



# Voices from the Shadows

**The Role of Cultural Contexts in Transitional Justice Processes**

**Maya Q'eqchi' Perspectives from Post-Conflict Guatemala**

**Lieselotte Viaene**

Ghent University, Belgium  
Law Faculty

**Doctoral Dissertation in Law**

Promotor: Prof. Dr. Eva Brems  
Co-Promotor: Prof. Dr. Stephan Parmentier  
Academic Year 2010-2011

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Community mayejak, 23 May 2008, Xalab'e

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Contact author: [lieselotteviaene@yahoo.com](mailto:lieselotteviaene@yahoo.com)

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## Note to the reader

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This doctoral dissertation is written along the concept of a Ph.D. on articles. As defined by the Faculty Board of the Law Faculty of Ghent University (4 October 2006 and 10 February 2010), a Ph.D. thesis can consist either of a book or of a collection of (3 to 5) articles in peer-reviewed journals or books of a high level and with a high impact. It is required that the articles make a personal and creative contribution of high academic level to a discipline within the legal science. The articles should be interconnected, for example through a common research theme or a common research methodology. The collection of articles must demonstrate an added value by the presentation of coherent insights or a useful synthesis. The faculty rules require moreover that connecting texts be added so as to create coherence among the body of articles. These connecting texts should include at least an introductory chapter situating the work within the relevant research field, the development of the research question(s), a description of the research methodology and a concluding chapter. At the time of submission of the Ph.D. thesis, the majority of the articles have to be either published or accepted for publication. Co-authored articles are allowed if the Ph.D. student is the first author.

The present Ph.D. thesis contains an extensive introduction, seven chapters and a concluding chapter that also include recommendations. The first two chapters discuss the case study of post-conflict Guatemala and the research methodology of this doctoral dissertation. The following five chapters contain five articles that have been or will be published in international peer reviewed journals. As this doctoral dissertation intersects the fields of human rights, transitional justice and anthropology, I have opted to publish in journals that address these different academic audiences.

At the time of submission, three articles have been published, and a fourth has been accepted for publication in international peer reviewed journals two of which have an "A1" ranking (meaning that they are included in the Social Sciences Citation Index). The fifth article is under review with the *Journal of Latin American Study* (also A1 ranking) and has recently received comments of the different anonymous reviewers. The present study contains the version of the article submitted for review, but in the near future before the public defence this article will be revised. Two of the five articles mention a co-author. The article in chapter five was written by myself, yet the co-author, Alfonso Huet, has added insightful and substantial comments. The article in chapter seven was written jointly with my supervisor Prof. Eva Brems, both co-authors having made equal contributions. Furthermore, chapter six has been enriched

with additional reflections and insights derived from the ethnographic data in order to complement the findings discussed in the article.

To enhance a common lay-out of the thesis I have opted to create one style template for all chapters. Yet, the spelling, citations and reference style of each journal has been preserved.

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## Preface

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On a rainy Monday morning in mid-October 2002 I was dropped together with Don Manuel in the village of Quixal located in the municipality of San Cristobal. This village is well known because it hosts the power station of the famous Chicoy hydroelectric dam that was built during the late 1970s and early 1980s. The construction of this dam affected the surrounding villages of the Chixoy River and forcibly displaced around 3,500 Maya Achi people. When the community members opposed to relocation they were tortured, kidnapped and massacred. These massacres became known as the Rio Negro massacre. Yet, Manuel and I weren't in Quixal because of this dam and its past human rights tragedy, but to start a five-day journey to several remote Q'eqchi' villages where Manuel would give training sessions about traditional agricultural techniques. These communities had suffered the scorched-earth campaigns of the Guatemalan military during the early years of the 1980s. Our visit started in Quixal and after a day's hike following mountain trails crossing surrounding green mountains we would reach our first village. That morning in Quixal I was quite nervous. I thought that I had prepared my backpack well, but now I had the feeling that it was far too heavy for such a short trip. Also, my right forefinger was still bleeding a bit. The evening before, just before I went to bed, I cleaned my Swiss army pocketknife but I had trouble retracting all the small knives. Suddenly my knife jumped out of my hand and the main knife pierced my right forefinger. It bled profusely and I even saw some white bone. But it was too late in the evening to look for a doctor so I taped the wound with some plasters. That morning, Alfonso Huet, a Belgian cooperant living in Cobán for 30 years, picked me and Manuel up in Cobán and brought us to our starting point Quixal. When Alfonso saw my finger he was quite worried and insisted on me seeing a doctor and cancelling my trip. However, since my arrival in Cobán I was really keen to visit a rural Mayan Q'eqchi' community. He had arranged that I could accompany Manuel, a worker of a Cobán-based NGO during this five-day trip to the isolated region of Chamá Grande, although from the beginning, Alfonso had advised against me taking on this trip because of the distance, the remoteness and the basic accommodation of the area. I convinced him that as I was an experienced hiker so the trip would be no problem. Now I didn't want my wounded finger to spoil this journey. The wound would heal during the trip, I said. That morning I didn't realise that this trip would change my view of the world nor that it would lead to a doctoral dissertation.

Of course, I surely underestimated the heat, the weight of my backpack and the distance during these five days. The first day, after an hour of walking I got desperate about the muddy trails and kicked off my professional walking boots and switched

them for the cheap rubber boots that I had bought the day before in the local market in Coban. Despite my physical good condition we arrived that day at dark after seven and a half hours walking to the first village. Fortunately the fireflies lit the path to the main saloon where we would stay the night. Shortly after our arrival, Manuel explained to me that there were some problems in that community and during the rest of the evening he would assist a nightly ceremony (*mayejak*) with several elders. I was invited to attend the intimate ceremony, although the conversations would be in Q'eqchi'. That night I couldn't feel my feet anymore, my shoulders felt stiff and my neck had a crick in it, but I was too curious to refuse the invitation. When Manuel took a red band out of his *moral* (bag) and draped it around his head, I understood that he was more than a technical worker for ADICI - he was also a spiritual guide. While observing how the flames absorbed the candles and incense, how the fire reacted to the moves of Manuel and how the old men and Manuel interacted, I realised that that day I had entered physically and mentally a material and spiritual world the existence of which I was unaware. Little did I understand of what was going on before me. During the nights of the other days I would attend more nightly ceremonies for different occasions in the other villages. Besides experiencing a spiritual eye opener, I also learned what living in a remote indigenous area means: sleeping on the ground, no access to tapwater or shower, having a meal of *tortillas* and black beans three times a day and getting stuck in the muddy trails. Actually, during that five-day trip I walked more hours during the day crossing overgrown mountain trails and towering maize fields to reach the several communities than the hours that I slept during those nights. During the long walks Manuel revealed little by little the history and the suffering of the region we were visiting which had been a heavy conflict zone in the early 1980s. After two days we finally reached the centre of the village of Chamá Grande. Manuel had already explained that during the conflict all men were obliged to patrol in their village and the area. Apparently, the army had a military base in Chamá and the village was totally militarised. Moreover, the military could count on the support of the local *finquero* (landowner) to find out about who were the local leaders and people that supported the guerrillas. The patrollers of Chamá were famous for their cruelty to Q'eqchi' from other communities in the region. After one of the workshops, Manuel and I were sitting outside the wooden house of the family where we were staying when a young and friendly man came up to us and talked a while with Manuel. When the man had left, Manuel told me that during the conflict this man was a patroller using a rifle, but was hardly 16 years old. That evening Manuel told also that our host lost his father during the conflict and that the perpetrator still lives in Chamá. In fact, our host sees his father's killer every day.

That five-day trip was part of six-week field research in the region of Cobán that I conducted in the context of my master's thesis in comparative cultural sciences. The central research question was whether Maya customary law could play a role in the local process of reconciliation and reparation. The goals of that research stay in Cobán

was trying to grasp a minimum idea of how Maya Q'eqchi' survivors are dealing with the legacy of the internal armed conflict. The research mainly consisted of personal interviews with key informants in Cobán, participant observations during workshops and meetings related to the issues. Once back in Cobán after the five-day trip to Chamá I tried to mentally take stock of what I had seen and felt. A few days later Manuel invited me to accompany him to Chicoj Raxquix, a small village near Cobán, where he would perform with several other spiritual guides a nightly community ceremony. A few days earlier the installation of electricity was finally terminated and the villagers wanted to feed ritually the 28 lampposts spread over the village before starting to use them. It was a huge ceremony with maybe around 300 participants, elders, adults, youths, children and even babies. After the blessing of the offer material the group was split up into three to search in the wild dark for the different lampposts and feed them ritually with chicken, blood and *b'òj* one by one. The ceremony lasted the whole night and at the break of dawn the village finally revealed itself to me. That nightly ceremony was an enlightened experience about what community life actually means and it nurtured a personal understanding of the concept of indigenous 'collectivity'.

The seeds of this master's thesis research question started to grow in fact in the autumn of 2000 when I was in Guatemala during a month for voluntary work for the Office International Accompanists in the village of Rabinal, Baja Verapaz. In that conflict-torn community I would accompany massacre survivors who were collaborating with human rights groups to achieve legal changes. Yet as always in Guatemala, planned programmes had been shaken up and new, often better, programmes had come about. Due to various reasons, the host organisation refused to send me to Rabinal. So it seemed that I had lost my hard-earned money by student jobs to an expensive and useless plane ticket. Fortunately, I was staying with a Belgian missionary of CIMM who moved heaven and earth to seek alternative activities in line with my human rights interests for the short period that I was in the country. His 'rescue mission' resulted in me being able to accompany Rosalino Tuyuc, president of the widow organisations CONAVIGUA on several of her visits to rural communities in the Quiché department where she presented the conclusions of the Historical Clarification Commission (CEH) to the local members. The short trips to several remote communities were a real eye opener as I caught glimpses of the local reality of indigenous communities. During one of the spare weekends I visited, on the proposal of the Belgian missionary, a Belgian-Guatemalan couple living in the surroundings of Quetzaltenango and working in one of the remote areas. Omar, Guatemalan with a philosophical background, was very interested in my studies on criminology and its theoretical concerns. When explaining the development and merits of restorative justice as an alternative paradigm to retributive justice, Joke his Flemish wife, intervened and explained that indigenous Mayan people have their own system of justice administration which is embedded in their cosmivision or worldview. According to the couple this justice system relies on

concepts of harmony and reconciliation and seeks to restore the broken relationship between victim and offender. I listened very carefully, because I had learned that the theory of restorative justice has its origins in the concepts and practices of the justice systems of the Maori, indigenous people from New Zealand, and of indigenous groups in Canada. Omar and Joke told me even that some researchers had written about Mayan indigenous law. I became intrigued. Once back in Belgium I finished my criminology studies at the Catholic University of Leuven and started in 2001 a master's course in comparative cultural science at Ghent University with the objective of writing a thesis about Guatemala, addressing the issues of human rights violations, indigenous culture and transitional justice. In the preparatory phase I was able to get hold of several publications about Mayan indigenous customary law thanks to the help of my Belgian missionary friend in Guatemala. I also read an intriguing ethnographic account written by the Belgian Bernard Dumoulin entitled 'The Word Isn't Hungry. About Dignity and Harmony among Maya Q'eqchi' in Guatemala'.<sup>1</sup> In the same period I also attended a lecture of Prof. Eva Brems, my current supervisor, about the ongoing universality-relativity debate in the human rights field and the concept of inclusive universality to deal with the reality of cultural diversity. I became intrigued again. With the theoretical insights about the Mayan normative system and cosmovision, human rights and cultural diversity, and my personal experiences in Guatemala I started to spin a research question for my master's thesis: can Mayan customary law play a role in the local process of reconciliation and reparation? Back in Belgium after my six weeks of field research in 2002 the process of writing the master's thesis encouraged me to analyse rigorously the gathered data and observations, and to link these insights with different frameworks of legal pluralism, transitional justice, human rights and cultural diversity. My thesis concluded with an intuitive answer to the central research question stating that Maya customary law could inspire and foster the reparation and reconciliation process in Guatemala, yet currently there is a gap between these two processes. To gain insight about a possible complementary functioning of both processes there is a need to analyse the current differences and similarities in both areas and functioning of both processes.

After my graduation in 2003 I was able to write together with Prof. Eva Brems a research proposal based on my master's thesis with the aim of setting up an academic research project of four years at the Human Rights Centre of Ghent University. During those four years we would explore the role of cultural context in transitional justice processes based on an extensive case study of post-conflict Guatemala. In 2006 we were able to begin the research project with external funding from the Research Foundation-Flanders (FWO) and I could continue my Guatemalan journey.

1. Bernard Dumoulin, *Het Woord heeft Geen Honger. Over Waardigheid en Harmonie bij Maya Q'eqchi' in Guatemala*, Mechelen, Epo, 1999, p118.

After eight years of this Guatemalan journey the scar on my right forefinger is still visible and does remind me of the real-life experiences in the region of Chamá Grande. These memories have never left my heart; in fact they were the inspiration and driving force behind this doctoral dissertation. I hope that the present study may shed light on the ways survivors and communities are dealing with the scars left by the heavy burden of past human rights violations.



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## Acknowledgements

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I owe my greatest thanks and deepest respect to all Q'eqchi' of the regions of Nimlah'akok, Nimlasachal and Salacium for all their kindness, trust, acceptance and generosity through the years. I send my heartfelt thanks to Santiago Chen and Abelino Cao Botzoc and their families for their warmth, generosity and offering me a home in Nimlaha'kok and Salacium, and for sharing their lives and personal and community histories. *B'antiox eere.*

From deep in my heart I would like to thank Bernard Dumoulin and Manuel Paau for their invaluable guidance, encouragements, unconditional support and the many illuminating conversations through the years. They helped me understand the Maya Q'eqchi' and their cosmovision and spirituality as no one else.

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I also express my deep appreciation for my aunty Ann and my grandmother Elizabeth. The smiles of my godchild Luna and my nephew Josaphat fill my heart with love.

Finally, I have unlimited gratitude, love and respect for my parents, Hilde and Paul, for supporting me in so many ways and being at my side throughout this endless journey of my studies and this doctoral process. I deeply thank them for their patience and for bearing the many times that I wasn't at home when a daughter should be.



# Abbreviations<sup>1</sup>

ADICI	Association for Integral Indigenous Community Development (Asociación de Desarrollo Integral Comunitaria Indígena)
AIDPI	Agreement on the Identity and Rights of Indigenous People (Acuerdo sobre, Identidad y Derechos de los Pueblos Indígenas)
AJR	Reconciliation Association for Justice (Asociación para la Justicia y Reconciliación)
ASC	Assembly of Civil Society (Asamblea de la Sociedad Civil)
AVANCSO	Association for the Advancement of the Social Sciences in Guatemala (Asociación para el Avance de las ciencias Sociales en Guatemala)
CAFCA	Centre of Forensic Analysis and Applied Science (Asociación Centro de Análisis Forense y Ciencias Aplicadas)
CALDH	Legal Centre for Action on Human Rights (Centro para Acción Legal en Derechos Humanos)
CEH	Historical Clarification Commission (Comisión para el Esclarecimiento Histórico)
CERJ	Council of Highland Ethnic Communities (Consejo de Comunidades Etnicas Runujel Junam)
CICIACS	Commission for the Investigation of Illegal Bodies and Clandestine Security Groups (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad en Guatemala)
CICIG	International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala)

1. If the abbreviations originates from Spanish or another language, the original denomination is mentioned in parentheses

CNR	National Reparation Commission (Comisión Nacional de Resarcimiento)
CODISRA	Presidential Commission Against Racism and Discrimination Against Indigenous Peoples (La Comisión Presidencial contra la Discriminación y Racismo contra los Pueblos Indígenas)
CONAVIGUA	National Coordination of Widows in Guatemala (Coordinadora Nacional de Viudas de Guatemala)
COPMAGUA	Co-ordinator of Organizations of the Maya People of Guatemala (Coordinadora de Organizaciones del Pueblo Maya de Guatemala)
COPREDEH	Presidential Commission on Human Rights (Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos)
CORESQ	Resistance Committee of Survivors Q'eqchi' (Comité de Resistencia de Sobrevivientes Q'eqchi')
CPR	Popular Communities in Resistance (Comunidad de Población en Resistencia)
CUC	Committee for Peasant Unity (Comité de Unidad Campesina)
DDR	Demobilization, Demilitarization and Reintegration
DEMI	Indigenous Women's Defence Office (Defensoría de la Mujer Indígena)
ECAP	Team of Communitarian Studies and Psychosocial Action (Equipo de Estudios Comunitarios y Acción Psicosocial)
EGP	Guerrilla Army of the Poor (Ejército Guerrillero de los Pobres)
FAFG	Foundation of Forensic Anthropology of Guatemala (Fundación de Antropología Forense de Guatemala)

FRG	Guatemalan Republican Front (Frente Republicano Guatemalteco)
GAM	Mutual Support Group (Grupo de Apoyo Mutuo)
GTZ	German Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit)
IARS	International Institute of Learning for Social Reconciliation (Instituto Internacional de Aprendizaje para la Reconciliación Social)
ICTJ	International Centre of Transitional Justice
IGER	Guatemalan Institute of Radio Education (Instituto Guatemalteco de Educación Radiofónica)
IMIPC	Multi-stakeholder Body for Peace and Harmony (Instancia Multi-Institucional para la Paz y la Concordia)
MINUGUA	United Nations Verification Mission in Guatemala
NGO	Non-governmental organization
ODHAG	Human Rights Office of the Catholic Archdiocese (Oficina de Derechos Humanos del Arzobispo de Guatemala)
OHCHR	UN Office of the High Commissioner for Human Rights
PAC	Civil Defence Patrol (Patrulla de Autodefensa Civil)
PAJUST/PNUD	Transitional Justice Programme/UNDP (Programa de Justicia de Transición en Guatemala/PNUD)
PDH	Human Rights Ombudsservice (Procuraduría de los Derechos Humanos de Guatemala)
PNC	National Civilian Police (Policía Nacional Civil)

PNR	National Reparations Programme (Programa Nacional de Reparación)
PRAHPN	Project to Recuperate the Historical Archive of the National Police (Proyecto de Recuperación del Archivo de la Policía Nacional)
REMHI	Project for Recovery of Historical Memory (Proyecto Interdiocesano de Recuperación de la Memoria Histórica)
SEPAZ	Secretary of Peace (Secretaría de la Paz)
TRC	Truth and Reconciliation Commission
URNG	Guatemalan National Revolutionary Unity (Unidad Revolucionaria Nacional Guatemalteca)
UN	United Nations
UNDP	United Nations Development Programme

# Glossary

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## Q'eqchi'

<i>Aatin</i>	Word, opinion, discourse
<i>Aj ilionel</i>	'He who sees what is hidden', spiritual guide, traditional healer
<i>Awas</i>	The inherent force in all things that can act in contra or in favour on the people who are using them in contra or in accordance with its nature.
<i>B'oqok xmuhel</i>	Ritual to call/invoke the spirit
<i>Boj</i>	Alcoholic drink made from fermented maize and sugar cane
<i>Chapok k'al</i>	Grab crop ritual
<i>Chaqrab'</i>	The code of norms, law, what is perfect
<i>Junajil</i>	Unity
<i>K'amok ib' sa usilal</i>	Behave in a good manner toward someone
<i>K'irtasink</i>	To heal
<i>Ka'jkamunk</i>	Recognition and gratitude by one person toward another for a task performed, help given or service rendered
<i>Kubsiiik aawib</i>	To drop the head
<i>Kuyuk maak</i>	To bear a fault, an error. In Catholic liturgy it is used as 'to forgive'
<i>Loq'</i>	Sacred, holy, dignified
<i>Maak</i>	Fault, error or infraction of a norm though inattention or ignorance
<i>Mayejak</i>	Offering-sacrefice ritual

<i>Mu</i>	The root of <i>mubel</i> which means 'shadow'
<i>Mubel</i>	Spirit/shadow
<i>Muxuk</i>	To desecrate, to profane, to defile, to violate the sacred or spiritual value of something or someone
<i>Nimla</i>	Large
<i>Nimla rahilal</i>	Huge suffering and pain (physical, emotional and spiritual), expression refers suffering and pain during the period of the internal armed conflict
<i>Pom</i>	Resin with a strong aroma
<i>Q'etok aatin</i>	To bend the word
<i>Q'etok</i>	To bend, to fail to do something
<i>Q'oq</i>	Stem of <i>q'oqonk</i>
<i>Q'oqonk</i>	Result of the internal logic of the cosmos; pain or sadness that someone or something feels for being treated badly/wrongly and that will be converted into a retributive punishment of the causer of the pain or sadness
<i>Rahilal</i>	Suffering and pain (physical, emotional and spiritual)
<i>Reeqaj</i>	Compensation and substitution
<i>Sum aatin</i>	Relationship but also couple as husband/wife
<i>Tenq</i>	Aid, help
<i>Tojok maak</i>	To pay the fault, error
<i>Tuqtuukilal</i>	Tranquility, harmony, peace
<i>Tzuultaq'a</i>	Hill-Valley or mountain spirits
<i>Usilal</i>	Goodness



<i>Wátesinq</i>	Feeding ritual
<i>Wankilal</i>	Power, strength
<i>Weeqaj</i>	My replacement
<i>Xiitink</i>	To mend damaged fabric
<i>Xiitinkil li rahilal</i>	Mending the suffering the pain
<i>Xiwak</i>	Fright, spirit loss ( <i>susto</i> )
<i>Yo'yo'</i>	Alive, living

## Spanish

<i>Cosmovisión</i>	Cosmovision, worldview
<i>Finca</i>	Large privately owned estate dedicated to agrarian production, big plantation
<i>Finquero</i>	Plantation/finca owner
<i>Ganas</i>	Pleasure
<i>Ladino</i>	Non-indigenous person according to criteria such as language ability, dress and occupation. Refers to people who identify themselves as non-indigenous, Spanish speaking and US/ Europe oriented
<i>Milpa</i>	Maize fields
<i>Mozos colonos</i>	Permanent labourers living on a <i>finca</i>
<i>Querellante adhesivo</i>	Complementary prosecutor
<i>Resarcimiento integral</i>	Comprehensive Reparation
<i>Resarcimiento</i>	Reparation
<i>Susto</i>	Fright, spirit loss ( <i>xiwak</i> )
<i>Tortilla</i>	Flat and circular maize dough cooked on a flat earthenware dish on the fire



Comunidad  
Chicofrayute  
26/2/070  
Coban A.V.

En 1981 12 DE marzo Llegaron los  
Soldados ~~es~~ ~~ternos~~ quemaron 3 casas nuestra  
los nuestras cosas.  
mataron un mi hijo su nombre  
SERAPIO CHUB en 1981 8 de agosto

ya no  
mas  
~~guerra~~  
ni violacion  
queremos  
que nuestros  
Hijos  
vivan  
en PAS



## The Voice

Life of the mountains  
is the voice of their birds

The voice of a people  
are their singers:  
a dumb people  
is a dead people

*Humberto Ak'abal*

Demonstration National Day of the Dignification of the Victims, 26 February 2010, Cobán



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# Introduction

## The Place of Cultural Contexts in the Transitional Justice Field

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This introduction sets the scene for this doctoral dissertation that aims to explore the role of cultural context in transitional justice processes. The first section expounds the central research question and moves then to a discussion about the broader framework of the booming field of transitional justice, in which the present study must be located. Next, a general description of the case study of post-conflict Guatemala is provided. This introduction ends by sketching the different voices that this research will disclose and the structure of the present study.

### **Research Question: Dealing with Past Human Rights Violations and Cultural Diversity in Transitional Societies**

This doctoral dissertation investigates the actual and potential role of cultural contexts in dealing with grave violations of human rights in societies emerging from an armed conflict and authoritarian regimes. This main research question includes a negative as well as a positive component. On the one hand cultural factors may create obstacles that are hard to overcome. Hence a successful post-conflict process of social recovery may require that the cultural context be taken into account. On the other hand culture may be a fertile soil and a catalyst for certain transitional justice initiatives. In the present study, culture, to follow Clifford Geertz, is understood as 'the structure of meaning through which men give shape to their experience'.<sup>1</sup> The heterogeneity of culture should be acknowledged as well that this system of meaning may have undergone profound changes in times of mass atrocities and violence. In order to address the research question which intersects the fields of transitional justice, human rights and anthropology, the research design has adopted a clear interdisciplinary approach.

The study of this central research question is based on the analysis of the case study of post-conflict Guatemala for which long-term ethnographic field research among Maya Q'eqchi' survivors has been carried out.<sup>2</sup> This case study focuses on how particularities of Maya Q'eqchi' culture could play or are already playing a role,

1. Clifford Geertz, 'The Politics of Meaning', in Clifford Geertz, *The Interpretation of Cultures. Selected Essays by Clifford Geertz*, New York, Basic Books, 1973, 312.
2. Chapter 2 discusses in-depth the methodology of ethnographic field research of his doctoral thesis.

at the local level of conflict-torn communities in the aftermath of the internal armed conflict. It aims to address several sub-questions that stem from this case study, that further onwards will be discussed, regarding how Maya Q'eqchi' survivors understand and perceive the driven goals of transitional justice and national-level transitional justice interventions. The overall purpose of the Guatemalan case study was thus to gain 'understandings from within' or 'emic perceptions' on the issues of justice, reconciliation, truth recovery and reparations.

In the human rights field, the debate about how to accommodate cultural diversity has been going on for several decades. In the academic literature on this subject several theories and concepts have been developed that form a framework for these debates.<sup>3</sup> Until today the debate and research with regard to cultural diversity and human rights have largely concentrated on the definition and interpretation of human rights. This can be explained by the origin of the debate in claims from South East Asia, Sub-Saharan Africa and the Islamic world expressing their 'own' human rights visions. However, the theoretical concepts that have been developed in this context can be applied more broadly and in particular be used in dealing with serious human rights violations in the context of transitional justice processes. A valuable framework in the present study for examining the role of cultural context in transitional justice processes has been provided by the concept of inclusive universality<sup>4</sup>, which is one of the concepts that been developed to address this debate in the human rights field. The perspective of inclusive universality avoids an ethnocentric approach to cultural diversity against Western human rights making room for cultural flexibility in the interpretation of human rights standards and for new developments in human rights protection based on non-Western cultural input. Its motivation is inherently democratic: equal participation of all people(s) in the human rights protection system. At the same time it is pragmatic: human rights make little sense if they are not linked to the life experiences of real people. If the people themselves, e.g. for cultural reasons, experience the concept of human rights or its interpretation in a specific case as something strange that is being forced upon them, the power of human rights is significantly undermined. Both the democratic and pragmatic motivations of inclusive universality are valid in this new context of transitional justice. First, this is a field in which international norms still largely have to be shaped. One may expect that in the years to come guidelines on transitional justice will be drafted. As a matter of principle, such norms must reflect the diversity of contextually coloured experiences with transitional justice. Second, there is the pragmatic factor, as explained above: cultural sensitivity is a crucial factor determining the success of transitional justice processes. Indeed, the power and impact of transitional justice efforts at the local level of survivors will be weak when these mechanisms are not culturally inclusive.

The transitional justice field emerged in the late 1980s and early 1990s in the wake of the Latin American and Eastern European transitions from authoritarian rule to democracy as a new academic field connected to a field of practice. This field is

3. For a brief overview see Chapter 7.

4. Eva Brems, *Human Rights: Universality and Diversity*, The Hague, Martinus Nijhoff Publishers, 2001, p574.



concerned with how these ‘transitions to democracy’, as these countries were generally called, could face the aftermath of massive gross human rights violations. The term ‘transitional justice’ coined this emerging field indicating a ‘new sort of human rights activity and as a response to concrete political dilemmas human rights activists faced in what they understood to be “transitional” contexts’.<sup>5</sup> In those societies the political transformations were legally entrenched with a strong call of accountability for the systematic human rights abuses of the former regimes. Transitional justice is, however, distinct from the broader human rights movement because it is grounded on the addition of the ‘normative aim of facilitating a transition to democracy’.<sup>6</sup> Since the 1980s nearly all transitional governments emerging from periods of authoritarian rule and armed conflicts were openly confronted with the question of how to address the legacy of the past mass atrocities and have debated their proper strategy and mechanisms to deal with this heavy burden. Notably, the field of academic inquiry and practice consistently termed transitional justice only came into being sometime after 2000.<sup>7</sup> Since its emergence, as further will be discussed, transitional justice has been faced with a host of contested and unsolved issues and challenges. For instance, the field has been challenged with claims of cultural diversity and currently the role of tradition-based approaches and community-based responses in transitional justice processes is largely discussed on international transitional justice fora.

When drafting the PhD research proposal in 2004 these claims for culturally sensitive transitional justice approaches were not as at issue as they are at present.<sup>8</sup> Even academic literature on this topic was rare to find - only the experience of the gacaca tribunals in Rwanda was discussed by some scholars. While carrying out this research some empirical studies dealing with grassroots level social recovery in other post-conflict societies have been published and the international debate about the role of traditional and informal justice systems in transitional justice emerged. Yet, as will be pointed out, despite the rapid growth of the transitional justice field, there is still a significant knowledge gap with regard to the role of cultural contexts in transitional justice processes as well as of theoretical studies.

Importantly, as indicated in the Preface, the inspiration for this doctoral research came from earlier empirical research experiences among Maya Q’eqchi’ survivors in the context of my master’s thesis in comparative cultural studies in 2003. This confrontation with real-world situations has influenced the theoretical and methodological framework of this present study. The research question of this master’s

5. Paige Arthur, ‘How ‘Transitional’ Reshaped Human Rights: a Conceptual History of ‘Transitional Justice’, *Human Rights Quarterly*, Vol. 31, No. 2, 2009, 326. However, some scholars have argued that this term has its conceptual historical roots in the Nuremberg Trials. See Ruti Teitel, ‘Transitional Justice Genealogy’, *Harvard Human Rights Law Journal*, Vol. 16, Spring 2003, 69-94 and Pierre Hazan, ‘The Genesis of Transitional Justice’, Pierre Hazan, *Judging War, Judging History. Behind Truth and Reconciliation*, Stanford, Stanford University Press, 2010, 14-28.
6. *Ibid.*, 358.
7. Christine Bell, ‘Transitional Justice, Interdisciplinarity, and the State of the ‘Field’ or ‘Non-Field’, *International Journal of Transitional Justice*, Vol. 3, No. 2, 2009, 6-9.
8. The research proposal was drafted in 2004, yet the actual research started in January 2006.

thesis was whether Maya customary law could play a role in the local process of reconciliation and reparation.<sup>9</sup> Based on six weeks' field research in the area of Cobán in Alta Verapaz, this thesis concluded with an intuitive answer stating that Mayan customary law could inspire and foster the reparation and reconciliation process in Guatemala, yet currently there is a gap between these two processes. To gain more insight into its complementarity there is a need to analyse the differences, similarities and functioning of both processes.

At the moment of writing the PhD proposal I broadened, in consultation with my supervisor, the angle of the study to the role of cultural contexts in transitional justice processes instead of only focusing on the role of customary law or traditional justice systems. The reason for this shift is twofold. On the one hand, the scope of the ethnographic case study goes beyond the single question of justice and reconciliation between victim and local perpetrator rather than entailing a holistic approach to transitional justice issues which also includes truth recovery, reparation and memory. Approaching these transitional justice goals from the broader cultural context at the local level enables the exploration of the links between these issues, whereas exclusively focusing on Mayan customary law could tend to restrict the research lens. On the other hand, a more substantial reason is the fact that these customary or traditional justice systems are embedded in a broader frame of reference which is culturally diverse compared to the dominant Western one. Analysing the broader cultural logics in which these normative systems are entrenched would foster a deeper understanding of this cultural frame of reference.

## The Boomig Field of Transitional Justice

Transitional justice is a rapidly expanding, dynamic and diverted field; however, it is important to note that there is no single theory of transitional justice and the term transitional justice does not have a fixed meaning.<sup>10</sup> In fact, over time the initial conceptual boundaries of transitional justice have been consistently pushed in response to practical difficulties encountered in new political contexts and reflections on the part of those working within the field itself.<sup>11</sup> Furthermore, its international popularity and increasing importance is reflected in the volume of academic literature produced over the past 15 years and the growing number of projects and interventions financed by international actor and donor agencies in post-conflict societies having a transitional justice label. The field has been described as an international web of 'individuals and institutions whose internal coherence is held together by common

9. Lieselotte Viaene, *De lange weg van verzoening: kan maya gewoonterrecht een rol spelen in het verzoenings- en herstelproces? (Q'eqchi' ervaringen)*, ongepubliceerde master thesis vergelijkende cultuurwetenschappen, Universiteit Gent, 2003, p111. [Lieselotte Viaene, *Guatemala: the long road to reconciliation: can Mayan customary law play a role in the local process of reconciliation and reparation? (Q'eqchi' experiences)*, unpublished master's thesis comparative cultural studies, Ghent University, 2003, p111].

10. Arthur, *supra* note 5, 359.

11. Arthur, *supra* note 5, 326. For other analyses of the different phases in the growth of the transitional justice field see Teitel, *supra* note 5 and Hazan, *supra* note 5, 29-62.

concepts, practical aims, and distinctive claims for legitimacy'.<sup>12</sup> Indeed, the study of how societies emerging from periods of dictatorship and armed conflict that left a legacy of gross human rights violations is not only confined to academic research, but also of international NGOs.<sup>13</sup> In fact, these NGOs not only play a crucial role in the development of the field but also in the rise of an international justice movement which has created 'a new multi-layered political and legal opportunity that makes it difficult for states to dismiss demands for accountability for widespread and systematic heinous human rights violations'.<sup>14</sup> They have even been called 'the missionaries of humane globalization'<sup>15</sup>, because through their activism they have made the fight against impunity 'a moral absolute, affirming with conviction that only the criminalisation of the perpetrators of such crimes will stop their repetition'.<sup>16</sup>

The early debates in the transitional justice field concerned the trade-off between justice and peace leading to a polarisation between adherents of criminal prosecution and those who advocated truth commissions.<sup>17</sup> The experiences with the South African Truth and Reconciliation Commission (TRC) became however 'the symbol of the new social engineering of transitional justice'<sup>18</sup>, as it showed that truth commissions are not a second-best alternative where trials are unavailable, but a positive choice in moral, political and strategic terms. Parallel to the development of a more mixed response, two ad hoc international tribunals were set up to deal with the massacres in the former Yugoslavia and with the genocide in Rwanda: the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1995. In fact, international criminal justice emerged on the international scene and became further institutionalized by the establishment of the International Criminal Court (ICC) in 2002 which is a permanent tribunal that has jurisdiction over genocide, crimes against humanity and war crimes. Now, among decision makers designing transitional justice processes there is a growing understanding that justice, truth and peace are fundamental and interrelated interests which cannot be isolated.<sup>19</sup> It is, however, important to note that since its emergence some 15 years ago, practitioners, members of civil society and academics have remain struggling about the significance and the direction of transitional justice revealing that it is not an unproblematic field.

