the organisations still with us or what had happened? This is my worry, because we are now used to going out and participating and now no, we are always at home<sup>115</sup>.

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The biggest need that we have is the clinic, because there are a lot of sick children here, malnourished, and also pregnant and poor women who have to travel far. For me, maybe I will not use it or maybe only a few times, but mostly the children and pregnant women need it. Equally, I have my grandchildren, I have my daughters, maybe they will go to use the clinic. But, through my struggle too, it is for them, not only for me<sup>116</sup>.

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I am pleased with the clinic. It is true, maybe I will not go there, but for my children, for my grandchildren and those that come after. At least we as women, we that fought, have left something for our grandchildren. Because our reality is sad, because when we become ill, we have to go to La Tinta and we do not have money to pay the travel fare. Because of this I am very happy that they are supporting us now in our community. I am not going to enjoy this, but for my grandchildren, it is there for them. That is what my struggle has been for<sup>117</sup>.

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<sup>115</sup> **Interview Doña E, 06-04-17:** Nosotras mismas las mujeres tenemos que exigir que den nuestra reparación, todo lo que hemos perdido. Es cierto, tal vez nosotras no lo vamos a gozar algún día. Yo siento que ya no voy a disfrutar [las reparaciones para] todo lo que hemos pedido, porque yo me siento mal porque me siento enferma. Cuando yo me siento mal, mi espalda me duele mucho así cuando estoy en la cama. Pues, eso es lo que exigimos, de que sea luego la reparación, todo lo que pedimos. Lo que nos queda ahora es exigir al gobierno que sea luego la reparación... Ahora estoy preocupada, como que estamos abandonadas por las organizaciones, porque ya nadie se viene a visitarnos. ¿Qué va a pasar? ¿Será que vamos a seguir o no? Esa es mi preocupación. ¿Será que están con nosotras las organizaciones todavía o qué hay? Esa es mi preocupación, porque nosotras como que estamos acostumbradas a salir, de ir a participar y ahora ya no, estamos en la casa siempre.

<sup>116</sup> **Interview Doña C, 06-04-17:** La necesidad más fuerte que tenemos es la clínica, porque hay muchos niños enfermos aquí, desnutridos, y también mujeres embarazadas y pobrecitas que van lejos. Para mí, tal vez yo no voy o tal vez en unas veces voy a ir, pero más los niños necesitan y las mujeres embarazadas. Igual, yo tengo mis nietos, tengo mis hijas, tal vez ellos van a llegar a la clínica. Pero, por mi lucha también, es para ellos, no solo para mí.

<sup>117</sup> **Interview Doña A, 07-04-17:** Estoy contenta con la clínica. Es cierto, tal vez ya no voy a ir ahí, pero para mis hijos, para mis nietos y los que vienen. Por lo menos nosotras como mujeres, las que luchamos, algo dejamos para nuestros nietos. Porque es triste nuestra realidad, porque cuando nos enfermamos tenemos que ir hasta La Tinta y eso no tenemos dinero para pagar viaje. Por eso estoy muy contenta ahorita en nuestra comunidad, que nos está apoyando. Yo no voy a gozar esto, pero para mis nietos, se queda para ellos. Pero eso es mi lucha.

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For me, we are already seeing some of the measures, not all of them, but little by little we are advancing. In the first place, the first reparation that we received was the clinic. It is true, it is not only for us, but now there are a lot of people that turn up to receive medicine and consultations there. So, I am pleased that the struggle has been because of the women, because of that the clinic is there. And now people say, 'how did these women get there? They are illiterate, they cannot read or write, neither can they speak Spanish'. So, they analyse the women, our other sisters, to see how we got there. You see that we have achieved something. Well, hopefully we can achieve everything that the tribunal has authorised, because we have to look at this too, because this is the struggle now. We want them to do everything that they promised to do.

The only thing that I want to say is that I hope that the organisations support the reparation measures, because that is what is urgent now. Well, hopefully they do not leave us alone; hopefully they are always with us, because we started together and we also have to finish together. Now more than ever we need their support to insist that the authorities [carry out] our reparation measures<sup>118</sup>.

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<sup>118</sup> **Interview Doña D, 08-06-17:** Para mí, las medidas ya estamos viendo también algunas, no todas, pero poco a poco vamos a estar avanzando. En primer lugar, la primera reparación que nos vino es la clínica. Es cierto, no es para nosotras solas, pero ahorita hay mucha gente que llega a recibir medicinas y consultas ahí. Entonces, estoy contenta yo de que la lucha es por medio de las mujeres, por eso está la clínica ahí. Y ahora la gente dice, '¿cómo llegaron esas mujeres ahí? Son analfabetas, no saben leer ni escribir, tampoco saben hablar el español. Entonces, analizan las mujeres, las otras compañeras, de cómo llegamos hasta allá entonces. Miren que hemos logrado algo. Pues, ojalá que se logre todo lo que nos ha autorizado el tribunal, porque eso tenemos que ver también, porque eso ahorita es la lucha. Queremos que llegue todo lo que se comprometió a hacer... Lo único que quiero dejar de decir es que ojalá que nos apoyen las organizaciones con las medidas de reparación, porque eso es lo que nos urge ahora. Pues, ojalá que no nos dejen solas, ojalá que siempre estén con nosotras, porque juntas empezamos y esto también tenemos que terminar juntas. Ahora más que nunca necesitamos el apoyo para insistir a las autoridades con nuestras medidas de reparación.



## Reparación digna e integral para reconstruir el proyecto de vida de las mujeres y sus comunidades

En la audiencia de reparación, el Tribunal dictó una serie de medidas para resarcir las secuelas materiales, físicas y psicológicas tomando como base los Convenios y Tratados de Derechos Humanos, la Constitución Política de la República de Guatemala y el contenido del artículo 124 del Código Procesal Penal; que permitan la reconstrucción del tejido social de las mujeres y las comunidades.

### REPARACIÓN A CARGO DEL ORGANISMO EJECUTIVO:

1. El Ministerio de Educación deberá:
  - Mejorar la infraestructura de las escuelas en las comunidades de Sepur Zarco, San Marcos, Poombaac y La Esperanza;
  - Instalar un establecimiento de educación media bilingüe para niñas, adolescentes y mujeres;
  - Otorgar becas de estudio en los tres niveles educativos para toda la población de Sepur Zarco;
  - Incluir en los programas de estudio, libros de texto sobre el caso de las mujeres de Sepur Zarco.
2. El Ministerio de Cultura y Deportes deberá:
  - Desarrollar proyectos culturales dirigidos a las mujeres de Sepur Zarco y su colectividad;
  - Junto al Ministerio de Educación deberán elaborar un documental que se refiera al caso de las mujeres de Sepur Zarco;
  - Deberán traducir la sentencia del caso Sepur Zarco a los 24 idiomas mayenses.
3. El Ministerio de Salud Pública y Asistencia Social, a mediano plazo debe construir un centro de salud en la comunidad de Sepur Zarco.
4. El Estado debe continuar con el trámite de tierras, iniciado por las personas desaparecidas, en la institución que actualmente corresponde.
5. El Ministerio de la Defensa deberá incluir en los cursos de Formación Militar las temáticas de derechos humanos de las mujeres y legislación de prevención de violencia contra la mujer.
6. El Estado de Guatemala a través del Ministerio de Gobernación deberá coordinar las medidas de seguridad para las integrantes de las organizaciones querellantes, víctimas y familiares.

### REPARACIÓN A CARGO DE AUTORIDADES LOCALES:

1. La municipalidad de El Estor, Izabal, deberá construir en el plazo de un año un monumento que represente la búsqueda de justicia de las mujeres de Sepur Zarco.
2. A través de los comités de desarrollo de las comunidades de Sepur Zarco, San Marcos, Poombaac y La Esperanza, se deberán realizar gestiones para dotar de los servicios básicos necesarios en las comunidades y viviendas de las víctimas.

### REPARACIÓN A CARGO DE OTROS ENTES:

1. El Ministerio Público MP debe continuar con la investigación para determinar el paradero de las personas desaparecidas en Sepur Zarco y sus alrededores.

### REPARACIÓN A CARGO DE LOS SENTENCIADOS:

1. Los señores Esteelmer Reyes y Heriberto Valdez Asig deberán pagar una caución económica a los familiares de las víctimas de desaparición forzada y a las once mujeres víctimas de violación sexual, esclavitud sexual y doméstica.

### REPARACIÓN A CARGO DE LAS ORGANIZACIONES QUERELLANTES:

1. Las organizaciones querellantes deberán dar trámite para que se reconozca el 26 de febrero, como "Día de las víctimas de violencia sexual, esclavitud sexual y doméstica", y deberán realizar las gestiones necesarias ante el Congreso de la República de Guatemala en relación a la Ley de Desaparición Forzada".

Figure Nine: Reparation Measures for Sepur Zarco (taken by Juliette Doman).

## Fieldnotes on the Commemoration of the Sentence, Continued, 26<sup>th</sup> February 2017

### The March

We get up early. After a quick breakfast, we walk to the point where we had agreed to meet Don A. He doesn't arrive. The idea was that we would meet him and go with him to the community where the march will start. Two men walk by. They start speaking to us. They then carry on walking. We see a pick-up coming and decide to get in to save us having to walk all the way to Pencala. We pass the two men walking and Olivia points them out, looking slightly guilty.

We pass a number of small communities and arrive at Pencala, where we get out. There are about thirty local people there. The women are all dressed in typical dress. Some of them carry placards, handwritten in Spanish. Two young Q'eqchi women are holding a banner that has been printed with the image that the Alianza created for the trial, two hands holding a white flower, the words *Juicio Sepur Zarco*, Alianza Rompiendo el Silencio and the name and logo of AVIHDESMI. All of the placards and banners are in Spanish, as are the written versions of the logos.

It starts raining. We take shelter at a small shop and eatery close to the meeting point. UNAMG arrive in two pick-ups. They have driven all the way from El Estor, where they stayed last night. Just as they get out, it really starts to bucket down. Some were unlucky enough to be in the back and had already

got wet. We all cluster together under the shelter. MTM still hasn't arrived, even though they were staying nearer in Teleman. After some time, the rain stops.

More and more people are arriving for the march, mostly local. The march starts. We walk behind a white pick-up that has speakers in it, on the dirt road that leads to Sepur. Either side are small communities made up of bamboo and wooden houses with thatched or tin roofs and areas planted with maize. Sara disappears to take photos. I take some of the placards and one or two of the march. I listen to the slogans in Spanish. After walking a while, I think I recognise one of the voices speaking on the microphone. It sounds like Olivia. There are around two-hundred people on the march, maybe more. There seems to be an even number of men and women. I can see plenty of Q'eqchi women, accompanied by their children, and also many local men. There are also flags and banners of *campesino* and leftist organisations.

We reach an old faded sign that reads Los Angeles Pencala, outside of what I assume to be community buildings. It continues, 'aquí trabajamos y luchamos por la seguridad y soberanía alimentaria y reducción de riesgo a desastres'<sup>119</sup>, and also carries the logo of the FGT and Action Aid. Next to it a sign reads, in both Q'eqchi and Spanish, 'Wi' laa' o wank qach'och' li qajunkab'al wanq xtzekemj, xkawilal ut xyu'am', 'Si las mujeres tenemos tierra, nuestras familias tendrán alimentos, salud y vida'<sup>120</sup>. It also carries the FGT logo.

The march continues past several more communities. A local radio presenter asks me to speak on the radio. I accept, awkwardly, wondering whether it is the right thing to do. I can't forget the discourse about foreign intervention in Guatemalan affairs, used to discredit Guatemala's struggles for truth and justice. I decide to congratulate Guatemala and describe the trial as a global advance. I forget to allow time for the presenter to translate into Q'eqchi, because I am carried away in my enthusiasm; in fact, I hadn't realised that he would translate. He asks me to pause and translates my comments. He thanks me after the interview and moves on to interview someone else. I spot Carmela who I met last week at the ECAP workshop with the children of the witnesses and the women. She seems pleased to see me and immediately introduces me to her teenage daughter, who is not wearing traditional dress. I chat with her for a while. She tells me that her father is here. He was a witness in the trial. During the ECAP workshop, she had told me a little of her father's story. She told me it has been written down in a book, but that she had been unable to read it because it was too painful for her. He was captured by the military, held and tortured at the Sepur Zarco detachment. I told her that I was in the courtroom

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<sup>119</sup> Here, we work and struggle for alimentary security and sovereignty and the reduction of disaster risk.

<sup>120</sup> If women have land, our families will have food, health and life.

when he testified. She seemed pleased to hear this. After a while, we see him. He is wheeling a bike. She introduces me to him and we shake hands. He also seems pleased to meet me.



**Figure Ten: Commemorating Domestic and Sexual Slavery. Sepur Zarco, Guatemala, February 2017.**

Some of the marchers, who, judging by their age of between thirty and fifty years, are the generation of the children of those disappeared, killed, and others who survived the war, start up a song in Spanish. The chorus goes, ‘pero ¿por qué mataron a nuestros padres?’<sup>121</sup> I speak to Gabriela too. She thinks that there are more people this year than last. There are perhaps three-hundred people at this point.

We reach Sepur Zarco and come to the market installation, the point where the fourteen women survivors are waiting. They have on their white *huipiles*. They stand in line at the front of the march, each holding a white candle. Lots of photos are taken. The women lead the march from this point on. We continue until the area where the mobile health clinic is located. A stage has been set up to the right of the clinic, with plastic chairs, microphones and a cover to protect from the fierce sun. There are a few people here already. Some are sitting under a wooden and tin structure, which has hay bales for seating.

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<sup>121</sup> But why did you kill our parents?