12. Arthur, supra note 5, 324.

13. For example, Human Rights Watch, Doctors Without Borders, Redress, International Center for Transitional Justice, Transparency International, World Organization against Torture.

14. Ellen Lutz, 'Transitional justice: Lessons learned and the road ahead', in Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*, Cambridge, Cambridge University Press, 2006, 328-329.

15. Hazzan, supra note 5, 48. In fact, these NGOs made the struggle against impunity one of their priorities in the 1990s, constructed the selling points of international criminal justice, and succeeded in mobilizing public opinion, several governments and the United Nations.

16. Ibid., 49.

17. For more about the justice vs truth debate see Naomi Roht-Arriaza, 'The new landscape of transitional justice', in Naomi Roht-Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century. Beyond Truth versus Justice*, Cambridge, Cambridge University Press, 2006, 1- 16.

18. Pierre Hazan, 'The Growing Strength of Transitional Justice', in Pierre Hazan, *Judging War, Judging History. Behind Truth and Reconciliation*, Stanford, Stanford University Press, 2010, 33.

19. Lutz, supra note 14, 327.

## Stakes of Transitional Justice

One of these ongoing debates is about the breadth - narrow or broad - of the scope of transitional justice. A narrow definition denotes transitional justice as 'the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes'.<sup>20</sup> A narrow conception of transitional justice tend thus to emphasize legal approaches to past mass atrocities. Whereas broadly defined, transitional justice involves 'anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations, from changes in criminal codes to those in high school textbooks, from creation of memorials, museums and days of mourning, to police and court reform, to tackling the distributional inequities that underlie conflict'.<sup>21</sup> The choice between these two conceptions of transitional justice lies at the core of many debates.

Currently, the main actors in the field tend to adopt a broad and pragmatic definition. Former UN Secretary-General Kofi Annan formalized the UN's normative commitment to transitional justice in 2004 and defined it as compromising 'the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation'.<sup>22</sup> In fact, there is a growing consensus that the driven goals of transitional justice are accountability, truth, reparation and reconciliation and that these different essential functions are complementary and mutually reinforcing.<sup>23</sup> The mechanisms to achieve these goals have been expanded over time and with experiences with different socio-political contexts. As previously said, the landscape of transitional justice was initially marked by a polarisation between criminal prosecution vs truth commissions; however, currently a mix of judicial and non-judicial, official and non-official, top-down and bottom-up strategies and approaches has been favoured.<sup>24</sup> Indeed, the above UN report states that transitional justice includes 'both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof'.<sup>25</sup> Similarly, the International Center for Transitional Justice (ICTJ), a New York-based international NGO and another international key player, advocates for a holistic approach to transitional justice which should include criminal prosecution, truth commissions, reparation

20. Teitel, *supra* note 5, 69.

21. Roht-Arriaza, *supra* note 17, 2.

22. *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616, 3 August 2004, 4.

23. Luc Huyse, 'Introduction: tradition-based approaches in peacemaking, transitional justice and reconciliation policies', in Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, Stockholm, International IDEA, 2008, 11. Often, guarantees of non-repetition, is mentioned as a fifth goal of transitional justice.

24. For a description of these evolutions in the transitional justice landscape see Roht-Arriaza, *supra* note 17, 1-16.

25. *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, *supra* note 22, 4.

programmes, security system reform and memorisation efforts.<sup>26</sup> Among practitioners and scholars there is in fact a growing consensus that these mechanisms or tools are complementary belonging to the transitional justice ‘package’, ‘menu’ or ‘toolbox’, although it has been acknowledged that a single formula does not exist.

Yet, this booming field is currently going through a maturation process by submitting itself to critical inquiries about its own origins, assumptions and significance and therefore enduring serious growing pains. In fact, transitional justice is moving from ‘infancy to a contested adolescence’.<sup>27</sup> One development is related to the disciplines involved in transitional justice scholarship. Given that human rights accountability was the initial focus, transitional justice is rooted in the discipline of law. Since its emergence, legal thinking and practices constitute the core of the field – scholarship and practice. Today, transitional justice is evolving towards an interdisciplinary research area where disciplines such as development studies, peace building studies, economics, education, history, philosophy, anthropology and psychology have become involved in transitional justice debates and concerns. Nonetheless, it has been argued that the field is still over dominated by ‘a narrow, legalistic lens which impedes both scholarship and praxis’<sup>28</sup> and should let go of legalism and give space to other disciplines. The intersections between transitional justice and those other disciplines result in new concerns and other unresolved and contested issues.

Since the experiences with the South African TRC, increasing attention is paid whether the restorative justice paradigm can contribute to transitional justice processes by fostering a victim-centred approach to transitional justice interventions.<sup>29</sup> Along the same line, there is an emerging interest among criminologists involved in transitional justice issues to develop a supranational criminology of international crimes and other gross human rights violations.<sup>30</sup> Another debate is about the nexus between transitional justice and peace building and whether transitional justice mechanisms

26. International Center for Transitional Justice, *What is Transitional Justice?*, [New York], 2008, [www.ictj.org/static/TJApproaches/WhatIsTJ/ICTJ\\_WhatIsTJ\\_pa2008\\_.pdf](http://www.ictj.org/static/TJApproaches/WhatIsTJ/ICTJ_WhatIsTJ_pa2008_.pdf).
27. [Hugo van der Merve and Harvey M. Weinstein] Editorial note, *International Journal of Transitional Justice*, Vol. 4, No. 1, 2010, 2.
28. Kieran McEvoy, ‘Letting Go of Legalism’, in Kieran McEvoy and Lorna McGregor (eds.), *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*, Oxford, Hart Publishing, 2008, 16.
29. See for example, C. Villa-Vicencio, ‘Restorative Justice in Social Context: The South African Truth and Reconciliation Commission’, in Nigel Biggar (ed), *Burying the Past: Making Peace and Doing Justice after Civil Conflict*, Washington DC, Georgetown University Press, 2001, 207-222; Bronwyn Leebow, ‘Restorative Justice for Political Transitions: Lessons from the South African Truth and Reconciliation Commission’, *Contemporary Justice Review*, Vol. 4, 2001, 267-289 and Stephan Parmentier, ‘The South African Truth and Reconciliation Commission. Towards a Restorative Justice in the Field of Human Rights’, in Ezzat Fattah and Stephan Parmentier (eds.), *Victim policies and criminal justice on the road to restorative justice. Essays in honour of Tony Peters*, Leuven, Leuven University Press, 2001, 401-428.
30. For more see Stephan Parmentier, ‘Global Justice in the Aftermath of Mass Violence. The Role of the International Criminal Court in Dealing with Political Crimes’, *International Annals of Criminology*, Vol. 41, No. 1/2, 2003, 203-224; Alette Smeulers and Roelof Haveman, *Supranational Criminology: Towards a Criminology of International Crimes*, Antwerp, Intersentia, 2008, p593 and the Platform for Supranational Criminology (<http://www.supranationalcriminology.org>).

advances or hinders sustainable peace processes.<sup>31</sup> A result of this attention is for instance the increasing appeal in academic literature to link transitional justice to disarmament, demobilisation and reintegration (DDR) programmes.<sup>32</sup> Traditionally, DDR programmes that transform combatants into ex-combatants have focused almost exclusively on military and security objectives, by which they have been developed in relative isolation of the transitional justice concerns of justice, reparations, truth recovery and reconciliation. There is also growing literature on engendering transitional justice addressing issues such as gender-based harms, sexual violence and women-centred reparations.<sup>33</sup> In fact, there is an increasing call to move away from the perception of women being a victim to ‘a recognition of gender dimensions and a broader role for women as strategists and decision makers.’<sup>34</sup> At the same time, discussions among scholars as well as practitioners, about the relationship between the transitional justice field and the development field are beginning to emerge.<sup>35</sup> A growing body of critical studies addresses the connections between for example social injustices and transformations, poverty reduction and land tenure reforms and particular transitional justice mechanisms such as truth commissions and reparation programmes.<sup>36</sup> The former UN High Commissioner for Human Rights, Louise Arbour, has also argued for integrating economic, social and cultural rights into the transitional justice framework, thereby making ‘the gigantic leap that would allow justice, in its full sense, to make the contribution that it should to societies in transition’.<sup>37</sup>

31. See for example, Rama Mani, ‘Rebuilding an Inclusive Political Community After War’, *Security Dialogue*, Vol. 36, No. 4, 2005, 511-526; Lisa Laplante, ‘Transitional Justice and Peace Building: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’, *International Journal of Transitional Justice*, Vol. 2, No. 3, 2008, 331-355 and Wendy Lambourne, ‘Transitional Justice and Peacebuilding after Mass Violence’, *International Journal of Transitional Justice*, Vol. 3, No. 1, 2009, 28-48.
32. Pablo De Greiff, *Contributing to Peace and Justice. Establishing Links between DDR and Reparations*, Bonn, Working Group on Development and Peace, 2007, p34; Kimberly Theidon, ‘Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia’, *Journal of Transitional Justice*, Vol. 1, No.1, 2007, 66-90; Ana Cutter, Pablo de Greiff and Lars Waldorf (eds.), *Disarming the Past. Transitional Justice and Ex-Combatants*, New York, International Center for Transitional Justice, 2009, p283.
33. See for example, the special issue on gender and transitional justice, *International Journal for Transitional Justice*, Vol. 1 , No 3, 2007 and Ruth-Rubio Marín (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, New York, International Center for Transitional Justice – Advancing Transitional Justice Series, 2006, p 346.
34. Navanethem Pillay, ‘Editorial Note: Special Issue Gender and Transitional Justice’, *International Journal of Transitional Justice*, Vol. 1, No. 3, 2007, 316.
35. See for example, the internet forum *Development and Transition*, organized by the United Nations Development Programme (UNDP) and The London School of Economics, for policy-oriented debates about how the nature, evolution and challenges of development and transition intersecting in Central and Eastern Europe and the former Soviet Union and also Turkey (<http://www.developmentandtransition.net>). See also, Rama Mani, ‘Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development’, *International Journal of Transitional Justice*, Vol. 2, No. 3, 2008, 253-265.
36. See for example, Jane Alexander, *A Scoping Study of Transitional Justice and Poverty Reduction. Final Report for the Department for International Development (DFID)*, 2003; Pablo de Greiff and Roger Duthie (eds.), *Transitional Justice and Development. Making Connections*, New York, International Center for Transitional Justice, 2009, p374 and the special issue on development and transitional justice, *International Journal of Transitional Justice*, Vol. 2, No 3, 2008.
37. Louise Arbour, *Economic and Social Justice for Societies in Transition*. Paper presented at *Second Annual Transitional Justice Lecture* hosted by the Center for Human Rights and Global Justice at New York University School of Law and by the International Center for Transitional Justice, New York University School of Law, New York, 25 October 2006.

Thus, transitional justice is clearly moving towards an interdisciplinary research field and the new debates and concerns emerging from the intersections between these different disciplines have pushed further the boundaries of the field. In the light of these developments, it has been argued that transitional justice is actually not a coherent field, but rather a label or cloak that 'that gives apparent coherence to particularized practices of conflict resolution, emanating from diverse contexts and diverse actors with diverse goals ... that simultaneously obscures the quite different political and moral implications of these practices'.<sup>38</sup> At the same time, transitional justice has become for policy makers and the main international actors a key tool for a range of political and social objectives beyond human rights accountability.<sup>39</sup>

### **Local and Cultural Challenges**

Besides these ongoing conceptual debates and concerns about good practices of how societies emerging from conflicts should deal with mass atrocities of the past, transitional justice is increasingly met with challenges from the field about how to tackle cultural diversity when dealing with that legacy. A number of recent experiences with the mobilisation of traditional approaches to justice and reconciliation with transitional justice strategies mainly on the African continent have strengthened criticism based on local and cultural particularities. The role of informal and traditional justice systems has led to an area of growing academic and policy interest. The transitional justice field is in fact confronted to address these cultural challenges at the conceptual level as well as in the design and implementation of transitional justice practices and measures.

The idea and related debates of using traditional and informal justice systems and returning to traditional and local culture as a means of dealing with the past of gross human rights violations originates in the Rwandan response to address the legacy of the genocide of 1994. In the wake of a genocide that left around 800,000 dead, the new Rwandan regime wanted to build a new country and strongly called to bring to justice all the perpetrators involved in the genocide and massacres. To address the challenge to prosecute the approximately 130,000 people imprisoned for offences related to the genocide, Rwandans began considering in 1997 innovative ways of dealing with this 'mass justice for mass atrocities'.<sup>40</sup> The idea emerged of transforming a traditional Rwandan community-based dispute settlement mechanism called *gacaca* into a mechanism to judge those accused of participation in the genocide and to eradicate impunity. Apart from the aim to speed up the trials, the government's arguments to choose a home-grown practice lay also in the need to replace imported and divisive practices which is part of 'a policy of creating a true post-colonial Rwanda'.<sup>41</sup>

38. Bell, *supra* note 7, 13.

39. *Ibid.*, 9.

40. Lars Waldorf, 'Mass Justice of Mass Atrocities: Rethinking Local Justice as Transitional Justice', *Temple Law Review*, Vol. 79, No. 1, 2006, 3.

41. Bert Ingelaere, 'The Gacaca courts in Rwanda', in Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*. Stockholm, International IDEA, 2008, 32.

In 2002, the first ‘modernised *gacaca*’ courts started to operate at the local level of genocide-torn villages and regions. This was the beginning of ‘an unprecedented legal-social experiment in its size and scope’<sup>42</sup> to deal with issues of justice and reconciliation. In thousands of communities the perpetrators, victims and bystanders come together weekly in the *gacaca* meetings to make accusations, listen to confessions and hear the verdicts of the local judges. This large-scale experiment attracted many scholars to analyze and discuss its merits and weaknesses as a new transitional justice tool resulting in an abundance of literature. A key debate among human rights defenders is to what extent the legal contours of this tradition-based accountability mechanism meets or violates international human rights standards.<sup>43</sup> It has been argued that, *gacaca* ‘actually respects the spirit of justice, if not the letter of criminal and human rights law. In other words, the practice of *gacaca* may well produce fair trails, but in an original, locally appropriated form’.<sup>44</sup>

Simultaneously, although unrelated to the Rwandan experiment, in the context of the South African post-apartheid regime and its TRC the language of reconciliation and human rights talk became synonymous with the African word *ubuntu*.<sup>45</sup> This traditional African value could be translated as ‘humaneness’ and expresses the metaphor of ‘people are people through people’.<sup>46</sup> Related to the African view of justice it refers to a need for understanding, reconciliation and reparation, and rejects revenge and the Western style of retributive justice.<sup>47</sup> Desmond Tutu, the chair of the TRC, pointed out that the African understanding of justice 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’.<sup>48</sup> In fact, the final report of the TRC explicitly links *ubuntu* with restorative justice. It should be recognized, though, that its use and revival is foremost an ideological concept with multiple meanings which links human rights, restorative justice, reconciliation and also nation-building within pan-Africanist ideology.<sup>49</sup> In fact, ‘*ubuntu* belies the claim that human rights would have no culturalist or ethnic dimensions’.<sup>50</sup>

Inspired by the Rwandan experience and also by the South African discourse on traditional African justice, also other countries, mostly African, emerging from violent

42. Peter Uvin, ‘The *Gacaca* Tribunals in Rwanda’, in David Bloomfield, Teresa Barnes and Luc Huyse, *Reconciliation After Violent Conflict. A Handbook*, Stockholm, International IDEA, 2003, 117.

43. See for example, Jeremy Sarkin, ‘The Tension Between Justice and Reconciliation in Rwanda: Politics, Human Rights, Due process and the Role of the *Gacaca* Courts in Dealing with the Genocide’, *Journal of African Law*, 2001, Vol. 45, No. 2, 143-172.

44. Uvin *supra* note 42, 119.

45. Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa. Legitimizing the Post-Apartheid State*, Cambridge, Cambridge University Press, 2001, 9-13.

46. Truth and Reconciliation Commission of South Africa, *Report Volume 1*, South Africa, 1998, 127.

47. Wilson, *supra* note 45, 11.

48. Desmond Tutu quoted in Huyse, *supra* note 23, 5.

49. For a discussion about the connection between *ubuntu*, human rights and nation-building see Wilson, *supra* note 45, 9-13.

50. *Ibid.*, 13.



conflicts started to mobilize culturally sensitive approaches to transitional justice mechanisms. For example, the mandate of the Sierra Leone Truth and Reconciliation Commission provided the possibility to 'seek assistance from traditional and religious leaders to facilitate its public sessions and in resolving local conflicts arising from past violations or abuses or in support of healing and reconciliation'.<sup>51</sup> Timor Leste, for instance, opted to include Community-Based Reconciliation Processes (CPR), of minor crimes in the design of its Commission for Reception, Truth and Reconciliation. In fact, it is reported that the incorporation of tradition and custom into the CRP is 'widely regarded as a both necessary and useful. The involvement of traditional leaders endorses both the process and its outcome, and without it, many are convinced the validity of the process would have been undermined'.<sup>52</sup> At the same time, several anthropological studies have discussed the importance of local cultural conceptions on healing such as for instance traditional cleansing and purification rituals in processes of reintegrating former child soldiers and the role of spirit possession in dealing with the aftermath of mass violence in African post-conflict societies as Mozambique and Angola.<sup>53</sup>

This tendency to include and revisit traditional culture, and traditional and informal justice systems in transitional justice strategies has been acknowledged by the above mentioned UN report on transitional justice and the rule of law in post-conflict societies. It states that 'due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their vital role and to do so in conformity with both international standards and local tradition'.<sup>54</sup> In fact, international NGOs and donor agencies have supported and even promoted those traditional justice instruments and 'a hype was born'.<sup>55</sup>

Currently, discussions have been heavily influenced by the recent developments in Northern Uganda. The Ugandan case has become the centre of complex key debates about peace vs justice and also international Western retributive justice vs local traditional justice. An important background factor is that the International Criminal Court (ICC) issued in 2005 its first-ever arrest warrants for several commanders of

51. Truth and Reconciliation Commission Act, 2000, para. 7.2.

52. Piers Pigou, *The Community Reconciliation Process of the Commission Reception, Truth and Reconciliation*, UNDP Timor-Leste, 2004, 30.

53. See the work of Alcinda Honwana on the practices traditional cleansing and purification rituals in the reintegration of former child soldiers: Alcinda Honwana, 'Healing for Peace: Traditional Healers and Post-War Reconstruction in Southern Mozambique', *Journal of Peace Psychology*, Vol. 3, No. 3, 1997, 293-305; Edward Green and Alcinda Honwana, 'Indigenous Healing of War-Affected Children in Africa', *The World Bank Indigenous Knowledge Notes*, 1999, p4; Alcinda Honwana, 'Healing and Social Reintegration in Mozambique and Angola', in Elin Skaar (eds.), *Roads to Reconciliation*, Lanham, Lexington Books, 2005, 83-100. And the work of Victor Igreja on spirit possession in Mozambique: Igreja Victor and Beatrice Dias-Lambranca, 'Restorative justice and the role of magamba spirits in post-civil war Gorongosa, central Mozambique', in Luc Huyse and Mark Salter Mark (eds.), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, Stockholm, IDEA, 2008, 61-83 and Victor Igreja et al., 'The epidemiology of spirit possession in the aftermath of mass political violence in Mozambique', *Social Science and Medicine*, Vol. 71, Issue 3, 2010, 592-599.

54. *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, supra note 22, 12.

55. Huyse, supra note 23, 1.

the Lord Resistance Army (LRA) for crimes against humanity and war crimes. Yet the ICC has come under much criticism in Northern Uganda and its intervention risks being perceived as a peace spoiler of the ongoing peace process between the Ugandan government and the LRA. Moreover, the ICC's warrants had been called 'the product of Western judicial neo-imperialism against "African values"'.<sup>56</sup> Indeed, Ugandan civil society organisations, and local and religious leaders stated that traditional justice mechanisms of the Acholi people that emphasize forgiveness, reconciliation and reintegration should deal with the LRA leaders, rather than a Western form of retributive justice.<sup>57</sup> These views are in fact reflected in the outcome of the Juba peace talks (2006-2008) between the government and the LRA which prescribed prosecutions through the Ugandan High Court and several modified traditional justice mechanisms, rather than the ICC.<sup>58</sup> In the light of this, several international and national aid agencies have started to promote and fund these local traditional justice mechanisms such as *mato oput* rituals, or 'drinking the bitter root' and the establishment of a council of 'traditional' leaders.

Notably, the discussions on Rwanda and Northern Uganda have come to polarize scholars and practitioners who support these traditional mechanisms and those who are opposed to them. Nonetheless, there is still a huge knowledge gap regarding the concrete (potential) role of traditional approaches and justice mechanisms in dealing with past massive human rights violations in different post-conflict contexts. It is important to note that not only these debates are nurtured by these experiences in Sub-Saharan Africa, but also the research is chiefly focussed on that region. Up to date, only one large policy-oriented research project has addressed the role of traditional justice in reconciliation processes after violent conflicts focussing on five African case studies: Rwanda, Mozambique, Uganda, Sierra Leone and Burundi.<sup>59</sup> The report offers an evidence-based assessment of both the strengths and weaknesses of traditional conflict management mechanisms within the broader framework of post-conflict social reconstruction efforts. However, empirical research in other post-conflict regions where it could be assumed that cultural context could play a role

56. Pierre Hazan, 'Uganda. Traditional Justice vs. the International Criminal Court', in Pierra Hazan, *Judging War, Judging History. Behind Truth and Reconciliation*, Stanford, Stanford University Press, 2010, 128.

57. For more in-depth discussions on these tensions see Lucy Hovil and Joanna Quinn, *Peace First, Justice Later: Traditional Justice in Northern Uganda*, Kampala Uganda, Refugee Law Project, 2005, p57; Tim Allen, *Trail Justice: The International Criminal Court and the Lord's Resistance Army*, London, Zed Books, 2006, p223; Erin Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, 91-114; James Ojera Latigo, 'Northern Uganda: Tradition-based practices in the Acholi region', in Luc Huyse and Mark Salter (eds.) *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*. Stockholm, International IDEA, 85-120; Marieke Wierda and Michael Otim, 'Justice at Juba: International Obligations and Local Demands in Northern Uganda', in Nicholas Waddell and Phil Clark (eds.), *Courting Conflict? Justice, Peace and the ICC in Africa*, London, Royal African Society, 2008, 21- 28 and Tim Allen, 'Ritual (Ab)use? Problems with Traditional Justice in Northern Uganda', in Nicholas Waddell and Phil Clark (eds.), *Courting Conflict? Justice, Peace and the ICC in Africa*, London, Royal African Society, 2008, 47-54.

58. See Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan, 29 June 2007.

59. Luc Huyse and Mark Salter (eds.) *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*. Stockholm, International IDEA, 2008, p203.

is actually lacking. For example, in several Latin American countries such as Peru, Guatemala, Chile and Colombia, and many victims of the internal armed conflicts and authoritarian regimes also belonged to different indigenous groups such as the Quechua, Asháninka, Maya, Mapuche and Afro Colombian communities.

By way of conclusion, it should be clear that the natural maturation process of this young but quickly expanding transitional justice field has induced many new debates and tendencies. An important outcome of this process is the growing awareness that transitional justice is highly abstract, general, legalistic and top-down. Indeed, the growing academic literature has mainly focussed on the international and national levels. Yet there is a growing call to shift the lenses toward looking more at the grassroots level of transitional justice and a need for understanding 'transitional justice from below'. This tendency aims to explore ways of how 'from above' transitional justice institutions and structures 'can broaden *ownership* and encourage the *participation* of those who have been most directly affected by the conflict'.<sup>60</sup> At the same time, there is an increasing concern about the need for critical inquiry into the impact and the success or failure of transitional justice interventions at the national as well as the local level of affected communities.<sup>61</sup>

## Case Study on Post-Conflict Guatemala

In the light of the main research question about the role of cultural context in transitional justice processes, a case study on Guatemala is of particular interest for several reasons. First, in Guatemala around 60 to 70 percent of the population belongs to indigenous ethnic groups, although, the dominant culture in Guatemala is that of the *ladinos* which is the term that refers to the people who identify themselves as non-indigenous, Spanish speaking and strongly US/Europe oriented. The indigenous landscape is constituted by the Maya, Xinka and Garifuna of which the Maya with its 22 ethnic groups is the largest indigenous population.<sup>62</sup> The 'worldview' of indigenous people has been denoted in Latin American literature as indigenous cosmovision, following the Spanish *cosmovisión*. In the Guatemalan context, Molesky-Poze provides an interesting conceptualisation of the notion of the Mayan cosmovision. She states that cosmovision is marked by various types of knowledge, traditions and intuitions, and provides a template of movement in which human existence and the cosmos are interrelated and harmonic. In fact, 'it is not anthropocentric; rather, the cosmos is the key referent. ... The construction and ordering of creation, patterns of fourfold markings, cycles of time, duality, mathematical principles, plants, animals,

60. Kieran McEvoy and Lorna McGregor, 'Transitional justice From Below: An Agenda for Research, Policy and Praxis', in Kieran McEvoy and Lorna McGregor (eds.) *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*, Oxford, Hart Publishing, 2008, 5. (Emphasis in original).

61. Hugo van der Merve, Victoria Baxter and Audrey Chapman (eds.), *Assessing the Impact of Transitional Justice. Challenges for Empirical Research*, Washington D.C., United States Institute of Peace Press, 2009, p344 and Phuang Phan and Patrick Vinck, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms', *International Journal of Transitional Justice*, Vol. 1, No. 2, 2007, 231-248.

62. The Quiché, Mam, Kaqchiquel and Q'eqchi' are the biggest Mayan populations.

and humans emanate from the same origin'. However, cosmovision is not only a template; 'it is a form through which Maya feel, think, analyze, understand, and move reciprocally in the cosmos'. Importantly, it 'is not remembered or practiced with unifocal concordance, nor is this cultural knowledge shared with all equally'. Crucial is that in Maya cosmovision there is no distinction or difference between the social, natural, and sacred spheres, which together make up the cosmos.<sup>63</sup> In fact, 'the division of the cosmos into the divine, the human and the natural is very Western'.<sup>64</sup>

The focus on Guatemala is also explained by the characteristics of its internal armed conflict which was one of the bloodiest and longest of the Latin American continent. This conflict was between the State's army and left-wing guerrillas who wanted to change fundamentally the exclusionary social, economic and political reality of the majority of the Guatemalans. This resulted in a low-intensity civil war lasting 36 years which finally ended on 26 December 1996 with the signing of comprehensive Peace Agreements between the Guatemalan government and the Guatemalan National Revolutionary Unity (URNG). At the beginning of the 1980s the conflict intensified under the administrations of Generals Romeo Lucas García (1978-1982) and Efraín Ríos Montt (March 1982-August 1983) who launched bloody military campaigns and scorched earth strategies at the indigenous country side as part of the counter insurgency war. Over 200,000 people were killed or disappeared during this conflict. Guatemala suffered 626 massacres, over 400 villages were totally destroyed, 1.5 million people were internally displaced and a refugee stream of 150,000 fled to Mexico. Of the mass scale of killings, massacres, forced disappearances and torture, the final report of the UN sponsored Commission on Historical Clarification (CEH), released in 1999, found that the army was responsible for 93 percent whereas the guerrillas were responsible for 3 percent of the gross human rights violations. Another crucial conclusion is that the large majority of the victims, 83.3 percent, of this internal armed conflict were indigenous Mayans. The departments<sup>65</sup> of El Quiché, Huehuetenango, Alta Verapaz and Chimaltenango were the most affected by the State repression while the ethnic groups who suffered the most human rights violations are the Quiché, Q'eqchi' and the Ixil (see maps 1 and 2). This shows a correlation between the ethnic groups that suffered the most human rights violations and the most affected departments of the country. The final report of the CEH also pointed out that between 1981 and 1983, 'the Army identified groups of Mayan people as the internal enemy, because it considered that they constituted or could constitute the basis of support for the guerrillas', and concluded that the acts of the Guatemalan State against the Maya people amounted to genocide. The fact that the majority of the victims are indigenous raises concerns about the extent that transitional justice efforts have taken into account this cultural context. This figure also brings up the

63. Edgar Esquit Choy y Ochoa Carlos García (eds.), *Yiqalil q'anej kunimaaj tzij niman tzij, El Respeto a la Palabra, El Orden Jurídico del Pueblo Maya*, Guatemala, Centro de Estudios de la Cultura Maya, 1995, 19-22.

64. Esteban Haeserijn, 'Filosofía popular de los K'ekchi' de hoy', *Guatemala Indígena*, 1975, Volumen X, 51.

65. Guatemala in total comprises 22 departments (*departamentos*) or provinces.

question whether the survivors have a specific cultural understanding of the conflict and culturally specific perceptions and needs.

Furthermore, the highly localized dimension and mass civilian participation in the large-scale human rights abuses makes the situation of Guatemala's internal armed conflict another example of what is labelled in post-conflict literature an 'intimate' crime.<sup>66</sup> A central tool of the military counter-insurgency strategy of total control of the rural indigenous areas was namely the imposition of the Civil Defence Patrols (*Patrullas de Autodefensa Civil* – PAC) system in the early 1980s.<sup>67</sup> These PACs were men between 15 and 60 years who functioned as the ears and eyes of the army in their villages. They were also forced to take over military tasks like sweeping areas for guerrillas and attacking so-called subversive villages. Their total number remains unclear, but at the peak of the conflict in the mid-1980s they numbered between 1,000,000 and 1,300,000 men. This has made these PACs the personification of the militarisation of rural indigenous areas. In such contexts of intimate crime, the qualification of who is victim is a difficult question because the violence created more 'grey zones'<sup>68</sup> than the clear victim-perpetrator dichotomy. This micro reality put forward the question about how victims and ex-PACs - individually and collectively - cope with these blurred lines and which factors foster and/or undermine local social recovery and reconciliation.

The comprehensive Peace Agreements of 1996 expressed the political will to deal with the root causes of the conflict which would allow a better distribution of wealth for the benefit of the people and to redefine the nation state as democratic, inclusive, multi-ethnic and pluri-cultural.<sup>69</sup> They offered an ambitious framework to dismantle the authoritarian and exclusionary state system constructed by economic and military elites. Fulfilment of the Peace Agreements constitutes a commitment of the Guatemalan State; however, progress in its compliance has been minimal.<sup>70</sup> In fact, 14 years after the official cease fire and the signing of the Peace Agreements, the road to reach a democratic multi-ethnic and pluri-cultural Guatemala State is still very

66. Other examples of such countries that suffered intimate crime are Mozambique, Bosnia-Herzegovina, Sierra Leone, Peru and Rwanda. For an in-depth discussion of intimate crime during Guatemala's internal armed conflict see Chapter 4.

67. For a further discussion see *ibid.*

68. Primo Levi, *Survival in Auschwitz*, New York, Touchstone, 1995.

69. Further reading of Guatemalan's transition to democracy and the Peace Agreements: Alain Rouquié, *Guerras y paz en América Central*, Mexico D.F., Fondo de Cultura Económica, 1994, p358; Rachel Sieder (eds), *Guatemala after the Peace Accords*, London, Institute of Latin American Studies – University of London, 1998, p 269; Susanne Jonas, *Of Centaurs and Doves: Guatemala's Peace Process*, Boulder CO, Westview Press, 2000, p299; William Stanley and David Holiday, 'Broad Participation, Diffuse Responsibility: Peace Implementation in Guatemala' In Stephan John Stedman, Donald Rothchild and Elizabeth Cousens (eds.), *Ending Civil Wars: The Implementation of Peace Agreements*, Boulder, Lynne Rienner Publisher, 2002, 421-462 and Roddy Brett, *Movimiento social, etnicidad y democratización en Guatemala, 1985-1996*, Guatemala, F&G Editores, 2006, p299.

70. Juan Méndez, 'Lessons Learned', in Due Process of Law Foundation (DPLF), *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington D.C., DPLF, 2007, 194; International Conference: The Guatemala Peace Accords Ten Years Later: An Analysis and the Outlook for International Cooperation, *Conclusions*, 2-3 May 2007, Brussels, Belgium; Impunity Watch, *Reconociendo el Pasado. Desafíos para combatir la impunidad en Guatemala. Informe de investigación*, Guatemala, Impunity Watch, 2010, 12-13.

long and covered with many obstacles. The main obstacles that have impeded their implementation are on the one hand the little political will on the part of the several post-conflict governments. The powerful economic, political, social and military minority sector, which benefits from extreme inequalities and have passed the armed conflict without significant changes, on the other. At the time of the peace negotiations and the signing of the Peace Agreements, discussions about how to reckon with the legacy of the gross human rights violations took place in Guatemala. As will further be elaborated, the succeeding post-conflict governments have never stimulated a clear policy to deal with this heavy burden of past mass atrocities. Instead, national and international human rights groups and victim organisations have pushed forward the thorny issues of justice, truth and reparations on the political and judicial agenda. The result is a patchwork of not clearly connected official and non-official efforts to take on these issues spread over the past 15 years.