Local representatives of the Ministry of Health arrive. Pilar and Mariela talk to the two representatives, Dr Coti and another woman. They explain that the area where the mobile clinic is used to be a maize field, but the man who grew on it had agreed to plant elsewhere. Men from the forty-five communities that will benefit from the clinic worked to clear the land. It is a large area. Pilar is trying to persuade the doctor that it is possible to build the clinic there. Dr Coti is clearly sceptical. He says that the problem is a lack of *certeza juridica*, security of land tenure. It becomes clear that Dr Coti was responsible for writing a recommendation about whether to reject or approve the construction of the health centre. He recommended that the construction was rejected, because of the lack of *certeza juridica*. The mayor has been saying that the centre will be built in Pencala instead. I heard about this last week at the ECAP workshop. Doña E was very concerned about the clinic being built in Pencala instead of Sepur Zarco. She was upset and angry at the thought. The discussion she had with the mayor was about the clinic. Mariela and Pilar sit with the doctor under the shelter. They argue that the *certeza juridica* will be sorted out and that he should not worry. They are the lawyers and it is their job to worry about the *certeza juridica*. His expertise is with medical issues. They ask if there is any other reason that he didn't recommend the construction of the clinic in Sepur Zarco. It seems that there is another project to build a clinic elsewhere and funds have been allocated for it. Pilar and Mariela argue that since the building of the clinic in Sepur is one of the reparation measures, it must be built here and it is important to use funds for that purpose. Pilar and Mariela are assertive and firm, but friendly. They say that the doctor should rewrite his recommendation, since the rejection was based on the *certeza juridica*. They ask him what the land needs, what conditions the health clinic will need. They ask him to maintain a positive attitude, difficulties can be resolved. They point out all the work that has been done in such a short space of time and argue that the space is suitable for construction. The land is flat, with no hills sloping down away from it. There are two flush toilets in wooden stalls that were constructed the week before, although the doors have not yet been attached. They point out how important a health clinic would be for the area, since there is currently little access. The doctor eventually agrees, although somewhat reluctantly, to support the project and change his initial recommendation.

We wait around for the mayor to arrive and wonder whether he will come as promised. Soon the clinic will be inaugurated and he was supposed to be here. People gather round in a circle. An elderly man places candles in a circle and prepares the centre for the Mayan ceremony, an important start to the activities and the inauguration of the clinic. Incense is heaped in the middle. The women survivors stand in the inner circle of people. Some of them help to lead the ceremony. Someone hands out candles for people to throw onto the fire. Women and men stand with their heads bowed in prayer, whispering in Q'eqchi. The ceremony is in Q'eqchi.

People start to gather in front of the stage. I stand with UNAMG. MTM staff start to get up on the stage. The doctor and the woman representative get onto the stage too, along with Radha and Fabian, Alberto and several others. They call the other women onto the stage. First there are some speeches that celebrate the sentence and the arrival of the mobile clinic. After this, it is time to give the women the awards from the Oficina de Derechos Humanos del Arzobispado de Guatemala (Office of Human Rights of the Archbishopric of Guatemala – ODHAG). Different MTM staff give out the awards. Pilar asks for a representative from ECAP and UNAMG to come up onto the stage. Eventually, Patricia gets up and awards the framed certificate and medal to one of the women. Silvana from UNAMG also gets on the stage and presents an award.

I see one of the other women that UNAMG and ECAP have worked with, a survivor of wartime sexual violence who was not part of the case. I ask her how she is in Q'eqchi. She says that she is sad. Olivia is with me. I ask why she is sad, imagining that, perhaps, for her the march and the activities bring back memories of the atrocities of the conflict and the disappearance of her husband. Gabriela is also with me. Although María doesn't say why she is sad, she gestures toward the stage. Gabriela hints that it is because she is also part of the group of women survivors and should really be up on stage with the others. She says that María always supports the others and comes to the events. I think about how the white *huipiles* mark the fourteen women out as different, yet the group of women that ECAP and UNAMG worked with include several others who were unable to be part of the legal process. I remember how the children in the ECAP workshop said that they also suffered. They had their own stories and it makes me think of how restrictive and potentially divisive the legal category of victim is.

After the women have been given their awards, UNAMG have to leave. I feel disappointed for them. They have brought goods for the women and drop them off at Don A's house. Olivia is tasked with distributing them, in secret so that other people cannot see, so as to avoid causing jealousy. They seem heavy and I wonder how the women will get them home. More speeches are made, then a poem is read in Spanish and translated into Q'eqchi by Alberto. Finally, the teenagers get their turn. They perform acrobatic acts, standing on top of each other and juggling, while others drum and one plays the trumpet. The last act is the song we heard on the march. A Guatemalan flag is raised and the national anthem is sung. I notice that, while some older men put their hand on their heart, as is the custom, most of the women do not. I wonder what the national anthem means to them. Doña D thanks people for coming.

It is time to inaugurate the clinic. A blue ribbon has been tied in front for Lilian, the health professional, to cut with Doña D. The fourteen women survivors are all at the front with their certificates in hand. Lilian cuts the ribbon and enters the clinic, followed by the mayor. After the acts have finished, we all

go for something to eat again at Don A's house. The fourteen women are to eat elsewhere. Olivia calls them for a meeting and distributes the goods. I sit with Sara, Ana and Samuel on a small table. Samuel is leaving soon and we have to get our bags from Doña F's house. I go out to find Olivia. She hasn't eaten yet. She comes to eat at Don A's. She wants Samuel to drive us to Doña F's house, because it is hot and she is tired. I ask and he agrees to drive us there.

We go back with Samuel and two others from the theatre group that have been training the teens from Sepur and the surrounding communities. They discuss the several days' stay that they had in Sepur, the energy of the teens, and many other things. They get out at Teleman, at the hotel they stayed in. They are going to take the bus back to the capital, via Cobán. Samuel gets his things from the hotel too. We continue on to El Estor, where we will stay the night. From there, we'll go back tomorrow to the capital.

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## Appendix 1: Original Research Ethics Application

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### COMMITTEE ON RESEARCH ETHICS

#### APPLICATION FOR APPROVAL OF A PROJECT INVOLVING HUMAN PARTICIPANTS, HUMAN DATA, OR HUMAN MATERIAL

##### NOTES

- 1) This application form is to be used by researchers seeking research ethics approval from the University, as per the University's Policy on Research Ethics involving Human Participation. If an application qualifies for expedited review (Section C) it may be reviewed at Level 2, by your School or Institute's research ethics process.
- 2) Applications to the University Research Ethics Committees must normally include an **application form, participant information sheet and consent form** (all templates available online), along with any other relevant information, and should be submitted by email to the relevant contact listed at <http://www.liv.ac.uk/researchethics/apply,for,research,ethics/>.
- 3) Applications from Student investigators: the Committee will require proof that your Supervisor has approved the application to be submitted. Please attach this to your email. Your supervisor must be copied in on all correspondence relating to your application.
- 4) This form must be completed by following the guidance notes, accessible at [www.liv.ac.uk/researchethics](http://www.liv.ac.uk/researchethics). Please complete every section, using N/A if appropriate. Incomplete forms will be returned to the applicant.
- 5) For studies involving overseas sites, please ensure you have researched any local approvals that might be required. Wherever possible this should include local research ethics approval. In the absence of a research ethics approval body, other relevant local approvals should be obtained, e.g. authorisation from a site, letter from a local organisation or group etc.
- 6) This form does not constitute insurance approval which must be sought separately. Please contact the **University's Insurance and Risk Manager** if your project involves overseas sites, vulnerable groups or is a clinical trial.
- 7) Staff investigators: You are encouraged to discuss your proposal with your Head of Department prior to submitting for research ethics approval.

**RESEARCH MUST NOT BEGIN UNTIL ETHICAL APPROVAL HAS BEEN OBTAINED**

**FAILURE TO SEEK RESEARCH ETHICS APPROVAL IS TAKEN EXTREMELY SERIOUSLY BY THE  
INSTITUTION.**

**BEFORE COMPLETING YOUR APPLICATION PLEASE CONFIRM WHAT APPROVAL YOU ARE SEEKING**

(please check with "x"):

- a) Expedited review of an individual research project .....X.....
- b) Full committee review of an individual research project .....
- c) Committee review generic\* approval .....

\*to cover a cohort of projects using similar methodologies and in line with Policy on Generic Approvals which can be found at [www.liv.ac.uk/researchethics](http://www.liv.ac.uk/researchethics) . Boundaries of the research must be defined clearly. Approval may be granted for up to 3 years and will be subject to annual review.

**Declaration of the:**

**Principal Investigator** \_\_\_\_\_ **OR** **Supervisor and Student Investigator**   x  

(please check with a "x")

- The information in this form is accurate to the best of my knowledge and belief, and I take full responsibility for it.
- I have read and understand the University's Policy on Research Ethics
- I undertake to abide by the ethical principles underlying the Declaration of Helsinki and the University's good practice guidelines on the proper conduct of research, together with the codes of practice laid down by any relevant professional or learned society.
- If the research is approved, I undertake to adhere to the study plan, the terms of the full application of which the REC has given a favourable opinion, and any conditions set out by the REC in giving its favourable opinion.
- I undertake to seek an ethical opinion from the REC before implementing substantial amendments to the study plan or to the terms of the full application of which the REC has given a favourable opinion.
- I understand that I am responsible for monitoring the research at all times.
- If there are any serious adverse events, I understand that I am responsible for immediately stopping the research and alerting the Research Ethics Committee within 24 hours of the occurrence, via ethics@liv.ac.uk.
- I am aware of my responsibility to be up to date and comply with the requirements of the law and relevant guidelines relating to security and confidentiality of personal data.
- I understand that research records/data may be subject to inspection for audit purposes if required in future.
- I understand that personal data about me as a researcher in this application will be held by the University and that this will be managed according to the principles established in the Data Protection Act.
- I understand that the information contained in this application, any supporting documentation and all correspondence with the Research Ethics Committee relating to the application, will be subject to the provisions of the Freedom of Information Acts. The information may be disclosed in response to requests made under the Acts except where statutory exemptions apply.
- I understand that all conditions apply to any co-applicants and researchers involved in the study, and that it is my responsibility to ensure that they abide by them.
- **For Supervisors:** I understand my responsibilities as supervisor, and will ensure, to the best of my abilities, that the student investigator abides by the University's Policy on Research Ethics at all times.
- **For the Student Investigator:** I understand my responsibilities to work within a set of safety, ethical and other guidelines as agreed in advance with my supervisor and understand that I must comply with the University's regulations and any other applicable code of ethics at all times.

**Signature of Principal Investigator**

or

**Supervisor:**



**Date:** (29/02/2016)

**Print Name:** Dr Marieke Riethof

**Signature of Student Investigator:**

**Date:** (29/02/2016)



**Print Name:** Juliette Doman

**SECTION A - IDENTIFYING INFORMATION****A1) Title of the research (PLEASE INCLUDE A SHORT LAY TITLE IN BRACKETS).**

Truth-telling and seeking justice from below: Mayan women's voices on transitional justice in Guatemala
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**A2) PRINCIPAL INVESTIGATOR / SUPERVISOR (PLEASE DELETE AS APPROPRIATE)**

<b>Title:</b>	Dr.	<b>Staff number:</b>	398080
<b>Forename/Initials:</b>	Marieke	<b>Surname:</b>	Riethof
<b>Post:</b>		<b>Department:</b>	MLC
<b>Telephone:</b>		<b>E-mail:</b>	

**A3) Student Investigator(s)**

<b>Title and Name</b>	<b>Post / Current programme (if student investigator)</b>	<b>Department/ School/Institution if not UoL</b>	<b>Phone</b>	<b>Email</b>
Ms Juliette Doman	PhD	MLC	xxxxx xxx xxx	xxxxxxxxx@liv.ac.uk

**A4) Co-Applicants**

<b>Title and Name</b>	<b>Post / Current programme (if student investigator)</b>	<b>Department/ School/Institution if not UoL</b>	<b>Phone</b>	<b>Email</b>

**SECTION B - PROJECT DETAILS**

- B1) Proposed study dates and duration (RESEARCH MUST NOT BEGIN UNTIL ETHICAL APPROVAL HAS BEEN OBTAINED)**

*Please complete as appropriate: EITHER*

- a) Starting as soon as ethical approval has been obtained**

YES (PLEASE DELETE AS APPLICABLE)

<b>Approximate end date:</b>	September 2019
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OR

- b) Approximate dates:**

<b>Start date:</b>		<b>End date:</b>	
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- B2) Give a FULL LAY SUMMARY of the purpose, design and methodology of the planned research. N.B. Please use as little jargon or technical language as possible. Where jargon / technical language is unavoidable, please ensure you provide a lay explanation. Please define any acronyms. The summary must be understood by persons outside of the subject area including members of the general public**

The proposed study will investigate women survivors' experiences and agency in transitional justice processes in Guatemala. The study focuses on the Sepur Zarco trial in Guatemala, which is a trial on wartime domestic and sexual slavery and the Tribunal of Conscience, a civil society led initiative on wartime sexual violence held in 2010. The study will examine the nature of women's participation in both processes, especially of women survivors and the extent to which women survivors develop and exercise their agency in mobilising to seek justice and in participating in these processes. It will also consider the extent to which both processes met women survivors objectives, needs and fulfilled their expectations, from the perspectives of women survivors, women's rights activists and members of the following supporting organizations: UNAMG – Guatemalan Women's Union, ECAP, a community psychology organization and MTM – Women Transforming the World, a feminist lawyers organization, and Jalok U, the women survivors' legal association. In addition, the role that civil society organizations have played in supporting women survivors and their participation in transitional justice processes, particularly in alternative/complementary processes, such as holding the Tribunal of Conscience on sexual violence and in documenting wartime sexual violence in four areas of the country, will be examined.

The study proposes to make visible the actions of civil society organizations and the agency of women survivors in prosecuting war crimes that have gone unpunished to date, with the intention to facilitate reflection on the actions of civil society actors and practice of the organizations and on the transitional justice process in Guatemala, viewed from the perspective of Maya women survivors and members of organizations who have been supporting the women. One of the primary objectives is to assess whether the transitional justice processes the women have been participating in have met their needs and treated them with dignity. Maya women are

still heavily discriminated against in Guatemala and earlier research has revealed that women testifying in international war crimes tribunals on sexual violence in other countries such as Rwanda and the former Yugoslavia, have not always been treated with dignity and the adversarial process has limited women's agency, since they have not been able to tell their narrative in their own terms.

Up to now, complementary and alternative transitional justice processes 'from below', while potentially offering women survivors both more support and more ability to exercise their agency and construct their own narratives, have received little attention and have been under-researched. It is important to examine the role(s) these processes can play in transitional contexts, supporting marginalised groups who have been harmed by armed conflict and/or military dictatorship but who are denied a voice and access to justice due to continuing unequal power relations. Civil society and survivor led transitional justice processes are particularly important in contexts where gender based and sexual violence has been part of both conflict and post conflict violence: these processes can help restore dignity to the survivors and construct a space in which their voices can be heard. Transitional justice has largely focused on the development of international law, international tribunals and (re)building national legal systems in the aftermath of conflict. However, a focus on formal legal processes and on state building has meant that the voices of those most affected by the conflict, particularly women and indigenous peoples', have often not been heard. This research will focus on the women survivors experiences in participatory and more formal processes. A participatory approach will help to generate collective analysis and reflection on the processes the women have participated in and on steps that have been taken to redress the harms caused, as well as analysing the next steps that could be taken. As part of this process, if appropriate, participatory photography and/or film may be used to facilitate reflection and discussion. Materials generated may later form part of an exhibition, which could help to raise awareness about the issues the women have faced.

Earlier research has examined limitations of 'top down' transitional justice processes, including the lack of a gender perspective in truth commissions and reparations programmes. However, there has been a tendency to consider women as a homogenous group. In addition, this research has considered international war crimes trials, not domestic ones. It is important to study domestic courts prosecuting war crimes, particularly in the case that the court is prosecuting war crimes that took place in the country where the court is based (as is the case for the Sepur Zarco trial), since there are both potential benefits to prosecuting such crimes in the courts of these countries, such as greater acceptance of the courts jurisdiction, as well as potential drawbacks, such as a failure to respect victims (or defendants) rights, and a potential failure to provide timely justice. The Rios Montt genocide trial, held in Guatemala in 2013, is one such example: the former dictator was found guilty of genocide but the trial was annulled a few months later, and the process has still not been resolved.

It is important to note that the study will not be documenting new or uncovered war crimes. These have been already documented and political violence is not the topic of the study.

The proposed research will gather (comparative) data from focus groups/workshops and interviews in Guatemala City, where the organizations are based and El Estor, the municipal centre in the area the women survivors are from. Additional archival research will be undertaken

primarily in Guatemala, using written and visual materials. Press reports, published and unpublished documents, and current research can be obtained from the Biblioteca Nacional Luis Cardoza y Aragon; the organizations UNAMG, ECAP, CALDH, ODHAG, Impunity Watch, Equipo de Antropología Forense, the Universidad de San Carlos; research institutions operating within the country (FLACSO, AVANCSO, CIRMA, PNUD); Governmental departments; and the country's written and online press. There are also photographs, available in a book published by UNAMG and a couple of short videos online.

## Methodology

Since the project focuses on the actions and agency of civil society actors and survivors, a participatory approach will be taken. This means that I will coordinate some stages of the research, particularly research activities held with the women survivors, with the survivors individually and with their legal association Jalok U and with the supporting organizations UNAMG (National Union of Guatemalan Women), ECAP (Community Studies and Psychological Action, a community psychology organization) and MTM (Women Transforming the World, a feminist lawyers organization). Initially, I plan to discuss the aims and objectives of the research with the organizations and survivors and to elicit initial suggestions about particular issues that could be investigated as part of the research, as well as activities and supportive actions that I could organize with supporting organizations and survivors that could be of benefit to the survivors and/or help with the work of the organizations. This could include organizing an exhibition in Liverpool and in Guatemala, if appropriate. I intend to observe activities organized by the organizations and survivors and will coordinate this with the organizations and survivors. As part of the research and participatory action, I hope to facilitate collective and participatory reflection on and analysis of the objectives that different actors have and on the steps that have been taken (by women survivors and organizations) to achieve these objectives, including the actions taken to support the survivors and secure justice and the effects of the actions taken. This reflection would be undertaken during focus group sessions held with staff and survivors, which I would organize and plan with the organizations and survivors. Sessions could also be used to identify and analyse issues that have emerged from actions taken by the organizations and survivors and, if appropriate, to consider possible future actions that could be taken. Sessions would also include reflection on any steps I have taken with the organizations and survivors as part of the research process, and if appropriate, could involve participatory photography and/or film. I will plan and run these sessions with the organizations and survivors (see later sections for more details). Materials generated from collectively planned sessions, including information (in anonymised form), could be shared with the organizations, as well as any publications produced.

I already have contacts with the women's organization UNAMG, contacts with the other organizations will be established through my contacts with UNAMG and other contacts I have in Guatemala. As mentioned above, it is intended that the research be of service to the women survivors and the organizations and that one of the outcomes could be the production of materials (photographs, video) that will be useful to the organizations and will contribute to an exhibition at the Liverpool International Slavery Museum.

### Stages of the participatory research methods

Stage 1 Meet with organizations and survivors (if appropriate) to discuss research including possible research methods, research question(s), ethical issues and participants.

Stage 2 Participant observation of organizational processes and workshops/meetings with the survivors.

Stage 3 (If appropriate) Focus group reflection and analysis of steps taken and desired objectives. (if appropriate) Analyse situation and define /refine goals and next steps to take. If appropriate, discuss investigation of (or future reflection on relevant issues), how to investigate them and what to do with knowledge generated.

Stage 4 a) Participant observation of organizational processes and next steps taken (if appropriate).

b) Investigation of or group reflection on an important issue (if appropriate). Participatory photography/film could form part of any group sessions here, if appropriate, as part of data generation.

Stage 5 Focus group reflection and analysis of next steps/action taken and desired objectives. (if appropriate). Initial feedback on issue investigated or on information generated from reflection/study so far (if appropriate).

Analyse information generated and define next steps to take. Discuss what to do with information/knowledge generated and how to present this information.

### Data collection strategies

I will gather data through a combination of primary documentary analysis, archival research, interviews, participant observation of workshops and activities with the women survivors (that are routinely organized by the organizations UNAMG, ECAP and MTM) and also through reflective focus groups with the staff and survivors, which I will organize with them. In addition, documents, reports and books produced by the organizations I will be working with will provide background context and details, including the (anonymised) testimonies of the women survivors in the Tribunal of Conscience and of survivors of wartime sexual violence, short films and photographs.



I will carry out the interviews with staff and volunteers of supporting organizations UNAMG, ECAP, MTM and a representative of the women survivors organization Jalok U, and also with other supportive human rights and victims organizations where appropriate (such as CALDH, ODHAG, Equipo de Antropología Forense, AJR). I will also carry out interviews with interpreters who have been working with the women survivors, and I also intend to interview other participants and people who have attended the trial.

I will plan the participant observation in conjunction with the organizations and survivors. I plan to observe meetings, workshops and focus group sessions with the women survivors (organized by the above organizations). I also plan to organize and hold additional focus group sessions with the women survivors and staff, which would be planned and organized jointly with the organizations, in order to reflect on the transitional justice processes that they have participated in. In these sessions I plan to use creative methodologies to facilitate discussion and to allow both verbal and nonverbal forms of expression (using drawings, body sculptures and other participatory creative methods. I intend to seek the advice and support of the organizations, in planning and conducting the focus group sessions, since they have been working with the survivors for many years and have expertise in supporting survivors.

Depending on the interest (and clearly support/approval) of the organizations and survivors, participatory photography and/or film could form part of the group sessions organized by the organizations or additional sessions organized by myself, in conjunction with the organizations. This could facilitate discussion and (possibly) contribute to future exhibitions or other outputs. I will discuss this with the organizations, and if they think it could be beneficial, will request further ethical approval. I would seek informed consent from each of the survivors once further ethical approval is granted. To ask for consent, I would firstly ask participants if they would be happy for participatory photography/filming to take place during sessions and if they would be happy to appear in images or footage taken (in such a way as to maintain anonymity – see below). If participants agreed, then I would seek consent (in principle) for materials produced to be used for future exhibitions or other outputs, before starting any sessions including participatory photography or filming.

After viewing and editing photos/film, I would then contact the women again, and show any new photographs or video that may be used in exhibitions or other outputs to research participants, to ask whether they would give their consent and authorisation for these specific materials to be in the public eye.

(Materials that have already been made public, such as photographs in a published book, could also be used for the exhibition).

It is important to note that these methods are not new for the women survivors: UNAMG have produced a book about the Sepur Zarco case, with photographs of the women and of workshops, and they have produced short youtube videos to raise awareness. Photographs and film have been done sensitively and thoughtfully, and have not revealed the women survivors faces in most cases. The exceptions are women and staff members who have wanted to speak out more publically, who have shown their faces in some of the videos.

I will hold the interviews and focus group sessions in the offices of the organizations, or other secure locations which are acceptable to the research participants and myself. I will choose the locations carefully to ensure that they are private, quiet and safe, to maintain confidentiality but also neutral and in the public sphere so that participants (or myself) feel able to leave at any time if they wish. I will determine and agree precise locations with participants while I am in Guatemala.

I will seek the approval and advice of the relevant organizations for participant observation of activities organized by them. I will also ask the organizations to consult with the survivors and any other participants about the possibility of me observing activities held with them, and then seek informed consent from each of the participants in the planned activity before the activity takes place. I will also seek the approval and advice of the relevant organizations before organizing any additional focus group sessions with survivors. I will then ask the organizations to identify any suitable participants for focus group sessions or interviews and to make contact with potential participants to ask if they would be interested in participating in research and if I can contact them with more information. I will then contact any survivors who have said that they are happy to take part and will seek informed consent from each potential participant (see section D3 and D5 for more details). Working with the organizations and survivors in this way will help to build more confidence in the process and survivors in particular are more likely to have confidence in the process if they can see that the organizations support the research.

Participants will be fully informed about the purpose, methods, and intended uses of the research, as well as what participating in the research involves, and about any potential risks. They will be informed that their participation is completely voluntary, and that they retain the right to withdraw either themselves or any information they provide at any time prior to the publication of research results.

All questions and any concerns that arise about participation in the research that potential participants may have before or during the research process will be answered as much as possible, and time and discussion will be allowed to make sure that participants' understandings of the research and their involvement match my own. Information will be provided through verbal explanations and an information sheet. Once participants have verbally agreed and shown that they are happy to participate, I will request that participants sign a consent form, where possible. Not all participants are able to read and write, and not all speak Spanish (the women survivors speak a Mayan language Q'eqchi) and so in some cases I will provide a verbal explanation, based on the information on the information sheet and if necessary, an interpreter will interpret the verbal explanation. I will then ask the participant to provide a thumbprint to show consent. I will ask for a witness to observe the procedure and to sign a document to record witnessing the consent (see section D3 and D5 for more details).

If, during the course of an interview, a participant feels troubled or unhappy about either the interview itself, or the content being discussed, the interview will be stopped. The participant will then be given the choice of ending the interview completely and withdrawing from the study,

rescheduling at a mutually convenient time or carrying on after a brief pause. The interview will only be restarted or rescheduled if the participant is certain that they wish to continue their participation in the research. I will always make sure that participants know that they can leave or stop an interview at any time they wish, and I will stop the interview myself in the unlikely event that there are any signs of discomfort. Also, it will always be made clear to participants, before interviews are held, that they can choose not to answer some questions or discuss some issues and that there is no obligation whatsoever to disclose any information that they do not wish to do so.

For focus group sessions, ground rules will be established before starting, in order to give all participants a chance to speak and be listened to, and to agree on how the sessions are conducted, what may be discussed, including any limits on what participants are happy to discuss and to agree how confidentiality can be respected. Group sessions with the survivors are intended to allow collective discussion and analysis of the shared experiences of the transitional justice processes the women have been involved with, to collectively generate criteria by which the processes may be judged by the survivors and to evaluate whether goals and needs have been met.

Discussion of political violence and the survivors own stories will not be a part of these sessions, since this could be upsetting and is not the focus of the study. Neither will information of a personal or sensitive nature be elicited in these sessions. Group sessions allow for the development of a collective voice and allow a degree of anonymity. The survivors have been participating in group counselling and workshops together for many years, and so are used to discussing issues and working together. The presence of a member(s) of the organizations they have been working with and also a psychologist/counsellor, will be arranged. I will ask ECAP, the community psychology organization (who have qualified psychologists and counsellors as staff members and who have held group counselling sessions with the women and other survivors of the war) to identify a suitable (female) psychologist/counsellor, who has worked with the women before. It is important that the psychologist/counsellor has worked with the women, because this will mean that she knows the women and the difficulties they have faced, and the women may not trust a psychologist that they have not already worked with.

The above measures will all be arranged prior to holding any focus group sessions and will be a necessary condition of organizing such sessions (and the sessions would only be held subject to the approval of the organizations and would be planned with their guidance). This procedure will allow for the sessions to be sensitively organized and for debriefing.

Participants' confidentiality is of prime importance. Participants will always be anonymised (unless their name is already in the public domain and they specifically request that they be named).

Interviews will be recorded with the consent of the participant, where possible. If permission to record interviews is not given, the interview may still be carried out without being recorded if the participant is still happy to be interviewed. The participant will then be asked whether it is acceptable for me to take notes of the interview, if not the interview may still be carried out with field notes being written afterwards, if the participant is happy for the information they give to be recorded in this way and for data gathered during the interview to be used in the study. Information from interviews will only be used in the thesis if participants consent. Participants will be asked after the interviews have been held whether the information they have given can be used and participants will be able to withdraw data even after it has been anonymised, until the final write up. All data will be password protected, stored on the university M drive and will only be accessible to my supervisors and myself. \* Once audio recordings and transcriptions have been transferred to the secure server ('M' Drive), they will be deleted from the audio device in order to increase information security .

**B3) List any research assistants, sub-contractors or other staff not named above who will be involved in the research and detail their involvement.**

The following organizations will be involved: primarily UNAMG, also it is anticipated that ECAP, MTM and Jalok U will be involved. Research will be planned with UNAMG and to some extent with ECAP, \*data may be shared (once anonymised).