### ***Ethnographic Field Research Among Maya Q'eqchi' Survivors***

The Maya Q'eqchi' ethnic group who live largely in the Alta Verapaz department and more specifically three regions of the Cobán municipality was chosen as the setting for long-term ethnographic field research.<sup>71</sup> My research stay in 2003 in that region had advanced my acquaintance with the local cultural reality of Q'eqchi' rural communities. Yet the choice of this region and this ethnic group as the research setting for this doctoral dissertation is based on other factors. These regions have historically been isolated and ignored by the State and also by international development aid agencies and non-governmental organisations (NGOs). And still today, in comparison with other affected regions such as the Western Highlands, Chimaltenango and Baja Verapaz, there lacks a strong presence by the State and external actors. Even academic research in the Alta Verapaz department addressing the conflict experiences has been limited in comparison to the other affected departments. The Maya Q'eqchi' are also an under researched ethnic group in contrast with other Mayan ethnic groups. Perhaps the remoteness of the regions as well as the fact that the large majority of the Q'eqchi' don't master a basic level of Spanish may explain this. These factors limit not only the physical accessibility to the communities, but also the interaction with the people, for foreign and Guatemalan researchers and development workers.<sup>72</sup> Therefore, an extended study of Maya Q'eqchi' survivors in Alta Verapaz would advance our general knowledge of this ethnic group.

The central research question addressed in this case study is how particularities of Maya Q'eqchi' culture could play or are already playing a role, at the local level in the aftermath of the internal armed conflict. This brings to the fore, questions regarding

71. Mayan Q'eqchi' live in smaller numbers in the department of El Péten and El Quiché, and also in Belize. The hardest hit municipalities by the internal armed conflict are Cobán, Chisec and San Cristobal.

72. The level of monolingualism among the Mayan Q'eqchi' ethnic group is 65.7% – the highest in the country. See Programa de las Naciones Unidas para el Desarrollo (PNUD), *Informe Nacional de desarrollo humano. Guatemala: Diversidad étnico-cultural: La ciudadanía en un estado plural*, Guatemala, PNUD, 2005, 399.

how Mayan Q'eqchi' survivors perceive and understand the driving goals of transitional justice. Thus the sub-questions are 1) How have Maya Q'eqchi' survivors culturally understood the gross human rights violations they have suffered during the armed conflict? 2) How do Maya Q'eqchi' survivors perceive the driven goals of transitional justice? 3) What is the meaning and significance that they give to concepts such as justice, reparation, truth recovery and reconciliation? 4) How are these meanings and significances linked with the Maya Q'eqchi' cosmovision and normative system? 5) How are Maya Q'eqchi' victims and ex-PACs restoring fragmented social relations in their communities? 6) What factors foster and/or undercut the reconstruction of communal life? 7) What are the perceptions of survivors to national transitional justice efforts? 8) How do these efforts tackle the local cultural realities of conflict-torn communities?

To address these sub-questions of the main research question I have opted to employ an anthropological ethnographic approach with a legal anthropological perspective, as further elaborated in Chapter 2. In total, I conducted 21 months of multi-sited ethnographic field research among Maya Q'eqchi' survivors in the micro regions of Nimlasachal, Nimlaha'kok and Salacium which belong to the municipality of Cobán (see map 3&4). This study would enable a multi-dimensional and multi-layered analysis of the specific local cultural context of Mayan Q'eqchi' survivors in Guatemala. In addition, another aim of this research was to link this micro level analysis with an examination of macro mechanisms, structures and debates related to transitional justice in Guatemala. Therefore, I conducted interviews with key stakeholders of national human rights groups, victim organisations and indigenous organisations as well as with interlocutors of the international community in Guatemala. At the same time, this research attempted to combine the empirical with the conceptual. This means that this study aimed to transcend the descriptive level of the case study and to make the leap to theory and the normative level of transitional justice related to cultural challenges. Indeed, the study intended to adapt and complement the theoretical concepts that have been developed in the framework of the debate on universality and diversity in human rights for their application in the new context of dealing with serious human rights violations in transitional societies.

## VOICES FROM THE SHADOWS

This study attempts to give voice to views and perceptions of Maya Q'eqchi' survivors on justice, reconciliation, truth recovery, and reparations and transitional justice processes which are currently covered up by different shadows. First, up to date transitional justice literature is largely focussed on the analysis of the international and national levels. This research by contrast presents local voices, through ethnographic accounts, concerning the needs, priorities, expectations and views of survivors. These voices 'from below' attempt at enriching the mainly 'from above' analyses in academic studies. As previously said, the current discussions and research about the role of traditional approaches and justice systems in transitional justice efforts is principally

stamped by African experiences. This study differentiates from this growing body of transitional justice literature as it recovers indigenous perspectives from Latin America which currently are under researched. Furthermore, at the level of Guatemalan society, Maya indigenous voices are currently unheard, under researched and even overshadowed by dominant ladino cultural views regarding transitional justice issues. Finally, this doctoral thesis endeavours to disclose views on justice, reconciliation, truth and reparation embedded in the philosophical, epistemological and ontological bases of the Mayan Q'eqchi' normative system which are until today shrouded by the mist of *secretos*.

### **The Structure of the Doctoral Dissertation**

This doctoral dissertation comprises seven chapters that together provide a multi-dimensional and multi-layered analysis of the role of the cultural context in transitional justice processes focussing on the perceptions of Maya Q'eqchi' survivors in post-conflict Guatemala. The core of this study has been or will be published in different international peer reviewed journals, yet here they are presented as five chapters. Each chapter zooms into the discussion of one particular research question, yet the lines of connection between these different chapters are intertwined and will be explained thereafter. This core has been complemented with this introduction, two additional introductory chapters and final conclusions.

Following this introduction, the general scene of the case study on Guatemala and the related field research is set out by two introductory chapters. The **first Chapter** offers first a panoramic view on the socio-political features of Guatemala's democratisation and transitional justice landscape. It looks at the link between the democratisation process and transitional justice which is, according to human rights activists, actually is lacking. Then the transitional justice landscape is discussed by zooming in respectively on the issues of truth, restoring dignity and memory; justice and accountability; reparations; reconciliation and finally the finding that Guatemala is a land of the eternal transition. Thereinafter, this chapter locates the cultural context in Guatemala's post-conflict processes by examining the rise of demands of collective rights by indigenous groups during the peace negotiations and the description of the characteristics of Mayan cosmivision and normative order. Finally, this chapter switches over to a description of the impact of the internal armed conflict at the local level of the Alta Verapaz department. A general socio-political background is provided as well as a sketch of Maya Q'eqchi' cosmivision. **Chapter two** discusses the different methodological choices which have been made when going local in post-conflict Guatemala. It explains why it has been opted to employ a legal anthropological approach to grasp 'emic understandings' among Maya Q'eqchi' survivors about the different transitional justice objectives as well as to study local transitional justice experiences and the encounter between macro level initiatives and micro level reality. After pointing out my locus of enunciation regarding the research, this chapter takes us to a discussion of the actual ethnographic encounter with Maya Q'eqchi'



survivors. The choice to conduct multi-sited ethnographic field research spread over four field research periods between 2006 and 2010 covering in total 21 months will be discussed. Here, reflections are also made about how gaining access and entering conflict-torn communities and regions, and the role of 'outsiders within', soundboards, knowledge brokers and gatekeepers. Thereinafter, the choice to apply methodological triangulation or multiple data collection techniques is justified and explained.

Then, **Chapters three and four** juxtapose the socio-political macro level context of post-conflict Guatemala with local and cultural realities of Maya Q'eqchi' transitional communities. The analysis of the field research data points at a difficult encounter between on the one hand national state initiatives and related civil society positions and the complex local level cultural reality of survivors of intimate crime on the other. Chapter three looks closer at the interplay between macro level transitional justice policies and micro level processes and perceptions by investigating the issue of financial compensation. In Guatemala, there are two state programmes aiming at redressing people affected by the internal armed conflict: the programme of compensation for ex-Civil Defence Patrollers and the National Reparations Programme that aids the victims. Both programmes have been created in a complex political but very polarized context and address the demands of what at the macro level is seen as two separate and homogenous groups: ex-civil patrollers or local perpetrators and victims. Nonetheless, at the local level of indigenous communities the lines between victims and perpetrators were blurred which has had a severe impact on local social recovery processes. Analysis of the gathered field data points at a mismatch between the macro and micro level which has the effect that these two state initiatives actually undercut the fragile local social recovery processes among Maya Q'eqchi' survivors. In Chapter four insights on how Maya Q'eqchi' view the National Reparations Programme (PNR) which has been created to redress victims of gross human rights violations suffered during the armed conflict are provided. This chapter shows that the encounter between the PNR with its beneficiaries is accompanied by many frictions. Ethnographic accounts disclose that the PNR does not address the real needs and priorities of victims, and lacks an inclusive and culturally sensitive design. The existence of Spanish-Q'eqchi' linguistic tangles reveal a clash between the design of the PNR, and Q'eqchi' norms and values. Moreover, the prioritisation of individual financial compensation, the strict legal and bureaucratic requirements, and also the exclusion of dead by forced internal displacement bring forth further frustration and suffering and shows that local culturally sensitive reparation measures are lacking.

Thereinafter, the study takes us to a deeper level uncovering that beneath the visual surface there is a hive of activities which at first glance is invisible. Ethnographic accounts disclose that Mayan Q'eqchi' survivors have and still do mobilize locally and culturally, practices and attitudes to tackle actively the heavy burden of the past. **Chapter five** discusses locally and culturally driven experiences on memorialisation, truth telling and historical memory recovery projects in the regions researched. The process of the creation of two local and cultural sites of memory in the region in the mid 1990s; the research project on the recovery of local memories of resistance and survival of 20 Maya Q'eqchi' and the elaboration of educational material based

upon that research are discussed. This analysis shows that Q'eqchi' survivors actively desire to recover, disseminate and transmit historical memory throughout the affected communities. This need has, however, not been addressed by the two national efforts of truth telling. Drawing on the discussion of these local processes, reflections are made about meanings and practices of local ownership in these kinds of processes. It is stated that outside actors should be able to acknowledge and take into account local perceptions and practices about coming to grips with the legacy of atrocities in the design and implementations of their interventions. **Chapter six** digs into local and cultural understandings of justice and reconciliation. It shows that these meanings are clearly grounded in the Mayan Q'eqchi' cosmivision and normative system. Ethnographic accounts of Mayan Q'eqchi' survivors disclose multiple ways of understanding justice, reconciliation, truth and reparation at the local level of transitional communities. In fact, these concepts are perceived very differently from interpretations in international law and transitional justice studies. Impunity, as defined by international law, is not the end of accountability, nor truth recovery or reparation. Here, the internal logic of the cosmos through an invisible spiritual force fosters social and spiritual repair at community level, explaining the absence of demands of justice by Q'eqchi' survivors. This chapter has been enriched with some reflections about the Maya Q'eqchi' normative system in order to complement the findings discussed in the chapter.

The final chapter, **Chapter seven**, addresses the general research question about the role of cultural contexts in transitional justice processes by critically linking and discussing insights from the academic debate in human rights law about cultural diversity, from legal anthropology and from the growing body of ethnographic field research in the transitional justice field. The chapter looks at how and what transitional justice can learn from the long ongoing universality-diversity debate in human rights law about the role of cultural contexts. Drawing lessons from this debate, the starting point of the emerging transitional justice paradigm should be that universal standards can and should accommodate cultural diversity and be responsive to local cultural realities. At the national level of transitional societies, transitional justice norms and policies should be drafted in a way that they make room for cultural diversity. Substantial dialogue and real participation of survivors are crucial to take into account survivors' ideas and expectations. Transitional justice scholarship should engage in researching the process of vernacularisation of transitional justice.

This study rounds up by highlighting the **main conclusions** of the case study and the research in general. **Recommendations** both to the national level of Guatemala as well to the transitional justice field - scholarship and policy making - are formulated.





1982

Se murieron en 1982

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## Certainty

"They can cut all the flowers  
But Spring will always return."  
Guatemala you will bloom.

Every drop of blood,  
every tear,  
every sob extinguished by bullets,  
every cry of horror,  
every shred of skin  
torn away in hatred  
by the anti-humans—  
will bloom.

The sweat that broke out  
of our anguish  
fleeing from the police  
and the sigh concealed  
in the most secret of our fears—  
will bloom.

We have lived a thousand years of death  
in a Homeland  
that will be together  
"An eternal Spring."

*Julia Esquivel*



# 1 Transitional Justice and Cultural Context in Post-Conflict Guatemala

## Introduction

Guatemala suffered a low-intensity war for 36 years which has left a human rights tragedy. Guatemala's transition to democracy was initiated in 1985 when a new constitution was enacted, national elections were organised and a civil government was installed. These changes were the result of an important shift in the international political climate in the 1980s. This new climate provided a context for a Central American peace initiative led by regional presidents and supported by the UN and a group of interested governments and international NGOs. Despite these important changes toward a civil democracy, a military regime was still ruling and the armed conflict was still going on. A negotiation process was initiated under the auspices of the international community – foremost the United Nations – between the Guatemalan State and the Guatemalan National Revolutionary Unity (URNG) to bring an end to the internal armed conflict. These negotiations took 11 years and resulted in the signing of a comprehensive Peace Agreement on 12 December 1996 between the Guatemalan State and the guerrilla forces.<sup>1</sup> These Agreements expressed the political will to deal with the root causes of the conflict which would allow a better distribution of wealth to the benefit of the people and to redefine the nation state as democratic, inclusive, multi-ethnic and pluri-cultural.<sup>2</sup> In fact, they offered an ambitious framework to dismantle the authoritarian and exclusionary state system constructed by economic and military elites. One of the outcomes was the establishment of a UN civilian peace

1. The Spanish versions of the different Peace Agreements can be found at: <http://www.congreso.gob.gt/> and the English translation of the Peace Agreements can be found at: <http://www.usip.org/resources/peace-agreements-guatemala>
2. Further reading on Guatemala's transition to democracy and the Peace Agreements: Alain Rouquié, *Guerras y paz en América Central*, Mexico D.F., Fondo de Cultura Económica, 1994, p358; Rachel Sieder (eds), *Guatemala after the Peace Accords*, London, Institute of Latin American Studies – University of London, 1998, p269; Susanne Jonas, *Of Centaurs and Doves: Guatemala's Peace Process*, Boulder CO, Westview Press, 2000, p299; William Stanley and David Holiday, 'Broad Participation, Diffuse Responsibility: Peace Implementation in Guatemala' In Stephan John Stedman (eds.), *Ending Civil Wars: The Implementation of Peace Agreements*, Boulder, Lynne Rienner Publisher, 2002, 421-462; Roddy Brett, *Movimiento social, etnicidad y democratización en Guatemala, 1985-1996*, Guatemala, F&G Editores, 2006, p299.

operation, the UN Verification Mission in Guatemala (MINUGUA) that would accompany the peace process for more than ten years (1994 – 2004).<sup>3</sup> In its final report of 2004, MINUGUA concludes that the ‘implementation of the agreements has been a tough uphill struggle, plagued by obstacles and setbacks and the resistance of powerful groups that feel threatened by change’.<sup>4</sup>

Even now, 14 years after the official ceasefire, the road of Guatemala’s transition to a strong democratic multi-ethnic and pluri-cultural State is still very long and covered with many road blocks. To date, the progress in enforcing the Agreements has been minimal.<sup>5</sup> The main obstacles that have impeded its implementation are on the one hand the little political will on the part of the several post-conflict governments. The powerful economic, political, social and military minority sector, which benefits from the extreme inequalities and has passed the armed conflict without significant changes, are the other stumbling block.

Although at the time of the peace negotiations the concept of ‘transitional justice’ was not yet setting the international agendas as it is now, discussions about how to reckon with the legacy of the gross human rights violations took place in Guatemala. Then, there was no political room for issues as justice and accountability as the peace negotiations took place ‘in a turbulent atmosphere which almost let collapse the peace process’.<sup>6</sup> The powerful sectors, the military and the economic elite, have seen the struggles for truth, justice and reparations as processes which would attack the peace in the country and as an attempt to continue with the conflict through other paths. So, in the period before the Peace Agreements it was impossible to promote transitional justice initiatives in its narrow sense of legal responses to the atrocities. Nevertheless, as will be discussed further, a Truth Commission Accord was signed in 1994 in the framework of the peace process, mainly as a result of the pressure of the international community and the strong lobby of national human rights groups. Indeed, it is important to note that from the early years of Guatemala’s democratic transition, national human right groups and victim organisations have been very engaged in the struggle for transitional justice issues as justice, truth, memory and reparation. Civil society’s initiatives play a key role in the Guatemalan post-conflict processes, whereas the State, due to a lack of political will, fails in complying with its obligations. Of course, the economic and military elites who impede the implementation of the Peace Agreements also resist and oppose the implementation of policy initiatives which deal with the legacy of the conflict. According to human rights defender Helen Mack the search for building a democracy has no clear links with applying transitional

3. MINUGUA operated under the terms of the Comprehensive Agreement on Human Rights, Mexico 29 March 1994.

4. MINUGUA, *Ninth Verification Report*, UN Doc A/59/307, 20 August 2004, 5.

5. Juan Méndez, ‘Lessons Learned’, in Due Process of Law Foundation (DPLF), *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington D.C., DPLF, 2007, 194; CIFCA, Grupo Sur and CIDSE *The Guatemala Peace Accords Ten Years Later: An Analysis and the Outlook for International Cooperation, Conclusions*, International Conference 2-3 May 2007, Brussels, Belgium; Impunity Watch, *Reconociendo el Pasado. Desafíos para combatir la impunidad en Guatemala. Informe de investigación*, 2010, 12-13.

6. *Ibid.*, 54.



justice mechanisms in Guatemala; de facto they are two distinct processes.<sup>7</sup> Where the transition to democracy started two decades ago, the search for truth, justice and reparation has only been stimulated for a decade.

In order to aid a better understanding of the research results of this present study which offer a 'transitional justice perspective from below', the following section highlights the main Guatemalans initiatives by the State and the civil society in addressing the main goals of transitional justice processes: truth, restoring dignity and memory, justice, reparation and reconciliation. Before moving to this section, it is necessary to make an important remark about the emergence of the concept of transitional justice in Guatemalan society.

In fact, this concept has only very recently found its way into the public discourses of the international community and national human rights groups in Guatemala. Interviews with several key stakeholders at the start of this field research in 2006 made clear that they were totally unfamiliar with the concept of *justicia transicional* (transitional justice) and its academic debates. It seems that the concept has been introduced by the UN system, namely through the work of the Office of the High Commissioner for Human Rights (OHCHR) that opened in 2005. In its first official report to the UN Commission of Human Rights, all national efforts related to justice, reparation, truth recovery and reconciliation are presented under the umbrella of transitional justice.<sup>8</sup> This office of the OHCHR dedicated a Human Rights Bulletin in 2006 to the definition of transitional justice which is based on the report of 2004 of the UN Secretary-General Kofi Anan about the rule of law and transitional justice in conflict and post-conflict societies.<sup>9</sup> Further, the concept of transitional justice also surfaced in the draft of the first report on the work of the National Reparation Programme (PNR) sponsored by the Programme to Support the Process of Peace and National Conciliation (PCON) of the German Technical Cooperation (GTZ). It seems that the GTZ wanted to reframe its future projects under the transitional justice umbrella.<sup>10</sup> By the end of 2009 and the beginning of 2010, the term had become a buzz word among stakeholders of human rights organisations and international cooperation. Then the United National Development Programme (UNDP) completed the design of a new national-level project with the name Transitional Justice Programme (PAJUST) that started in the course of 2010 and that will last 5

7. Helen Mack, 'Justicia transicional en Guatemala: la confrontación política y la crisis de gobernabilidad diluyen las opciones para examinar el pasado', In Mo Bleeker, Javier Ciurlizaa y Andrea Bolañol-Vargas (eds.), *El legado de la verdad: Impacto de la justicia transicional en la construcción de la democracia en América Latina*, International Centre of Transitional Justice, 2007, 51-55.
8. *Report of the High Commissioner for Human Rights on the situation of human rights in Guatemala*, UN DOC. E/CN.4/2006/10/Add.1, 1 February 2006.
9. Oficina del Alta Comisionado de las Naciones Unidas para los Derechos Humanos in Guatemala (OACNUDH), *Boletín Derechos Humanos. Derechos Humanos y Justicia de Transición*, Guatemala, OACNUDH, 2006, p2.
10. Personal communication with the head of the PCON, March 2007. In fact, the director of the PNR became familiar with the concept at the International Conference 'Building a Future on Peace and Justice', in Nuremberg, Germany (25-27 June 2007) which he attended together with the head of the PCON-programme of the GTZ. Interestingly, transitional justice became a buzz word among PNR staff during the future meetings to prepare the report.

years.<sup>11</sup> The PAJUST has as its main objective the support and strengthening of civil society's initiatives and of the State to foster national reconciliation. The main State counterparts are the PNR, Secretariat of Peace (SEPAZ), Presidential Commission on Human Rights (COPREDH), the National Police Archives of Guatemala (AHPN) and Public Military (MP). The PAJUST also supports the work of national NGOs: the Foundation of Forensic Anthropology of Guatemala (FAFG) and International Institute of Learning for Social Reconciliation (IARS). From my conversations and interviews during the research period of 2010, I ascertained that many interlocutors link the term transitional justice with the UN system and interpret it as a new UN framework, but are ignorant about the fact that it is a field of scholarship and practice with long ongoing debates and is an emerging international paradigm.

## **Guatemala's Transitional Justice Landscape: a Patchwork**

Although Guatemala has only recently become familiar with the term transitional justice, it has carried out several initiatives of the transitional justice agenda to respond to the legacy of the armed conflict. Guatemala's transitional justice landscape looks, however, much more like a patchwork than a sophisticated traditional Mayan woven textile. It is clear that the successive post-conflict governments have never promoted a transitional justice policy. Instead, national and international human rights groups and also victims' organisations have pushed forward the thorny issues of justice, truth and reparations on the political and judicial agenda. However, each organisation has been working from its own perspective to specific issues and a comprehensive approach among the different organisations is lacking. This brief sketch of the transitional justice landscape will also show that a national reconciliation process has never been stimulated.

### ***Truth, Restoring Dignity and Memory***

In the wake of the peace negotiations two major truth-seeking initiatives have been organised in Guatemala. During the peace negotiations, under strong pressure from national civil society organisations and international cooperation, a Truth Commission Accord was signed between both negotiating parties in 1994 which created the Historical Clarification Commission (CEH). The purpose of the U.N. sponsored CEH was to investigate violations committed during the armed conflict, clarify the

11. Personal communications with UNDP programme officials, March 2010. Transitional Justice is a new umbrella name for all initiatives related to justice, reparation, truth recovery and reconciliation. In fact, the PAJUST absorbs and gives continuation to two other UNDP programmes about 'Support to the signification and psychosocial attention to victims of the armed conflict (DIGAP) and 'Alliances with Civil Society' (PASOC). The PAJUST is funded by the United States Agency for International Development (USAID), Swedish International Development Cooperation Agency (SIDA/ASDI) and the Netherlands Development Cooperation.

causes and consequences of that conflict, and formulate specific recommendations to preserve the memory of the victims, to foster a culture of mutual respect and observance of human rights, and to strengthen the democratic process.<sup>12</sup> Human rights groups were however very critical of the Truth Commission Accord because of its narrow mandate which was precluded from naming those responsible for the human rights abuses and would have no legal implication.<sup>13</sup> After 18 months of investigation the CEH published its final report 'Guatemala: Memory of Silence' in February 1999, based upon over 8,000 testimonies.<sup>14</sup> Despite the initial criticism, the conclusions and recommendations of its final report were far stronger than initially predicted. Perhaps the CEH's strongest and most controversial conclusion was that the State had committed genocide against the Mayan people. On the basis of the patterns of violent acts in four regions<sup>15</sup> the CEH concluded that, 'agents of the State of Guatemala, within the framework of counterinsurgency operations carried out between 1981 and 1983, committed acts of genocide against groups of Mayan people'.<sup>16</sup> In fact, 'the massacres, scorched earth operations, forced disappearances and executions of Mayan authorities, leaders and spiritual guides, were not only an attempt to destroy the social base of the guerrillas, but above all, to destroy the cultural values that ensured cohesion and collective action in Mayan communities'.<sup>17</sup> The CEH also recognises that they have 'information that similar acts [of genocide] occurred and were repeated in other regions inhabited by Mayan people'.<sup>18</sup> Another crucial conclusion was that the underlying historical roots of the conflict are the 'structural injustice, the closing of political spaces, racism, the increasing exclusionary and anti-democratic nature of institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts'.<sup>19</sup> The CEH attributed, in line with its mandate, responsibility for human rights violations not to individuals yet to institutions, demonstrating that 93% of the investigated cases were attributable to the State and 3% to the URNG. Its final extensive chapter about recommendations suggested four kinds of measures: the preservation of the memory of the victims; the compensation of the victims; to foster a culture of mutual respect and observance of human rights;

12. Agreement on the establishment of the Commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer, Oslo, 23 June 1994.
13. See Richard A. Wilson, 'The Politics of Remembering and Forgetting in Guatemala', in Rachel Sieder (ed.), *Guatemala after the Peace Accords*, London, University of London – Institute of Latin American Studies, 1998, 181-195.
14. Comisión para la Esclarecimiento Histórico (CEH), *Guatemala: Memoria del Silencio. Tz'inil Na'Tab'Al*, Guatemala, UNOPS, 1999, 8 Volumes. Also available at: <http://shr.aas.org/guatemala/ceh/mds/spanish/>
15. Maya-Q'anjob'al and Maya-Chuj, in Barillas, Nentón and San Mateo Ixtatán in North Huehuetenango; Maya-Ixil, in Nebaj, Cotzal and Chajul, Quiché; Maya-K'iche' in Joyabaj, Zacualpa and Chiché, Quiché; and Maya-Achi in Rabinal, Baja Verapaz
16. CEH, *supra* note 14, conclusions.
17. *Ibid.*
18. *Ibid.* In fact, a recent study on the impact of the armed conflict among Maya Q'eqchi' demonstrates that among this ethnic group genocide has also occurred. See Alfonso Huet, *Nos Salvó La Sagrada Selva. Memoria de Veinte Comunidades Q'eqchi'es que sobrevivieron al Genocidio*, Guatemala, Imprenta Maya Na'oj, 2008, p355.
19. *Ibid.*

for strengthening the democratic process. It also contained other recommendations to favour peace and national harmony and to establish a body responsible for promoting and monitoring the implementation of its recommendations.

It is clear that the CEH's final report discussed several sensitive subjects for Guatemalan society which caused controversy in the different social sectors. Right-wing sectors criticised the report as biased, but neither the Arzú government nor the military openly criticised the findings.<sup>20</sup> In fact, 'the document felt in a political vacuum'.<sup>21</sup> The Arzú government official reaction was that the CEH's recommendations were already carried out as part of the implementation of the Peace Agreements.<sup>22</sup> In fact, a few days before the release of the report president Arzú had publically acknowledged and proclaimed pardon for State participation in actions during the conflict without specifying which kind of actions or in what kind of context.<sup>23</sup> Even to this day, the controversy in Guatemalan society over the CEH's conclusions about genocide and racism persists and the different ideological sectors have maintained their positions.<sup>24</sup>

The CEH was an important landmark in Guatemala's transitional justice process; therefore it is important to look at its impact and the progress in the implementation of its recommendations. In 2004, MINUGUA stated in her verification report on 5 years of the presentation of the CEH report that 'we observe with anxiety that the advances have been scarce. The volume of outstanding tasks on the agenda of national reconciliation gives the new authorities the challenge of responding with high-mindedness and responsibility, to thousands of Guatemalans who are still waiting for the State, a response that cannot continue to be delayed'.<sup>25</sup>

In the context of the tenth anniversary of the release of the final report of the CEH in 2009, human rights defender Claudia Samayoa took stock of the progress made in the implementation of the recommendations.<sup>26</sup> She concludes that in comparison with five years ago 'it is indisputable that a few more advances have been made; however the magnitude of the challenges has increased considerably'.<sup>27</sup> She points out there have been advances in the issues of reparations and restoring dignity. Yet, the absence of a systematic action plan regarding the entirety of the recommendations makes the impact of these advances pale before the increase of the dynamic of militarisation, violence and impunity in the country. As will be further analysed in Chapter 4, the

20. Rachel Sieder, 'War, Peace, and the Politics of Memory in Guatemala', in Biggar Nigel (ed.), *Burying the past. Making peace and doing justice after civil conflict*, Washington, Georgetown University Press, 2002, 193.

21. Mack, supra note 7, 55.

22. Ibid. and Claudia Samayoa, 'Evaluación del Cumplimiento de las Recomendaciones de la Comisión para el Esclarecimiento Histórico', in Impunity Watch, *La Persistencia de la Verdad. A diez años del Informe de CEH*, Guatemala, Impunity Watch and La Convergencia por los Derechos Humanos, 2009, 48.

23. Ibid.

24. Ibid. Martínez, 'Un Pasado que (no) Conviene Recordar: el debate alrededor del Informe de la CEH', in Impunity Watch, *La Persistencia de la Verdad. A diez años del Informe de CEH*, Guatemala, Impunity Watch and La Convergencia por los Derechos Humanos, 2009, 13.

25. MINUGUA, *El Estado de Cumplimiento de las recomendaciones de la Comisión para el Esclarecimiento Histórico. Informe de Verificación*, Guatemala, MINUGUA, 2004, 9-10.

26. Samayoa, supra note 22, 45-66.

27. Ibid, 65.

State has taken steps regarding the issue of reparation with the establishment of a National Reparation Programme. The issues of forced disappearances and the search for disappeared people have become more visible on the public agenda thanks to the pressure and work of human rights groups, international organisations and the Guatemalan Human Rights Ombudsservice (PDH). Regarding the dissemination of the findings of the CEH's final report and the inclusion of the historical memory in the education system, crucial steps are still pending.<sup>28</sup> Samayoa also states that there has been some advances concerning the dignification of the victims, yet mainly under the pressure of some judgments of the Inter-American Court of Human Rights. In comparison with five years ago, currently there are more official guidelines about how the Public Ministry should create mechanisms regarding the realisation of exhumations of clandestine mass graves. In general, Samayoa observes that the obstacles that curb substantial advances in the implementation of the CEH's recommendations are closely linked with the resistance to assume the conclusions and to act on them. Crucial is the creation and implementation of a specialised body that is charged with the monitoring of the overall and comprehensive implementation. To date, such a mechanism has not been implemented yet.

The first extensive national report into the dynamics of the armed conflict and the past human rights abuses was in fact published by the Human Rights Office of the Catholic Archdiocese (ODHAG). The Catholic Church set up a project for Recovery of Historical Memory (REMHI) mainly to support the CEH, but also because many Catholic priests and catechists were killed during the conflict. So, REMHI was not created in the framework of the peace negotiations, nor was it a commitment between the State and the URNG. The analysis of the result of almost 5,000 testimonies was embedded in a report published in April 1998 by Monsignor Juan Gerardi, the driving force behind REMHI. The report was called 'Guatemala: Never Again' and was based on 3 years of extensive research throughout the country. REMHI managed to use the extensive networks of the Catholic Church in the rural areas which gave access to crucial direct information about the lived experiences during the conflict. The report would come to similar conclusions as the CEH and revealed that the Guatemalan army was responsible for 90% of the human rights abuses and that at least 400 massacres had occurred in the country. Two days after the presentation of REMHI, Monsignor Gerardi was assassinated in his garage. The investigation and trial to bring to justice the material and intellectual authors of this murder has been one of the most highly publicised and bizarre trials in Guatemalan history. Over the course of 3 years, a judge, a prosecutor, and a key prosecution witness fled the country after saying that they had received death threats. Two grenades exploded at the house of one of the presiding judges the night before the trial opened. Finally, on 8 June, 2001, three high ranking military officials were convicted of the murder of Gerardi and were each sentenced to 30 years in prison. A Catholic priest was convicted of complicity and sentenced to 20 years in prison. This was another landmark in Guatemala's transitional justice process

28. This will be discussed in depth in Chapter 5.

as it was the first time that members of the military had faced trial before civilian courts and a court had pronounced a judgment related to the internal armed conflict. It is important to note that the work of REMHI provoked 'a process in Guatemala's society which is in itself an invaluable contribution in breaking the public silences and resisting legal impunity'.<sup>29</sup> The murder of Gerardi stopped virtually the fourth and final phase of the REMHI project which was the return and dissemination of the report to the survivors and the engagement in a reconciliation process at the local level of the affected communities.<sup>30</sup> Only a few REMHI teams continue their work such as the REMHI-Alta Verapaz and REMHI-San Marcos. Nonetheless, the impact of the REMHI has been considered higher than the final report of the CEH, because at least some dissemination of the report happened.<sup>31</sup>

The many exhumations of clandestine mass graves executed over the past two decades are other important efforts which play a crucial role in uncovering the truth and restoring the dignity of those who died during the conflict. In fact, exhumations may serve 'to facilitate closure of grieving processes, permit fulfilment of long-delayed, cultural and religious obligations around death, honor the victims, square the historical record, acquire critical evidence for bringing legal actions, and confront grievances between opposing factions'.<sup>32</sup> Human rights groups and victim organisations had already been initiated in the late 80s' exhumation processes in the rural areas most affected by the conflict which challenged the veil of silence. Currently, three organisations of civil society are involved in exhumations: Centre of Forensic Analysis and Applied Science (CAFCA), Foundation of Forensic Anthropology of Guatemala (FAFG) and Human Rights Office of the Catholic Archdiocese (ODHAG).<sup>33</sup> Over the last 16 years they have realised 962 exhumations and recovered 5,469 skeletons.<sup>34</sup> Currently, processes of exhumations in communities are always accompanied by psychosocial counselling offered by NGOs specialised in mental health such as the Team of Communitarian Studies and Psychosocial Action (ECAP), Association Utz K'aslemaal, Maya Centre Saq B'e and the Group of Mutual Support (GAM). After the exhumation the remains are taken to Guatemala City for forensic analysis, to confirm the identification of the victim, as well as to determine the cause and circumstances of the death. This process may take several months after which the remains are returned to the families for reburial according to the local and cultural rituals.