**B4) List below all research sites, and their Lead Investigators, to be included in this study.**

Research Site	Individual Responsible	Position and contact details
Guatemala City	Juliette Doman	PhD student email: xxxxxxxx@liv.ac.uk phone: xxxxx xxx xxx
El Estor Guatemala	Juliette Doman	PhD student email: xxxxxxxx@liv.ac.uk phone: xxxxx xxx xxx
Ixil Triangle (Nebaj/Chajul), Guatemala	Juliette Doman	PhD student email: xxxxxxxx@liv.ac.uk phone: xxxxx xxx xxx

**B5) Are the results of the study to be disseminated in the public domain?**

YES (PLEASE DELETE AS APPLICABLE)

➤ *If not, why not?*

N/A

**B6) Give details of the funding of the research, including funding organisation(s), amount applied for or secured, duration, and University of Liverpool reference**

Funding Body	Amount	Duration	UoL Reference
SLAS	£600	Travel costs	

**B7) Give details of any interests, commercial or otherwise, you or your co-applicants have in the funding body.**

### SECTION C - EXPEDITED REVIEW

**C1)**

<p><b>a) Will the study involve recruitment of participants outside the UK?</b></p> <p><i>For studies involving overseas sites, please ensure you have researched any local approvals that might be required. Wherever possible this should include local research ethics approval. In the absence of a research ethics approval body, other relevant local approvals should be obtained, e.g. authorisation from a site, letter from a local organisation or group etc.</i></p>	YES
<p><b>b) Does the study involve participants who are particularly vulnerable or unable to give informed consent? (e.g. children, people with learning or communication disabilities, people in custody, people engaged in illegal activities such as drug-taking, your own students in an educational capacity) (Note: this does not include secondary data authorised for release by the data collector for research purposes.)</b></p>	NO
<p><b>c) Will the study require obtaining consent from a “research participant advocate” (for definition see guidance notes) in lieu of participants who are unable to give informed consent? (e.g. for research involving children or, people with learning or communication disabilities)</b></p>	NO
<p><b>d) Will it be necessary for participants, whose consent to participate in the study will be required, to take part without their knowledge at the time? (e.g. covert observation using photography or video recording)</b></p>	NO
<p><b>e) Does the study involve deliberately misleading the participants?</b></p>	NO

<b>f) Will the study require discussion of sensitive topics that may cause distress or embarrassment to the participant or potential risk of disclosure to the researcher of criminal activity or child protection issues? (e.g. sexual activity, criminal activity)</b>	YES  (but see sections E1, E4, E5)
<b>g) Are drugs, placebos or other substances (e.g. food substances, vitamins) to be administered to the study participants or will the study involve invasive, intrusive or potentially harmful procedures of any kind?</b>	NO
<b>h) Will samples (e.g. blood, DNA, tissue) be obtained from participants?</b>	NO
<b>i) Is pain or more than mild discomfort likely to result from the study?</b>	NO
<b>j) Could the study induce psychological stress or anxiety or cause harm or negative consequences beyond the risks encountered in normal life?</b>	YES  (but see sections E1, E4)
<b>k) Will the study involve prolonged or repetitive testing?</b>	NO
<b>l) Will financial inducements (other than reasonable expenses and compensation for time) be offered to participants?</b>	NO

C2)

<b>a) Will the study seek written, informed consent?</b>	YES
<b>b) Will participants be informed that their participation is voluntary?</b>	YES
<b>c) Will participants be informed that they are free to withdraw at any time?</b>	YES
<b>d) Will participants be informed of aspects relevant to their continued participation in the study?</b>	YES
<b>e) Will participants' data remain confidential?</b>	YES
<b>f) Will participants be debriefed?</b>	YES

If you have answered 'no' to all items in SECTION C1 and 'yes' to all questions in SECTION C2 the application will be processed through expedited review.

If you have answered "Yes" to one or more questions in Section C1, or "No" to one or more questions in Section C2, but wish to apply for expedited review, please make the case below.

- C3) Case for Expedited Review – To be used if asking for expedited review despite answering YES to questions in C1 or NO to answers in C2**

**SECTION D - PARTICIPANT DETAILS**

- D1) How many participants will be recruited?**

Approximately 60

- D2) How was the number of participants decided upon?**

This number reflects a variety of participants, in order to be representative and give enough breadth of opinion. The total includes the women survivors who have taken part in the Sepur Zarco trial and some of the women survivors who took part in the Tribunal of Conscience, and also some other participants who have taken part in the Sepur Zarco trial and the Tribunal of Conscience (as observers, expert witnesses and some other witnesses for the prosecution). A number of staff and volunteers of organizations who have been supporting the survivors will also be interviewed. Some staff members of other human rights organizations will also be interviewed for background.

- D3)**

- a) Describe how potential participants in the study will be identified, approached and recruited.**

The women's organization UNAMG will be approached first, to investigate the possibility of conducting the study jointly, and to ask about the possibility of interviewing some of the staff. Contacts with other organizations, particularly the community psychology organization ECAP and the Guatemalan feminist lawyers organization MTM will also be made, either directly (both have websites and are in the public eye), through UNAMG or through contacts that I already have in Guatemala.

From these initial contacts, a snowballing approach will be taken to identify potential interviewees. Snowballing involves asking participants, after they have been interviewed, if they can suggest other potential participants. They will then be asked, if appropriate, whether they can first make contact themselves before putting me in touch with or introducing me to the person(s). This allows for a selective process of identifying potential participants. In this way, anonymity is respected since the potential participants can refuse without becoming known to me and will not be approached without first agreeing. Potential participants will then be approached by myself to ask if they would like to take part in the study, they will be provided with the participant

information sheet and then given at least 24 hours to consider whether to take part. The approach will be made in the standard way following all standard ethical procedures of informed consent. Precautions and great care will be taken to ensure that nobody feels coerced into participating.

Where possible, research will also follow the participant observation method of data collection. This means observing some of the participatory activities those groups studied are presently engaged in, with the approval of the above mentioned organizations. I will seek approval and advice from the organizations, then I will seek informed consent from all potential participants.

The organizations will be asked to initially ask potential participants about the possibility of me observing and participating in workshops, meetings and other group sessions, since they have a trusted relationship with the women survivors, and will know the best way to ask, and to make it clear that the women can refuse consent for me to observe any group sessions (since they have been working with them for over 12 years). The organizations have held group sessions with the women in which researchers have participated in the past, so this will not be a new thing. I will then seek informed consent with the women myself, after I have explained what the research involves and its purpose. It will be necessary to use interpreters for some of the participants, who do not speak Spanish and are illiterate, and to request witnessed thumbprints where signatures are not possible (see details below in section D5). Extra care will be taken to ensure that participants who cannot read and write understand what participating involves and are happy to participate.

If possible, and if appropriate, I will organize additional focus group sessions with the survivors, with the support of the organizations. These additional sessions would take place after I have participated in sessions organized by one of the organizations and once they have got to know me and what the research is about. Focus group sessions would be planned and organized by myself with the support of the supporting organizations, particularly UNAMG, with whom I have an existing relationship, and is aware and supportive of the planned research, and ECAP. I would request that staff of one or both of these organizations and also a psychologist/counselor attend, to facilitate the session and support the survivors if necessary.

It is important to note that participatory research is an iterative and inductive process, in which knowledge gained informs later steps taken. A somewhat flexible research design is required, to allow for changes and/or further steps to be taken and leads to be followed. Research is agreed with participants, then reflections on actions taken follow, and decisions are made (by the participants) as to the next steps to take.

**b) Inclusion criteria:**



The main inclusion criteria for participants in this research project is that they have participated or been involved in transitional justice processes on wartime sexual violence in Guatemala, in particular the Tribunal of Conscience and the Sepur Zarco trial and people who work or volunteer with organisations which have supported these processes. This includes staff and volunteers of supporting organizations who work with women survivors of wartime sexual violence and who have been involved in transitional justice processes seeking justice for the crimes committed against them, interpreters who work with the women, and the women survivors themselves.

**c) Exclusion criteria:**

N/A

**d) Are any specific groups to be excluded from this study? If so please list them and explain why:**

N/A

**e) Give details for cases and controls separately if appropriate:**

N/A

**f) Give details of any advertisements:**

N/A

**D4)**

**a) State the numbers of participants from any of the following vulnerable groups and justify their inclusion**

<b>Children under 16 years of age:</b>	N/A
<b>Adults with learning disabilities:</b>	N/A
<b>Adults with dementia:</b>	N/A
<b>Prisoners:</b>	N/A
<b>Young Offenders:</b>	N/A
<b>Adults who are unable to consent for themselves:</b>	N/A

Those who could be considered to have a particularly dependent relationship with the investigator, e.g. those in care homes, students of the PI or Co-applicants:	N/A
Other vulnerable groups (please list):	Women survivors of wartime sexual violence who are not literate and some of whom do not speak Spanish. I hope to include them because their voices on transitional justice are very important to understanding whether these processes meet their needs. See section D5 for more details.

**b) State the numbers of healthy volunteer participants:**

Healthy Volunteers	60
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**D5) a) Describe the arrangements for gaining informed consent from the research participants.**

Primarily, and where possible, informed consent will be sought by asking that the individual participants read an information sheet and sign a consent form (in Spanish). I speak fluent Spanish, after having lived in Guatemala for over 6 years, and so will be able to answer any questions about the research and verify that participants are happy to take part. I will make it absolutely clear that participants can withdraw at any time. For the interviews I will make it clear that the interviewees don't have to answer any questions that they do not wish to answer and I will ask for additional consent before recording any interviews. If interviewees do not wish to be recorded, I will ask if they wish to proceed with the interview or not and will only proceed if they are happy to do so. I will also ask for consent before making notes, and if consent is not given, I will check again whether participants are happy to be interviewed and whether they are happy for data from the interview to be used in the study.

Where research participants have been identified by a gatekeeper (which will be the case of the women survivors), the gatekeeper will be contacted first, and asked if they can make contact with potential participants and explain the study. The gatekeeper can then put me in contact with the potential participants who are happy to take part. This will allow anonymity of potential participants, who do not wish to take part. I will then approach these individual participants and obtain their explicit informed consent (as described above). However, some of these participants will be unable to read the information sheet or provide written consent – the women survivors participating in the Sepur Zarco trial are not literate and do not speak Spanish. I intend to work primarily with the women survivors as a group, with their legal association Jalok U, the women's organization UNAMG, the community psychology organization ECAP, and the feminist lawyers organization MTM, who have all been working with and supporting the women for over 12 years and have strong and trusting relationships with the women. I intend to observe workshops and meetings the organizations hold, and will seek the approval of the organizations first, and then ask the organizations to consult with each the potential participants about the possibility of me observing, and to make it absolutely clear that they are within all their rights to refuse. This way, the participants can retain their anonymity and will not feel under any pressure to consent (since they have a trusting relationship with the organizations).

If all participants initially agree to meeting me to discuss the possibility of me observing a session, I will then seek informed consent from each one. I will provide a verbal explanation of the project and, if appropriate, read out the information sheet and consent form, explaining the meaning of the information on the documents. An interpreter will interpret the explanations (into Q'eqchi) for participants who cannot speak Spanish. If the participants choose to continue, and in the event that he/she is unable to sign their name, I will ask participants to provide a thumbprint. An independent witness will sign a declaration form to ensure a record of consent.

In any case where a verbal explanation is required, care will be taken to ensure that the participant understands what the research involves, its purposes and use, what is expected of them, any possible risks and also their rights to withdraw at any time and to only provide information that they wish to give. Research participants will also be asked if they would like to ask any questions or clarify any aspect of the research and that they may ask questions at any time.

- b) If participants are to be recruited from any of the potentially vulnerable groups listed above, give details of extra steps taken to assure their protection, including arrangements to obtain consent from a legal, political or other appropriate representative in addition to the consent of the participant (e.g. HM Prison Service for research with young offenders, Head Teachers for research with children etc.).**

It is important to note that the participants who are vulnerable, the survivors, are able to give informed consent. Measures will be taken to assure support and protection, nevertheless (see relevant sections for more details). The research that is to be undertaken with the survivors will be undertaken after first seeking the advice of organizations that have been supporting the women for more than 12 years, and this research will be undertaken together with the organizations under their guidance. I will follow procedures and advice established by these organizations at all times. I will also consult with my supervisors and will follow UoL ethical guidelines at all times.

- c) If participants might not adequately understand verbal explanations or written information given in English, describe the arrangements for those participants (e.g. translation, use of interpreters etc.)**

Most of the participants (who will be interviewed) speak Spanish (which I speak fluently). All information about the research will be provided in Spanish. In the case of the women survivors, who mostly do not speak Spanish, but a Maya language, interpreters that have worked with UNAMG and ECAP will be approached to interpret the information about the research. These interpreters are known and trusted by the women survivors.

- d) Where informed consent is not to be obtained (including the deception of participants) please explain why.**

There may be a very small number of situations in which people in public events, not in the immediate research domain, will be observed and included in the research (for example community events or Mayan ceremonies). In this instance, I will take all practicable steps to be introduced by local known participants and identify myself as a researcher. Ethical standards will be adhered to at all times and no personal or identifying information will be recorded about people who are not part of the research group.

**D6) What is the potential for benefit to research participants, if any?**

There are no direct benefits for individual participants from the research but the research does have indirect benefits for the participants.

The research project aims to help organizations to reflect on their practice and for women survivors to reflect on their experiences, and to generate materials and information that will be useful for this practice and later reflections or activities that participants will be involved with. I also intend to explore possibilities for the research to made useful in Guatemala, particularly for the survivors, their organization(s), communities and for the supporting organizations (?) and for building connections and solidarity, by participating in and/or organizing exhibitions in Guatemala and in the UK. After publication of the thesis, I will provide the organisations with translated copies of the completed research, and I will look to publicise the research in writing in Guatemala. In all these possible cases, all University of Liverpool and local organizations ethical guidelines will be followed.

**D7) State any fees, reimbursements for time and inconvenience, or other forms of compensation that individual research participants may receive. Include direct payments, reimbursement of expenses or any other benefits of taking part in the research?**

Where participants may be required to travel to a location in order to specifically participate in the research for interviews or focus groups, they will receive a light refreshment and additionally be reimbursed with travel expenses to the destination (this is standard practice with NGOs in Guatemala). These expenses will be reimbursed on the day, even if the interview is subsequently terminated for any reason. Some of the research may be conducted through observation of activities that the participants are already engaged in (workshops, meetings, conferences), in this case participants will not incur any extra expense. Participants who offer their additional time outside of these activities (for example, individual and group interviews) will always be offered light refreshments.

No other financial incentives will be offered to research participants to avoid the risk that participants feel pressured into consent, and continue in the research because they feel they must do so to receive payment. There is a danger that financial incentives could put pressure onto participants and place them in what they see as a contractual or coercive relationship, which may

diminish their freedom to withdraw, complain, or raise any issue if they feel uncomfortable, or produce certain responses in efforts to be more deserving of the fee.

### **SECTION E - RISKS AND THEIR MANAGEMENT**

**NOTE:** *Completing section E fulfils the requirement for risk assessment, provided that this section is reviewed if circumstances change, or new information makes it necessary.*

*A copy of this form should be given to your departmental safety coordinator to enable monitoring of risk assessments. The findings of the risk assessment, especially the precautions required, must be communicated in a user-friendly way to all those doing this work.*

**E1) Describe in detail the potential physical or psychological adverse effects, risks or hazards (minimal, moderate, high or severe) of involvement in the research for research participants.**

There are unlikely to be any physical adverse effects or hazards associated with involvement in this research. Adverse psychological effects are also highly unlikely with most of the people I will interview, since most of the interviews will not be conducted with women survivors. I will conduct most of the interviews with members of organizations who have been involved in the process, supporting the women survivors. Members of these organizations have been interviewed before, and the topics that will be discussed will not be sensitive topics relating to the war, since the focus of the research is the nature of women survivor's participation in transitional justice processes, the actions of civil society actors in facilitating women's participation in transitional justice processes, their objectives in doing so and their perspectives on how the process has served the women survivors and met the womens' and organizations' goals.

I will also conduct some interviews with survivors who wish to be interviewed. Some of the survivors have been interviewed by researchers before, so this will not be new to them. However, I will seek advice first with the supporting organizations on how best to interview survivors and will ask for the organizations to suggest potential interviewees. I will also request that a member of one of the supporting organizations be present during the interview, and/or a counsellor/psychologist known to the woman. Survivors will also debrief with a member of one of supporting organizations and/or a counsellor. Sensitive topics are not part of the research and will not be raised – in particular, it is important to state that this study will not ask women to retell their stories of harm, to avoid upset or harm. The womens' testimonies have already been documented, and are available in an anonymised and written form in a book that has been published by UNAMG. This material can be used as the background to the research (UNAMG have given me a copy of the book to use).

If, during an interview, an interviewee finds what he or she is talking about to be troubling, the interviewee will be asked if he/she would like to withdraw from the interview and the study. Only if the participant is sure that he/she would like to continue will the interview proceed. Participants will be aware at all times that they do not have to answer any questions they do not wish to answer, and that they may exit interviews at any point. As mentioned earlier, the likelihood of sensitive topics being part of the interviews is low, such issues will not be raised by myself, and certainly are not a requirement for the study. Participants will also be informed that they may later withdraw any information, after data has been analysed and anonymised, up until the thesis is in the final stages of being written up. If, for any reason, information is given that has potential to cause harm to participants, this will not be included in the thesis and will be kept out of the public domain. This is highly unlikely, however, since research will take place after the trial has been held and the violence has already been documented and is not part of the study.

There is a very slight risk of psychological adverse effects in the group sessions, if sensitive topics are raised by women survivors. Research with the women survivors in these sessions is however, focused on observing supportive, group activities that the participants will already be involved in, not on discussing the events from the war. Participants have been involved in these activities for many years, so it is highly unlikely that any new issues should come up and since these sessions are planned and run by organizations that have been supporting the women for over 12 years, they have great expertise in handling any issues that may arise. Great care will be taken not to initiate discussion of these topics on my part and participants privacy and confidentiality will be respected at all times.

I will seek advice on and support/approval for conducting any additional workshops or focus groups with survivors as part of the research with the organizations that have worked with the women for years. I would plan and design such sessions with the supporting organizations, following their guidance as well as my supervisors guidance and UoL ethical practices. The content and activities, and ground rules would first be agreed with the women survivors. I will invite members of the organizations and I will ask at least one staff member to facilitate/lead the session. No focus groups or workshops will be held without staff members of the supporting organizations present, who can also provide reassurance and support in the case that anyone needs it.

Before any session starts, I will make participants aware that they can leave the session or stop the session altogether if they so wish. In the event that any participant wishes to stop or leave the session, all participants will be asked whether they wish to continue after a short break, stop the session and reschedule another or stop the session and completely withdraw. Equally, if a participant appears to be showing any sign of discomfort, I will pause the session and ask whether each of the participants wish to continue after a short break, stop and reschedule another session or stop and withdraw completely. Participants will be debriefed by a staff member of one of the organizations and/or with a psychologist/counsellor that has already worked with the women

(whether a session is completed or not). However, I do not anticipate that focus group sessions will be problematic for the women, since focus group meetings are one of the activities they have been involved in for many years. These activities include meetings, focus groups, reflective workshops and participatory theatre exercises, some of which have been carried out with researchers and some of which have been photographed, with participants consent and in a sensitive manner that respects anonymity. As such, it will require little disruption to their normal practices. Reflection on experiences and participatory creative practices in group sessions have been beneficial for survivors and provide mutual support and strength, as well as a safe space in which to speak.

If the supporting organizations consider it to be appropriate, sessions may be photographed and/or filmed, in a sensitive way that respects participants anonymity. Sessions and activities have been photographed in the past, without showing the women survivors' faces and some of these photographs have been used by the organizations to produce a book, and may be used for a temporary exhibition in Guatemala. Photographs taken in the past have included creative outputs, such as drawings and body sculptures (a participatory theatre technique). Sessions would be photographed/filmed in a participatory way, in which participants decide what to photograph/film and how, and participants will themselves take the photographs/film if possible. Photographs/film could then be used for data analysis, with the consent of each of the participants and also could be used for exhibitions (again with the participants' consent and with anonymised participants only, unless a staff member who is already in the public eye wishes to appear in photographs/film), along with other materials.

With respect to the issue of data protection, all participants will be anonymised, unless they are already in the public eye and have specifically requested to be named (or shown in photographs/film). All markers that could compromise anonymity will be removed. Also, the researcher's supervisors will be able to spot any confidentiality issues that may arise, while revising draft chapters. Participants will also be able to withdraw information provided, after interviews or focus group sessions have been held, up until the final stages of writing up the thesis.

**E2) Explain how the potential benefits of the research outweigh any risks to the participants.**

It is extremely important that women survivors are treated with dignity in transitional justice processes and that trials are conducted in such a manner that meets the needs and goals of the survivors; earlier research into international trials has suggested that this is not always the case and improvements are possible. Domestic war crimes tribunals have been little investigated. This research is intended to critically assess how Maya women are treated by a national court in Guatemala, and whether improvements can be made to future processes. Also, as mentioned above, group reflection on experiences and participatory creative practices in group sessions have been beneficial for survivors. It is very important for women to have a safe space for reflection



and discussion, and to have a space in which to give and to receive mutual support (there is evidence that this is psychologically beneficial). Reflection on existing practices can also both facilitate improvements and information gained can provide valuable information for other organizations who may wish to learn from the processes in Guatemala. The Guatemalan Tribunal of Conscience was inspired by a citizens tribunal on wartime sexual slavery in Japan. In addition, survivors and women's rights organizations have tried to raise awareness both within Guatemala and in the international community about what happened during the war, and the continuing impunity. Women survivors want the crimes against them to be publically denounced, they want a public recognition that these crimes took place, and public recognition that they (the women) are not to blame. Women have had considerable difficulty in accessing justice in Guatemala, especially Maya women, and violent crimes against women have largely remained in impunity. Potential outputs such as exhibitions, could help towards raising awareness and are themselves public acts. Finally, data and knowledge created by the research will be available (in anonymised form) for the use of the participants and organizations.

**E3) Describe in detail the potential adverse effects, risks or hazards (minimal, moderate, high or severe) arising from this research to the researchers or anyone else.**

The potential adverse effects should be minimal, however one potential area of risk to myself relates to the urban crime which takes place in parts of Guatemala city. This research project, however, does not require me to go to marginal areas in Guatemala city or elsewhere. I also have the advantage of speaking Spanish fluently and I know the country well, after having lived there for over 6 years, and so am well accustomed to taking the necessary precautions in Guatemala. Most foreign visits to Guatemala are trouble free, despite crime levels in Guatemala being higher than in Europe. The risk in this area can be categorised as minimal.

The El Estor and Nebaj and Chajul towns of Guatemala suffer much lower levels of crime. There will no risks in conducting research in these locations beyond the normal hazards associated with daily life.

The risk in this area can be categorised as minimal.

**E4) What precautions will be in place to minimise the risks identified in E1 and E3?**

In the (highly unlikely) event that a participant feels troubled by the interview or the content being discussed, the interview will be terminated, and the participant given the chance to decide if he/she wants to stop the interview completely and withdraw from the study, reschedule, or carry on. Only if the participant is sure that he/she would like to continue will the interview proceed at a time convenient for the interviewee. Additionally, it will be made clear to participants from the outset that they are under no obligation to disclose any information (specific or general) to me. Also, I will always explain that the participants can leave the interview at any time (or I will stop the interview myself in the highly improbable event that there is visible discomfort).

Group sessions with the survivors will have been organized by the supporting organizations who are very experienced in creating a supportive and positive environment and any additional sessions will be organized with these organizations to reduce any risk to participants and to make sure measures are in place to provide support if necessary. Sessions will also be stopped if necessary, and participants will be given the choice as to whether continue the session after a short break, to reschedule another session or to withdraw completely. Sessions would only continue if participants are sure that they are happy to continue. Participants will also be aware that they may leave the session at any time they wish. As described above, the content and activities of such sessions will be agreed with participants before starting, and ground rules will be established and participants will be made aware that participation in any activity is voluntary and that they are under no obligation to disclose any information that they do not wish to do so. As an additional safeguard, interpreters will be asked to regularly verify (with the survivors) that information provided in Q'eqchi is information that participants are happy for me to receive, before they interpret it into Spanish. This will avoid accidental disclosure. The interpreters used will be interpreters who have worked with the women in similar such sessions, who are trusted individuals. In addition, interpreters will be asked to sign a confidentiality agreement.

Debriefing will be undertaken with all participants, and in the case of women survivors, this debriefing will be carried out with a psychologist known to the women, to provide support if any is needed.

Finally, I will always seek the advice of my supervisors to ensure that any action taken conforms to the University of Liverpool ethical guidelines. All unexpected outcomes and adverse events will be reported to my supervisors and to the Research Governance Office within twenty four hours.

- E5) Will individual or group interviews/questionnaires discuss any topics or issues that might be sensitive, embarrassing or upsetting, or is it possible that criminal or other disclosures requiring action could take place during the study (e.g. during interviews/group discussions, or use of screening tests for drugs)?**

YES / NO (PLEASE DELETE AS APPLICABLE)

➤ ***If Yes, give details of procedures in place to deal with these issues.***

The study focuses on the nature of women survivors' participation in transitional justice processes, the actions of civil society actors and women survivors in seeking justice and their reflections on their experiences of and their perspectives on the transitional justice processes that they have been involved with in Guatemala. The research is not investigating the events that took

place during the war, and such topics will not be raised by the researcher in interviews or focus groups. However, there is a chance that some upsetting topics or issues may be raised by women survivors during workshops/focus group sessions with them. As stated above, such sessions would only be conducted with staff members of supporting organizations who have been working with the women for over 12 years, who would be on hand to provide support to any participants if this were to be necessary. Consent and guidance would be sought first with these organizations before observing any group activities or holding focus group sessions with the survivors (as indicated above) and information would only be recorded or included within the study with the permission of the participants. Participants will be debriefed, as described above.

**E6) Describe the measures in place in the event of any unexpected outcomes or adverse events to participants arising from their involvement in the project**

In the interviews with staff members of the organizations, it is unlikely that any distress will be caused to the participant. However, if the interviewee does appear to be troubled at all, I will stop the interview and ask if the participant wishes to continue, postpone or even withdraw completely.

In group sessions, members of supporting organizations will be on hand to provide support if this is necessary. Sessions will also be stopped if participants or staff members of supporting organizations wish to stop or if staff members or myself feel that this is necessary to avoid any risk of harm, as described above. In the case of the women survivors, the support of a psychologist known to them will be available, both within any sessions held, in debriefing afterwards and if necessary, follow up support will also be available. Each session will be carefully monitored and evaluated by myself and the supporting organizations. The organizations will continue working with the women survivors after the research has taken place, which means that survivors will continue to receive support and have a space to discuss issues and support one another. In all cases, I will seek the advice of my supervisors to ensure that any action taken conforms to the University of Liverpool ethical guidelines. This includes asking for advice about appropriate locations for holding interviews if I am unsure. Moreover, any unexpected or adverse events, such as if a participant becomes distressed during an interview or group session and asks to postpone or withdraw, will be reported to my supervisors. All unexpected outcomes and adverse events (e.g. if the participant finds the interview too troubling to continue and asks to postpone/withdraw) will be reported to the PI (my supervisors) and to the Research Governance Officer within 24 hours.

**E7) Explain how the conduct of the project will be monitored to ensure that it conforms with the study plan and relevant University policies and guidance.**

The researcher, Juliette Doman, will be in regular email and Skype contact with the supervisors, Marieke Riethof, Niamh Thornton and Padraig McAuliffe(University of Liverpool) and will always seek and follow their guidance.