29. Wilson, *supra* note 13, 190.

30. Dave Lindstrom, *Putting the Pieces Back Together*, Foundation for Human Rights in Guatemala (FHRG), 2001. Available at: <http://www.fhrg.org/mambo/index.php?option=content&task=view&cid=16&Itemid=>; ODHAG, *Movilizando la memoria: a 10 años del REMHI*. Guatemala, ODHAG, 2008, 34.

31. Mack, *supra* note 7, 56.

32. M. Brinton Lykes and Marcie Mersky, 'Reparations and mental health: psychosocial interventions towards healing, human agency, and rethreading social realities', In Pablo De Greiff (ed.), *The Handbook of Reparations*, Oxford, Oxford University Press, 2006, 612.

33. FAFG is the biggest organisation which encompasses 90 people who formally work on forensic exhumations. CAFCA and ODHAG are not only dedicated to exhumations but also to activities concerning human rights and justice.

34. Impunity Watch, *supra* note 5, 36.

Another important truth-recovery initiative is the efforts to recover the archives of the National Police and the army. In July 2005 officials from the Human Rights Ombudsman (PDH) entered a munitions depot in Guatemala City to investigate complaints about improperly stored explosives. By coincidence they discovered an enormous collection of documents, stored in five buildings and in an advanced state of decomposition. The documents belonged to the National Police, a branch of Guatemala's security forces which played a crucial role in forced disappearances, torture, assassinations and abductions during the armed conflict. The newly discovered police archives 'promises to be one of the most revealing collections of military or police records ever discovered in Latin America'.<sup>35</sup> The PDH estimates that the volume of the archives is 80 million pages or an estimated 4.5 kilometres covering a time period of a century. Therefore, the PDH created, in December 2005, the Project to Recuperate the Historical Archive of the National Police (PRAHPN) to recuperate, digitise and systemise documents, photographs and other materials. Currently, the PRAHPN prioritises the classification and analysis of documents concerning the period between 1975 and 1985 which is the most violent period of the internal armed conflict. In its first extensive report 'The Right to Know', presented in March 2009, the PDH describes and analyses the structure and functioning of the National Police during the period of 1975-1985, the relations between the National Police and other security forces, and the role of the National Police during the armed conflict, and discusses several emblematic cases.<sup>36</sup>

Finally, the current president Colom announced, just a month after his appointment, on 25 February, 2008 which is the National Day of the Dignity of the Victims, that the military archives would be opened to the public, 'so we can know the truth, to start building on a foundation of truth and justice'.<sup>37</sup> The government Secretary of Paz (SEPAZ) would be the official institution responsible for receiving the archives. Nonetheless, up to date the military has refused to declassify all the files, arguing that this would threaten national security while ignoring instructions from the president of the Republic and judicial orders. Some progress has been made, as in March 2009, the Minister of Defence passed two major military plans Victoria 82 and Firmeza 83, although incomplete, to the national court in the genocide trial brought by the Association of Justice and Reconciliation (AJR) (see *infra*). According to the director of the Legal Centre for Action on Human Rights (CALDH), 'It is historic that the Army has had to turn over these pieces of evidence. It is a tacit recognition of their responsibility. The locks to achieving justice have been removed'.<sup>38</sup> Another important breakthrough in the same genocide case was the handover by the Guatemalan government of a copy of the famous military document 'Plan Sofia' which contains maps, telegrams and handwritten patrol reports to the Public Prosecutors'

35. Kate Doyle, *The Guatemalan Police Archives*, National Security Archive Electronic Briefing Book No 170, 21 November 2005. Available at: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB170/>

36. Procurador de los Derechos Humanos de Guatemala, *Informe especial del Archivo Histórico de la Policía Nacional. El Derecho a Saber*, Guatemala, PDH, 2009, p 262.

37. Prensa Libre, *Alvaro Colom ofrece abrir archivos militares*, 26 de febrero 2008.

38. NISGUA, *Breakthrough in Guatemala's Genocide Cases*, 15 March 2009. Available at: [http://www.nisgua.org/themes\\_campaigns/index.asp?id=3382](http://www.nisgua.org/themes_campaigns/index.asp?id=3382)

office in April 2010.<sup>39</sup> According to Doyle, these documents ‘record the military’s genocidal assault against indigenous populations in Guatemala’.<sup>40</sup>

### **Justice and Accountability**

A key demand from Guatemalan human rights groups is that those responsible for the atrocities are held accountable and brought individually to justice. During the peace negotiations, they, concerned that both negotiating parties would agree a blanket amnesty law for the military, had formed the Alliance Against Impunity to lobby against such an amnesty.<sup>41</sup> In December 1996, the government and the URNG agreed to amnesty provisions which came into effect in the, ironically titled, National Reconciliation Law<sup>42</sup>. This legislation clears anyone who has committed a political crime or publically motivated common crime related to the armed conflict, of criminal responsibility. The law explicitly excludes ‘those crimes which violate fundamental rights’ and specifically mentions genocide, torture and forced disappearance. On the basis of this law, amnesty has been granted only in cases of common crimes of ex guerrilleros, such as the illegal possession of arms, but never in relation to soldiers for crimes such as murder, homicide and kidnapping.<sup>43</sup>

For the successful pursuit of justice for massive human rights violations, a reliable and effective justice system is crucial. The CEH has demonstrated that the ineffectiveness of the judicial system is not a result of the armed conflict, yet, ‘Whether through acts of commission or omission, it [judicial system] contributed to worsening social conflicts at various times in Guatemala’s history’.<sup>44</sup> The report goes further, stating that impunity permeated the country ‘to such an extent that it took control of the very structure of the State, and became both a means and an end. As a means, it sheltered and protected the repressive acts of the State, as well as those acts committed by individuals who shared similar objectives; whilst as an end, it was a consequence of the methods used to repress and eliminate political and social opponents’.<sup>45</sup>

The Peace Agreements provided a unique opportunity to redefine Guatemala’s judicial branch, the Army and the policing institutions and strengthened the rule of law. The Agreement on the Strengthening of the Civil Power and on the Role of the Armed Forces in a Democratic Society is crucial.<sup>46</sup> It called for a set of constitutional reforms, legal reforms, administrative measures and the constitution of the Commission

39. Reuters, *Guatemala hands over a key file in army genocide case*, 22 April 2010. Available at: <http://www.reuters.com/article/idUSTRE63L6GF20100422>

40. The National Security Archive, *Operation Sofia. Documenting Genocide in Guatemala*, National Security Archive Electronic Briefing Book No 297, 2 December 2009. Available at: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB297/index.htm>

41. Margaret Popkin and Nehal Bhuta, ‘Latin American Amnesties in Comparative Perspective: Can the Past be Buried’, *Ethics and International Affairs*, Vol. 13, issue 1, 1999, 116.

42. Ley de Reconciliación Nacional, Decreto 145-1996.

43. Impunity Watch, *supra* note 5, 51.

44. CEH, *supra* note 14, Conclusions, § 10.

45. *Ibid.*

46. The Agreement on the Strengthening of the Civil Power and on the Role of the Armed Forces in a Democratic Society, Mexico City, 19 September 1996.



of Strengthening of the Justice. In the framework of this Agreement an important reform and modernisation process of the judicial system has been implemented. This started with the approbation of a new Procedural Penal Code, the establishment of the Public Prosecutor as an autonomous institution and several constitutional reforms in 1993.<sup>47</sup>

Despite these reforms, the judicial system fails to effectively bring cases of human rights violations to court due to institutional and practical barriers. The main institutional barriers<sup>48</sup> are the intimidation, threats and assassination of judicial operators, and everyone who collaborates with the justice branch. The system is permeated with corruption and political assignments of judicial officials. Further, the influence of high ranking military in the assignments to people of important hierarchical functions in the judiciary is still very high. There is also a clear lack of willingness to investigate and prosecute grave offences. The adoption of legislative measures tends to hamper judicial action against violent acts and human rights violations. Finally, the penal prosecution system relies on little financial and human resources. In addition, victims also face many practical obstacles to participating in judicial processes against perpetrators of human rights violations.<sup>49</sup> There is a lack of physical access to the judicial institutions and an insufficient presence of those institutions in rural areas. Further, they are confronted with the high financial costs of the procedures and monolingual judicial officials. Racism is still deeply rooted among judicial officials towards indigenous victims. These obstacles impede substantial progress in bringing to trial those responsible for the atrocities during the conflict.

In what follows, the advances regarding justice and accountability are highlighted. It is important to note that all progress is thanks to the persistent efforts, the courage and pugnacity of the victims and their defenders. The figure of a complementary prosecutor (*querellante adhesivo*) in Guatemala's Procedure Penal Code is an important vehicle for victims and human rights organisations because it gives them the opportunity to participate in criminal proceedings by co-supporting the prosecutor and by asking to undertake certain judicial inquiries.<sup>50</sup>

47. For a more in-depth discussion of the reforms, see Comisión Nacional para el Segimiento y Apoyo al Fortalecimiento de la Justicia, *Informe 'Una nueva justicia para la paz'. El proceso de implementación 1998-2004*, Guatemala, Magna Terra, 2005, p377; Rachel Sieder, 'Renegotiating 'law and order': judicial reforms and citizen responses in post-war Guatemala', *Democratization*, Vol. 10, Issue 4, 2003, 137-160; Yolanda Pérez Ruiz, 'La contribución de la justicia penal al fortalecimiento del Estado de Derecho. Caso de Guatemala', In Mo Bleeker, Javier Ciuurizaa y Andrea Bolañol-Vargas (eds.), *El legado de la verdad: Impacto de la justicia transicional en la construcción de la democracia en América Latina*, International Centre of Transitional Justice, 2007, 103-107.

48. For more details see: Fundación Myrna Mack, *Justicia Transicional: Una Deuda Pendiente*, Guatemala, Fundación Myrna Mack, 2010, 2-3 and Impunity Watch, supra note 5, 74-77.

49. See: Fundación Myrna Mack, *Ibid.*, 6-9.

50. Impunity Watch, supra note 5, 50.

For ten years there has been a genocide case under investigation with the Guatemalan Public Prosecutors' Office; however, there have been no significant advances. In 2000 the Guatemalan Reconciliation Association for Justice (AJR), which represents several indigenous communities, with the assistance of the CALDH filed a lawsuit against officials of the administration of General Lucas García.<sup>51</sup> They charged them with responsibility for ten massacres carried out while he was in power from July 1978 to March 1982. A year later the two organisations charged General Ríos Montt and other former army leaders with genocide, war crimes and crimes against humanity during his regime from 1982-1983. At the time of the charge, 2001, General Ríos Montt was head of the Congress. Although the CALDH and AJR have demanded repeatedly to interrogate Ríos Montt, the Public Prosecutor has not yet fulfilled this demand.<sup>52</sup> As previously mentioned, the recent release and handover of important military documents was a substantial breakthrough for these genocide cases. Besides this domestic genocide case, it is important to note that several victims and human rights groups have turned to international justice, making use of the principle of universal jurisdiction. In 1999, Nobel Peace prize winner Rigoberta Menchú and a group of Spanish and Guatemalan NGOs presented a lawsuit in Spain against several senior Guatemalan government officials accusing them of terrorism, genocide and systematic torture.<sup>53</sup> Six officials, among them general Efraim Rios Montt, were formally charged on 7 July 2006 to appear in the Spanish National Court after Spain's Constitutional Court ruled in 2005 that Spanish courts can exercise universal jurisdiction over human rights violations committed during the internal armed conflict. The investigational phase is still going on, and in 2008 and 2009 the Spanish judge heard testimonies from Mayan survivors and also from international and Guatemalan experts. In Belgium the families of Walter Voordeckers, who was killed in 1980, Serge Berten, who disappeared in 1982, and filed charges against several Guatemalan government officials in January 2001 making use of the Belgian genocide law.<sup>54</sup> Also this investigation is still going on. Regarding genocide, it is also important to note that the Inter-American Court of Human Rights has ruled in its judgment on the Plan de Sánchez massacre of 1982 that genocide had taken place and attributed it to the army forces of the Guatemalan government.<sup>55</sup>

The final report of the CEH documented 669 massacres, but only in three cases have those who were materially responsible been convicted by national courts.<sup>56</sup> Furthermore, only six of the 962 exhumations executed over the past 15 years have contributed to criminal investigation of judicial processes related to the armed

51. For more information see: <http://www.caldh.org/>

52. Impunity Watch, *supra* note 5, 67.

53. For more information on this case, see the Centre for Justice and Accountability (<http://www.cja.org>) which since 2006 has been legal counsel in this case.

54. Belgian Law of 23 April 2003, Wet tot wijziging van de wet van 16 juni 1993 betreffende de bestraffing van ernstige schendingen van het internationaal humanitair recht en van artikel 144ter van het Gerechtelijk Wetboek (1), *Belgian Monitor* 7 May 2003, For more information, see <http://www.guatebelga.be>

55. Inter-American Court of Human Rights, Plan de Sánchez massacre v. Guatemala, 29 April 2004, IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr))

56. Massacre of Santiago Atitlán (1993), Massacre of Xaman (May 2004), Case Rio Negro (May 2008).

conflict.<sup>57</sup> An important step however, is that in 2005, in response to strong demands by several human rights groups, the Public Prosecutor's Office created a Section of Human Rights in which a unit is responsible for special cases, human rights violations and historical clarification.<sup>58</sup> Between July 2005 and June 2008 this special unit received 166 charges of which 163 were related to the armed conflict of which the majority concerned forced disappearances.<sup>59</sup> Significantly, after 3 years of functioning, this unit has yet not started any legal proceedings or taken a case to court.<sup>60</sup>

Very recently there have been two milestone judgments related to forced disappearance which set an important precedence in a context of total impunity and give hope to human rights organisations and other victims that other cases of gross human rights violations can be brought to justice. On 31 August, 2009 the first trial for forced disappearance in the Guatemalan court system took place in which ex-military commissioner Felipe Cusanero Coj was condemned to 150 years in prison for the disappearance of six people in Pachalum, San Martín Jilotepeque, Chimaltenango, from 1982-84. A few months later, on 3 December 2009, a new verdict on forced disappearance came into effect in which for the first time a high-ranking military official was sentenced. A former military official and three former commissioners were condemned to 53 years in prison for the forced disappearance and illegal detention of six people in El Jute, Chimaltenango in 1981. Significantly, the tribunal also ordered an investigation of the former defence minister, the former head of Defence Security, and other officials and soldiers assigned to the same military base as the guilty parties in 1981. Both sentences, however, do not provide any reparation measures for the relatives.

Significant are also the recent steps undertaken by the Guatemalan judicial system in response to a sentence of the Inter-American Court of Human Rights. On 24 November 2009, the Court sentenced the Guatemalan State for the massacre of 251 habitants of the community Dos Erres, Libertad, Petén Department which occurred on 6 and 8 December 1982.<sup>61</sup> The Guatemalan Association of the Families of the Disappeared (FAMDEGUA), with the assistance of the Washington-based Centre of International Law (CEJIL) brought the case to the Inter-American system in 1996. In 2000 a 'friendly settlement' was reached between the Guatemalan government and the survivors. A key element of the settlement was that the Guatemalan State would investigate and bring to justice those intellectual and material responsible for the massacre. In July 2008, in the absence of any progress in the investigation, the Inter-American Commission on Human Rights re-submitted the case to the Inter-American Court. Now, the Court ordered 'to effectively direct the investigations so as to identify, prosecute, and punish those responsible for the crimes committed in Las

57. Impunity Watch, *supra* note 5, 35. The cases are: Massacre of Rio Negro, Massacre of Plan de Sanchez, multiple human rights violations en Tuluché, Relatives of Anabelle Gargina and the Massacre of Pachalum.

58. Impunity Watch, *supra* note 5, 56.

59. *Ibid.*, 59.

60. *Ibid.*

61. Inter-American Court of Human Rights, "Las Dos Erres" massacre v. Guatemala, 24 November 2009, IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr))

Dos Erres, and remove all obstacles, *de facto* and *de jure*, which maintain the case in impunity'.<sup>62</sup> In compliance with this verdict, the Guatemalan Supreme Court of Justice declared 8 February 2010, the immediate execution of the sentence and consequently ordered the competent court to continue with the prosecution of persons accused and those responsible for these human rights violations.<sup>63</sup> In response, the justice system issued 17 simultaneous arrest warrants for ex-military, which had never been seen in Guatemalan history. In the meantime, authorities of the United States in May arrested three ex-military who had been involved in this massacre.<sup>64</sup> To conclude, it seems that the Guatemalan judicial system shows some openness to deal with the past atrocities and thus the ruling impunity is slowly crumbling.

### **Reparations for Gross Human Rights Violations**

During the peace negotiations the Guatemalan State and the URNG recognised by means of the General Agreement on Human Rights of 1994 that 'it is a humanitarian duty to compensate and/or assist victims of human rights violations. Said compensation and/or assistance shall be effected by means of government measures and programmes of a civilian and socio-economic nature addressed, as a matter of priority, to those whose need is greatest, given their economic and social position'.<sup>65</sup> In addition, the CEH recommended in its final report of 1999 the installation of an ambitious national reparation programme over ten years which should include a series of measures inspired 'by the principles of equality, social participation and respect for cultural identity'.<sup>66</sup> The proposed measures are: restoration of material possessions, economic compensation, psychosocial rehabilitation and reparation as well as restoration of individual dignity and satisfaction. The CEH calls further for the implementation of individual and collective reparatory measures. The collective measures should be implemented in such a way 'as to facilitate reconciliation between victims and perpetrators, without stigmatising either'.<sup>67</sup> According to the CEH the active participation of Guatemalan society is vital in the definition, execution and evaluation of the reparation programme.<sup>68</sup> In fact, this participation is especially important in the case of the Mayan population and also regarding the design of collective reparation measures in defining their priorities.

62. *Ibid.*, §233.

63. See CEJIL, *Guatemalan Supreme Court Orders to Proceed Immediately with the Investigation of the Las Dos Erres' Massacre*, February 2010. Available at: <http://cejil.org/en>

64. Prensa Libre, *Capturan en EE.UU a tres implicados en masacre de las Dos Erres*, 5 May 2010.

65. Comprehensive Agreement on Human Rights, VIII, Mexico D.F., 29 March 1994.

66. CEH, *supra* note 14, Recommendations, III § 9.

67. *Ibid.*, III § 10.

68. *Ibid.*, § 11.

The road to create an official National Reparation Programme has however been long and covered with many obstacles.<sup>69</sup> In the wake of the peace negotiations, a platform called Multi-stakeholder Body for Peace and Harmony (IMIPC) was created representing nearly 90 organisations of civil society. This platform had the objective to formulate and guide the victims' reparation demands and to negotiate with the governmental Secretariat of Peace (SEPAZ) on the creation of a reparation programme. The process leading up to the creation and implementation of the National Reparations Programme (PNR) has, however, been fraught with political struggles and tensions. In fact, when the presidential candidate for the FRG, Portillo, promised in 1999 to pay the ex-civil patrollers for their services to defend the country and private property against communism, civil society protested and claimed that first the victims should be redressed. The subsequent mobilisation of ex-civil patrollers in several areas to demand their payment in 2002 encountered strong resistance from civil society.<sup>70</sup> Paradoxically, this debate on the payment of the PAC created political room for serious negotiations between the Portillo government and civil society to design a reparation programme. The IMIPC proposed in March 2003, after over 50 sessions of dialogue, a Reparation Law; however even the official party rejected the proposal. Yet, finally in May of the same year, an Executive Decree was approved which created both a National Reparation Programme and a National Reparation Commission (CNR).<sup>71</sup> Ten representatives of governmental institutions and victim and human rights organisations initially composed the CNR. They faced the daunting tasks of designing a reparation policy and implementing the PNR. The CNR designed a comprehensive (integral) reparation programme consisting of five main measures: material restitution, economic remedies, psychosocial reparation and rehabilitation, honouring civilian victims and cultural remedies. From that moment on, the difficult process of deciding who qualifies as victim and the defining of different reparation measures began. During this initial phase, there was strong tension between both the government and civil society representatives, but also amongst the victim organisations. Due to the persistent friction, President Berger decided in 2005 to restructure the CNR and the PNR by sidelining the civil society representatives from the CNR and only allowing them a voice through a new Advisory Council. Although the original five measures remained in the design, the actual implementation was reduced to economic compensation, because the victim organisations strongly demanded it. In November 2005, a new Executive Decree was promulgated which contained the work

69. For a more detailed historical reconstruction of this long process, see MINUGUA, *supra* note 4; Gustavo Porras Castejón, 'El Programa Nacional de Resarcimiento: Cómo Se Quiso, Cómo Es y Cómo Debe Ser,' in Programa Nacional de Resarcimiento (PNR), *Primer Informe Temático 2006-2007 del Programa Nacional de Resarcimiento. La vida no tiene precio. Acciones y Omisiones de Resarcimiento en Guatemala*, Guatemala, Magna Terra Editores, 2007, 27-36; Jorge Alvarado Pisani, 'Notas para la Genealogía del Programa Nacional de Resarcimiento,' Programa Nacional de Resarcimiento (PNR), *Primer Informe Temático 2006-2007 del Programa Nacional de Resarcimiento. La vida no tiene precio. Acciones y Omisiones de Resarcimiento en Guatemala*, Guatemala, Magna Terra Editores, 2007, 39-55.

70. The issue of compensation to ex-PAC will be discussed in Chapter 3.

71. Acuerdo Gubernativo 258-2003.

lines of the restructured PNR.<sup>72</sup> The PNR has since started to function with the focus on financial compensation for those who survived torture or sexual assault and for the relatives of victims who died in illegal executions, massacres or forced disappearances. In Chapter 4 the implementation of the PNR will be thoroughly discussed as well as critical insights from users' perspectives.

It is important to note that the PNR's legal status is rather weak, as it was created by an Executive Decree and not by law, which implies its vulnerability to governmental changes and party politics. With the new Colom administration of 2008, both the PNR staff and the CNR members were replaced, and, the discourse on reparation has been revised in two ways. First, the PNR has to take up again the original design of the *resarcimiento integral* or comprehensive reparation and started by the end of 2009 with the implementation of the measure of material restitution through pilot projects of housing which resulted in the building of 888 houses across the country.<sup>73</sup> In 2010 the PNR has planned to build in total 3,000 houses spread over 12 departments. In Alta Verapaz 19 communities have been selected to receive this material restitution and 351 houses will be built. At the same time, the concept of '*resarcimiento con pertinencia cultural*' or reparation with cultural pertinence is currently circulating in the head office and departmental offices of the PNR. However, interviews with PNR officials in Guatemala and Cobán make clear that a conceptualisation of this '*pertinencia cultural*' is lacking.<sup>74</sup> This new buzz statement seems to entail the formal recognition that many of the PNR's beneficiaries are indigenous people. This would imply that these beneficiaries should be attended in their language and that all reparation measures should be implemented with cultural pertinence. Part of this idea is a shift in its methodology to approach its beneficiaries in the sense that the PNR intends to intervene directly at community level. At the local PNR office in Cobán, this shift entails that, for instance, since the end of 2009 a liaison worker is employed to visit the communities and inform them about for instance the implementation of the housing project. However, this is a non-Q'eqchi' speaking person. Further, for several months a psychologist has been appointed to organise mental health assistance for Q'eqchi' survivors and to support interviews with women who are victim of sexual violence during the conflict. However, this psychologist is not an experienced woman originally from the capital and is not familiar with the complexities of indigenous rural conflict-torn areas and who doesn't master a basic level of Q'eqchi'. Currently, among human rights groups there exist many sceptics concerning the functioning of the PNR. Recently, in March 2010, the GAM publically denounced that during the first trimester of 2010 the PNR had not yet executed any funds of its annual budget to redress victims.<sup>75</sup> It is also important

72. Acuerdo Gubernativo 619-2005.

73. See Programa Nacional de Resarcimiento, *Memoria de Labores del PNR 2009*, documento no publicado, 2009. In Alta Verapaz 139 houses were built in 2009.

74. Interview with Head of the Dignification Department PNR, March 2009, Guatemala; interview with Head of Implementation Reparation Measures, February 2010 and interview with Coordinator PNR Office in Cobán, February 2010.

75. Grupo de Apoyo Mutuo (GAM), *Nula ejecución del presupuesto del Programa Nacional de Resarcimiento (el resarcimiento no llega a las víctimas y sus familiares)*, comunicado GAM, Guatemala, 25 de marzo de 2010.

to note that since its implementation, the PNR has been accused by several human rights organisations and victim groups of being very politicised. Indeed, 2011 is a presidential election year and high government officials related to the PNR are already sensitising and mobilising victims. For instance, in the pre-election year of 2010, the PNR has organised manifestations of victims in all the departments where they have an office around the National Day of the Dignification of the Victims, 25 February to demand support for its implementation. On 26 February at least 1,200 victims from different regions in Alta Verapaz and Baja Verapaz demonstrated in Cobán under the clear instructions of the PNR office of Cobán. In his speech, the current president of the National Reparation Commission (CNR) Cesar Davilla, called upon the victims to remember those institutions, organisations and political parties which are helping them and those which are not.<sup>76</sup> He also warned the audience that certain political parties that are running for the presidency are responsible for the violence during the armed conflict and demanded that justice should be done.

Besides the PNR, also the Inter-American human rights system plays a significant role in the issue of reparation measures.<sup>77</sup> The Guatemalan State has by means of the Presidential Commission on Human Rights (COPREDEH), the entity in charge of coordinating human rights issues for the executive branch, executed reparation measures for various cases after a friendly settlement was reached between the government and the survivors or after being forced by the Inter-American Court of Human Rights. In total the Inter-American Court of Human Rights has issued judgments in nine contentious cases which were directly related to the armed conflict, involving cases of disappearance, torture and murder.<sup>78</sup> Generally, there are four categories of remedies agreed to and/or imposed on the Guatemalan state namely, investigation and prosecution in domestic jurisdiction, individual and collective reparations, actions to dignify the memory of the victim, and other moral reparation and legislative and/or administrative reforms.<sup>79</sup> Financial compensation is almost always paid and there has been some implementation of dignification measures such as public apologies.<sup>80</sup> There has been very little execution of the other remedies. An emblematic case is that of the massacre of Plan De Sanchez.<sup>81</sup> In this case, the government was ordered to pay \$25,000 for each of the victims and survivors, a total of \$7.9 million.<sup>82</sup> This financial

76. Fieldnotes, demonstration: '25 de febrero. Día de la Dignidad de las Víctimas del Conflicto Armado Interno', 26 February 2010, Cobán.

77. For deeper discussion see: Marcie Mersky and Naomi Roht-Arriaza, 'Guatemala' in Due Process of Law Foundation (DPLF), *Victims Unsilenced. The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington D.C., DPLF, 2007, 7-32.

78. Inter-American Court of Human Rights: Panel Blanca v. Guatemala, 8 March 1998; Blake v. Guatemala, 24 January 1998; Bámaca Velásquez v. Guatemala, 25 November 2000; Myrna Mack v. Guatemala, 25 November 2003; Maritza Urrutia v. Guatemala, 27 November 2003; Plan de Sanchez Massacre v. Guatemala, 29 April 2004; Carpio Nicolle et al. v. Guatemala, 22 November 2004; Molina Theissen v. Guatemala, 4 May 2004; 'Las Dos Erres' Massacre v. Guatemala, 24 November 2009. IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr))

79. Mersky and Roht-Arriaza, *supra* note 77, 15.

80. *Ibid.*

81. For more details, see Kathleen Dill, 'Reparations and the Illusive Meaning of Justice in Guatemala', in Barbara Johnston & Susan Slyomovics (eds), *Waging War, Making Peace. Reparations and Human Rights*, Walnut Creek, Left Coast Press, 2009, 183-204.

82. Mersky and Roht-Arriaza, *supra* note 77, 19.

compensation had been paid to all the victims by the end of 2008.<sup>83</sup> It is important to note that these amounts are unimaginable to most families given the Guatemala social context of high poverty rates among indigenous rural people. Therefore they have engendered many problems among the beneficiaries such as division in the family or alcohol abuse.<sup>84</sup> Further, there are survivors who were not included in the case and left without any compensation. They could apply to the PNR, yet these amounts are considerably smaller.

### ***Land of the Eternal Spring and the Eternal Transition***

Guatemala is portrayed in many travel guides as the land of eternal spring because of its magic scenery, green mountains and the colourful traditional clothing of its indigenous people. Yet, the country is also the land of the eternal transition. Although the peace accord was signed in 1996, Guatemala is currently further sinking away in a swamp of increasing insecurity, violence and huge institutional instability. Since 2000 there has been a severe resurgence of human rights violations which international human rights observers have described as Guatemala's 'human rights melt-down'.<sup>85</sup> In fact, over the years Guatemala has become one of the most violent countries in Latin America. In 2009, the National Civilian Police reported that 6,498 Guatemalans were violently killed, compared to 6,244 in 2008 and 5,781 recorded in 2007.<sup>86</sup> The rate of homicides remained above 48 per 100,000 inhabitants, which is one of the highest among countries formally at peace. There is not only a total impunity related to the atrocities committed during the armed conflict, in fact, there is a general climate of impunity. For every 100 homicides only two are sentenced and of every 100 crimes only four are judged.<sup>87</sup> Another alarming figure is that of violence against women and its total impunity. The number of violent deaths of women continued to increase in 2009, totaling 720 compared with 590 deaths in 2007.<sup>88</sup> Between 2003 and 2008, murders of women increased by 179%.<sup>89</sup> Of the 30,873 complaints of violence against women charged in 2009, only 0.7% led to prosecutions and 0.2% to sentences.<sup>90</sup>

83. Inter-American Court of Human Rights: Plan de Sánchez Massacre v. Guatemala. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, 1 July 2009. IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr))

84. Personal communication with the Director Community Museum Rabinal, May 2009.

85. Amnesty International, *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*, Amnesty International, London, 2002, 5-6.

86. *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala*, UN Doc A/HRC/13/26/Add.1, 3 March 2010, 5 and *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala in 2008*, UN Doc A/HRC/10/31/Add.1, 28 February 2009, 5.

87. *Report of the Special Rapporteur on the Independence of Judges and Lawyers, Leondro Despouy. Mission to Guatemala*, UN Doc A/HRC/11/41/Add.3, 1 October 2009, 5.

88. See note 86.

89. Procurador de los Derechos Humanos, *Informe Anual Circunstanciado. Tomo I. Situación de los derechos humanos en Guatemala*, 2009, PDH, Guatemala, 61.

90. UN Doc A/HRC/13/26/Add.1 supra note 86.



Since president Colom came to power in 2008, the Interior Ministry has had four ministers and also the National Civilian Police has experienced constant turnover due to corruption scandals.<sup>91</sup> Against the back-drop of this long-term pattern of impunity and institutional instability, the International Commission against Impunity in Guatemala (CICIG) has been created in 2006 as a result of an agreement between the United Nations and the Guatemalan State – a mechanism which some perceive as a new model for international criminal justice mechanisms<sup>92</sup> and others even see as a new and important transitional justice tool<sup>93</sup> in the specific context of Guatemala. The CICIG should help ‘Guatemalan institutions adopt more robust criminal law practices to investigate and prosecute domestic actors currently committing crimes under Guatemalan law’.<sup>94</sup> This may embolden the judiciary branch to prosecute perpetrators of human rights abuses related to the armed conflict in the future.

This CICIG is, in fact, the result of a 2003 proposal to create the Commission for the Investigation of Illegal Bodies and Clandestine Security Groups (CICIACS) which was withdrawn when its independent prosecutorial powers, the strongest element of the proposal, was declared unconstitutional. The CICIG is tasked to support, strengthen and assist Guatemalan institutions in identifying, investigating, prosecuting, and ultimately dismantling domestic illegal security forces and clandestine security organisations.<sup>95</sup> Its powers can be broadly grouped into two categories, ‘powers related to promoting individual prosecutions and powers related to institutional reform’.<sup>96</sup> Such criminal clandestine organisations and violent illegal security forces have their roots in military intelligence and counterinsurgency structures established during the conflict but were never dismantled.<sup>97</sup> Although vetting<sup>98</sup> of people who lack integrity from security agencies has become an important tool of the transitional justice toolbox and institution reform in post-conflict societies, there was no political room during the Guatemalan peace negotiations to enforce this. The CICIG’s mandate is not intended to investigate the perpetrators of human rights violations during the armed conflict, but its work is undeniably linked with that legacy. Halfway through its mandate, the CICIG was investigating 39 individual ‘high-impact’ cases and has been involved as a private prosecutor in eight high-level cases.<sup>99</sup> In those eight cases all the accused

91. El Periódico, *Destituyen a Ministro de Gobernación por actos anómalos en la cartera lo sustituye Carlos Menocal*, 6 de Mayo 2010.

92. Andrew Hudson and Alexandra W. Taylor, ‘The International Commission against Impunity in Guatemala. A New Model for International Criminal Justice Mechanisms’, *Journal of International Criminal Justice*, 2010, Vol 8, 53-74.

93. Personal Interview with Helen Mack, May 2009, Guatemala City.

94. Andrew Hudson and Alexandra W. Taylor, *supra* note 92, 57.

95. Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission against Impunity in Guatemala (“CICIG”), 12 December 2006, Art 1. See also [www.CICIG.org](http://www.CICIG.org)

96. Hudson and Taylor, *supra* 92 note, 54.

97. Washington Office on Latin America (WOLA), *Hidden Powers. Illegal Armed Groups in Post-conflict Guatemala and the Forces Behind Them*, Washington D.C., WOLA, 2003, p12 and Patrick Gavigan, ‘Organized Crime, Illicit Power Structures and Guatemala’s Threatened Peace Process’, *International Peacekeeping*, 2009, Vol. 16, No 1, 62-76.

98. For more about vetting see: Office of the United Nations High Commissioner for Human Rights, *Rule-of-law tools for post-conflict states. Vetting: an operational framework*, United Nations, New York, 2006, p42.