### **SECTION F - DATA ACCESS AND STORAGE**

**F1) Where the research involves any of the following activities at any stage (including identification of potential research participants), state what measures have been put in place to ensure confidentiality of personal data (e.g. encryption or other anonymisation procedures will be used).**

*\*PLEASE NOTE THAT UNLESS THERE ARE EXCEPTIONAL CIRCUMSTANCES, ALL DATA MUST BE HELD SECURELY ON THE "M" DRIVE AND IN LINE WITH UNIVERSITY POLICY. VISIT THE CSD WEBPAGES FOR FURTHER INFORMATION*

<b>Electronic transfer of data by magnetic or optical media, e-mail or computer networks</b>	Data will always be anonymised before sending/transferring.
<b>Sharing of data with other organisations</b>	Data will always be anonymised before sharing (if it is to be shared with UNAMG and/ECAP/MTM/Jalok U)
<b>Exporting data outside the European Union</b>	The data will be gathered outside of the EU.
<b>Use of personal addresses, postcodes, faxes, e-mails or telephone numbers</b>	Most contact details will be contact details for organizations, which are in the public domain. However it will be necessary to gather some personal contact details (phone numbers and emails addresses). This information will be stored securely.
<b>Publication of direct quotations from respondents</b>	Quotations will always be anonymised where participants have not expressly asked for their names to be included or where the information spoken and the speaker is not already in the public domain.
<b>Publication of data that might allow identification of individuals</b>	All data will be kept so as to ensure individuals cannot be identified, unless the information and individual are already in the public domain and have requested to be named/shown.
<b>Use of audio/visual recording devices</b>	Yes – all audio recording devices and any cameras/video cameras will be stored securely under lock (unless being carried in the field in

	which case it will be on the researcher's person at all times). Once audio recordings or transcriptions are transferred to the secure server ("M" drive), they will be deleted from the audio device immediately.
<b>Storage of personal data on any of the following:</b>	
<b>Manual files</b>	Notes will be taken in such a way that participants cannot be identified except by the researcher. All notes/fieldbooks will be kept under lock or on the researcher's person.
<b>Home or other personal computers</b>	<i>DATA MUST ONLY BE STORED ON THE UNIVERSITY'S SECURE SERVER, YOU CAN GAIN REMOTE ACCESS TO THE SECURE SERVER VIA THE UNIVERSITY'S APPS ANYWHERE APPLICATION.*</i>
<b>University computers</b>	<i>DATA MUST ONLY BE STORED ON THE UNIVERSITY'S SECURE SERVER, YOU CAN GAIN REMOTE ACCESS TO THE SECURE SERVER VIA THE UNIVERSITY'S APPS ANYWHERE APPLICATION.*</i>
<b>Private company computers</b>	<i>DATA MUST ONLY BE STORED ON THE UNIVERSITY'S SECURE SERVER, YOU CAN GAIN REMOTE ACCESS TO THE SECURE SERVER VIA THE UNIVERSITY'S APPS ANYWHERE APPLICATION.*</i>
<b>Laptop computers</b>	<i>DATA MUST ONLY BE STORED ON THE UNIVERSITY'S SECURE SERVER, YOU CAN GAIN REMOTE ACCESS TO THE SECURE SERVER VIA THE UNIVERSITY'S APPS ANYWHERE APPLICATION.*</i>

**F2) Who will have control of and act as the PRIMARY custodian for the data generated by the study?**

SUPERVISOR

*(PLEASE DELETE AS APPLICABLE)*

**F3) Who will have access to the data generated by the study?**

Supervisors Marieke Riethof, Niamh Thornton and Pdraig McAuliffe plus UNAMG and ECAP (in anonymised form)
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**F4) For how long will data from the study be stored?**

Until the data is no longer needed for research.
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**SECTION G – PEER REVIEW AND TRAINING**

**G1) a) Has the project undergone peer review?**

YES (PLEASE DELETE AS APPLICABLE)

**b) If yes, by whom was this carried out? (please enclose evidence if available)**

This was carried out during my application to the university to do the PhD – Dr Marieke Riethof

**G2) a) What date was your most recent training in research ethics?**

<b>Date:</b>	<p>1) Oct-December 2015</p> <p>2) 2<sup>nd</sup> November 2015</p> <p>3) 27<sup>th</sup> November 2015</p>
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**b) Please provide details of the training provider and course:**

<b>Training provider:</b>	<p>1) University of Liverpool</p> <p>2) University of Manchester</p> <p>3) University of Liverpool and University of Lancaster</p>
<b>Course title:</b>	<p>1) SOCI501: Policy and Practice of Social Research. Session on ethical approval (6/11) plus other sessions on ethnographic approach (including ethical issues), power and politics in research and lay involvement in research.</p> <p>2) Conference/workshop: The Ethics of Research on Contentious Terrain</p> <p>3) Workshop &amp; roundtable discussion: The Ethics of Collaboration</p>

**SECTION H - CHECKLIST OF ENCLOSURES**

*PLEASE ADD "YES" WHERE APPROPRIATE*

<b>Study Plan / Protocol</b>	
<b>Recruitment advertisement</b>	
<b>Participant information sheets</b>	Yes*
<b>Participant Consent forms</b>	Yes*
<b>Research Participant Advocate Consent form</b>	
<b>Evidence of external approvals</b>	
<b>Questionnaires on sensitive topics</b>	
<b>Interview schedule</b>	
<b>Debriefing material</b>	
<b>Other (please specify)</b>	
<b>Evidence of peer review (If G1 = Yes)</b>	

\*Participant information sheets and consent forms have been tailored for interviews, participant observation of sessions and focus group sessions.

## Appendix Two: Notice of Major Amendment to Research Ethics Application

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### Committee on Research Ethics

### Notice of Major Amendment

Please complete this form electronically and submit to the Research Governance Officer at [ethics@liverpool.ac.uk](mailto:ethics@liverpool.ac.uk) or, if approved by a School or Departmental Ethics Committee, to the relevant contact found at <http://www.liv.ac.uk/researchethics/deptcommittees.htm>. Please ensure that you complete this form in language comprehensible to a lay person.

#### 1. Details of Principal Investigator / Supervisor

Name:	Dr Marieke Riethof
School and Department:	Modern Languages and Cultures
Telephone:	xxxx xxx xxxx
Email:	xxxxxxxx@liverpool.ac.uk

#### 2. Details of Student Investigator (if applicable)

Name:	Juliette Doman
School and Department:	Modern Languages and Cultures
Telephone:	xxxx xxx xxxx
Email:	xxxxxxxx@liv.ac.uk

#### 3. Details of Research Project

Full Title ( <i>short title in brackets</i> ):	Truth-telling and seeking justice from below: Mayan women's voices on transitional justice in Guatemala
Research Ethics Sub-Committee Reference Number ( <i>as detailed on Approval email</i> ):	RETH001049
Date of latest Research Ethics Committee approval:	Approval date: 29/05/2018 Approximate end date: 30/09/19



Amendment Number and Date:	Number:2 Date:29/01/2019
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#### 4. Type of Amendment(s)

- 1) Amendment to information supplied in original University Research Ethics Approval application form

YES  NO

- ***If yes, please clearly state which sections in the Summary box below.***

- 2) Amendment to information sheet / consent forms or other supporting documentation for the study

YES  NO

- ***If yes, please submit these documents with all changes highlighted to [ethics@liverpool.ac.uk](mailto:ethics@liverpool.ac.uk)***

**5. Details of Amendment(s)** – *Please summarise in language comprehensible to a lay person, including what measurements have been put in place for any additional ethical issues that may arise as a result of the amendment (s).*


The proposed end date for the research, detailed in section B1 a) of the original application, is September 2019. However, Juliette Doman has changed from full time to part time study, and so the final date for thesis submission is 15/12/2020. It is therefore proposed to extend the approval for the study until 30/06/2021 to allow time for the thesis submission and completion of the Viva. This should not lead to additional ethical issues arising since the original ethics application and participant information sheet provided to participants state that the material gathered will be deleted when it is no longer needed for the research (section F4 on the application form). On the participation information sheets and consent forms, participants were also informed that they may withdraw their data from the study or request for it to be destroyed, which still applies and will continue to apply for the rest of the duration of the study. Juliette Doman can also contact the organizations who work with and regularly speak to the participants to inform them of the proposed new end date for the study and can state that they may still withdraw their data up until the new end date.

#### 6. List of Enclosures

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**7. Declaration (for signatures, please type names)**

<ul style="list-style-type: none"> <li><b>The information I have provided in this form is accurate to the best of my knowledge.</b></li> </ul>	
Signature of Principal Investigator / Supervisor: <i>(please delete as appropriate)</i>	
Signature of Student Investigator: <i>(if applicable)</i>	<b>Juliette Doman</b>
Date:	<b>29/1/2019</b>

## Appendix Three: Research Ethics Information Sheet: Focus Groups

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### Committee on Research Ethics

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### Information Sheet: Focus groups

Version 2: 25/04/18

#### **Truth-telling and seeking justice from below: Mayan women's voices on transitional justice in Guatemala**

1. You are being invited to participate in a research study for academic purposes. Before you decide whether to participate, it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and feel free to ask if you would like more information or if there is anything that you do not understand. Please also feel free to discuss this with anyone else you may wish to. We/I would like to stress that you do not have to accept this invitation and should only agree to take part if you want to.

Thank you for reading this.

2. What is the purpose of the study?

Our objective is to complete an in-depth study on women's participation and experiences in trials and other legal processes that address human rights abuses committed during the Guatemalan war, and on women's participation with organizations that support women survivors of the war. The aim is to publish the results of the study in academic articles and also in a less academic form for the general public. The main aim, however, is to learn from the experiences of women who have taken part in trials, and from the experiences and actions of supportive organizations and community members, in order to examine ways in which procedures could be improved as well as to highlight examples of good practice that could be employed elsewhere. All the selected participants have taken part in or observed one of these trials (and are supportive of the women), or worked with an organization that supports

survivors and that has been involved with one of the legal processes and/or the reparations process.

3. Why have I been chosen to take part?

You have been asked to participate because you have participated in a trial or legal process, observed a trial or are part of an organization that supports women who take part in trials and legal processes, or another human rights and/or women's rights or community organization. Your knowledge and experiences of this subject is of great use to the development of the investigation.

In the event that we have specifically asked if you will participate in a focus group session(s), this is because you have taken part in a trial or legal process or reparations process that is a very important part of the study.

4. Do I have to take part?

Participation in this project is entirely voluntary and you are free to withdraw at any time.

If you are invited to participate in a focus group session and you decide to take part, you may wish to limit your participation to some of the activities and group discussions, and not others, or you may wish to take part in all activities and discussions. The choice is entirely yours. Whatever you decide, we would be extremely grateful for any level of participation.

5. What will happen if I take part?

If you decide to participate in focus groups and/or workshops organized by the researchers, you will participate in a group with other participants who also have knowledge and experience of the topic in question. During a focus group session, you and other participants will be asked about your knowledge of the topic in question and your experiences relating to the theme. You will be asked to take part in some participatory and creative activities, including drawing and theatre exercises. These activities are intended to facilitate group discussion and reflection on experiences seeking justice. Activities will be planned and agreed with all members of the group at the start of each session. Information gathered from each session, with your consent, will be audio recorded and transcribed in order to be analysed together with other information gathered for the project. Focus groups can be held in a place and time convenient for you and the other participants. At the end of each session, as a group and individually you will be asked to evaluate the activities and discussion with a member of an organization you are involved with. Your feedback will help to improve any future sessions and will be gratefully accepted.

6. The investigators are Dr Marieke Riethof and Ms Juliette Doman.

7. Expenses for travel and refreshments will be provided.

8. Are there any risks in taking part?

## *Focus groups*

There are no risks to participating in the focus groups. We will not ask you to discuss topics that may be upsetting for you or other participants, and at the start of each session we (the participants, a member of one of the organizations and the researcher) will plan and agree collectively which topics to discuss. It is possible that one of the participants may raise a topic that is upsetting for another participant(s), if this happens we will support the participant(s) who are upset and do what we can to ameliorate the problem. Anonymity is provided as a default (unless you are speaking on the record as a holder of public office) but can be waived on request.

9. If you experience any discomfort or disadvantage as a result of participating in this study please let us know immediately and we will find the most appropriate way to remedy the situation.

10. Are there any benefits in taking part?

Benefits:

a) The primary benefit will be to reflect on and learn from women's experiences of legal processes to redress serious human rights abuses that they are participating in, and activities with organizations that support their search for justice. This reflection and learning could help other women and/or other supporting organizations who are undergoing the same processes and who may experience some of the same things, and could help legal institutions and/or organizations to improve procedures and prepare women who decide to take part in legal processes.

b) Another benefit is that the research could help to raise awareness of the women's search for justice and raise awareness of the social work that is being carried out by the organizations.

11. What if I am unhappy or if there is a problem?

If you are unhappy, or if there is a problem, please feel free to let us know by contacting Juliette Doman ([xxxxxxxx@liv.ac.uk](mailto:xxxxxxxx@liv.ac.uk)) or Marieke Riethof ([xxxxxxxx@liv.ac.uk](mailto:xxxxxxxx@liv.ac.uk)) and we will try to help. If you remain unhappy or have a complaint which you feel you cannot come to us with then you should contact the Research Governance Officer at [ethics@liv.ac.uk](mailto:ethics@liv.ac.uk). When contacting the Research Governance Officer, please provide details of the name or description of the study (so that it can be identified), the researcher(s) involved, and the details of the complaint you wish to make.

12. Will my participation be kept confidential?

Anonymity is granted as default to all those participating in group sessions organized by the researcher unless you chose to waive this or are speaking on the record as a holder of public office.

All recordings and transcriptions will be anonymised, encrypted and password protected on the investigator's equipment and it will be deleted once it is uploaded to the University's secure server (also password protected) where it will be stored until the end of the study. After the interview has been transcribed, the researchers will summarise and feedback interview data to you to verify the information and to check you are happy for it to be used as part of the study (in anonymised form). Once data from the research has been collated and anonymised, it will be shared with the organizations UNAMG, MTM, Jalok U and ECAP, in a summarised form for analysis and discussion. No individual information or individual transcripts will be shared. With your permission, individual quotes, once anonymised, may be shared for discussion with the organizations if these quotes facilitate analysis or understanding. The researchers will first seek further authorisation/consent from you before sharing any quotes.

The study from start to finish will last for 3 years after which the material will be deleted. Your further permission will be sought in the event that the project overruns or that the organizations you are involved with request to use the information (in anonymised form).

### 13. What will happen to the results of the study?

The results of the study/information gathered will be published in academic form and in publications for the general public (in Guatemala and the UK). Publications will be both in print and online. If you wish, you may have a copy of a summary of the research. You will not be identifiable from the results, unless you have requested to be named.

### 14. What happens if I want to stop taking part?

You can withdraw from participation at any time, without explanation. Information up to the period of withdrawal may be used, if you're happy for this to be done. Otherwise you may request that it is destroyed and no further use is made of it. If results are anonymised, information provided may only be withdrawn prior to anonymisation.

### 15. Who can I contact if I have further questions?

Contact details:

Dr Marieke Riethof

Ms Juliette Doman

Department of CLAS/Politics, Department of Modern Languages and Cultures

University of Liverpool,

University of Liverpool,

Cypress Building,

Cypress Building,

Liverpool L69 7WZ.

Liverpool L69 7ZR.

Email: [xxxxxxx@liv.ac.uk](mailto:xxxxxxx@liv.ac.uk)

[xxxxxxx@liv.ac.uk](mailto:xxxxxxx@liv.ac.uk)

**Appendix Four: Research Ethics Participant Consent Form: Focus Groups**

**Committee on Research Ethics**

**Participant Consent Form**  
Focus Groups

**Title of Research Project: Truth-telling and Seeking Justice from Below: Maya Women’s Voices on Transitional Justice in Guatemala**

**Please  
initial  
box**

**Researchers: Dr Marieke Riethof, Ms Juliette Doman**

1. I confirm that I have read and have understood the information sheet dated (date) for the above investigation. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without my rights being affected. In addition, should I not wish to answer any particular question or questions or participate in any activity as part of a group session organised, I am free not to do so.