99. International Commission against Impunity in Guatemala, *Two Years of Work: Our Commitment to Justice*, 2009. Available at <http://cicig.org/index.php?page=two-years-of-work>

had been directly linked to government institutions, politicians or drug-trafficking organisations.<sup>100</sup> Further, within its framework the Commission has presented two legal reform packages that seek to improve the legal and institutional framework of the criminal prosecution of crimes that fall under the CICIG's jurisdiction to the relevant national authorities.<sup>101</sup>

The CICIG plays thus an important role in the improvement and reform of Guatemala's weak legal system. It has a unique hybrid structure because it operates completely within the domestic legal system of the host country and it incorporates both powers to foster prosecutions and strong institutional reform tools.<sup>102</sup> It seems that the CICIG plays a key role in the struggle against impunity, because as Méndez states 'the struggle against impunity is intimately linked to the quality of the democracy to be built because this struggle aims to establish the fundamental principle of equality before the law and absence of privilege. And it seeks to ensure that institutions – especially those designed to protect citizens from abuse and offer them redress – play their role without undue interference'.<sup>103</sup>

### **Reconciliation**

Finally, this brief overview of Guatemala's transitional justice landscape concludes by looking at the concept of reconciliation. At the national level, the significance of reconciliation is confusing and has even been used in opposing discourses. The military has used reconciliation in the context of turning the page and amnesty for the atrocities. The above discussed National Reconciliation Law fits in this discourse. Importantly, the economic elite share this vision of the military. On the other hand, the Catholic Church, through the follow up of the REMHI project, promoted the word in their discourses on truth, justice and forgiveness. A striking statement is: 'Sow the truth, and justice and reconciliation will be the harvest'. In the light of this, for many people, reconciliation has therefore clear Christian undertones. Moreover, Mayan groups have rejected the use of the concept of reconciliation, saying that that the conflict in Guatemala was not a matter of the past 36 years, but of the past five hundred years. Guatemalan society has never had conciliation, so it is difficult to talk about re-conciliation. Human rights activist Helen Mack states that there has never been a shared conceptualisation of reconciliation among the main actors of Guatemala's state and civil society.<sup>104</sup> In fact, the term reconciliation has never been promoted during the peace negotiations and even more it has been deliberately excluded from the peace agenda. Mack concludes that in Guatemala an integral reconciliation process is absent.

100. Hudson and Taylor, *supra* note 92, 65.

101. International Commission against Impunity in Guatemala, *supra* note 95.

102. Hudson and Taylor, *supra* note 92, 73.

103. Méndez, *supra* note 5, 195.

104. Helen Mack, 'La reconciliación en Guatemala: un proceso ausente', in Instituto Interamericano de Derechos Humanos (IIDH), *Verdad, justicia y reparación, Desafíos para la democracia y la convivencia social. Guía Didáctica*, Colombia, IIDH, 2006, 199-200.

## Locating the Cultural Context in Guatemala's Post-Conflict Processes

Both national-level truth recovery initiatives have largely recognised that the majority of victims of Guatemala's internal armed conflict are Mayan indigenous people. Moreover, the CEH has pointed out that genocide has been committed against groups of Mayan people. The above sketched transitional justice landscape shows however, that the state as well as human rights groups have been disregarded to promote the incorporation of a multiethnic and pluricultural perspective to national-level transitional justice initiatives. Yet, during the peace negotiations Guatemala's pluricultural reality has been an important political issue on the peace agenda. In the light of the recent international debates about the role of traditional approaches and the mobilisation of traditional and informal justice systems as a means to deal with transitional justice issues, this subsection attempts to locate the role of cultural context at the national level of Guatemala's post-conflict process and to explain the omission of an inclusive culturally sensitive transitional justice agenda. To start, the emergence of an indigenous Mayan movement during the early transition years will be discussed as well as their struggle and its outcomes for cultural and collective rights. Second, some of the points regarding claims to collective rights of indigenous peoples are highlighted.

### **Role of the Indigenous Movement**

As previously said, in the Guatemalan case the armed conflict has not been one over ethnic indigenous claims for autonomy or self-determination, but about historical social injustices. The historical exclusion and discrimination of the Mayan majority population was one of the underlying root causes of the conflict. In the wake of the peace process, however, a new political actor by means of a Maya indigenous movement surfaced with strong cultural claims and concrete reform proposals to transform the Guatemalan exclusive, racist and discriminatory nation-State and to improve the political representation and socio-economic participation of the indigenous people. It is important to note that these demands for the recognition of cultural diversity must be situated in a broader political context of democratic transitions in Latin America in the 1980s and the 1990s when large discussions took place about the place of indigenous peoples and the position of indigenous justice systems in the construction of multicultural states.<sup>105</sup> Actually, what indigenous people claim in Latin America is 'not so much a return to 'traditional law', but rather a redress of historical injustices and the legitimate power to regulate their own affairs'.<sup>106</sup>

105. For more details, see Rachel Sieder (ed.), *Multiculturalism in Latin America. Indigenous Rights, Diversity and Democracy*, New York, Palgrave Macmillan, 2002, p280.

106. Rachel Sieder, 'Recognizing Indigenous Law and the Politics of State Formation in Mesoamerica', in Rachel Sieder (ed.), *Multiculturalism in Latin America. Indigenous Rights, Diversity and Democracy*, New York, Palgrave Macmillan, 2002, 199.

In Guatemala, parallel to the armed conflict, a Mayan indigenous movement emerged in the mid-1980s and early 1990s.<sup>107</sup> The emergence was based on 'the belief that to be a Maya was as something culturally, socially and even politically distinct'.<sup>108</sup> Further, its rise was linked with the emergence of a broader indigenous movement on the Latin American continent at that time.<sup>109</sup> As a result of the pressure of this new political actor, a separate agreement on indigenous rights has been signed by the negotiating parties. The fact that the inclusion of the issue about identity and rights for indigenous peoples appeared among the main points of the peace negotiations, reveals a new sensibility towards this theme and the pressure of Mayans within the URNG and civil society.<sup>110</sup> An analysis of the origin, evolution, different ideological positions and the question whether currently it is possible to speak about a real Mayan movement is beyond the scope of this study.<sup>111</sup> However, in the light of the research question of the present study it is necessary to highlight some key insights about this Mayan movement with the aim to foster a better understanding of the role of cultural context in Guatemala's macro level post-conflict processes.

From the start this Mayan movement was pluralistic and heterogeneous, and characterised by two main, yet antagonist, currents: a Mayan popular sector (movimiento popular) and Pan-Mayanists (*mayanistas*).<sup>112</sup> The Mayan popular sector, which has been labelled the 'grassroots popular Left' is constituted by different social grassroots organisations, and is broadly aligned with the left-wing sector and the URNG. The left-wing sector was constituted of ladino dominated unions and popular organisations that tended to use a class analysis. These Mayan organisations, such as the Group of Mutual Support (GAM)<sup>113</sup> and the National Coordination of Widows in Guatemala (CONAVIGUA) have been forged around a strong human rights discourse against political violence and the gross human rights violations. During the 1980s they became influential at the national level and received support from elsewhere in Latin America, the United States and Europe. These organisations

107. See: Roddy Brett, supra note 2; Santiago Bastos, 'Construcción de la identidad Maya como un proceso político', in Santiago Bastos y Aura Cumes (coordinadores), *Mayanización y vida cotidiana. La ideología multicultural en la sociedad guatemalteca. Volumen 1: Introducción y análisis generales*, Guatemala, FLACSO-CIRMA-Cholsamaj, 2007, 53-80.

108. Philippe Wearne, *Minority Rights Group International Report: The Maya in Guatemala*, MRG, London, 1994, 37.

109. For further reading, see Kay Warren and Jean Jackson (eds.), *Indigenous Movements, Self-Representation, and the State in Latin America*, Austin, University of Texas Press, 2002, p294; Ronald Niezen, *The Origins of Indigenism. Human Rights and the Politics of Identity*, Berkeley, University of California Press, 2003; Erick Langer and Elena Muñoz, *Contemporary Indigenous Movements in Latin America*, Wilmington, Jaguar Books, 2003, p220.

110. Bastos, supra note 107, 60.

111. For in-depth analysis of the Maya movement: Wearne, supra note 108, p52; Edward Fisher and McKenna Brown, *Maya Cultural Activism in Guatemala*, Austin, University of Texas Press, 1996, p245; Kay Warren, *Indigenous Movements and Their Critics. Pan-Maya Activism in Guatemala*, Princeton, Princeton University Press, 1998, p288; Victor Montejo, *Maya Intellectual Renaissance. Identity, Representation and Leadership*, Austin, University of Texas Press, 2005, p236; Edward Fisher, *Cultural Logics & Global Economies. Maya Identity in Thought & Practice*, Austin, University of Texas Press, 2001, p287.

112. Bastos, supra note 107.

113. The GAM was founded in 1984 by several *ladino* women yet the majority of its members are Mayan indigenous people.

formed a loose alliance with other Mayan popular groups such as the Committee for Peasant Unity (CUC) and the Council of Highland Ethnic Communities (CERJ). In fact, these human rights organisations were crucial in the early 1990s in drawing public attention to the atrocities of the conflict and in putting the demilitarisation of the countryside, the abolishment of the PACs and the end of forced recruitment on the political agenda. In their analysis of the conflict, the root cause is the horizontal or class-based division in the country. At the other end of the Mayan movement's spectrum the Pan-Mayanists must be located. This is a group of Mayan intellectuals, such as Demetrio Cojtí and Victor Montejo, mainly trained outside Guatemala in literature and linguistics who focused this activism on recovering the Mayan culture through revitalising and promoting Maya languages, bilingual education, and Maya traditional leadership. These Pan-Mayanists rejected a class-based analysis of Guatemala's reality that time, pointing to the internal colonialism of Ladino domination as the root cause of the internal armed conflict. Obviously, these antagonist ideological understandings 'generate distinctive priorities for social policy and distinctive images of the nation'<sup>114</sup> in the broader Mayan movement at that time.

Despite these early years of severe tensions and rivalry, these two Mayan tendencies accreted around two important periods: the continental campaign of '500 years of Indigenous, Black and Popular Resistance' in 1991 and again in 1992 when Maya Quiché woman Rigoberta Menchú won the Nobel Peace Prize. During the peace negotiations in the mid-1990s both Mayan currents managed to bridge their ideological cleavages by collaborating and pushing together for the demilitarisation and democratisation of the country. Here, a crucial moment in the peace negotiations was the establishment in 1994 of the Assembly of Civil Society (ASC), a consultative forum empowered to present proposals from civilian society to the negotiating parties. This ASC brought together representatives of very different politics and created a space for debates and alternative proposals and, in fact, fostered the coalition between the two antagonist Mayan tendencies. The Pan-Maya movement saw in the peace process cultural stakes and an important opportunity to demand cultural and collective rights, recognition and self-determination and to argue for a multiethnic, pluricultural and multilingual nation-state.<sup>115</sup> The creation of the Co-ordinator of Organizations of the Maya People of Guatemala (COPMAGUA), a coordinating body of 200 Maya organisations gave another boost to these collaboration efforts between the two currents in the Maya movement. As a result, COPMAGUA presented in 1994 an initial draft for an agreement on identity and rights of indigenous people which was amended by ASC before it was presented to the peace negotiation table. In March 1995 the Agreement on the Identity and Rights of Indigenous People (AIDPI) was signed by the URNG and the Guatemalan government.<sup>116</sup>

By the end of the peace process, the convergence among Pan-Maya organisations and popular indigenous organisations fragmented and COPMAGUA disintegrated

114. Warren *supra* note 111, 28.

115. Warren, *supra* note 111, 52-68; Roddy Brett, *supra* note 2.

116. Agreement on Identity and Rights of Indigenous Peoples, Mexico, March 1995.

by mutual accusations of political manipulations and embezzlement.<sup>117</sup> However, a sharp division between these two antagonised Mayan currents has become highly blurred and, in fact, it is more appropriate to describe the current Maya movement as a spectrum of different perceptions, visions and positions accompanied by a fragmentation process and a lack of clear direction.<sup>118</sup> This disintegration is for example noticeable in the fragmented positions that Maya activists occupy in different civil society organisations, government and state institutions. For instance, some high profile Mayan activists have occupied positions as Minister of Culture, Vice Minister of Education and other Vice Ministers during the government of Alfonso Portillo (FRG) (2000-2004) and Oscar Berger (GANA) (2004-2008). The most symbolic position was that of Rigoberta Menchú as Goodwill Ambassador to the Peace Accords during the Berger government. Importantly, parallel to this process of organisational fragmentation, there has been an 'ideological re-strengthening of the Maya movement through the search, codification and consolidation of "lo maya/Mayan", understood as "the own", the culturally "different" from what is not maya, which is generally nominated as "West"'.<sup>119</sup> 'The 'own' or 'the Mayan' has been translated ideologically by the strategic use of the concept of the Mayan cosmovision. Many indigenous organisations across the Latin American continent use this notion in their discourses to refer to indigenous culture and identity. In fact, 'for many contemporary indígenas, the very notion of cosmovisión already expresses a difference vis-à-vis the imposed Christian religion and worldview'.<sup>120</sup>

### **Claims of Collective Indigenous Rights**

To the surprise of many Guatemalans, one of the Peace Agreements, the AIDPI, call the Guatemalan state to implement several constitutional reforms recognising indigenous peoples' collective rights with the aim to make Guatemala a multiethnic, culturally plural and multilingual nation-state.<sup>121</sup> The AIDPI calls for the constitutional and legal recognition of indigenous organisational forms and customary law as well as the recognition of indigenous languages, spirituality, sacred places, and traditional dress. However, it excludes territorially based autonomy agreements. The Agreement was

117. Bastos, supra note 107, 63.

118. Morna Macleod, *Luchas Políticas-Culturales y Auto-Representación Maya en Guatemala*, Tesis de Doctorado en estudios Latinoamericanos, Universidad Nacional Autónoma México, 2008, México D.F., 117.

119. Bastos, supra note 107, 67-68.

120. Koen de Munter and Nicole Note, 'Cosmopraxis and Contextualising Among the Contemporary Aymara', in Nicole Note (eds.), *Worldview and Cultures: Philosophical Reflections from an Intercultural Perspective*, Springer, 2009, 99.

121. For a fuller discussion of this Agreement, see René Paul Amry, 'Indigenous Peoples, Customary Law and the Peace-Process in Guatemala', in Réne Kuppe and R Potz (eds.), *Law and Anthropology. International Yearbook for Legal Anthropology*, The Hague, Martinus Nijhoff Publishers, 1999, Vol.10, 52-79; Roger Plant, 'Ethnicity and the Guatemalan Peace Process: Conceptual and Practical Challenges', in Rachel Sieder (ed.), *Guatemala after the Peace Accords*, London, University of London-Institute of Latin American Studies, 1998, 80-96 and Rachel Sieder and Jessica Witchell, 'Advancing indigenous claims through the law: reflections on the Guatemalan peace process', in Jane K. Cowan, Marie Dembour and Richard A. Wilson (eds.), *Culture and Rights: Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, 201-225.

clearly influenced by new international law related to indigenous rights, in particular the International Labour Organization's Indigenous and Tribal Peoples Convention (ILO 169) and the ongoing debates on the UN Draft Declaration on the Rights of Indigenous Peoples.<sup>122</sup> The AIDPI mirrors also a legal discourse which elevates culture as a means of recognition and inclusion of indigenous peoples and tends to essentialise and codify cultural values and practices.<sup>123</sup> In fact, it reflects the strategic essentialism used by Pan-Mayan activists as a political tactic focusing on collective cultural and political claims in order to reach recognition and self-determination.<sup>124</sup> These indigenous discourses promote customary norms and values as being rooted in a harmonious and millenarian culture. After the signing of the AIDPI, popular indigenous organisations started to disseminate the content of the agreement through educational programmes to all levels of society.<sup>125</sup> Hence, organisations in the popular indigenous movement started to widen their human rights discourse with indigenous and collective rights,<sup>126</sup> whereas pan-Mayan organisations adapted a two-pronged approach in seeking a culture-based solution to Guatemala's many problems: working for the conservation and revitalisation of elements of Mayan culture while promoting constitutional and educational reforms.<sup>127</sup>

In 1999 a package of constitutional reforms, many of which dealt with indigenous issues and the redefinition of the Guatemalan state as multiethnic, pluricultural and multilingual, was presented in a national referendum.<sup>128</sup> The referendum campaign was marked by a well orchestrated and mediatised campaign against formal recognition of indigenous rights raising the fear of balkanisations of the country and using other scare tactics by saying that the country would be totally dominated by indigenous people.<sup>129</sup> The proposed constitutional reforms were rejected based upon an 18% turnout and the 53% to 47% defeat. One advance is, however, that in the wake of the Peace Agreements several governmental institutions were created such as the indigenous Women's Defence Office (DEMI) and the Presidential Commission Against Racism and Discrimination Against Indigenous Peoples (CODISRA) with a mandate to defend indigenous individual and collective rights.<sup>130</sup>

122. Guatemala has ratified this ILO Convention in 1997

123. See: Sieder and Witchell, *supra* note 121.

124. For a deeper discussion of strategic essentialism in the Maya movement, see Macleod, *supra* note 118.

125. Brett, *supra* note 2, 103.

126. *Ibid.*

127. Edward Fisher and McKenna Brown, 'Introduction: Maya Cultural Activism in Guatemala', in Edward Fisher and McKenna Brown (eds.), *Maya Cultural Activism in Guatemala*, Austin, Texas University Press, 1996, 13.

128. In Guatemala, proposals for constitutional reforms should first be agreed by Congress and later approved by a popular referendum to measure the civil support.

129. Kay Warren 'Voting against Indigenous Rights in Guatemala: Lessons from the 1999 Referendum', in Kay Warren and Jean Jackson (eds.), *Indigenous Movements, Self-Representation, and the State in Latin America*, Austin, University of Texas Press, 2002, 149-180 and Jonas, *supra* note 2.

130. Other institutions are: the Indigenous Ombudsman's Office within the office of the Human Rights Ombudsman (1998), and a department of indigenous peoples within the Ministry of Labour (2005). For more details, see Demetrio Cojtí, *La Difícil Transición al Estado Multinacional. El caso del Estado Monoétnico de Guatemala: 2004*, Guatemala, Cholsamaj, 2005, p167 and Rachel Sieder, 'The judiciary and indigenous rights in Guatemala', *International Journal of Constitutional Law*, Vol. 5, No. 2, 2007, 211-241.

As previously said, up to date few advances have been made in the implementation of the Peace Agreements. Also regarding the implementation of the AIPDI the balance is rather negative.<sup>131</sup> The poverty situation, the social exclusion and discrimination that indigenous people are facing has over the years not changed substantially. Moreover, as a result of the rejection of constitutional reforms, the juridification of indigenous rights remains extremely weak in Guatemala.<sup>132</sup>

For many years, the issues of recognition of indigenous customary law and legal pluralism have been a major subject of discussion and controversy. In fact, they have 'become one of the key issues around which legal battles for recognition of indigenous rights have subsequently centered'.<sup>133</sup> Key debates were initially concentrated about the constitutional recognition of indigenous law and the question about how to advance the coordination between indigenous law and state law.<sup>134</sup> Currently, many Mayan rights activists prefer to approach these issues of coordination by a judicial, namely a case-by-case basis, than the legislative route arguing that by taking cases related to indigenous rights to court this 'can play an important role in raising awareness about collective rights and may contribute to changes in government policy'.<sup>135</sup> Since recently, international donors have been following the same path. The Office of the UN High Commissioner of Human Rights together with the Norwegian development cooperation in September 2009 set up a programme of strategic litigation to technically train representatives of Guatemalan civil society and scholars about strategic litigation regarding rights for indigenous peoples with the aim to advance the defence of these rights.<sup>136</sup> Currently, a main issue is about how to defend collective rights of indigenous peoples such as rights to land and natural resources. For instance, during his recent visit to Guatemala in June 2010, UN Special Rapporteur James Anaya identified a high level of social conflict and instability in relation to natural resource extraction activities being carried out in indigenous lands by private companies, in large part due to a lack of effective consultation with the indigenous communities affected by these activities.<sup>137</sup>

Interestingly, the construction of a common Mayan identity among the different indigenous Maya communities who participated in the domestic genocide case has been an important strategy by the Guatemalan NGO CALDH.<sup>138</sup> The idea of this

131. CIFCA, Grupo Sur and CIDSE, *International Conference: The Guatemala Peace Accords Ten Years Later: An Analysis and the Outlook for International Cooperation, Conclusions*, 2-3 May 2007, Brussels, Belgium. available at: [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/fd/droi20071126\\_guatemala\\_003/DROI20071126\\_Guatemala\\_003en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/droi20071126_guatemala_003/DROI20071126_Guatemala_003en.pdf)

132. Sieder, supra note 130

133. Sieder, supra note 130, 220.

134. See the work of: Raquel Yrigoyen Fajardo, *Pautas de Coordinación entre el Derecho Indígena y el Derecho Estatal*, Guatemala, Fundación Myrna Mack, 1999, p136 and Esquit Edgar y García Ivan, *El Derecho Consuetudinario, la Reforma Judicial y la implementación de los Acuerdos de Paz*, Guatemala, FLACSO, 1998, p167.

135. Sieder, supra note 130

136. [http://www.oacnudh.org.gt/ver\\_noticia.asp?idnoticia=89](http://www.oacnudh.org.gt/ver_noticia.asp?idnoticia=89)

137. Observaciones preliminares del Relator Especial de Naciones Unidas sobre la situación de los derechos humanos y las libertades fundamentales de los indígenas, S. James Anaya, sobre su visita a Guatemala, 13 a 18 de junio de 2010, Available at: <http://unsr.jamesanaya.org/>

138. For a more in-depth discussion: Karine Vanthuyne, 'Becoming Maya? The Politics and Pragmatics of "Being Indigenous" in Postgenocide Guatemala', *Political and Legal Anthropology Review*, Vol. 32, No. 2, 2009, 195-271.



genocide case did not originate from the 22 communities of massacre survivors. In fact, the CALDH convinced the massacre survivors by repoliticising their memories of the lived atrocities thus transforming survivors into political victims. At the same time, the CALDH worked on the re-ethnisation of the survivors through workshops encouraging the indigenous communities to identify them as 'Maya' and to remember and valorise their 'Mayan culture'.

Despite these strong claims to collective indigenous rights, it is important to note that only a few empirical research studies are available, mainly conducted in the 1990s, that investigate on a large scale the practices and foundations of the indigenous normative system.<sup>139</sup> Several of these investigations should also be situated in an attempt to ideologically reconstruct this Mayan normative system as part of the consolidation process of '*lo maya*'. Along the same line are the more recent publications of some national Mayan NGOs such as the *Defensoría Maya* and the *Oxlaju Pop* that deals with partial issues related to the Mayan normative system focusing on, for instance, local indigenous authorities and their functions or conflict resolution mechanisms.<sup>140</sup> In the present study Chapter 6 will discuss in more length the cornerstones of what has been conceptualised as this indigenous customary law or Mayan normative system.

Against this backdrop, it may seem odd that although there have been strategic claims to Mayan identity and collective indigenous rights during the peace negotiations and to date, these cultural discourses have not been translated into political cultural claims to transitional justice interventions. Based on my observations and readings I raise several interconnected reasons to explain this absence. First, during the Guatemalan peace process a holistic approach to transitional justice issues was not yet elaborated at that time, nor sensitivity toward cultural diversity. At the same time, as mentioned above, Guatemala's transitional justice agenda is, by lack of political will, mainly set by human rights groups and victim organisations which uphold a strong fundamental human rights discourse and a class-based ideology, and have paid less attention to cultural diversity. Another factor that may play here is that these capital-based organisations

139. See Esquit Choy Edgar y Ochoa García Carlos (eds.), *Yiqalil q'anej kunimaaj tzijij niman tzij, El Respeto a la Palabra, El Orden Jurídico del Pueblo Maya*, Guatemala, Centro de Estudios de la Cultura Maya, 1995, p187; Instituto de Investigaciones Económicas y Sociales (IDIES), *El Sistema Jurídico Maya: una Aproximación*, Guatemala, Universidad Rafael Landívar, 1998, p204; See also the studies of Saq'b'ichil-COPMAGUA which have been financed by the UN Verification Mission MINUGUA: Coordinación de Organizaciones del Pueblo Maya de Guatemala Saq'b'ichil-COPMAGUA, *Más allá de la costumbre: Cosmos, orden y equilibrio: El derecho del pueblo Maya de Guatemala. Proyecto: Investigaciones en Derecho Consuetudinario y Poder Local*, Guatemala, Editorial Servicios San Antonio, 1999, p279; Coordinación de Organizaciones del Pueblo Maya de Guatemala Saq'b'ichil-COPMAGUA, *Oxloq'il Baanuheem. Proyecto: Investigaciones en Derecho Consuetudinario y Poder Local. Los Hechos Sagrados. Fundamento de las ideas y normas del Pueblo Q'eqchi'*, Guatemala, Editorial Servicios San Antonio, 1999, p215.

140. See; Conferencia Nacional de Ministros de la Espiritualidad Maya - Oxlaju Ajpop, *Uxe'al Pixab' re K'iche' Amaq, Fuentes y Fundamentos del Derecho de la Nación Maya K'iche'*, Guatemala, Oxlaju Ajpop, 2001, p192; Conferencia Nacional de Ministros de la Espiritualidad Maya - Oxlaju Ajpop, *Aportes del Sistema Jurídico Maya Hacia el Estado de Guatemala, en Materia de Prevención y Transformación de Conflictos*, Guatemala, Conferencia Nacional de Ministros de la Espiritualidad Maya, 2005, p190; Defensoría Maya, *Sukb'anik, Administración de Justicia Maya, Experiencias de Defensoría Maya*, Guatemala, Defensoría Maya, 2001, p195; Defensoría Indígena Wajxaqib' No'j, *Una Visión Global del Sistema Jurídico Maya*, Chimaltenango, Defensoría Indígena Wajxaqib' No'j, 2006, p161.

use a top-down approach which creates a gap regarding the grassroots organisations and conflict-torn communities. In addition, political actors, the Mayanistas, that actually struggle for cultural claims have focused their work on more 'traditional' aspects of culture such as language, education, dress, spirituality and indigenous law. Post-conflict social recovery in conflict-torn communities has not been part of their agenda. A final reason should also be located in the institutionalised racism and discrimination against indigenous peoples in the Guatemala's State institutions. The lack of a culturally sensitive approach in the design of the new UNDP programme PAJUST in relation to transitional justice may be explained by the fact that these factors are continuing up to date.

### **Going Local in Post-Conflict Guatemala: Maya Q'eqchi' Survivors in the Alta Verapaz Department**

The final section of this chapter switches over from the national perspective of the case study to a sketch of the general background of the fieldwork area of the conflict-torn communities. Because indeed, if we seek to understand the impact of the armed conflict in predominantly rural indigenous societies then, as Sanford points out, 'we can learn more from the situated subjectivity of rural Maya peasants than from the elites who claim to present them'.<sup>141</sup> The fieldwork area of the present study was in three regions belonging to the Cobán municipality in the Alta Verapaz department and has focused on Mayan Q'eqchi' survivors. The following chapter will discuss in detail the methodological choices and general background of these regions.

According to the last national census of 2002, around 90 percent of the total population of the Alta Verapaz department is indigenous, mainly Mayan Q'eqchi', and the department has the highest percentage of rural population.<sup>142</sup> The history of the Verapaz region<sup>143</sup> differs from that of the country's other regions for various reasons. First, the Spanish conquest was a peculiar experience, as the Q'eqchi' and Poqomchi' living in the region long resisted this military conquest. Therefore, the region was called *Tezulutlán*, or 'land of war.' Only in this region of Central America did Friar Bartolomé de las Casas, together with other Dominican monks, implement his plan of peaceful evangelisation. Under this peaceful evangelisation, the indigenous people fell directly under royal authority, thus escaping the abuses, ill-treatment and pilferages and the slave regime of the Spanish conquistadors. In 1547, the Spanish King, at the request of de Las Casas, changed the name of the region to Verapaz ("True Peace"), as the evangelisation had been very successful.<sup>144</sup> The effect of the

141. Victoria Sanford, *Buried Secrets. Truth and Human Rights in Guatemala*, New York, Palgrave Macmillan, 2003, 122.

142. Programa de las Naciones Unidas para el Desarrollo (PNUD), *Diversidad Étnico-Cultural: La Ciudadanía en un Estado Plural. Informe Nacional de Desarrollo Humano 2005*, Guatemala, PNUD, 2005, 349. The percentage of rural population is 79 percent.

143. Currently, the departments Baja Verapaz and Alta Verapaz exist, yet, before and during the conquest, these were considered one region.

144. Centro Ak'Kutan, *Recorriendo la Historia de Verapaz. Los Caminos del Evangelio en Verapaz del Siglo XIV al XX*, Cobán, Centro Ak'kutan, 2001, 7-8.

conversion and colonisation should however not be overestimated, in the sense that the Dominicans were mainly dedicated to the administration of the sacraments, while the Q'eqchi' maintained their religious beliefs and practices.<sup>145</sup> Importantly, the indigenous people of the Verapaz, the Mayan Q'eqchi' had lived in an isolated region since before the conquest and were for the first time confronted with Western culture in the middle of the 19th century. During that time, the liberal Guatemalan government set up a system of *fincas*, or big farms with coffee plantations, in the region.<sup>146</sup> German immigrants came in to snap up the cheap land and workers, and consequently, the Q'eqchi' were driven from their land and many were reduced to *mozos colonos* or colonial peasants which are workers forced into permanent service to the coffee-growing farms.<sup>147</sup> At the century's close, Alta Verapaz was thus converted into the nation's chief coffee-producing region and the indigenous people became an object rather than an actor in the economic and social development.<sup>148</sup> The imposition of this plantation system had a highly destructive impact on Q'eqchi' life-world and communities in Alta Verapaz.<sup>149</sup> In fact, these *fincas* were 'separate judicial spaces with their own legal regimes; they were in effect, sources of a highly authoritarian and discriminatory legal order'.<sup>150</sup> At the start of the 20th century, the Germans also started growing cardamom and consolidated their economic position in the region. This made it even more difficult for the indigenous people to obtain land, as most of it was already in the hands of others. In 1930, under the dictatorship of General Jorge Ubico, an Act was passed against Vagrancy.<sup>151</sup> This Vagrancy Act stated that all farmers not employed by a landlord or who did not own a certain amount of land, were to be considered vagrants. Vagrancy was punishable by forced labour on public works, so the indigenous population was left with the choice between working on farms or carrying out forced labour in the construction of roads. During the Second World War, the German *fincas* owners were expropriated, but much of their land was returned afterwards but some was distributed to new private owners.<sup>152</sup> During the reformist period of 1944-1954, some *fincas* were divided and titled to indigenous communities or transformed into state cooperatives.<sup>153</sup> Yet, years later much of that land passed into the hands of corrupt state officials. This semi-feudal system on the *fincas* has been

145. Karl Sapper, 'Fray Bartolomé de las Casas y la Verapaz (1936), in Fundación Yax Te', *Estudios Q'eqchi'es: Etnógrafos Alemanes en las Verapaces*, Central America, Yax Te' Foundation, 1998, 18-27 [Originally: Karl Sapper, 'Fray Bartolomé de las Casas und die Verapaz (Nordost-Guatemala)', *Baessler-Archiv*, 19, 1936, 102-107.

146. For a brief historical overview of the occupation and appropriation of the land of Alta Verapaz from the 16<sup>th</sup> century until now, see Laura Paz y Hurtado Paz, *Dinámicas Agrarias y Reproducción Campesina en la Globalización: el Caso de Alta Verapaz 1970-2007*, Guatemala, F&G Editores, 2008, 55-95.

147. See Julio Cambranes, *Café y campesinos. Los orígenes de la economía de plantación moderna en Guatemala, 1853-1897*, Madrid, Catriel, Second edition, 1996.

148. Centro Ak'kutan, supra 144, 49.

149. Rachel Sieder, *Customary Law and Democratic Transition in Guatemala*. London, University of London, Institute of Latin American Studies, 1997, 35.

150. *Ibid.*, 36.

151. *Ibid.*, 36-37.

152. Hans Siebers, 'We are Children of the Mountain', *Creolization and Modernization among the Q'eqchi'es*, Amsterdam, CEDLA, 1999, 22.

153. Sieder, supra note 149, 37-38.

characterised by a lack of freedom, miserly salaries, high work pressure, abuse and absence of schooling for the *mozos colonos* and their relatives.<sup>154</sup> The struggle to access land and the related land conflicts have always been a major source of violence in the Q'eqchi' region. In such conflicts, the *finqueros* have usually been supported by an army of police. The massacre in the town of Panzós on 29 May 1978, which occurred prior to the arrival of the revolutionary guerrillas in the region, is an example of this support and has its origin in land conflicts over land ownership.<sup>155</sup>

The appearance of the guerrilla organisation Army of the Poor (EGP), the largest of the four guerrilla groups, in the region in the early 1980s caused the army to step up its level of repression and violence against the rural indigenous population. The EGP moved into the area near the El Quiché department and had presence in the south of Cobán and to the west in Chamá, Salacium, Chisec and the valley of the Polochic river.<sup>156</sup> It is important to note that the guerrillas in Alta Verapaz had no significant support base among other social peasant organisations as was the case in the Western highlands of the country.<sup>157</sup> In that area, the people had far more experience with trade unions, cooperatives, political parties and development initiatives. The reason for this is that in the Q'eqchi' region there was historically very little political development. In the period before the violence, the issues of social change were in fact introduced in the Q'eqchi' communities by Catholic catechists who used the discourse of the Liberation Theology to reflect about human dignity and poverty.<sup>158</sup> As a result of these factors, before and during the armed conflict, the Q'eqchi' region did not undergo the same political radicalisation process that took place in, for instance, the Quiché department.<sup>159</sup> Therefore, there is little evidence to support the leftist interpretation that 'the Q'eqchi' saw armed struggle as having something to do with the land conflicts in which they were engaged'.<sup>160</sup> By 1982, the guerrillas were active in large parts of the rural areas of the Alta Verapaz department. The large majority of the mass atrocities were committed by the Guatemalan army forces whereby the municipalities of Cobán, Chisec and San Cristobel suffered the most.<sup>161</sup> As a result of the persecution, massacres and scorched earth campaigns of the army, many communities were destroyed in those areas and people fled into the mountain forest. Importantly, the majority of the Q'eqchi' only came into contact with the guerrillas once they had sought refuge in the surrounding mountains out of despair due to the massacres and persecutions to look for safety in areas which

154. For a discussion about the life conditions in the fincas, see Huet, supra note 18, 13-46.

155. For a detailed analysis of this massacre, see Victoria Sanford, *La Masacre de Panzós: Etnicidad, tierra y violencia en Guatemala*, Guatemala, F&G Editores, 2009, p176.