3. I understand that, under the Data Protection Act, I can at any time ask for access to the information I provide and I can also request the destruction of that information prior to anonymisation, if I wish.

4. I agree to take part in the above study.

5. If I agree to take part in the study, I agree to the audio recording of the focus group session.

6. If I do not agree to the audio recording of the session, I agree to note taking during the session.

7. If I agree to take part in the above study, I agree to information (once collated, in anonymised form) being shared with UNAMG, ECAP and Jalok U.

Participant Name..... Date..... Signature.....

Name of Person

Taking Consent..... Date..... Signature.....

Researcher..... Date..... Signature.....

**Principal Investigator: Dr Marieke Riethof, Department of CLAS/Politics, University of Liverpool, Liverpool L69 7WZ**

**Student Investigator: Ms Juliette Doman, Department of Modern Languages, University of Liverpool, Liverpool L69 7ZR**

## Appendix Five: List of Interviews, Focus Groups and Observations

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### Table of Anonymised Respondents (Pseudonym and interview date):

#### Women Survivors (interviews with the women survivors took place in Sepur Zarco unless stated):

**Doña A:** 07-04-17

**Doña B:** 06-04-17

**Doña C:** 06-04-17

**Doña D:** 08-06-17

**Doña E:** 06-04-17

**Doña F:** 07-04-17

**Doña G:** 06-04-17

**Doña H:** 17-04-17 (Comunidad la Esperanza)

**Doña I:** 17-04-17 (Comunidad la Esperanza)

**Doña J:** 07-06-17

**Doña K:** 07-06-17

**Doña L:** 12-06-17

**Doña M:** 06-04-17

**Doña N:** 08-06-17

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### Representatives of the Supporting Organisations:

#### ECAP:

- **Ana** (Psychosocial Team): 07-06-17
- **María** (Psychosocial Team): 09-02-17
- **Patricia** (Psychosocial Team): 16-05-17
- **Sandra:** 05-07-17

#### MTM:



- **Alberto** (Interpreter): 22-03-17
- **Claudia** (Interpreter): 28-05-17
- **Daniela** (Psychosocial Team): 20-06-17
- **Martina** (Interpreter): 20-06-17
- **Mariela** (Coordinator): 28-04-17
- **Pilar** (Coordinator): 05-02-17
- **Rebeca** (Legal Team): 17-06-17

**UNAMG:**

- **Aurora** (Director): 19-06-17
- **Gabriela** (Women's Empowerment Team): 22-03-17
- **Miranda** (Interpreter): 03-07-17
- **Silvana**: 22-03-17
- **Sulema** (Founder): 28-04-17
- **Andrea, Gabriela & Silvana**: 04-28-17

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**Other Interviews:**

**CALDH**: 24-04-17

**Carlos** (Forensic Team of FAFG): 01-06-17

**Don A** (Community Leader Involved in the Reparation Process): 06-06-17

**Impunity Watch:**

- **Beatriz**: 05-02-17
- **Olivia**: 20-04-17
- **Olivia & Beatriz**: 05-02-17

**Mirta** (author Expert Linguistic Anthropological Report): 27-04-17

**Rosa** (Coordinator of CONAVIGUA): 20-06-17

**Samuel** (Legal Team of the Programa Maya, Naciones Unidas): 28-06-17

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**Focus Groups:**

**Workshop in El Estor:** 30-06-17

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**Fieldnote Observations:**

**Forum in El Estor:** 24-11-16

**Protest in El Estor:** 25-11-16

**Commemoration of Sentencing in Sepur Zarco:** 24-11-17; 25-11-17; 26-11-17

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## Appendix Six: Exhibition Materials

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This mini exhibition includes selected photographs gathered from fieldwork undertaken by PhD candidate Juliette Doman and a rolling slideshow with short video clips about the Sepur Zarco trial.

The exhibition is a small-scale pilot project and will run from the 22<sup>nd</sup> November to the 10<sup>th</sup> December. Feedback is invited to help inform this project. The exhibition seeks to question dominant assumptions about both gendered violence and justice by looking at the struggle for justice in the Sepur Zarco case and the broader struggle against violence against women in Guatemala.

The photos are a mixture of my own photos, photos taken by UNAMG, and photos taken by other organisations.

On the 23<sup>rd</sup> November, from 4-5pm, Juliette Doman will give a short talk introducing the exhibition and to discuss the Sepur Zarco trial and the links between struggles against gender-based violence and historical struggles against authoritarian violence.

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### Guatemala City, November 2016



This photograph was taken by Juliette Doman at a press conference organized in Guatemala by the Coordinadora 25 de Noviembre – the coordinating body of feminist organizations that organize the annual protests and campaigns against violence against women. On 25<sup>th</sup> November every year in

Guatemala, as in many other Latin American countries, women's rights organizations organize protests and other campaigning activities to denounce violence against women and to campaign for its eradication. There are extremely high levels of violence against women, including high levels of murders of women, in Guatemala.

Campaigns against violence against women in Latin America, and particularly the 25<sup>th</sup> November, have roots in earlier struggles against authoritarian violence committed by authoritarian governments and security forces. The 25<sup>th</sup> of November was chosen at the first Latin American and Caribbean Feminist Gathering in Bogota, 1981, in order to commemorate the brutal assassination of the Mirabal sisters in the Dominican Republic, who were killed on the 25<sup>th</sup> November 1960 at the orders of the dictator Rafael Leonidas Trujillo, because they were leading activists in the political struggle against the dictator (see Robinson, 2006). The sisters' code names were "the butterflies". The butterfly has since become a symbol of feminist struggle.

Years earlier, Trujillo had sexually harassed Minerva, the eldest of the four sisters, and tried to force her to spend time with him. Trujillo was in the habit of inviting – and coercing - young women to spend a night or several nights with him. Minerva famously rejected Trujillo, and slapped him at a party she and her family had been forced to go to by him (Robinson, 2006: 176).

In 1999 the 25<sup>th</sup> November became internationally recognised as the International Day for the Elimination of Violence against Women on 25<sup>th</sup> November by the UN General Assembly in its resolution 54/134, in which it invited governments, international organizations and non-governmental organizations to organize activities to raise awareness about the problem of violence against women.

To learn more information about the Mirabal sisters, a good starting place is the novel *In the Time of the Butterflies*, written by Julia Alvarez.

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**'We Want to be Alive' Feminist Graffiti, Guatemala City, 2017**



Photo taken by Juliette Doman.

This has become a slogan of contemporary feminist movements in Latin America protesting the high levels of violence against women. The slogan alludes to another Latin America slogan, from protests by relatives of the disappeared in a number of Latin American countries, including Guatemala. "Vivos se los llevaron, vivos los queremos." "They were taken (detained) alive, we want them back alive."

**'Security with Justice, not with Arms' Feminist Graffiti, Guatemala City, 2017**

Photo taken by Juliette Doman.

This photo illustrates a feminist perspective on achieving security and is a commentary on the creeping re-militarisation of the country, including joint patrols of soldiers and police officers and the reopening of military bases that operated during the war.

Armed police patrols that also include soldiers have been a response to pressing concerns in Guatemala about citizen security, and the reopening of military bases has been done with the justification that it is necessary to do so to tackle organized crime. However, creating a civilian police force, closing military bases and reducing the size of the Guatemalan military were commitments that the Guatemalan government made when it signed the peace accords, in December 1996.

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### **'Remembering Militarisation' Political Graffiti, Guatemala City, 2017**



This is a photo, taken by Juliette Doman, of a flyposted cut out image of a photo originally taken by photo journalist Jean Marie Simon in the 1980s, in Nebaj, Quiche, at a dance celebrating Guatemalan Independence Day.

This photo shows memory activism in contemporary Guatemala City. The streets of the historic centre of Guatemala City are part of the urban landscape of Guatemala's memory battles. Most of the flyposted images on city streets are from photos of the faces of Guatemalans who were forcibly disappeared during the war, while other images and text refer to the genocide.

Many of Guatemala's post war governments have refused to accept the findings of the UN Historical Clarification Commission. In early 2014, the Guatemalan Congress declared that there had been no genocide.

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### **Soldier Dancing with Girl, Independence Day, Nebaj, Quiche**

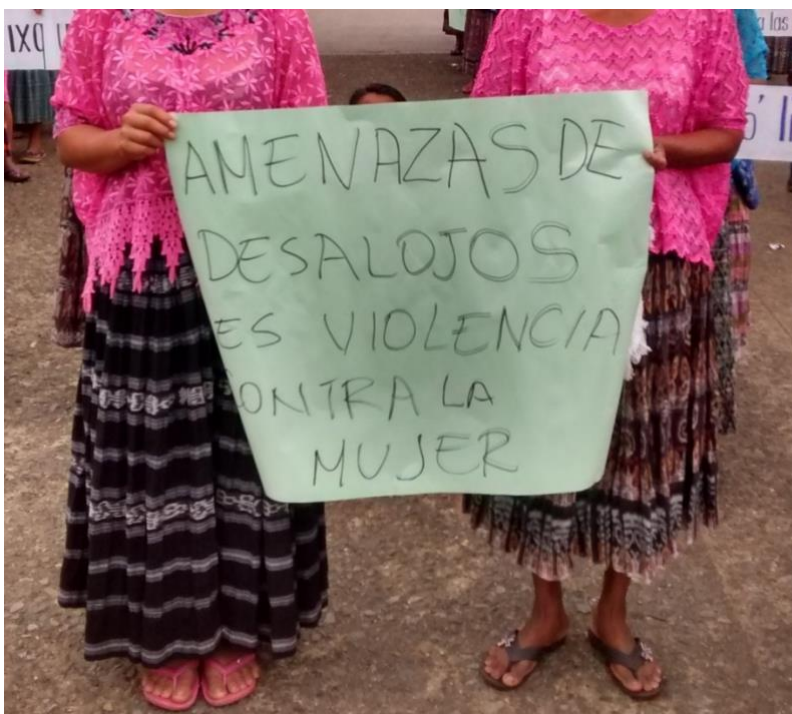
This is the original photo, taken from Jean Marie Simon's book "Guatemala: Eternal Spring, Eternal Tyranny" (Simon, 1987:127), which documented violence committed during the 1980s. The book is the result of Simon's work travelling to Guatemala and taking photos over a period of 6 years. The area where the original photo was taken, the Ixil triangle region of Nebaj, Chajul and Cotzal, was heavily militarised in the early 1980s, which deeply affected day to day life.



This militarisation affected gender relations. It is important to state that, of course, it is not possible for us to know what either the Maya Ixil woman or the soldier are thinking, or what the relationship between them is. However, for me the photo symbolises how militarisation affected gender relations. The presence of the military and the nature of the counter-insurgency in Guatemala meant that anyone could denounce anyone else as a subversive. The threat of being denounced – or having someone else in your family denounced – was used in some cases to force women to marry (e.g. see Paredes, 2006).

### **‘The Threat of Eviction is Violence against Women’ El Estor, 25<sup>th</sup> November 2016**

Photo taken by Juliette Doman at the annual march in El Estor, Izabal (the region where the women survivors live) on the 25th November 2016, to protest violence against women and to commemorate the International Day for the Elimination of Violence Against Women.





### What is Violence against Women?

At this march, a number of women held placards protesting the evictions of Maya Q'eqchi communities to make way for agribusiness and mineral interests. In the fertile Polochic Valley, the ancestral land of the Maya Q'eqchi, there is an ongoing process of concentration of land ownership. The land contains rich nickel deposits and is also highly fertile. The land is being mined for nickel and cultivated to produce African palm and sugar for export. Maya Q'eqchi communities periodically attempt to reclaim the land in order to grow the maize, beans and rice that are staples of their diet. Evictions of these communities can be violent, and involve the police, the military and often, private security.

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**'Feminism is a lamp. Its light is justice that illuminates rooms darkened by intolerance, prejudices and abuses. By the authorities, when they don't respect our rights. El Zapote neighbourhood, El Estor, Izabal' El Estor, 25<sup>th</sup> November 2016**

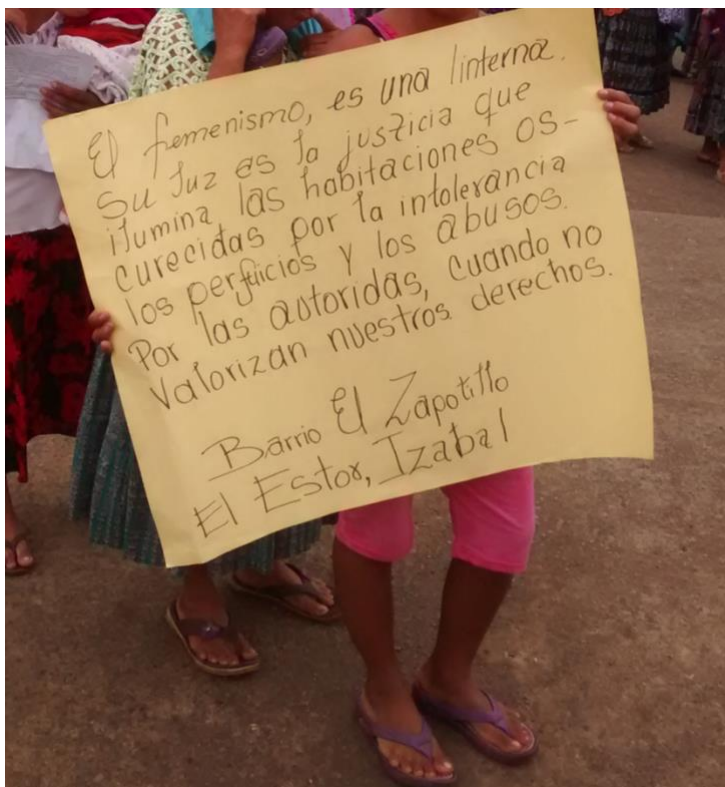


Photo taken by Juliette Doman, at the march in El Estor to protest violence against women and to commemorate the International Day for the Elimination of Violence Against Women, 25th November 2016.

Feminism has different meanings for different people. Here, it is linked with abuses by authority figures and the search for justice.

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**'We demand justice for Berta Cáceres and all those who defend the body-land territory'  
Guatemala City, 8<sup>th</sup> March 2017**



Photo taken by Juliette Doman at International Women's Day protest march in Guatemala City.