156. Richard A. Wilson, *Maya Resurgence in Guatemala. Q'eqchi' Experiences*, Norman, University of Oklahoma Press, 1995, 208 and Alfonso Huet, 'La Diócesis de la Verapaz y el Conflicto Armado,' in *Rescatando la Memoria del Camino. Diócesis de Verapaz 1935-2003*, Cobán, Centro Ak'kutan, 2003, 52.

157. Wilson, supra note 156, 209; Siebers, supra note 152, 35 and Huet, supra note 18, 56.

158. Huet, supra note 18, 34-43.

159. Wilson, supra note 156, 209-210.

160. Siebers, supra note 152, 25.

161. In the following chapters the magnitude of the conflict in the Alta Verapaz department will be discussed in more detail.

are difficult to penetrate.<sup>162</sup> People knew only that their lives were threatened and they had to flee from their communities. In these mountains the guerrillas had their military strongholds. Thus, only a minority had been in contact with the guerrilla forces through political workshops before they took refuge in the mountains. Many Q'eqchi' went into hiding in the mountain forests and did so en masse which indicates the cohesion and unity of Q'eqchi' communities.<sup>163</sup> Once in the mountains, the different displaced groups lived a nomadic life and had to constantly move from one refugee camp to a new one to escape from the persecution of the soldiers and the PAC. The size and composition of these displaced groups varied and some survived several months while others six years in the mountains. Their survival was based on cohesion, mutual help, solidarity and sharing of the scarce food.<sup>164</sup> Some of these groups received also tactical survival instructions and armed accompaniment from the few guerrilla troops present in the regions, but many did not. It is, however, important to note that the different Q'eqchi' groups did not organise educational initiatives, unlike the Popular Communities in Resistance (CPR) of the Ixcán and received little ideological and political training by the guerrilla forces.<sup>165</sup> The EGP withdrew from Alta Verapaz by the end of 1983, while many Q'eqchi' were still up in the mountains. In the following chapters, the magnitude of the conflict in the Q'eqchi' area will be discussed as well as the ways these internally displaced groups returned from the mountains and were relocated in the region.

The Maya Q'eqchi' region goes beyond the Alta Verapaz department; in fact, its population is around 800,000 people and is the second largest indigenous group of the country.<sup>166</sup> In comparison with other Mayan ethnic groups, Mayan Q'eqchi' are predominantly monolingual.<sup>167</sup> The majority of the Q'eqchi' are agriculturalists cultivating maize and beans for subsistence and commercial crops such as coffee and cardamom for cash. To the Q'eqchi', the place in which they live and the geographical surroundings of their community are the location of their identity or 'the community identity is imagined in the relationship with the sacred local landscape'.<sup>168</sup> In Q'eqchi' cosmovision, this mountainous landscape is the home of the *Tzuultaq'a* or mountain spirits; *tzuul* means mountain and *taq'a* means valley. *Tzuultaq'a* has a significant degree of dualism: 'it is both mountain and valley, male and female, spirit and matter, singular and multiple, benevolent and vengeful, indigenous and foreign, with a Q'eqchi' name and a Spanish saint's name, linking the heavens and the earth.'<sup>169</sup> The *Tzuultaq'a* gives all the essential things to life: maize, beans, water and wood, and feeds the animals. To Q'eqchi' the *Tzuultaq'a* is the owner of the natural world

162. Huet, supra note 18, 49.

163. Wilson, supra note 156, 221.

164. For an in-depth analysis of the way these internally displaced Q'eqchi' groups survived in the mountains, see Huet, supra note 18, 105-165.

165. Wilson, supra note, 156, 168 and Huet, supra note 18, 158.

166. PNUD, supra note 142, 350.

167. PNUD, supra note 142, 399. The percentage of monolingual population is 65.7 percent which is the highest of all the ethnic groups. Some Q'eqchi' also live in the Petén department and in the El Quiché department.

168. Wilson, supra note 156, 21. See also: Siebers, supra note 152, 15.

169. Wilson, supra note 156, 53.

and encompasses the whole of the sacralised landscape.<sup>170</sup> These mountain spirits are living (*yo'yo*) and reside in the caves of mountains, but are also the physical features of the sacred landscape itself. The *Tzuultaq'a* is omnipresent and guides and oversees all actions of daily life. Consequently, the Q'eqchi' need to ask permission to cultivate the land and are obligated to pay, respect and feed the *Tzuultaq'a* which is done during a *majej* or offering *pom*<sup>171</sup>, candles, cacao and *boj*<sup>172</sup>. The following testimony reflects this conception well:<sup>173</sup>

Before touching any natural resources, cutting or bringing down a tree, hunting an animal, fishing, weeding for sowing or taking advantage of a creek for sowing the corn of the earth, it is necessary to ask permission to *Tzuultaq'a*. Hunting and the rest of the activities one carries out for trough which something is taking something from Nature weigh quite a lot for the community, you cannot go just like that...because the animals, the trees and the other things are not there just like that. It is necessary to respect Nature and the Owner of what has been created.

In Q'eqchi' cosmovision there exists a reciprocal 'contract'<sup>174</sup> between Q'eqchi' and the *Tzuultaq'a* that if Q'eqchi' show respect, sacrifice and thank the *Tzuultaq'a* then these mountain spirits reward them with abundance and protection. When Q'eqchi' don't comply with these obligations and thus don't perform these rituals for asking permission, then the person can fall on misfortune, namely one could get lost in the mountains, the dog that accompanies a peasant could be attacked by a snake or captured by the *Tzuultaq'a*, one could suffer an accident, etc. Thus, 'the success of agricultural production and the preservation of individual health is intimately linked to observation of the rituals with regulates the relationship between people, nature and *Tzuultaq'a*'.<sup>175</sup>

Importantly, like many Mayans in Central America, Q'eqchi' are Christians, either Catholic or evangelical, although mainly Catholic and a process of syncretism or religious intermixture has unfolded over the past 500 years. The *Tzuultaq'a*, which is considered a supreme God, is in fact the universe as an entire entity.<sup>176</sup> The idea of a personal and transcendent God is not inherent to Q'eqchi' cosmovision, but they don't ignore such a God. It can be assumed that the *Tzuultaq'a* is directly related to nature and the agricultural cycle of crops, whereas the Christian God is mainly relevant to the life-cycle of individual Q'eqchi' expressed in, for instance, baptism and Catholic marriage.<sup>177</sup> It must, however, be acknowledged that the disappearance

170. For more about the *Tzuultaq'a*, see Carlos Rafael Cabarrús, *La Cosmovisión Q'eqchi' en Proceso de Cambio*, El Salvador, UCA Editores, 1979, p205; Wilson, supra note 156; Ruth Carlson and Francis Eachus, 'El Mundo Espiritual de los Kekchies', in , Helen L.Neuenswander and Dean E. Arnold (eds.), *Estudios cognitivos del Sur de Mesoamérica*, Dallas, Summer Institute of Linguistics Museum of Anthropology, 1977, 35-61.

171. Copal incense.

172. Alcoholic drink made from fermented maize and sugar cane.

173. SAQB'ICHIL – COPMAGUA, supra note 139, 77.

174. Siebers, supra note 152, 86.

175. Sieder, supra note 149, 60.

176. Esteban Haeserijn, 'Filosofía popular de lo K'ekchi' de hoy', *Guatemala Indígena*, Vol. 10, 1975, 49.

177. Siebers, supra note 152, 89.

of many leaders and ancient book during the Spanish conquest, the imposition of the Catholic faith, the massacres and killing of elders during the armed conflict, the influences of the evangelical churches and of development projects based on neo-liberal principles has led to a fragmentation of cosmological knowledge and the crumble of agricultural rituals and practices.<sup>178</sup> Yet at the same time it has been argued that Q'eqchi' have the ability to respond to modernising problems and influences of external actors because of their creolising capacity.<sup>179</sup> This is their capacity to articulate 'their selective (re)invention of tradition with selectively adopted and adapted external elements from intervening agencies, to combine the selective continuation of pre-modern elements with selectively adopted and adapted modern aspects'.<sup>180</sup> This creolisation capacity depends on 'the maintenance of the relative autonomy of their local community and of their households'.<sup>181</sup> The question is however to what extent conflict-torn communities will be able to restore some level of autonomy and thus their creolisation capacity.

Another cornerstone of the Q'eqchi' life-world and identity is the large community sense among the members of the community and also the concept of unity (*junajil*) or social cohesion. It is a community that 'accompanies, animates, celebrates and participates in the whole process and development of a person'.<sup>182</sup> The community does not only play a crucial role in the life of persons, but also with regard to religious and agricultural activities. Solidarity, reciprocity, equality and fraternity are the main building blocks of this community sense.<sup>183</sup> Indeed, involvement in labour reciprocity is 'both a defining feature of indigenous identity and a criterion of community membership'.<sup>184</sup> Moreover, the most important thing in a community is to 'perform one's duty to the others and serve the community, because it is the only way throughout to obtain all the rights'.<sup>185</sup> Here, 'ritual is something which unifies community life and reaffirms the reciprocal relationship between people, the earth and the tzuultaq'a'.<sup>186</sup> Unity between the community members before and during a community mayejak or offering-sacrifice is important for its successful performance. Indeed, a mayejak is in the first place a communitarian practice which expresses the wish of the community to relate with the mountain spirits.<sup>187</sup> Therefore, community harmony is necessary which implies that no individual will be excluded. In the light of this it is important to highlight that Q'eqchi' communities are not homogenous entities, but are politically and religiously diverse and there exists economic differentiation among the community

178. Inge Hatse y Patrick De Ceuster, *Prácticas Agrosilvestres Q'eqchi'es: Más Allá de Maíz y Frigol*, Cobán, Centro Ak'kutan, 2001, 17.

179. See Siebers, supra note 152. Concepts that are related to creolisation are 'hybridisation', 'syncretisation' and 'bricolage'.

180. Ibid., 159.

181. Ibid., 166.

182. José Parra Novo, *Persona Y Comunidad Q'eqchi'. Aproximación Cultural a la Comunidad Q'eqchi' de Santa María Cahabon*, Cobán, Centro Ak'kutan, 1997, 8.

183. Ibid., 8.

184. Wilson, supra note 156, 93.

185. Saqb'ichil-COPMAGUA, supra note 139, 194.

186. Sieder, supra note 149, 61.

187. Centro Ak'kutan, *Fenomenología de las culturas mayas de Verapaz*, Cobán, Centro Ak'kutan, 2002, 23.

members.<sup>188</sup> Moreover, the counter-insurgency tactics of the conflict had a destructive impact on the cultural values that ensured cohesion and collective action in Mayan communities and caused a rupture ‘with both community mechanisms and the oral transmission of knowledge of their own culture, likewise damaging Mayan norms and values of respect and service to the community’.<sup>189</sup>

188. Wilson, *supra* note 156, 22.

189. CEH, *supra* note 14, Conclusions nr 63







"No To



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For those//  
who do not speak our languages//  
we are invisible

*Humberto Ak'abal*

Community mayejak, 5 May 2008, Saha'kok



## 2 Methodological Choices when Going Local in Post-Conflict Guatemala

Recently the transitional justice field has shifted from the international and national level toward local approaches in post-conflict recovery processes, a tendency that has been called ‘transitional justice from below’<sup>1</sup>. Part of this development is the growing recognition among international actors and governments of the value of traditional and informal justice systems in peacemaking and transitional justice policies. Among scholars and practitioners, however, there is a growing concern about the lack of information about how these local approaches should be understood and how the encounter between top-down transitional justice interventions and the local realities take place. At the same time there is an emerging interest in examining survivors’ perspectives and priorities on the central issues of justice, reconciliation, truth recovery and reparation. The underlying reason for this trend is the growing awareness among practitioners that by taking into account the survivors’ needs and priorities at all stages of transitional justice policies - conceptualization, design, implementation - these policies will meet more effectively the survivor’s expectations. Indeed, the impact and the effectiveness of the various tools of transitional justice have been questioned. In this evolving transitional justice context, NGOs, donor agencies, external actors and governments are keen to hear what ‘the people think’ about the distinct transitional justice and social recovery interventions in a national context. However, in this sense, the words of Pouligny are revealing, ‘I have myself been regularly asked about what ‘people’ thought of a truth commission, or a tribunal. I have always refused to answer such a question, because I doubted my capacity to furnish a non superficial answer and to tell anything but what I had myself in mind.’<sup>2</sup> During the past five years a growing body of academic literature and research reports of international NGOs is giving voice to survivors of different armed conflicts. Nonetheless, an important knowledge gap remains and several scholars have called for further empirical research

1. See: Kieran McEvoy and Lorna McGregor (eds.), *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*, Oxford, Hart Publishing, 2008, p254.
2. Béatrice Pouligny, *The Forgotten Dimensions of ‘Transitional Justice’ mechanisms: Cultural Meanings and Imperatives for Survivors of Violence Conflicts*. Paper presented at the “Global Justice, Local Legitimacy” International Conference, University of Amsterdam, (January 2005).

at the grassroots level of conflict-torn communities and with survivors.<sup>3</sup> Besides this gap, there is also little written or discussed about the different methodological challenges to research on the one hand these local and tradition-based approaches and processes and the responses and survivors' perspectives on the other.<sup>4</sup>

Therefore this chapter discusses extensively the applied research methodology and justifies the several methodological choices that have been made in the present study to address the research questions. This study aimed to explore the actual and potential role of Maya Q'eqchi' culture in the local process of social recovery when dealing with the legacy of the internal armed conflict. The central research question is about how the driven goals of transitional justice - justice, reparation, truth recovery and reconciliation - are understood from the perspective of Maya Q'eqchi' survivors. Therefore the meaning and significance that Maya Q'eqchi' survivors give to the gross human rights violations they have suffered during the armed conflict were explored. Further, this study attempted to gain better insights into the ways in which victims and ex-PACs are reconstructing social relations and living together again. Finally, this research wished to grasp the interconnection between macro level policies on transitional justice and micro level processes and how these policies are engaged with this micro level of conflict-torn communities. To address these research questions it was decided to conduct multi-sited ethnographic field research with a legal anthropological approach using methodological triangulation.

Before moving to the discussion of the employed research methodology, first some reflections are made on currently applied research strategies in the transitional justice field. Next, the added value of a legal approach to anthropological research on transitional justice from below will be discussed. Thereafter, the third section examines my own locus of enunciation disusing my positionality in this research. Then follows my cleaned up version of my extensive field research because, indeed, 'Despite all the myths about how research is done, it's actually a messy process that's cleaned up in the reporting of results'.<sup>5</sup> The fifth section describes my ethnographic encounter with Maya Q'eqchi' survivors. Here the socio-geographical background of the three regions forming part of the conducted multi-sited ethnographic field research is sketched. Then reflections are made upon entering the fields and the role of 'outsiders within', local soundboards, knowledge brokers and gatekeepers. The sixth section describes briefly the different field research periods between 2006 and 2010. The final section discusses the use of methodological triangulation or multiple data collection

3. See for example, Erin K. Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, 97; Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice', *Temple Law Review*, Vol. 79, 2006, 6.

4. Though see: Hugo van der Merve, Victoria Baxter and Audrey Chapman (eds.), *Assessing the Impact of Transitional Justice. Challenges for Empirical Research*, Washington D.C., United States Institute of Peace Press, 2009, p344.

5. Bernard Russel, *Research Methods in Anthropology. Qualitative and Quantitative Approaches*, Lanham, Altamira Press, 2006, 69.

techniques. These techniques are ethnolinguistic study and workshops, participant observation and photography, semi-structured focus group discussions, and formal and informal individual interviews. This section concludes with a discussion of the strategy of analysis and reporting of the gathered ethnographic data.

## Researching Transitional Justice from Below

Currently, there is a clear tendency in transitional justice studies to favour quantitative large-scale surveys yielding insights into strategies and mechanisms that address the needs of victims. Recently several large-scale population-based surveys have been conducted to understand the priorities, needs and attitudes of victims toward peace, justice, reintegration, and reconciliation in for example Rwanda, Northern Uganda, Eastern Congo, Colombia, Bosnia and Cambodia.<sup>6</sup> Here the Human Rights Centre of the University of California Berkeley has become a key expertise centre in the design and employing of such empirical studies using the quantitative method of structured questionnaires.<sup>7</sup> The applied research design includes normally a qualitative assessment of focus groups with representatives and experts prior to the development of the specific country survey. These surveys have often been conducted in collaboration with the New York-based NGO International Centre of Transitional Justice (ICTJ) or the Payson Center for International Development, Tulane University. There are some empirical studies elaborated by the ICTJ on Timor-Leste and Iraq in which qualitative methods such as focus groups with representatives and key informant interviews were employed.<sup>8</sup> Based upon these research experiences, the research team of the Human Rights Centre of the University of California Berkeley, advocate developing effective evidence-based transitional justice programmes which ‘consist of the initiation of policies and programs based on evidence derived from the best available data’.<sup>9</sup>

6. See: Phuong Pham, Patrick Vinck, Marieke Wierda, Eric Stover and Adrian di Giovanni, *When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda*, New York, Human Rights Center, University of California, Berkeley, 2007, p57; Payson Center for International Development, Tulane University; International Center for Transitional Justice, 2005; Fundación Social, *Consejería en Proyectos PCS y International Centre of Transitional Justice, Percepciones y Opiniones de los Colombianos sobre Justicia, Verdad, Reparación y Reconciliación*, Bogotá, 2006, p75; Patrick Vinck, Phuong Pham, Suliman Baldo and Rachel Shigenkane, *Living with Fear. A Population-Based Survey on Attitudes about Peace, Justice and Social Reconstruction in Eastern Democratic Republic of Congo*, New York, Human Rights Center, University of California, Berkeley; Payson Center for International Development, Tulane University; International Center for Transitional Justice, 2009, p72.
7. Though see also: Stephan Parmentier, Marta Valiñas and Elmar Weitekamp, ‘How to Repair the Harm after Violent Conflict in Bosnia? Results of a Population-Based Survey’, *Netherlands Quarterly of Human Rights*, Vol. 27, No. 1, 2009, 27-44.
8. Piers Pigou, *Crying Without Tears. In the Pursuit Of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations*, New York, International Center of Transitional Justice Occasional Paper Series, 2003, p56 and Human Rights Center and International Center for Transitional Justice, *Iraqi Voices, a Population-based Survey of Attitudes toward Peace and Justice*, New York, Human Rights Center, University of California Berkeley and International Center for Transitional Justice, 2004.
9. Phuong Pham and Patrick Vinck, ‘Empirical Research and the Development and Assessment of Transitional Justice Mechanisms’, *International Journal of Transitional Justice*, Vol. 1, No. 2, 2007, 231-248.

Surveys may offer insights into what 'the people' broadly think and so responding to the needs of policy makers, their use in fragile and fragmented communities, however, raises a number of concerns and questions. Anthropologist Shaw, for instance, argues that this research methodology is highly problematic in societies emerging from mass violence because people 'have historical reasons not to trust any exercise that resembles official information gathering'.<sup>10</sup> Further, how do these kinds of surveys deal with the fact that key concepts such as justice, reparations, truth recovery and reconciliation may be contested in non-Western and culturally diverse societies? For example, to what extent are different frames of reference taken into account in the design and implementation of these surveys? What about the level of intercultural translation and how does the interviewer know if the interviewees really grasp the different survey questions? Another question is related to the sufficient time and space these surveys offer for debate to discuss the range of optional answers. To what extent do the interviewers comprehend what the respondents answer? Further, are these surveys, focussing on individual perceptions, able to examine the collective experience of gross human rights violations? Finally, in which ways are the design and implementation of these surveys influenced by the agenda and the time frames of the NGOs and policy makers who finance them.

Besides these population-based surveys, there are also a number of recent anthropological studies, mainly by medical anthropologists, based on long-term ethnographic field research among certain groups of survivors and affected communities of different armed conflicts such as Peru, Sierra Leone, Mozambique and South Africa. These studies have addressed for instance the functioning and impact of truth commissions at the local level, meanings of healing of war traumas and reconciliation as well as social reintegration processes of child soldiers or ex-combatants.<sup>11</sup> Generally, it is argued that the anthropological ethnographic approach is the most appropriate research strategy to study social issues that are not yet clearly understood and to grasp people's own perspectives.<sup>12</sup> This research approach usually involves a long-term commitment of the researcher with the research field drawing on a range of sources of data such as participant observation, formal and informal interviews and collecting documents.<sup>13</sup>

10. Rosalind Shaw, *Rethinking Truth and Reconciliation Commissions. Lessons from Sierra Leone*, Washington D.C., United States Institute of Peace Special Report, 2005, 6.

11. Ibid.; Shaw *infra* note 14; Richard A. Wilson, *The Politics of Truth and Reconciliation in South Africa, Legitimizing the Post-Apartheid State*, Cambridge, Cambridge University Press, 2001, p271; Alcinda Honwana, 'Healing and Social Reintegration in Mozambique and Angola', in Elin Skaar, Siri Gløppen and Astri Suhrke (eds.), *Roads to Reconciliation*, Lanham, Lexington Books, 2005, 83-100; Edward C. Green and Alcinda Honwana, 'Indigenous Healing of War-Affected Children in Africa', *The World Bank: I.K., Notes*, [Washington D.C.], The World Bank, 1999, p4; Alcinda Honwana, Healing for Peace: Traditional Healers and Post-War Reconstruction in Southern Mozambique, *Journal of Peace Psychology*, 1997, 3(3), 293-305; Joanna Quinn, Social Reconstruction in Uganda: the Role of Customary Mechanisms in Transitional Justice, *Human Rights Review*, 2007, Vol. 8, No. 4, 389-407; Victor Igreja and Beatrice Dias-Lambranca, 'Restorative justice and the role of magamba spirits in post-civil war Gorongosa, central Mozambique', in Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, International IDEA, 2008, 61-83.

12. Michael Angrosino, *Doing Ethnographic and Observational Research*, Book III of Uwe Flick (ed.) *The Sage Qualitative Research Kit*, Los Angeles, Sage Publications, 2007, 20.

13. See: Martyn Hammersley and Paul Atkinson, *Ethnography. Principles in Practice. Third Edition*, London, Routledge, 2007, p275.



Several anthropologists stress the appropriateness of this research methodology to produce knowledge about survivor perspectives and needs in post-conflict societies. Shaw argues, for example, that this method is the most suitable way to examine how transitional justice mechanisms such as truth commissions actually work on the ground and either intersect or not with local practices of social recovery.<sup>14</sup><sup>15</sup> It gives also access to another kind of knowledge than when the functioning of these mechanisms are researched only from within. Another strength of this methodology, according to Shaw, is that it fosters an understanding in the people own terms and has also the potential to challenge our assumptions. Because this methodology entails building up relations with survivors and listening to them on their terms. This kind of knowledge cannot be achieved by single visits to the research settings in the context of quantitative research techniques. Theidon further notes that this approach offers also the possibility of ‘moving beyond the black and white of statistics to explore the grey zone that characterizes the complex realities of a fratricidal war’.<sup>16</sup> It is also worthy to highlight that whereas jurists and political scientists usually analyse the state, the anthropological way of framing discussion on for example reparations draws attention to ‘the impact of human rights violations on entire communities in addition to the injuries that individuals suffer’.<sup>17</sup> It is indeed also important to pay attention to the collective dimension of armed conflicts – something which is difficult to grasp through population-based surveys.

It should, however, be acknowledged that both research methodologies have their strengths and weaknesses and that neither method is intrinsically superior to the other. In fact, in social science the debate about the value of either quantitative or qualitative methods is already long-lasting. The selection of the research methods depends on the topic of research and the specific research questions. In fact, in line with the recent tendency in social science to use mixed methods, in the transitional justice field also, the development of appropriate methodologies combining breadth and depth, and drawing strength from the complementarity of population-based surveys and anthropological ethnographic methods will allow the uncovering and understanding of the complexities. Yet, as mentioned, there is a strong tendency to favour population-based surveys to produce knowledge about survivors’ priorities and needs. Naidu points out that the current consultation processes by policy makers and donor agencies have usually a ‘top-down approach to ‘rubber-stamp’ pre-determined agendas’<sup>18</sup>. In light of this assessment, one wonders whether the fact that

14. Shaw, supra note 10, 6.

15. Rosalind Shaw, ‘Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone’, *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, 188.

16. Kimberly Theidon, ‘Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia’, *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, 74.

17. Alison Dundes Renteln, ‘Reparations and Human Rights: Why the Anthropological Approach Matters’, in Barbara Johnston and Susan Slyomovics, *Waging War, Making Peace. Reparations and Human Rights*, Walnut Creek, Left Coast Press, 2009, 242.

18. Ereshnee Naidu, *The ties that bind: Strengthening the links between memorialisation and transitional justice*, Research Brief, [Johannesburg], The Centre for the Study of Violence and Reconciliation CSVR, 2006, 2, [www.csvr.org.za/docs/livingmemory/tiesthatbind.pdf](http://www.csvr.org.za/docs/livingmemory/tiesthatbind.pdf).

these national institutions and agencies show preference to quantitative research over anthropological studies is related to the time-consuming character of ethnographic field research. The use of this research methodology as a basis for their policies implies the need to extend significantly their project timelines and funding commitments. Maybe this preference is also related to the fact that these kinds of studies generally reveal that local recovery processes are multidimensional and multilayered and thus challenge global standardized responses. Nonetheless, as this study will show too, ethnographic research offers important insights into the complicated ideas, practices and politics at the grassroots level of transitional communities that could be very useful for policy makers.

### **Adding a Legal Anthropological Approach to Thnographic Studies on Transitional Justice**

In order to examine the actual and potential role of Mayan Q'eqchi' culture in the local process of social recovery an elaborate extensive ethnographic research with a legal anthropological approach was chosen. This doctoral research was inspired by Geertz who has highlighted that anthropological research, analysis and writing are interpretative activities and must be actor-oriented.<sup>19</sup> In fact, the data gathered from ethnographic research are 'our own constructions of other people's constructions of what they and their compatriots are up to'.<sup>20</sup> This means that the description of the culture must be 'cast in terms of the constructions we imagine [them] to place upon what they live through, the formulae they use to define what happens to them'.<sup>21</sup> Adopting a semiotic approach to culture facilitates researchers 'in gaining access to the conceptual world in which our subjects live so that we can, in some extended sense of the term, converse with them'.<sup>22</sup> Along the same line, this present study attempted to gain better insight into the Q'eqchi' conceptual world and more specifically to 'understandings within' or 'emic perceptions' of Maya Q'eqchi' survivors about transitional justice issues. Yet, the central challenge an anthropologist faces is to connect his analytical concepts to the strange social and cultural world that the researcher deals with. This is commonly known as the problem of translation where the major challenge lies in 'translating native concepts into the anthropologist's working language'.<sup>23</sup> Therefore, it should be acknowledged that ethnographic descriptions lie closer to the world experienced by the participants, the emic level, whereas the analytical descriptions and perspectives of the anthropologists is moreover the 'etic' level.<sup>24</sup>

19. Clifford Geertz, 'Thick Description: Toward an Interpretive Theory of Culture', in Clifford Geertz, *The Interpretation of Cultures: Selected Essays*, New York, Basic Books, 1973, 3-30.

20. *Ibid.*, 8.

21. *Ibid.*, 14.

22. *Ibid.*

23. Thomas Hylland Erikson, *Small Places, Large Issues. An Introduction to Social and Cultural Anthropology*, London, Pluto Press, 2001, 35.

24. For more on emic and etic level in anthropological research see, *ibid.*, 36-37.

In light of the little knowledge available about how transitional justice works at the grassroots level and the current trend to use mainly quantitative research methodology to explore survivors' perceptions and needs, I argue that a legal anthropological approach can make a major contribution to the study of 'transitional justice from below' issues for several reasons. As previously said, since its emergence the transitional justice field has been highly dominated by legalism which makes transitional justice discussions and practices take a predominantly legal approach. Moreover, emerging paradigm transitional justice tends even toward a new transnational normative system (cfr. *infra* Chapter 7). A legal anthropological approach can open avenues to a better understanding of the complex transitional justice issues in diverse social and political contexts. Legal anthropology is the discipline which has the objective of 'understanding the rules of social behaviour, but emphasizes the legal domain, all the while recognizing that law can never be considered in isolation; law is only one element in the cultural and social whole of each society, and is variously interpreted and used by each subgroup'.<sup>25</sup> So, a legal anthropological approach, in contrast with an analysis of law-as text by legal theorists, provides a contextual analysis of law that highlights 'the effects that economic, social and political processes have in establishing differential legal relations among individuals and social groups'.<sup>26</sup> For instance, in the field of human rights law, the growing body of anthropological studies of human rights around the world have offered meaningful contributions to a better understanding of how human rights work, what they actually do and how international law is translated into local justice.<sup>27</sup> Taking the insights developed in these studies into account and elaborating more anthropological studies of transitional justice processes of different post-conflict societies will nurture a better understanding of how transitional justice functions.

Legal anthropological approach can also shed light on the role of the local, traditional mechanisms in transitional justice processes and how survivors and communities 'mobilize the ritual and symbolic elements of transitional justice to deal with the deep cleavages left –or accentuated – by civil conflicts'.<sup>28</sup> By studying legal pluralism in diverse societies legal anthropologists have made a major contribution to the study of law by 'challenging Western notions of what constitutes a legal domain and by extending the concept of law beyond rule-based formulations to incorporate view of "law as process"'.<sup>29</sup> In fact, legal anthropology plays 'a valuable role in translating the legal precepts of local societies into the vernacular of the dominating cultures'.<sup>30</sup> Moreover, anthropological studies have given crucial insights into the

25. Norbert Rouland, *Legal Anthropology* (translated by Philippe Paniel), London, The Athlone Press, 1994, 2.
26. Anne Griffiths, 'Using Ethnography as a Tool in Legal Research: An Anthropological Perspective', in Reza Banakar and Max Travers (eds.), *Theory and Method in SocioLegal Research*, Oxford, Hart, 2005, 113.
27. See the work of: Sally Engle Merry, *Human Rights and Gender Violence. Translating International Law into Local Justice*, Chicago, The University of Chicago Press, 2006, p269; Mark Goodale and Sally Engle Merry (eds.), *The Practice of Human Rights. Tracking Between the Global and the Local*, Cambridge, Cambridge University Press, 2007, p384; Mark Goodale (ed.), *Human Rights: An Anthropological Reader*, Oxford, Wiley-Blackwell, 2009, p409.
28. Theidon, *supra* note 16, 67.
29. Griffiths, *supra* note 26, 113-114.
30. James Donovan, *Legal Anthropology. An Introduction*, Lanham, Altamira Press, 2008, 207.

discussion on the relation between, culture, cultural diversity and human rights.<sup>31</sup> One of these insights is that a very narrow conception of culture as being static and homogenous cannot hold and that a more contested, dynamic, hybrid and fluid model of culture offers a better understanding of human rights practice at the global and local level.<sup>32</sup> Another crucial finding is that in the international human rights community there is an inclination to ‘demonize culture’<sup>33</sup> and to see culture rather as an obstacle than as leverage. Also in the transitional justice field it has already been observed that also international actors working on for example social and community rehabilitation, local cultural resources of healing are easily put under the disputable label of harmful traditional practices and therefore ignored or underestimated.<sup>34</sup> In addition, critics that women and youths are discriminated against when incorporating local and traditional justice systems and approaches in grassroots transitional justice processes are also often heard in international transitional justice fora. Yet, these are in fact assumptions which are actually not yet grounded on empirical studies. Against this backdrop, ethnographic field research can be a powerful tool for understanding processes on the ground and for ‘challenging received wisdom’.<sup>35</sup> Moreover, it has been recognized that ethnographers strive to be conscious of and set aside the perspective of ethnocentrism.<sup>36</sup> This critical and reflective attitude can be very valuable and an important strength in light of these current international debates about the role of culture and cultural diversity in the transitional justice field.

## My Locus of Enunciation

Before moving on to a discussion of the ethnographic fieldwork, I want to consider some reflections about my locus of enunciation or the place where I speak from. The value of reflexivity has been widely accepted in anthropology and refers to ‘the constant awareness, assessment, and reassessment by the researcher of the researcher’s own contribution/influence/shaping of intersubjective research and the consequent research findings’.<sup>37</sup> As previously mentioned in the Preface, the journey of this doctoral research started many years ago during personal encounters with the local and cultural reality of remote rural indigenous areas in the Alta Verapaz department

31. For more on this see: Jane Cowan, Marie-Bénédicte Dembour and Richard Wilson (eds.) *Culture and Rights: Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001 and also see Chapter 7.

32. Jane Cowan, Marie-Bénédicte Dembour and Richard Wilson, ‘Introduction’, Jane Cowan, Marie-Bénédicte Dembour and Richard A. Wilson (eds.) *Culture and Rights: Anthropological Perspectives*, Cambridge, Cambridge University Press, 2001, 13-14.

33. Sally Engle Merry, ‘Human Rights Law and the Demonization of Culture (And Anthropology along the Way)’, *Political and Legal Anthropology Review*, Vol. 26, No. 1, 2003, 55-76.

34. Béatrice Pouligny, Simon Chesterman and Albrecht Schnabel, ‘Introduction: Picking up the pieces’, In Béatrice Pouligny, Simon Chesterman and Albrecht Schnabel (eds.), *After Mass Crime. Rebuilding States and Communities*, Tokyo, United Nations University Press, 2007, 6.