Honduran indigenous rights and environmental activist Berta Cáceres was assassinated in neighbouring Honduras in March 2016, because she had been a leader of indigenous rights organization COPINH and had been struggling against a hydroelectric dam project. Women are leaders in the struggles to defend the land against megaprojects. The slogan “in defence of the body-land territory” was first used in the context of a struggle against a mining company in Jalapa, in the east of Guatemala. It later became a concept of community feminism in Guatemala, and refers both to a conceptual link between sacred bodies – particularly women's bodies – and the sacred mother earth which is important in Maya cosmovision – particularly for the Maya Q'eqchi. The concept also refers to the link between the colonisation or violent appropriation of land and of women's bodies.

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## The Sepur Zarco Trial and Struggle for Justice, Guatemala City, February 2016



Photo taken by photo journalist Lozano and published in “Sepur Zarco: Una Interpelacion al Racismo” [online article], 26<sup>th</sup> February 2016, Barrancopolis, available at <http://barrancopolis.com/sepur-zarco-una-interpelacion-al-racismo/> .

This photo shows the historic Sepur Zarco trial prosecuting wartime sexual and domestic slavery committed against Maya Q’eqchi women at a Guatemalan military detachment (temporary military base) in the form of crimes against humanity. The trial was held in February 2016 and represents the first time worldwide that wartime domestic and sexual slavery is prosecuted in the national courts of the country where the crimes took place. The trial also prosecuted the forced disappearances of the women’s husbands and the murders of one of the women and her two little girls, who had been enslaved and were held on the military detachment for a week.

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**Reyes Girón, Guatemala City, February 2016**

Photo taken by UNAMG staff

Former Lieutenant Esteelmer Reyes Giron was in charge of the military detachment when the women were forced to work there. As the former commander of the detachment, Reyes Giron was responsible for overseeing the conduct of the soldiers under his command. Reyes Giron was found guilty and sentenced for crimes against humanity in the form of domestic and sexual slavery, and the murders of three people.

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**The Jalok U Collective, Guatemala City, February 2016**

The women survivors formed a collective organization in order to be able to take part in the prosecution as a civil party (Guatemalan law makes provisions for victims and organizations to do this). They named their collective “Jalok U” - which means change of face, in Q’eqchi. During the trial, they were represented by a lawyer (sitting in front in the next photo) and the president of their association, who spoke in court on a couple of occasions, through an interpreter. The survivors attended most of the trial, but due to security concerns they decided to cover their faces with traditional woven shawls.

The interpreter also provided simultaneous interpretation for the women during the trial (pictured sitting next to the women without a woven shawl).



Prosecution Team, Guatemala City, February 2016



Photo taken by UNAMG staff

This photo shows the lawyers for the three civil parties to the prosecution (Mujeres Transformando el Mundo- Women Transforming the World, UNAMG, Jalok U) and the attorney for the Human Rights Prosecutorial Office (which is responsible for prosecuting cases relating to atrocities committed during the Guatemalan civil war). The legal strategy was led by the feminist lawyers' organization MTM and the attorney for the Human Rights Prosecutorial Office. UNAMG (National Union of Guatemalan Women) and the Jalok U Collective also participated as civil parties. The approach used by the organizations and state prosecution was strategic litigation – which is an approach that tries to use the law strategically by taking on particular cases in order to achieve a wider social impact.

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### **Video Testimony, Guatemala City, February 2016**



Photo taken by Juliette Doman.

The photo shows video testimony being presented to the court. The use of video testimony was an important precedent to prevent re-victimisation. The women's testimonies were recorded in court in 2012, and were presented during the trial in a series of videos. The pre-trial judge ruled that the video testimonies could stand in place of live testimony, to avoid the women having to tell their painful stories yet again. The videos were recorded in an evidentiary hearing in 2012.

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### **Interpreting for Witnesses, Guatemala City, February 2016**



This photo, taken by one of the UNAMG staff shows a Mayan Q'eqchi (male) witness giving oral testimony, with the support of an interpreter (from Q'eqchi to Spanish). During the trial, several Mayan Q'eqchi men and women testified in open court to corroborate the women survivors' testimonies. Some of the men were held on the Sepur Zarco base and tortured by the military, during which time they could see women who were being forced to work on the base. Other local men were forced to construct the base, or witnessed the kidnapping of the women's husbands.

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### **Solidarity, Guatemala City, February 2016**

This photo, also taken by one of the UNAMG staff, shows a Maya woman from another region attending the trial to show solidarity with the women survivors. Many Maya women and men from different ethnic groups came to observe the trial and show support for the women survivors. University and school students also came to show support, along with other Guatemalans and people from other countries, including foreign diplomats. This visible support strengthened the women survivors.

At times, relatives of the two defendants and supporters of the military also came to court. Supporters of the military also held daily protests outside the court, arguing that the women and the organizations had invented the whole thing in order to get money and land from the Guatemalan state, and that Guatemalan justice was one sided and biased because it was – according to them - only prosecuting members of the military.



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**Victory! Day of the Sentence, Guatemala City, 26<sup>th</sup> February 2016**



Photograph: Wilder Lopez/Soy 502



[https://www.soy502.com/sites/default/files/styles/full\\_node/public/12787578\\_1020855917795722\\_3\\_1037538099\\_o\\_1.jpg?itok=njPwraXk](https://www.soy502.com/sites/default/files/styles/full_node/public/12787578_1020855917795722_3_1037538099_o_1.jpg?itok=njPwraXk)

This photo shows the moment after the guilty verdict and sentence was read out on the last day of the trial. The court room, which was packed full, broke out in applause and the women raised their hands to celebrate and salute the people who came and showed solidarity with them.

### **What does justice mean?**

These photos were taken at the annual march to protest and commemorate the Panzos massacre, which was committed on the 29<sup>th</sup> May 1978 and marked the start of the worst years of the war and the start of more intense military repression in the region where the women survivors live. The photos show different sections of a banner made with the women and other community members, with the support of ECAP (Equipo Comunitario de Accion Psicosocial - Community Psychosocial Action Team). The banner illustrates the women's story and long struggle for justice.

### **Collective Reparations, Panzos, Alta Verapaz, Guatemala, 29<sup>th</sup> May 2017**



Photo taken by Juliette Doman.

This is a section of a banner. It shows the collective reparations measures chosen by the women survivors, and which were ordered by the court at a reparations hearing held three days after the

conclusion of the trial. The reparations measures depicted here are the construction of a monument for the women's disappeared husbands (since they have been unable to locate their remains and give them a dignified burial), the construction of a high school for their grandchildren and the youth of the communities where the women live and other neighbouring communities to attend and the construction of a health centre – described a hospital – for the women's own communities and neighbouring communities. The reparations process is ongoing and progress on these measures has been very slow, however (see below). The women, the organizations and community leaders meet periodically with representatives of Guatemalan government ministries to discuss and agree on how the measures should be implemented.

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**Legal Justice, Panzos, Alta Verapaz, Guatemala, 29th May 2017**



Photo taken by Juliette Doman.

This is another section of the banner. It represents the trial. Formal legal justice was important for the women, partly as a form of recognition of the crimes committed against them, their families and their communities.

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**Historical Memory of Suffering and Survival, Panzos, Alta Verapaz, Guatemala, 29<sup>th</sup> May 2017**



Photo taken by Juliette Doman.

This is the final section of the banner. The far-left section represents the atrocities committed against the communities, showing a palm thatched hut on fire and a military helicopter flying overhead, and showing darkness over the community. The right-hand section shows the start of the long struggle to overcome the suffering and search for truth and justice – the community is in light, and there are Mayan ceremonies to the Tzuul taq'a (Mountain Lords)- represented by the circle with a fire – and the candles. Traditionally the Maya Q'eqchi have a close relationship with the Tzuul taq'a, and conduct ceremonies to ask for permission and support for important events and actions. Conducting Maya ceremonies asking for support was an integral and very important part of the struggle for justice for the women. The banner also shows the mountains and a river, illustrating the local landscape.

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## Protagonism and Speaking Out, El Estor, Guatemala, 24<sup>th</sup> November 2016



Photo taken by Juliette Doman.

This photo was taken at a forum organized by a local organization and two of the organizations of the Alianza to commemorate the International Day for the Elimination of Violence Against Women. The women survivors went to the forum to share their story with Q'eqchi women representatives from over 30 different communities. The women survivors were the most important speakers at the event, which was organized to encourage Q'eqchi women to denounce violence against women and to talk about the different forms of violence against women. Encouraging other women to speak out and working to prevent violence against women is a very important goal of the women survivors and the organizations.

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## Commemorating Domestic and Sexual Slavery, Sepur Zarco, Guatemala, 26<sup>th</sup> February 2017

Photo taken by Juliette Doman at a march to commemorate the first anniversary of the Sepur Zarco sentence.

Another reparations measure that the women asked for and that was ordered by the court was for the Guatemalan state to officially recognise the 26<sup>th</sup> of February (the day of the guilty verdict and sentence in the Sepur Zarco trial) as a day to commemorate victims of domestic and sexual slavery. For this to happen, Guatemalan Congress must create and pass a law – something that depends partly on political will and partly on campaigning by the organizations.

Nevertheless, the first anniversary of the sentence was commemorated and celebrated by the women, their families and communities and the organizations, as can be seen in the picture. The commemorations were a way to publically honour and recognise the women survivors in front of their communities. A similar march and celebration were held in the community a year earlier after the guilty verdict. These public events helped to dignify the women and their struggle, and repair some of the harm done. The women had been blamed for the rapes and stigmatised by members of their own communities during the war and in the years afterwards. The blame and stigma were deeply hurtful and damaging for the women – it took great courage for them to speak about what had happened.



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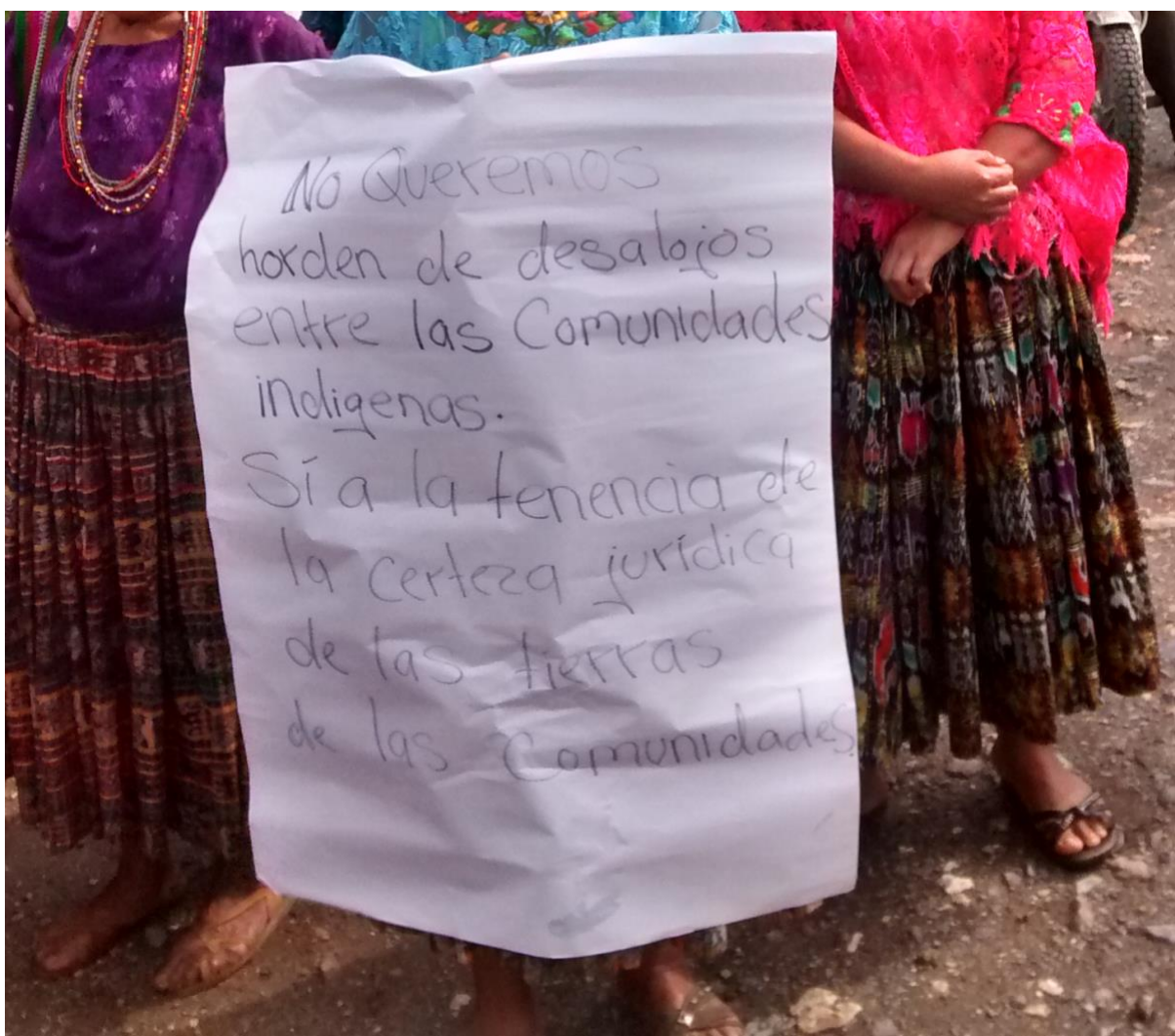
**‘We don’t want eviction orders against indigenous communities’ Sepur Zarco, Guatemala, 26<sup>th</sup> February 2017**

Photo taken by Juliette Doman at a march to commemorate the first anniversary of the Sepur Zarco sentence.

This photo illustrates a major concern of the women survivors and community members. One of the biggest obstacles to the construction of the monument, high school and health centre is that the land

on which the village of Sepur Zarco is located is registered as belonging to a privately owned plantation.

The history of land ownership is complex in this region and some of the privately owned land was acquired fraudulently in a land registration process that started over 100 years ago. It has proved very difficult to resolve this issue and the negotiations are ongoing. The lack of security of land tenure for the Sepur Zarco community – like many other communities in the region – places them in a situation of insecurity. Despite the fact that the Maya Q'eqchi have always lived in this region, some of the neighbouring Maya Q'eqchi communities live in fear of being evicted from the land they are living on – and periodically, some communities are evicted by force.



**Appendix Seven: Link to Video Presentation**

<https://stream.liv.ac.uk/5jn9vevx>

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