35. Shaw, *supra* note 15, 188.

36. Michael Angrosino, *Doing Ethnographic and Observational Research*, Los Angeles, Sage Publications, 2007, 38.

37. Philip Carl Salzman, ‘On Reflexivity’, *American Anthropologist*, Vol. 104, No 3, 2002, 806.

in Guatemala. Writing up these personal histories related to this study was actually an attempt to visualize the ‘invisible author-narrator’<sup>38</sup> of the several article publications which constitute the core of this doctoral dissertation. Yet it also shows that indeed, ethnographers are ‘multi-sensory human beings with unique personal histories’.<sup>39</sup> Also in this study it should be acknowledged that the orientations of the researcher are shaped by their socio-historical locations and that as a researcher one is both an observer of the social world and a part of that same world.<sup>40</sup>

Besides those real-life experiences, also theoretical post-colonial readings of Edward Said on orientalism, of Mignolo about border knowledge, Gayatri Spivak about the voice of the subalterns and the ideas of imitation and mimicry of Homi Bhabha have inspired and sharpened my approximation of the topic.<sup>41</sup> In the light of subaltern studies and the work of Spivak, for instance, I questioned why in Guatemala outside actors and the intellectual elite generally perceive and treat victims of gross human rights as passive people. In fact, these actors emphasize their suffering rather than acknowledging their ability to confront actively the heavy burden of the past. Do these international NGOs and donors actually give political and social space to people who suffered during the internal armed conflict to voice their demands and engage with the legacy of the mass atrocities? In the case of Guatemala, are the victims – mainly indigenous people – not at the same time subalterns toward the dominant Ladino culture and the indigenous intellectual elite? How can these voices be recovered and when this actually happens, is the heterogeneity of these subaltern victims’ voices recognized? Along the same line goes the profound question about whether the subaltern survivor actually can speak regarding transitional justice interventions that will have an impact on their life and their community. And when there is actually space for their voices, will they be heard by those who set the national peace building and transitional justice agenda?

Further, from the setting up of the research in Guatemala I was concerned about how to translate my concern about the reciprocity of my research toward the research subjects and communities, while maintaining a critical, analytical, academic perspective. The core method of ethnographic research is long-term interpersonal contact between the researcher, participants and field of analyses, and as Bourgois states ‘anthropologists cannot escape physically, ethically, and emotionally the suffering or the brutality of their research subjects and the historical epoch in which they live’.<sup>42</sup>

38. Robertson, *ibid.*, 785.

39. Jennifer Robertson, ‘Reflexivity Redux: A Pithy Polemic on “Positionality”’, *Anthropological Quarterly*, Vol. 75, No 4, 2002, 789.

40. Hammersley and Atkinson, *supra* note 13, 14-19.

41. See: Edward Said, *Orientalism*, Harmondsworth, Penguin Books, 1978, p368; Walter Mignolo, *Local Histories/Global Designs. Coloniality, Subaltern Knowledges, and Border Thinking*, Princeton, Princeton University Press, 2000, p371. Gayatri Spivak, ‘Can the Subaltern Speak?’, in Cary Nelson and Lawrence Grossberg (eds.), *Marxism and the Interpretation of Culture*, London, Macmillan, 1998, 271-313; Homi Bhabha, *The Location of Culture*, Routledge, 1994, p285.

42. Philippe Bourgois, ‘Foreword: Anthropology in the Global State of Emergency’, in Victoria Sanford and Asale Angle-Ajani (eds.), *Engaged Observer: Anthropology, Advocacy and Activism*, New Brunswick, Rutgers University Press, 2008, xii.

For most anthropologists, research entails a significant engagement with its research subjects, yet in the field of anthropology of human rights the tensions between critical analysis and political activism and advocacy have been largely discussed.<sup>43</sup> In the case of anthropological research among indigenous communities in the Mayan region - Mexico and Central America - some anthropologists have been involved in human and indigenous activism, while others, equally engaged in their research subjects, have approached their research from a more strictly academic perspective embracing the critical academic distance.<sup>44</sup> Similarly, transitional justice is also a field of academic research connected with a field of practice. This means that transitional justice scholars are in fact also confronted with policy concerns and questions regarding their own research findings. As an 'engaged observer'<sup>45</sup> I committed myself, from the end of 2006, to facilitate the wish of the Resistance Committee of Survivors Q'eqchi' (CORESQ) to elaborate a popular and visual version of a recent study about historical memory of internally displaced Q'eqchi' survivors throughout the various communities of Alta Verapaz.<sup>46</sup> This engagement resulted in supporting the elaboration process of a set of five posters that narrates this historical memory and which later has been complemented with other educational material. Further, I also accepted in 2007 the consultancy opportunity offered by the German Development Cooperation (GTZ) to collaborate on the first national report on the National Reparation Programme (PNR) about victim perceptions of the PNR based on empirical research. Finally, it is the aim to share the main findings of this research with national human rights groups, victim and indigenous organizations, representatives of civil society and the international community in Guatemala through a Spanish publication with a Guatemalan publisher.

## Being There: An Ethnographic Encounter with Maya Q'eqchi' Survivors

First, the use of multi-sited ethnographic field research is discussed and a sketch is given of a general background of the three regions where field research has been conducted. Next the role of 'outsiders within', local soundboards, knowledge brokers and gatekeepers in gaining access to the different conflict-torn communities is examined. Finally, the four different field research periods between 2006 and 2010 are described.

43. See for example: Shannon Speed, 'At the Crossroads of Human Rights and Anthropology: Toward a Critically Engaged Activist Research', *American Anthropologist*, Vol. 108, Issue 1, 2006, 66-76 and Victoria Sanford and Asale Angle-Ajani (eds.), *Engaged Observer: Anthropology, Advocacy and Activism*, New Brunswick, Rutgers University Press, 2008, p254

44. Shannon Speed and Xochitl Leyva Solano, 'Human Rights and the Maya Region', in Pedro Pitarch, Shannon Speed and Xochitl Leyva Solano (eds.), *Human Rights in the Maya Region. Global Politics, Cultural Contentions, and Moral Engagements*, Durham, Duke University Press, 2008, 18-19.

45. A term which I borrow from Sanford and Angle-Ajani supra note 42.

46. This study has been published in Q'eqchi' and Spanish: Alfonso Huet, *Xooxkol li loq'aj Tzuul, loq'aj K'iche. Resilil li yu'aminb'il x'b'aaneb' junmay chi k'aleb aj q'eqchi' chalen xtiklajik li rahibal naq xe'k'ate' rochocheb' ut xe'kolé' rub'el li loq'aj K'iche'*, Guatemala, Magna Terra Editores, 2006, p268 and Alfonso Huet, *Nos salvó la sagrada selva: Memoria de veinte comunidades Q'eqchi'es que sobrevivieron al genocidio*, Guatemala City, Maya Na'oj, 2008, p355. The elaboration process of these popular and visual materials will be discussed in depth in Chapter 5.

## **Multi-sited Ethnographic Field Research: Regions of Nimlasachal, Nimlaha'kok and Salacium**

Traditionally, ethnographic research has been conducted in a single site of analysis, yet recently multi-sited ethnography has become common as a strategy to trace circulating ideas and practices and translocal processes as well to examine connections and contrasts across different places.<sup>47</sup> Also in this doctoral dissertation it is the objective to trace circulating ideas and practice related to transitional justice issues among Q'eqchi' survivors and to track translocal social recovery processes in the affected regions. Therefore, multi-sited ethnographic research has been conducted in the micro regions of Nimlasachal, Nimlaha'kok and Salacium which belong to the municipality of Cobán (map 3&4). They were the most affected regions of the Cobán municipality by the counter-insurgency violence during 1980, 1981 and 1982 (see map 5). Currently, these regions are administratively three different regions, yet during the conflict these regions were one zone of acute military conflict. Although much diversity exists among the communities in these regions, the majority were created or reconstituted after the peak of the conflict. This section sketches the geographical and social make-up of these three regions.

The municipality of Cobán is with its 170,000 inhabitants the largest of the 15 municipalities of the Alta Verapaz department and has a territorial extension of 2,132 km<sup>2</sup> (see map 3).<sup>48</sup> This municipality is divided into six micro-regions that are, according to the municipal codex of 2002, legally recognized entities. These six micro-regions account for 317 local communities scattered over the territory, which makes Cobán one of the municipalities with the highest rural population density of the country. Every region has a coordinator or a so-called regional mayor who acts as the communication channel between the inhabitants of each region and the municipality of Cobán. The coordinators are assisted by a regional development council (COCODE 2). The three regions studied are located in the west and north-west of the Alta Verapaz department and are adjacent to the department of El Quiché.

The region of Nimlasachal is historically, culturally, socially and geographically the most forgotten and isolated area of the whole department. This region is situated at the west of Cobán and the region of Nimlaha'kok is adjacent in the north. Nimlasachal currently consists of 33 communities and fincas with about 4,000 inhabitants who are all Mayan Q'eqchi' and monolingual. The largest settlement is Chamá Grande of around 100 families, yet the average size of communities is around 30 families. The communities in this region are only accessible by foot across mountain trails and the distance between the communities is around a two or three-hour walk. The administrative centre of the region is located in Sachal and it is a

47. George Marcus, 'Ethnography in/of the World System: the Emergence of Multi-Sited Ethnography', *Annual Review of Anthropology*, Vol. 24, 1995, 95-117.

48. Municipalidad Cobán, *Características de Pobreza. Documento Interno*, 2009, p26.

five-hour hike to arrive at the road from where it takes another two-hour drive to reach Cobán.<sup>49</sup> As previously said, my first visit to this region was in 2002 when I conducted ethnographic field research for my master thesis in Cobán and was able to join Manuel Paau (*infra*) on his visits to the communities of Las Pacayas, Sachal and Chamá Grande. Due to its remoteness, the region has historically been neglected by (inter) national and local NGOs and also by the State. During my field research for this doctoral dissertation I was able to visit the region twice. In August 2006 I accompanied an agriculturalist of the NGO ADICI to the remote community of Xalab'e. The objective of this four-day trip was not to interview people, but to grasp a minimum level of physical understanding of the area which had, during the conflict, severely suffered massacres and where people had gone into hiding in the mountains for months or even years. Another reason was to see the huge cross which was erected in 1999 to commemorate the victims of that area (cf. *infra* Chapter 3). To reach this community you have to start to walk where the 4x4 jeep, after a one-hour drive from Cobán, cannot go any further. It took us another six hours of walking, descending almost 900 metres through a sloping landscape and following a muddy and slippery trail, as we did the visit during the raining season.<sup>50</sup> In fact, you have to cross the famous green mountains of Alta Verapaz which are the lungs of the region. As the trail is downhill, the immense white cross is visible two hours away from arriving at the small village of Xalab'e. We stayed with the family of Javier who is a key leader of the community. Although I am an experienced hiker I described back home in Cobán on my internet weblog this hike as the 'Paris Roubaix of Alta Verapaz'. Due to the muddy, slippery and broken trail I came back with two blue knees and on top of that I lost the nail of my right big toe somewhere on the road. I had the opportunity to visit the region again in May 2007. Then I attended a nightly community mayejak at the cross of Xalab'e and was able to interview several elders in Sachal. Infrastructure in the sense of electricity, roads or access to medical care is in this isolated region absent.

I also conducted ethnographic field research in the communities of Chicoj Raxquix, Samaq and Sa'nimtaq'a that administratively belong to the micro region of Cobán, but the inhabitants have strong historical ties with the Nimlasachal region. These communities are situated near Cobán and easily accessible by microbus or by foot. All the families of Chicoj Raxquix are internally displaced Q'eqchi' originally from the areas around Chamá Grande, Xalab'e and Sachal.<sup>51</sup> Several families have still some land in that area that they cultivate. The community of Samaq, a vast national cooperative formed in 1943 from an expropriated German finca, had a severe experience of the conflict. The territory of this huge cooperative stretches out in the Nimlasachal region by which many communities are, up to day, actually annexed

49. Yet from other communities in that area the people have to travel for more than two days to reach Cobán.

50. Six hours is the regular time to reach the village, although depending on your physical condition this hike can take eight to ten hours. However, adults as well as the children of the village need only four hours to reach the un-asphalted road.

51. The community of Chicoj Raxquix was created by the Pastoral Social of the Diocese of La Verapaz in 1984 to resettle internally displaced Q'eqchi'.



to Samaq. Land conflicts between communities from the Nimlasachal region and the board of Samaq are still commonplace. In 1981 the guerrillas set on fire the buildings of the cooperative and shortly thereafter the military base of Cobán obliged the men to organize PACs. Samaq was a strategic entry point for the military into the area of Nimlasachal and obliged several PACs leaders to guide them when hunting internally displaced people and guerrilleros. But also several local leaders and catechists disappeared during the conflict. After the amnesty of General Rios Montt in 1982 many internally displaced people hiding in the Nimlasachal region were resettled in Samaq. This means that Samaq is constituted by a mix of original inhabitants which are ex-PACs and widows and of internally displaced people originally from the Nimlasachal region. The community of Sa'nimtaq'a is located one hour's walk from Samaq and is in fact the entry point to the Nimlasachal region. At the beginning of the conflict in 1981 some houses of the community were destroyed by the army and the majority of the families of Sa'nimtaq'a fled into the mountains, while some other families stayed in the village. In 1982 most people came back from the mountains and sought refuge for some years in the neighboring community of Samaq. In June 1982 military forces killed 34 people from Sa'nimtaq'a on the road to Samaq. A commissioner from Samaq has been appointed by the survivors from Sa'nimtaq'a to be responsible for dealing with this massacre.

The region of Nimlaha'kok is situated around 80 kilometres north-west of Cobán and is accessible by road. It takes a three-hour drive in an overloaded microbus to reach the administrative centre of the region. The first 40 kilometres are asphalted and then the road is clay which is sometimes washed away during the raining season and sometimes cracked by the sun. Although, this un-asphalted road was constructed some ten years ago, this region remains geographically and socially isolated. This region is currently constituted by 44 communities and fincas of which the majority are only accessible by foot. The region contains around 7,500 people almost all belonging to the indigenous Maya Q'eqchi' group and nearly the entire population is monolingual.<sup>52</sup> Nimlaha'kok is stretched out and some communities are a 12-hour walk from Saha'kok which is the administrative centre hosting the office of the regional coordinator and also the monthly meetings of the regional development council (COCODE 2). Besides the official organizational structures, a council of the elderly is active in the region which was formally formed after the armed conflict. These elders don't have a political function in the official structures yet, but are attempting to be integrated into the regional official structure. Important to note is that this region declared itself in November 2008 an indigenous Maya Q'eqchi' region which is in line with the new municipal legislation of 2002 and the ILO Convention 169. This is the result of a long process of Mayan revitalization and the restoration of

52. The community of Copala Esperanza is an exception because it is constituted by Mam refugees who lived for many years in refugee camps in Mexico. With help from the international cooperation they were able to buy the land of a *fincas* and to build the community. These Mam have Spanish as their second language and the majority doesn't speak Q'eqchi'.

traditional leadership over the past 15 years. Moreover, the leaders have expressed that the final aim is to reach territorial autonomy as an indigenous region. Also this region is marked by land conflicts. Many Q'eqchi' are living on untitled (*baldío*) land and encounter difficulties in obtaining secure titles; nonetheless several communities have been able to buy *fincas* with international funding. The infrastructure in the region is minimal: there is no electricity and only in Saha'ok is there tap water, small hiking trails connect the different communities, there is a medical centre with two nurses but no doctor and only three communities have a secondary school offering the first grades.

The third region studied is Salacium which borders in the south with Nimlaha'kok and in the north with the National Natural Park of Laguna Lachua and the Northern Transversal Strip<sup>53</sup>. The region currently consists of 16 communities and has around 5,500 inhabitants. The administrative centre is in Salacium which is a large settlement of almost 300 families. This village is characterized by a mix of ex-civil patrollers and victims of the guerrillas and the army (see chapter 3). Some communities in the region are composed of several internally displaced people from the Chamá Grande area, yet the majority are people who stayed during the conflict and lived under the control of the military base of Playa Grande. Currently, from Saha'kok it takes forty-five minutes to drive to Salacium, whereas during the conflict it was a four-hour hike across mountains. The social, economical and religious composition of this region differs substantially from the neighbouring regions of Nimlaha'kok and Nimlasachal. Salacium was founded by two *ladino* families in the early 1900s who created a cooperative to cultivate the land which attracted over the years Q'eqchi' from other *fincas*. Since its foundation these *ladino* families have had socio-economic and political power in their hands and a strong alliance with the military during the several dictatorial regimes. Also during the conflict, some of the family members were commissioners with close connections with the military base of Playa Grande. In fact, it seems that they orchestrated the conflict in the region. These *ladino* families, in contrast with the large majority of the Q'eqchi' at that time, have always been evangelics. The region is very fragmented and regularly suffers raids on minibuses. Actually, the specific socio-political and religious composition of the village and region represents the country's reality at the micro level. In Salacium a *ladino* minority dominates an indigenous majority. Another factor of its reality is the tensions and conflicts generated by land, the high level of violence, the religious fragmentation and mixed population of ex-PACs and victims of the guerrillas as well as the army. Of the three regions, Salacium has the best infrastructure. In fact, the administrative centre, Salacium, has electricity, several primary schools, a secondary school, a medical centre with one nurse, a subunit of the National Police, a justice of the peace court, a regional training centre hosted by the National Natural Park of Laguna Lachua and an aid worker of the US Peace Corps.

53. This Northern Transversal Strip is a geopolitical crucial region in the country.

## Entering the Fields

Every field researcher wrestles with the question of how to gain access to the field of analysis. At first glance this seems rather a practical matter; however in reality it involves mainly intra- and inter-personal resources and strategies.<sup>54</sup> In fact, gaining access is a relational process which is continuous and dynamic throughout the entire research.<sup>55</sup> Yet, conducting ethnographic field research in post-conflict research raises the question of how to approach conflict-torn communities where there is a high level of distrust among survivors. When doing field research in this specific context the researcher also faces other challenges such as what kind of questions it is possible to ask and which it is not, how to approach mixed communities of victims and so-called local perpetrators (PACs). In this section I first discuss the role of several key informants during the preparation, people who I would like to denote as ‘outsiders within’, local soundboards and knowledge brokers. Next, I will describe the crucial role of gatekeepers in gaining access to the different regions of the field research. This section shows that indeed, ethnographic fieldwork ‘stands or falls on building mutually supportive relations with a few key people’.<sup>56</sup>

### **Reflections about ‘Outsiders Within’, Local Soundboards and Knowledge Brokers**

Four people proved to be crucial during the several field research periods between 2006 and 2010. Sister Rosario, Alfonso Huet, Manuel Paaú and Bernard Dumoulin were very helpful during the initial phase in painting an extensive picture of the local socio-political historical and contemporary reality of the different regions. In fact, there are almost no written historical sources available that describe what happened before, during and after the armed conflict in the different affected communities and regions. Further, they were very helpful in giving crucial insights into the current socio-political situations of the different communities in the sense of explaining who was who in the different places, who could help me gain access to Q’eqchi’ victims and ex-PACs and what the background was of the different local and traditional leaders. So, I learned from them because they were ‘the outsider within’, although they were that in different ways and levels.

Spanish Sister Rosario has been active in the region of Cobán since 1978 as a Sister of the congregation of the Dominicans. Before and during the internal armed conflict she worked in the remote areas of Nimlasachal, mainly around Chamá Grande.<sup>57</sup> In

54. Hammersley and Atkinson, *supra* note 13, 41.

55. Marta Feldman, Jeannine Bell and Michele Berger, *Gaining Access. A Practical and Theoretical Guide for Qualitative Researchers*, Walnut Creek, Altamira Press, 2003, x-xi.

56. Bernard, *supra* note 5, 199.

57. She was one of the few people who tried to continue her visits during the conflict, despite the fact that in Cobán rumours were buzzing about her so-called linkage with the EGP guerrilla. Later, she played a key role in the above described rescue operation of the Diocese of La Verapaz of a big group of internally displaced Q’eqchi’ in the late 1980s.

1995 she became the coordinator of the Office of Peace and Reconciliation which organized the work of REMHI in Alta Verapaz. After the presentation of REMHI's final report in 1998 she and her team of reconciliation promoters from a number of Alta Verapaz's affected communities was one of the few equips of the ODHAG who continued within the framework of the follow-up phase of REMHI. Over the years their activities decreased and at the beginning of 2007 she organized the last formal activity in Cobán.

Another key informant was the Belgian cooperant Alfonso Huet who arrived in the region in 1980. In the early years of the 1980s, he worked with educational programmes in Mayan Q'eqchi' communities mainly in the current regions of Nimlahak'ok and Nimlasachal, through the network of the Catholic Church. Then he was for nine years, from 1987 to 1996, the executive secretary of the Pastoral Social of the Diocese of La Verapaz which played an important role in the relocation of many internally displaced Q'eqchi'. He also cooperated with REMHI-Alta Verapaz and with the work of the CEH in the Alta Verapaz region. In 2006, he concluded a four-year research project about the historical memory of 20 Q'eqchi' communities of internally displaced people, the research results of which have been published in Q'eqchi' and in Spanish.<sup>58</sup>

Bernard Dumoulin, Belgian and currently living in Belgium, was my fourth crucial source for a more historical perspective on what happened during the conflict and the early years of social recovery. Bernard and his wife Caty lived in Salacium from 1988 until 1995. At that time the conflict was still going on, the PACs were still active, and fear and silence ruled in the region. The couple worked in the region of Salacium and Nimlahak'ok under the umbrella of the Catholic Church that had never been permanently present there. [0]Currently, he works as a North-South administrator of the Belgian municipality of Herent which has a city partnership with the regions of Nimlahak'ok and Nimlasachal.

A fourth and final key contact was Manuel Paau who I met for the first time in 2002 in the context of my research for my Master's thesis. Manuel has a working trajectory of more than 20 years in the three regions of my research and is one of the very few urban Q'eqchi' who knows what is really going on in those communities.<sup>59</sup> In fact, he has established longstanding and close relationships with the people and enjoys the trust of many Q'eqchi', particularly elderly men and women. Besides his work in the communities for different organizations, he is also a well-known and appreciated spiritual guide (*aj ilionel*). During his community visits, he is regularly asked to perform ceremonies such as *majejak* (offering-sacrifice ceremony) and

58. See: Huet, *supra* note 45.

59. In fact, his experience with the people of those regions goes back to more than 20 years ago when he started work as a catechist for the Cobán parish El Calvario. In those years he also collaborated with Bernard Dumoulin and Caty Stuyck in their work in Salacium and Nimlahak'ok. Later, he continued working in those areas as a social worker for the Guatemalan Institute of Radiophonic Schools (IGER), the only school system available in those remote areas. From the end of the 1990s until 2008 he worked for the local NGO ADICI on issues such as traditional medicine, cosmovision and traditional authority. Since the start of the city partnership between the Belgian municipality Herent and the Q'eqchi' regions, Manuel has visited Belgium several times as he was responsible for the visiting delegations.

*wátesing* (feeding ritual) for families or for the whole community which happens mostly during the night. During the research period from 2006-2009, he was working for the NGO ADICI in the regions of Nimlaha'kok and Nimlasachal about traditional leadership with local elders. Since the beginning of 2010, he has worked directly for the Nimlaha'kok region where he is responsible for the regional training programme.

Alfonso, Bernard and Manuel shared with me the same concerns and interests about the role of Mayan Q'eqchi' cosmovision in the local recovery processes which made our conversations go far beyond the factual historical considerations of the conflict and the current socio-political situations in the regions. In fact, I consider them as important 'knowledge brokers'<sup>60</sup> between two culturally distinct worlds, because they are, each from their different personal experiences with Q'eqchi' and the Western world, concerned and involved with the problem of cultural translation. They were also important soundboards who I could consult about different challenges and concerns that I faced in the field. For example, which kinds of questions are possible to be asked in the local post-conflict reality and which are not. Or how should one approach victims and ex-civil patrollers? Another concern we discussed was the impact of the research findings and the production of knowledge on the research participants. Yet, although many people know Alfonso and Bernardo in the regions under research, I never referred to them in the interviews nor in personal conversations. I preferred to be introduced to the people and the communities by my gatekeepers.

### **The Role of Gatekeepers**

While other foreign anthropologists working in Guatemala have collaborated officially with for example, the Forensic Anthropological Team (FAFG) or the Catholic Church to approach war survivors and affected communities, and have used this institutional framework to elaborate their field research, I opted from the start not to work through this kind of institutional framework of a(n) (inter)national or local NGO. I have chosen other routes to achieve access directly to survivors and communities namely through local 'gatekeepers'<sup>61</sup> or people who have the ability to open up access to a community. My soundboards were very helpful in advising me on potential local gatekeepers. Before describing how I gained, with the help of these gatekeepers, access to the communities I highlight several reasons which have motivated this choice.

First, I had learned from my ethnographic field research for my MA thesis in 2002 about the advantages of doing research independently and of not being stuck within one organization. Then I participated in workshops and meetings organized by different organizations which gave me the opportunity to learn and approach issues from different points of view. Further, in 2002 I noticed that no national human rights groups or victim organizations were permanently active in the region. This

60. Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropologist*, 2006, Vol.108, Issue 1, 38-51.

61. For more on this see Hammersley and Atkinson, *supra* note 13, 49-53.

absence remained unchanged over the years. In fact, the only institution which was working on topics related to my research in the communities at the time of my arrival in 2006 was the mental health section of the Social Service of the Catholic Church in Cobán. However, the unit, which focus was on mental health and exhumations, was decomposed by the end of 2006 due to the end of the internationally funded project that lasted four years. I could have opted to approach communities through national or local NGOs working in the communities around issues of micro credits or agriculture, yet this would have meant a certain time investment on issues not related to the research to give something back to that organization. Another substantial reason was that I attempted to avoid a one-sided view or reading of the issues of justice, reconciliation, reparation and truth recovery. Here a reflection of anthropologist Richard Wilson, who conducted research in the late 1980s about Mayan resurgence in Alta Verapaz, brought me to this particular point.<sup>62</sup> During his field research he visited twice the community of Plan de Sánchez in Baja Verapaz, which suffered a huge massacre during the conflict, where he participated in workshops with community members. During the first visit he attended a workshop organized by a group of human rights lawyers who were preparing a submission to an international human rights commission and were consulting the people about their demands from such a commission. His second visit was with a member of REMHI who organized a two days workshop. Interestingly, during the workshop with the human rights lawyers the participants clearly demanded the death penalty for the perpetrators, whereas during the workshop with REMHI this demand never surfaced. Based upon these experiences Wilson says that it is important to acknowledge the existence of diverse opinions within a community. This experience, however, also raises questions about how transnational ideas about human rights operate at the local level and to what extent and how the interplay between globalized discourses on justice and local perceptions reshapes people's opinions and meanings. Along the same line, Shaw points out that there is a difference between listening to the survivors on their terms and listening to them through local NGOs or sensitization workshops. In fact, this is particularly important in the light of the fact that 'for the international community, the local voice or the voice of civil society is increasingly assumed to mean that of local NGOs'.<sup>63</sup> Yet, this presumption marginalizes and excludes the majority who do not speak this international language of NGOs and human rights. As a researcher you have to be aware of these dynamics and also of the fact that every human rights group has its own political agenda which they transmit during their interventions and activities. Of course, I am also aware of the fact that being a researcher is for many people in the communities a fuzzy and not clear-cut position.

As previously described, Manuel Paau was a key person who paving the way for me into the regions of Nimlaha'kok and Nimlasachal. Through him I also gained

62. Richard A. Wilson, 'The Politics of Remembering and Forgetting in Guatemala', in Rachel Sieder (ed.), *Guatemala after the Peace Accords*, London, University of London - Institute of Latin American Studies, 1998, 201.

63. Shaw, *supra* note 10, 6.

access to Samaq, a community nearby Cobán. From the outset of my research I wanted to interview 'ex-PACs from the first hour', yet gaining access to them is not straightforward. There are no NGOs working with ex-PACs regarding for example reintegration, compensation nor social recovery after the armed conflict in the regions under research; in fact to my knowledge there are no such NGOs in the whole of Guatemala. Samaq is an interesting community in the context of transitional justice, as above described, because of its particular experience with the conflict and its mixed population. In mid-May of 2007, the board of the cooperative of Samaq asked Manuel to perform a *majejak* because they had internal problems. Through the *majejak* they hoped to reunite them again and receive guidance on solving their internal problems and differences. Manuel knew that I was looking for a way to enter that community for research purposes and invited me to accompany him to this *majejak*. In the early evening on 19 May 2007 we travelled together to Samaq where he introduced me to the board of the cooperative as a friend. After a meal, the necessary *wátesinq* (feeding ritual) of the offerings and the packing of the offerings in two big boxes, we left in a small group from the centre of Samaq and started to hike into the surrounding mountains. I was the only woman and foreigner in the group. After a short hour's walk through the woods uphill in the dark, we arrived at the entrance of a huge cave. We descended carefully some ten metres into the cave which had a huge dark hall. It was the first time that I had entered a cave of a mountain, the place where the *Tzuultaq'a* resides. The whole ceremony was in Q'eqchi' and I tried to stay awake by observing the interactions between the board members, the fire and the behaviour of Manuel. At the end of the ceremony, as we were looking at the extinguishing fire I had the feeling that everyone was satisfied with the ceremony. Suddenly I heard Manuel talking about me. He waited until the end of the ceremony to explain who I was, what I was doing and the exact purpose of my presence, namely interviewing survivors of the conflict and also ex-PACs. One of the men answered in Q'eqchi' and I could understand that he appreciated my presence and found it important that I also would speak with ex-PACs. Later it became clear that this man was one of the ex-PAC leaders of Samaq and the current president of the COCODE. Once the fire died out, we all climbed out of the cave and I felt quite groggy when looking down into the black hole where we had spent the whole night. Once at the entrance of the cave, I realized that the day had already started. We walked back to the village and enjoyed our breakfast of hot, fresh chicken soup. During the breakfast I talked in Spanish explaining the objectives of my research and replied to the questions and remarks in this respect. Apparently, most of the men spoke Spanish. With the secretary of the board I fixed the dates of the first interviews and he would invite the widows as well as the ex-PACs for the respective dates. During the rest of the month of May and June I was able to organize seven focus group discussions and to conduct several personal interviews in Samaq.

Also some of my contacts within CORESQ opened doors to their own community. For example, I was also able to interview a group of widows of the community of Sanimtaq'a whose husbands were killed in the massacre on the road to Samaq in 1982. Gerardo, who is a member of CORESQ and an important leader of Sanimtaq'a was

the gatekeeper to that community. When asking him whether it would be possible to interview some widows in his communities, he reacted quite reluctantly to my question. His reluctance originated in his awareness that many of the widows were highly frustrated due to not having received any financial compensation from the National Reparations Programme yet. However, many had given their testimony to the CEH and Remhi and in 2002 the FAFG had carried out the exhumation of the mass grave. Not knowing whether we would be able to interview someone, we travelled that particular day of the interview in August 2007 to Sanimtaq'a. To our surprise all the invited widows showed up and we had an interesting interview about the massacres and the men responsible for their suffering as well as about their ideas about justice, reconciliation and reparation measures.

During the first research period the idea arose to add a third region to the field research. From the start, the objective was to identify translocal recovery processes and to trace ideas and practices about transitional justice issues among regions with a distinct conflict experience. The region of Salacium seemed a very interesting research area because of its particular conflict experience and its mixed population of ex-civil patrollers, victims of the guerrillas and also of the army and some internally displaced people. My specific interest in doing field research in Salcium was also based upon several other concerns. First, during the first fieldwork period, the majority of the participants of the research were internally displaced people except the ex-PACs from Samac. I still wanted to interview more 'ex-PACs from the first hour' and Salacium was another important bastion of PACs during the conflict. Actually, up to date no research has been done in that region about the process of social recovery after the conflict.<sup>64</sup> To find a trustworthy local gatekeeper I relied on the advice of my soundboards who I could consider an authority to grant access. In February 2008 I met up with Abelino and Serio, the regional mayor of Salacium in a small café in Cobán. Abelino, a victim and ex-PAC, had been at the time of our conversation in July 2007 the president of the regional development council (COCODE 2) of Salacium for several years.<sup>65</sup> During that meeting I explained to them the objectives of my research, my previous research experiences in the region, and responded to their questions and concerns. Both ensured me that it was possible to conduct research in the region about the topics of my interest and that they would help me organize the focus groups with widows and ex-PACs. In fact, they would invite the people on the dates that I would be in Salacium.

64. Salacium was not part of one of the communities of Alfonso Huet's research project as he had focused on communities of internally displaced people. Sister Rosario had visited the region to present the findings of the REMHI report as part of the final phase of the REMHI project yet thereafter never went back.

65. Abelino's father was an important leader and catechist who was abducted during one of the nightly raids of the military of the Playa Grande military base on the village. As a young adult he was forced to join the civil patrols of Salacium. Abelino was active as catechist when Bernard and his family were living there and had collaborated with the construction of the cross in Nimlahak'ok. For eight years he was involved in the regional COCODE of Salacium of which he was president from 2004 until 2007. This regional assembly is constituted by the factual local leaders of the region and is an unpaid engagement.



## Different Field Research Periods

The overall field research period in Guatemala spanned 21 months between July 2006 and March 2010. The field research included one long-term period of research from July 2006 till September 2007, a shorter period from April till May 2008 with a preparatory visit in February and two follow-up visits from March till April 2009 and from February till March 2010.

After six months of literature study in Belgium I started my first field research period in Guatemala in July 2006 and stayed for 14 months until September 2007. This long research period was marked by different phases. Initially, I concentrated on getting settled administratively and physically in Guatemala and Cobán, on following Mayan Q'eqchi' language classes and mapping the research area. During those first months of mainly practical challenges of preparing the entrance to the field I also widened up my perspective by participating in two international conferences on legal anthropology in Latin America and about the actual situation of legal pluralism in Guatemala.<sup>66</sup> By the end of 2006 I had started to prepare and conduct the different ethnographic methodologies focussing initially on setting up what I started to call a preliminary ethnolinguistic study on Q'eqchi' concepts related to transitional justice. From April 2007 on I concentrated on tracing ideas and practices from Q'eqchi' survivors related to transitional justice which meant a rotary stay in the regions of Nimlaha'kok, Nimlasachal and Cobán. During these months the majority of my semi-structured focus group discussions were conducted and several nightly, community meetings and family ceremonies were attended. In August I engaged in a short consultancy for the Guatemalan programme on the reconciliation of the German Technical Cooperation (GTZ) about the National Reparations Programme. This consultancy encouraged me to start with a thorough analysis of the gathered ethnographic data and to write an extensive piece about the research findings, which originally was not foreseen in the research agenda.<sup>67</sup> A final activity was a two-day reconstruction organized together with CORESQ, in the village of Sanimtaq'a, of several scenes of the period before and during the conflict. The goal was to take the pictures that would serve for the educational material package about the historical memory. During that month I travelled several times to the Nimlahak'ok region and

66. International conference: '*Justicia y Diversidad en Tiempos de Globalización*', organized by network of Latin American legal anthropologists RELAJU, Mexico-Oaxtepec, 16-20 October 2006 and an international seminar: '*Experiencias y Avances del Derecho Indígena Maya en el Contexto de Pluralismo Jurídico*', organized by the Centro de Investigaciones Regionales de Mesoamérica (CIRMA), Guatemala City, 6-8 December 2006.

67. This consultancy resulted in a chapter contribution to the first National Report on the National Reparations Programme in Guatemala. See Lieselotte Viaene, '*Justicia Transicional y Contexto Cultural en Guatemala: Voces Q'eqchi'es sobre el Programa Nacional de Resarcimiento*', In *Primer Informe Temático 2006-2007 del Programa Nacional de Resarcimiento: La vida no tiene precio. Acciones y Omisiones de Resarcimiento de Guatemala*, Guatemala, Magna Terra, 2007, 133-171. In November 2007 I went back to Guatemala to attend the presentation of the first report in the presidential palace. The day after, I participated in an international forum about reparations in Guatemala as I was asked to present my research results to the broader public. Upon the invitation of the GTZ, there was also a small delegation of Q'eqchi' of the Nimlahak'ok region present during the presentation. They also had a meeting with the president of the National Reparation Commission (CNR) Rosalina Tuyuc about their concerns and demands regarding the PNR.

attended community meetings and also some workshops organized by Manuel Paau.

I spent five months back in Belgium, organizing and analysing the gathered field data. In February 2008 I travelled back to Guatemala for two and a half weeks. The objective of this short trip was to explore the possibility of conducting research in the region of Salacium and to find a gatekeeper and translators. From April till May 2008 I conducted a second fieldwork period which was focused on Salacium. The first month and a half I stayed during the week in Salacium together with my interpreter Marta and travelled back to Cobán on Friday or Saturday. We organized one or two focus group discussions a day with widows, elders and ex-PACs and also conducted personal interviews with, for example the representatives of the ex-PACs and of the victims. In between we went twice to Saha'kok to attend the reburial of the exhumed remains of the father of one of my participants as well as a regional activity related to reforestation and the city partnership with Herent in Belgium. This second fieldwork period was closed with the official presentation in Cobán of Alfonso Huet's Spanish book about the historical memory of 20 Q'eqchi' communities of internally displaced people and of the related elaborated educational material.

The field research periods in 2009 (March-April) and 2010 (February-March) served a double research agenda. First, a follow up was performed of the local social recovery processes in the three regions with short visits mainly to Nimlaha'kok<sup>68</sup>. I wanted to check details, fill in some gaps in the interview material and to conduct further participant observation. For example, in 2009 I spent the Holy Week in Saha'kok during which several Catholic processions were held as well as the biannual regional commemorative activity for the victims of the conflict at the cross. Second, as previously said, another research objective was also to explore the linkage between the local and cultural micro reality and the macro context and to gain insights into broader macro level policies and strategies. During those months in 2009 and 2010, I conducted numerous formal and informal interviews with key stakeholders and interlocutors of national human rights groups, victim and indigenous organizations and the international cooperation. Further, I also attended several national and regional activities related to my research topic in the capital and in Cobán. For example, I attended the official presentation of the report of the Human Rights Ombudsservice (PDH) about the archives of the National Police in March 2009. Also, I presented together with Alfonso Huet our experiences with the locally and culturally driven recovery and dissemination of historical memory at the international conference about 'Educating Nunca Más' organized by the ODHAG in Guatemala City.<sup>69</sup> During the field period in 2010 I was able to observe a regional manifestation organized by the National Reparation Programme related to the National Day of the

68. I had the idea to travel to Salacium in April 2009, yet the day that I left for Nimlaha'kok I heard on the radio that the road in Salacium was blocked by locals because of an attempt to mob lynch some local raiders of a microbus. No one could enter Salacium, not even the National Civil Police.

69. Paper presentation with Alfonso Huet: 'La pedagogía de la memoria histórica desde la organización comunitaria: una experiencia Q'eqchi'' at the international conference: '*Eduquémonos para el Nunca Más. La importancia de la memoria histórica, su inclusión y abordaje en los pensum de estudios*', organized by Oficina de Derechos Humanos de Arzobispado de Guatemala (ODHAG), Guatemala City 4 April 2009.

Victims, 25 February, in Cobán in which the president of the National Commission of Reparation and the coordinator of the National Movement of Victims participated. Around 2,000 survivors from different regions from Alta Verapaz as well as Baja Verapaz attended the manifestation making their demands to the PNR clear. Further, I was able to attend a national forum organized by the Dutch NGO Impunity Watch about the two recent milestone judicial convictions about forced disappearances during the conflict.

## Data Collection: Using Methodological Triangulation

From the outset, the general aim of this study was to attempt to understand in a comprehensive and in-depth way the role of Mayan Q'eqchi' culture in local processes of social recovery. So, the research endeavoured, after ascertaining people's own perspective and cultural understanding of the armed conflict, the transitional justice efforts and key concepts of transitional justice. It should, however, be clear that this study has never pretended to represent the perception of the Q'eqchi' and so to generalize the research findings to *all* Q'eqchi' survivors.

To foster an in-depth understanding of the complex local and cultural reality, methodological triangulation or multiple data collection techniques were used in this study. Triangulation denotes in qualitative research the combination of different methods, theories, data and/or researcher in the study of one issue.<sup>70</sup> As in other areas of qualitative research, triangulation in ethnographic research is 'a way of promoting quality of research'.<sup>71</sup> Methodological triangulation in qualitative research refers in general to 'combining different methods from different research approaches, but within qualitative research'.<sup>72</sup> Currently, it is perceived more as a road to deeper understanding of an issue and a step to more insights and knowledge, and less toward validity and objectivity in interpretations.<sup>73</sup> Here it is important to note that anthropology has always been a discipline which applies a 'permanent methodological eclecticism'.<sup>74</sup> Indeed, ethnographic research is characterized by the 'flexible and hybrid use of different ways of collecting data'.<sup>75</sup> So, although the term triangulation is not often used in anthropological literature, implicit triangulation is embedded in ethnographic research.<sup>76</sup>

70. Uwe Flick, *An Introduction to Qualitative Research*, London, Sage Publications, 2002, 226.

71. Uwe Flick, *Managing Quality in Qualitative Research*. Book VIII of Uwe Flick (ed.), *The Sage Qualitative Research Kit*, Los Angeles, Sage Publications, 2007, 89.

72. *Ibid.*, 66.

73. For a historical discussion about the aims of methodological triangulation in qualitative research see Uwe Flick, *supra* note 71, 145.

74. Russell Bernard, 'Introduction On Method and Methods in Anthropology', in Russel Bernard (ed.), *Handbook of Methods in Cultural Anthropology*, Walnut Creek, Altamira, 2000, 17-19.

75. Flick, *supra* note 71, 89.

76. *Ibid.*, 77-79

In the present study, the research strategy went indeed beyond a simple combination of methods and explicitly combined specific methodological approaches. In fact, by applying explicitly methodological triangulation this research attempted to produce knowledge at different levels and to compare and link the produced ethnographic data. The following methods were triangulated to enhance the richness of data: ethno linguistic study, ethnographic participant observations, semi-structured focus group discussions and formal and informal individual interviews. In the following subsections, I will discuss these data collection techniques separately; however, it is important to note that during the different fieldwork periods there was a constant back and forth between these methods. I finalize with a description of the approaches used to analyse the different gathered ethnographic field data. Although I present the analysis as a separate subsection, it should be clear that for qualitative research it is typical that analysis concurs with data collection, which means that analysis already starts in the field.<sup>77</sup>

### ***Ethno Linguistic Study and Linguistic Workshops***

A necessary first step in setting up the first field period in 2006 was to attempt to master a basic level of the Mayan Q'eqchi' language. While following language classes I became enlightened about the complexities and different logics of the language. One of the difficulties is the fact that the verb 'to be' (ser) does not exist in the Q'eqchi' language. In the sense that for the Q'eqchi' 'what exists 'is', and therefore they have found unnecessary to express this explicitly'.<sup>78</sup> So, 'ixq', means woman and also 'is woman'. Yet there are several ways to express the different nuances of the verb 'to be'. Also interesting is that there exists no distinction between male and female nouns. Another particularity is that everything which exists in a necessary relationship with something else entails a possessive pronoun. For example, a hand cannot exist as such, yet it is always in relationship with someone and therefore it has a possessive noun. Unfortunately I never became fluent enough to conduct interviews on my own. My spoken knowledge was limited to some formal greetings, self-presentation and initial questions. To be able to do that, I should have devoted at least six months solely to learning the language and practising it immediately in a Q'eqchi' speaking environment, which was not possible due to time and practical constraints.<sup>79</sup> My limited oral level did, however, help me to catch the general flow of a discussion and interview. My reading level of Q'eqchi' allowed me to check the transcriptions of the interviews and parts of the Spanish translations.

The first puzzle that confronted me during the initial months of this first field research period was the language tangles I faced while elaborating a topic list in Q'eqchi' which

77. Graham Gibbs, *Analyzing Qualitative Data*. Book VI of Uwe Flick (ed.), *The Sage Qualitative Research Kit*, Los Angeles, Sage Publications 2007, 3.

78. Esteban Haeserijn, *Diccionario K'ekchi' Español*, Guatemala, Editorial Piedra Santa, 1979, 1.

79. In fact, there are only a few Q'eqchi' teachers who are able to teach, explain and transmit the complex grammatical structure of the language. Unfortunately I did not find a good teacher available to give me an intensive language course for a couple of months.

would guide the focus group discussions in the communities. From the outset it was my concern to use the proper Q'eqchi' concepts as it was the aim of the research to elucidate 'understandings from within' related to transitional justice issues. Yet, while consulting several local knowledgeable people about the most appropriate concepts, it became clear that this would be a difficult endeavour. My different soundboards and knowledge brokers seemed unable to give a straight answer on which word I should use to translate for example justice or reconciliation. For the word justice I gathered at least three different Q'eqchi' words such as 'raqok aatin, tiikilal, raqok chaqrab'. Also the several Spanish-Q'eqchi' dictionaries could not give a decisive answer. There are for example two small dictionaries dedicated to legal and human rights terminology mainly designed for legal operators.<sup>80</sup> Yet they use a word-to-word approach from Spanish into Q'eqchi' attempting to find practicable words in Q'eqchi' for the Spanish judicial technical terms. The faced language tangles reveal a more profound cultural translation problem between two distinct socio-cultural worlds and logics. During the first months of the research, I became convinced that a deeper analysis of key words in Q'eqchi' and an exploration of their linkage with the socio-cultural context in which they are embedded would help in unravelling, to rephrase Geertz, the formulae Q'eqchi' survivors use to define what happened to them during the armed conflict and what they perceive as justice, reconciliation, reparation and truth. This would open windows to a better understanding of their local cultural perception or emic understanding of transitional justice issues. Along the same line, the Guatemalan anthropologists Carlos Ochoa and Edgar Esquit proposed to use ethnolinguistics as one of the methodologies to analyse the content of Mayan normative order.<sup>81</sup> Similarly, Haeserijn, pointed out that the analysis of the significance of Q'eqchi' words and the behaviour of Q'eqchi' would uncover their profound concepts and the ultimate reasons for their acting or not acting.<sup>82</sup>

In the discipline of anthropology this cultural translation problem has been addressed more in-depth by linguistic anthropologists. The field of linguistic anthropology is, as currently practised, dedicated to 'the understanding of the crucial role played by language (and other semiotic resources) in the constitution of society and its cultural representations'.<sup>83</sup> Linguistic anthropologists work within the anthropological paradigm rather than within a linguistic one and go therefore beyond the grammatical description, historical reconstruction and collection of texts. Indeed, they find it necessary to think about language 'as an activity which is born out of

80. Instituto de la Defensa Pública Penal y Instituto de Lingüística y Educación Universidad Rafael Landívar, *Glosario Bilingüe de Términos Jurídicos Español-Q'eqchi'*, Guatemala, 2004, p73 and Oficina Regional de MINUGUA en Cobán, *Vocabulario de Términos Relacionados a los Derechos Humanos Español-Q'eqchi'*, Cobán, MINUGUA, 1997, p78.

81. Edgar Esquit and Carlos Ochoa (eds.), *Yiqalil Q'anej Kunimaaj Tz'ij Niman Tz'ij. El Respeto a la Palabra. El Orden Jurídico del Pueblo Maya*, Guatemala, Centro de Estudios de la Cultura Maya, 1995, 16.

82. Estaban Haeserijn, 'Filosofía popular de los K'ekchi' de Hoy', *Guatemala Indígena*, Vol. X, No. 3-4, 1975, 45.

83. Alessandro Duranti, 'Linguistic Anthropology: History, Ideas, and Issues', in Alessandro Duranti (ed.), *Linguistic Anthropology. A Reader. Second Edition*, Oxford, Wiley-Blackwell, 2009, 5.

social life'<sup>84</sup>, instead of studying language in an abstract form as linguistics normally do. The meaning of linguistic messages must, according to linguistic anthropologists, therefore be studied 'within the contexts in which they are produced and interpreted'<sup>85</sup>, using a combination of linguistic analysis and ethnographic methods. One of the important analysis strategies regarding the relationship between language and culture is to discover what linguistic forms, such as words and syntactic constructions, achieve in the construction of daily life.<sup>86</sup> Here, linguistic forms are perceived as 'constraints on the ways in which individual speakers as members of speech communities perceive reality or are able to represent it'.<sup>87</sup>

Guided by these insights I decided to complement the ethnographic methods of participant observation, focus group discussions, and formal and informal personal interviews with linguistic analysis of linguistic forms related to transitional justice issues. I elaborated a double linguistic research strategy to address these language tangles in the hope that this would offer new ways of understanding alien concepts and terms, and would further help to understand the socio-cultural world, and so their cosmovision, in which these concepts make sense. First, I formed a list of 48 Spanish words which included key terms of transitional justice discourses and words related to the Maya cosmovision. I presented this list separately to different kinds of people for discussion asking them for a meaning-based translation in Q'eqchi' during the months of December and January 2006. I approached two Q'eqchi' with a broad background in the Q'eqchi language, cosmovision and bilingual education to elaborate a socio-linguistic analysis of Q'eqchi' concepts related to these Spanish words and to explore the significance of related Q'eqchi' concepts which don't have a literal translation in Spanish.<sup>88</sup> Both prepared a report with their analysis, considerations and insights which I afterwards discussed individually. I also presented the list to two war widows who I could approach through the networks of Alfonso Huet and REMHI-Alta Verapaz.<sup>89</sup> Further, I discussed the list also with a spiritual guide, a recognized Q'eqchi' lawyer and his father who is an important urban leader.<sup>90</sup> The same words were discussed in a double interview with two monolingual elders who are members of CORESQ together with a younger member with a basic level of Spanish and who served as interpreter. Finally I presented the list to Sister Rosario who has a basic level of Q'eqchi' and also to Alfonso Huet who has a native level of Q'eqchi'. All participants collaborated on a voluntary basis in this linguistic endeavour

84. Alessandro Duranti, 'Introduction Part II. The Performance of Language: Events, Genres, and Narratives', in Alessandro Duranti (ed.), *Linguistic Anthropology. A Reader. Second Edition*, Oxford, Wiley-Blackwell, 2009, 153.

85. Duranti, *supra* note 83, 31.

86. *Ibid.*, 26.

87. *Ibid.*, 27

88. Mario Sebastián Caal Jucub is a linguist who has worked for the Academy of Maya Languages (ALMG) and is currently working in the Department of Bilingual Education of the Ministry of Education. Mario Sebastian is also a spiritual guide. Juan Tzoc has a background in education and bilingualism. He has worked for many years as interpreter for the MINUGUA office in Cobán and has collaborated with the dictionary about terms related to human rights (*supra* note 78).

89. María Elena is an urban Q'eqchi' and Candelaria an internally displaced widow with a guerrilla background from Chisec.

90. Respectively: Manuel Paa, Amilcar Pop and Esteban Pop.

and every interview was recorded and transcribed. The second linguistic research strategy entailed the exploration of different semantic fields and logics behind several key Q'eqchi' words. While analyzing the gathered data I deduced several Q'eqchi' concepts which seemed to be crucial in the research context. Together with Manuel Paaú I interviewed two groups of monolingual Q'eqchi' survivors in two communities belonging to the Nimlahak'ok region about these Q'eqchi' concepts. The idea behind these focus groups was to gather opinions and explanations of those concepts in a broader context than just the armed conflict and post-conflict realities. Further, two linguistic workshops were organized in April with the assistance of the Guatemalan anthropologist Carlos Ochoa who is an expert in employing an ethnolinguistic approach to study the Mayan normative system.<sup>91</sup> The first workshop was organized with six Q'eqchi' survivors from different regions of which the majority had only a basic knowledge of Spanish. In this workshop Alfonso Huet also participated. In the second workshop the participants were six legal translators working in official institutions such as the National Reparations Programme, the Academy of Maya Languages and the Public Criminal Defence Office. In both workshops my translator Mario and a freelance teacher participated who both were responsible for the transcription and translation of the workshops. Each workshop covered an entire day and was recorded and transcribed. During both workshops the different semantic fields of the words were explored as well as their practical use in social life. The workshop with the Q'eqchi' survivors produced mainly narratives and concrete situations in the communities, whereas during the second workshop the discussions and analysis were much more technical. Both workshops produced very rich and enlightened data and insights on issues related to the conflict and perceptions on the driven goals of transitional justice, but also on the philosophical bases and practices related to the Q'eqchi' normative system and their cosmivision. Yet, it should be clear that it was not possible to organize a workshop about every single Q'eqchi' concept. In the context of the consultancy for the GTZ I organized, with the financial support of the GTZ, an additional linguistic workshop with several Mayan Q'eqchi' linguists was held in August 2007. Additionally, one of the focus groups with widows from the village of Samaq focused on exploring the meaning of several Q'eqchi' words.

Strongly related to these linguistic concerns and crucial for this research was the collaboration with qualified and available translators. For several reasons it was, however, neither a straightforward nor easy task to find people to transcribe and translate the recorded interviews. Despite the existence of training to become a legal translator, which is organized by the Landívar University, and of Q'eqchi' courses organized by the Maya Language Academy, only a few people manage to master a good level of Q'eqchi' writing. Further, legal translators are trained in translating Spanish into practicable Q'eqchi' words, but are not familiar with the written translation of Q'eqchi' into Spanish. Nor are they trained to go beyond the factual translation and

91. Carlos Ochoa García, 'La Percepción Cultural Del Conflicto: Ch'oj', in Carlos Ochoa García, *Derechos Consuetudinario y Pluralismo Jurídico*, Guatemala, Cholsamaj, 2002, 293-304.

examine the relation between the significance of words and phrases, and the social cultural context in which they are used or the deeper meaning of these concepts.

In January 2007 Mario started working on a full-time basis on the transcription of Q'eqchi' interviews at my apartment in Cobán due to having no separate office. Mario, a Mayan Achi originally from Rabinal in Baja Verapaz, was married to a Q'eqchi' and lived in San Pedro Carcha, a town nearby Cobán. He was a teacher but was also a trained legal translator of Spanish – Q'eqchi' and had worked as a translator in the mental health unit of the Catholic Church. Further, I had contracted a teacher on a freelance basis to transcribe Spanish interviews. By the end of April 2007 I finally found someone who could accompany me as interpreter to the communities. Maya Q'eqchi' is the ethnic group with the highest level of monolingualism which means that the majority of the Q'eqchi', certainly in the rural areas, don't speak Spanish as a second language. So, this implies that I would never be able to conduct an interview by myself and that for even easy conversations an interpreter would be useful. From the start of the research I searched for a female, indigenous, bilingual and mature person. It had to be someone who was willing to travel on local transport to the rural areas, to hike several hours a day to the more remote villages and who was willing to live for several days in basic material conditions. Further, I preferred to work with the same interpreter in the different regions which meant that for organizational reasons she should be living in Cobán. Marta is an indigenous women who was literate in both Spanish and Q'eqchi', although she did not master a written level of Q'eqchi'. She is in her late thirties, the mother of three youngsters and had secretarial training. She had worked as a secretary for an indigenous lawyer and had thus legal knowledge. She was not an experienced translator yet was willing to learn it by practice and prepared to travel to the rural areas. As an urban Q'eqchi' she was totally unfamiliar with the living conditions of the indigenous people in the rural areas. Marta accompanied me from April to all communities and to all other research-related activities in Cobán. I also found another translator who was available to translate the Q'eqchi' texts of the interviews into Spanish. Jorge Oliverio was a more experienced translator and had among other things collaborated with the translation project of the Bible into Q'eqchi'. From that moment I worked together with three people on a full-time basis to interpret, transcribe and translate all my interviews.

### **Participant Observation**

At the core of ethnographic research lies the research method participant observation which is 'a way to collect data in a relatively unstructured manner in naturalistic settings by ethnographers who observe and/or take part in the common and uncommon activities of the people being studied'.<sup>92</sup> In fact, it is 'both a data collection and an analytic tool'.<sup>93</sup> In the context of this study, participant observation has been very

92. Katleen Dewalt, Billie Dewalt and Coral Wayland, 'Participant Observation', in Russell Bernard (ed.), *Handbook of Methods in Cultural Anthropology*, Walnut Creek, Altamira, 260.

93. *Ibid.*, 264.



useful in several ways as it 'opens things up' and gives 'an intuitive understanding of what is going on in a culture'.<sup>94</sup>

First, it helped the grasping of the more general social and cultural realities in the different regions and communities and their embedded social norms. For example, my initial observations of community meetings and workshops with elders organized by Manuel Paau, allowed me to gain important insights into the specific dynamics and characteristics of group conversations among Maya Q'eqchi'. Q'eqchi' have a strong oral tradition where respect for the spoken word is an important social norm. When someone talks and shares his or her ideas with the group, the other participants hardly interrupt that person even when the intervention takes for example 20 minutes. During meetings all who want to share his or her opinion get the time needed to express themselves. Community meetings can therefore take several hours to up to a day when important issues are at stake. This is a very contrary dynamic compared to the European style of meetings where participants have only a very limited time to express his or her point. Further, participation during community mayejaks or sacrifice ceremonies in different contexts and communities taught me to see who the traditional authorities and the leading elders actually are. During the ceremonies, the leaders behind the scene become visible as they fulfil central roles during the performance of the rituals.

Second, it has been very valuable to analyze concrete contexts where the processes under study become visible as for example during community or family organized commemorative ceremonies and activities related to the armed conflict. The large majority of the commemorative ceremonies which I have attended were organized by the survivors themselves and not by for example a local or national human rights group. In fact, I was often the sole participating outsider. These ceremonies and activities shed light on the practices survivors employ and the meaning they give when dealing with for example disappeared or exhumed family members. My personal interest in photography encouraged me to use this visual medium during ceremonies and community as well as familiar activities related to the conflict.<sup>95</sup> As previously said, the role of a field researcher is rather unclear and blurred, whereas taking photographs is in fact a reasonable activity during nightly ceremonies where talking is very difficult. This role as photographer enabled me also to observe these ceremonies without asking many questions. Being a photographer also advanced a rapid entry into familiarity. For instance, I was asked to attend the reburial of the remains of the father of one of the key informants in Nimlah'kok and was at the same time friendly asked to take pictures. Furthermore, the pictures had also an important reciprocal function towards the gatekeepers and other participants. In the course of the different field research periods I arranged as much as possible that the people would receive copies of the

94. Bernard, *supra* note 5, 354-355.

95. For more on the use of visual methods in ethnography see: John Collier and Malcolm Collier, *Visual Anthropology. Photography as a Research Method. Revised and Expanded Edition*, Albuquerque, University of New Mexico Press, 1986, p248 and Sara Pink, *Doing Visual Ethnography. Images, Media and Representation in Research*, London, Sage Publications, 2001, p196.

photographs, something which was highly appreciated. I also explored photography as a way to visualize unique moments of healing and dealing with the past.

Finally, participant observation during several national activities related to the armed conflict or to the issue of indigenous people nurtured the interpretation of the manner of how macro level policies are linked with micro level processes. These observations also traced inherent attitudes towards survivors and indigenous people in general and encouraged a critical analysis of 'top down' institutions, policies and events. For instance, it was remarkable to observe how the Q'eqchi' survivors of the Panzós massacre of 1978 were treated on the day of the thirtieth anniversary of the massacre. The National Reparation Programme had organized a big activity on 29 May 2008 in Panzós where many Q'eqchi' survivors of the whole department and representatives of national NGOs such as ECAP and FAMDEGUA had come to commemorate the massacre. The First Lady, Sandra Torres, was invited to open this historical commemoration and was expected to arrive at ten o'clock in the morning. Yet, after three hours of waiting outside, and the heavens had opened, it became clear that she would not show up and the more than a thousand people present were finally invited to enter the huge municipal hall. Apparently, her helicopter could not land in Panzós due to the heavy rains; however, the bad weather had already been forecast some days before. Once the official ceremony finally started, the speeches of the other official representatives were interrupted by a phone call from the First Lady, Sanda Torres. The organizers arranged for all the people present to be able to hear the personal message of the First Lady by connecting the mobile phone to the speakers. After that it became clear to all the participants that the First Lady was on the phone; the mayor of Panzós had by mistake addressed Sandra Torres by the name of her predecessor; she apologised for not being able to attend this important moment. She continued talking through the bad cell phone line and offered in the name of the actual government official, apologies to the survivors of the massacre for what had happened 30 years ago. She ensured that reparation measures were on the way for all the survivors and their relatives, and suggested trying to come back the next Thursday. I didn't have the feeling that these official apologies made any impression on the thousand survivors present in the huge municipal hall – in fact, I doubt whether they actually heard the message. After the First Lady's phone intervention, the official representatives continued their speeches. In the programme a testimony of the daughter of Mama Maquin, the famous local Q'eqchi' leader who was murdered by the army on the day of the massacre, was also foreseen. When she took the stand and addressed the group of survivors in Mayan Q'eqchi', the official representatives left the stand and the organizations took the tables, seats and the promotion material of the National Reparation Programme away.

## Semi-Structured Focus Group Discussions

I have chosen to work with the focus group methodology because of its appropriateness to gather data in the complex local and cultural context of Maya Q'eqchi' transitional communities. Focus groups are a 'form of group interview that capitalises on communication between research participants in order to generate data'.<sup>96</sup> Crucial in this research method is that the researcher actively encourages group interaction to ensure that participants talk amongst themselves rather than with the researcher. Focus groups are particularly useful 'for exploring people's knowledge and experiences and can be used to examine not only what people think but how they think and why they think that way'.<sup>97</sup> In fact, the idea behind this method is that a group process 'can help people to explore and clarify their views in ways that would be less easily accessible in a one to one interview'.<sup>98</sup> Further, in qualitative studies, focus groups are often selected to attempt to access groups that are perceived as hard-to-reach populations such as ethnic minorities and for eliciting the perspectives of those whose voices have otherwise been muted.<sup>99</sup> Focus groups are also often employed in cross cultural research because they are sensitive to cultural variables.<sup>100</sup> Indeed, as they tap into interpersonal communication they can highlight cultural values or groups' norms.

Despite the scepticism of some researchers concerning the use of this method for elucidating experiences with sensitive topics, they have been used to address sensitive topics such as sexual behaviour, views on abortion, contraceptive habits and people with serious mental health problems.<sup>101</sup> As previously mentioned, focus group methodology has already been applied in post-conflict research to examine for instance community perspectives and expectations on truth recovery, justice, accountability, reconciliation and forgiveness in Timor-Leste.<sup>102</sup> Also a recent study on post-conflict Liberia and the rule of law adopted the focus group as one of their methodologies to explore local perceptions on justice and on formal and customary justice systems.<sup>103</sup>

Further, the focus group method is an inherently flexible method which makes it possible to develop an approach appropriate to the research context and topic.<sup>104</sup> Indeed, in order to be useful in the specific context of Maya Q'eqchi' transitional communities, it was necessary to develop a more culturally sensitive approach to using focus groups. Several reasons will be sketched hereinafter. First, Q'eqchi' are not familiar with the commonsense routines and ground rules of interviewing, nor

96. Jenny Kitzinger, 'Introducing Focus Groups', *British Medical Journal*, Vol. 311, 24 July 1995, 299.

97. Ibid.

98. Ibid.

99. Rosaline Barbour, *Doing Focus Groups*, Book IV of Uwe Flick (ed.) *The Sage Qualitative Research Kit*, London, Sage Publications, 2007, 20-21.

100. Kitzinger, supra note 96, 299-300.

101. Barbour, supra note 99, 18.

102. Pigou, supra note 8.

103. Deborah Isser and Stephan Lubheman, *Looking for Justice: Liberian Experiences with and Perceptions on Local Justice Options*, Washington D.C., United States Institute of Peace, 2009, p104.

104. Barbour, supra note 99, 14.

to share with an unknown person their personal experiences of the intimate crimes that they, their family and the community have suffered. The collective, group-oriented nature of indigenous people makes them more receptive to collective or group conversations and meetings with strangers or outsiders than with one-to-one conversations. Therefore, interviewing Q'eqchi' survivors in groups on these sensitive topics is less threatening than a one-to-one interview and encourages greater candour. Indeed, for the majority of the participants it was their first occasion to share their opinions regarding coexistence, justice, reconciliation, reparation and truth recovery. In the case of the focus groups with ex-PACs, it was important to create a non-judgmental environment encouraging greater openness. Second, Q'eqchi' are not familiar with the strict question-answer logic of interviews, yet they are more used to reflect upon certain topics by giving a response which interweaves their different ideas and opinions. Interestingly, the participants always ended their intervention(s) with the expression: '*Ka'a'jwi' a'an kiib' oxib'aq li waatin*' which means 'Only these are my two or three words'. A challenge while analyzing the transcriptions of the focus groups was to unravel the expressed different words or ideas. The inherent dynamic of the focus groups made space for each participant to share additional ideas in relation to the topics under discussion. Third, although we explained at the beginning of each interview that the questions were related to the current situation in the communities and their perception on truth recovery, reparations, reconciliation, co existence and justice, every time the participants started by giving a testimony of what they personally had lived through and survived during the period of the conflict. Normally, the researcher would interrupt the participant explaining that the focus of the interviews is not the past lived experiences but the present context and situation. However, bearing in mind the cultural insight about giving respect to each word, we gave everyone adequate time for expression even though this resulted in longer focus groups.

It seems further that these focus groups were of some meaning for the participants themselves. Apparently, these focus groups offered for the participants 'spaces for healing' as well 'spaces for agency'. For many participants it was not only the first time to share opinions about transitional justice goals, but even the first occasion to speak publically about their suffering and lived experiences. Notably, many participants expressed their gratitude that finally someone had come to their village to listen to them. Especially ex-PACs expressed regularly their gratitude for being heard too. Indeed, 'while it is painful to recount their experiences, it is also a cathartic relief because the pain is always with them. It is with them in their silence as much as it is with them in their testimony'.<sup>105</sup> In fact, a phrase as '*li rabihal ma joqe ta'elq sa' qach'ool*' which means 'the pain will never leave our hearts' was regularly voiced by participants. The fact that the conversations were tape recorded was for both groups very important and meaningful. It was significant to observe how during many focus groups the participants spontaneously passed round the voice recorder. This conduct has a double

105. Victoria Sanford, *Buried Secrets. Truth and Human Rights in Guatemala*, New York, Palgrave Macmillan, 2003, 50.

meaning. First, everyone wanted his or her spoken words to be recorded and put on paper. Their desire that their spoken words be transformed into written words reveals their concern about the recovery of historical memory in the broad sense. Not only the lived experiences of the past should be recovered, but also their concerns about the present and the future should be recovered and disseminated. Indeed, the expression 'take our words with you' which was often said, has the undertone that I had to reveal and spread the ideas which they had shared with me. As one widows said:

Similar as the others here [present here in this focus group], it hurts me ... As they [I and my translator] are recording our words now, what we are talking about, where they are going to say, that these people would take into account what we have suffered, what they [I and my translator] are recording now. That would be good.

So, in fact, these focus groups offered not only 'spaces for healing', but also 'spaces for agency'. The participants realized that those focus groups were an opportunity to voice their opinions which made them engage actively with regard to the different topics. The participants all took time out of their work in the house or from their fields to meet with us and share their ideas. Their final desire was in fact that their ideas and perceptions be taken into account by those who could support them directly.

The practical organization of the focus groups was in the different regions similar. They were held in the house of one of the participants and were conducted in the natural environment of a house life. Chickens, dogs and children went in and out of the room and sometimes an occasional visitor popped in during the interview. Each focus group took a whole morning or afternoon including a small break during which we offered *pan dulce* (sweet bread) and coffee or *gaseosa* (soft drink). At the end of each focus group discussion we also offered a home made fresh chicken soup with *tortillas* (fire cooked flat and circular maize dough).<sup>106</sup> During the fieldwork period in Salacium, the focus groups with the ex-PACs and the elders were held in the small office of Abelino in the centre of the village, whereas the interviews with the widows took place in a nearby community saloon because of their larger size. The individual interviews were also conducted at this office. Abelino sat always at the doorstep of his office as a guardian listening to the conversations yet never interfered. Once back at his home we regularly discussed the conversations of that day. Also in Salacium we offered the participants sweet bread and soft drinks during the break. Instead of giving a warm lunch or dinner in a private house of one of the participants, we always went with the group to the local *comedor* (eating place).

The average recording time was around two hours and 15 minutes for each focus group. During all focus groups I asked the questions in Spanish sometimes using some Q'eqchi' expression where after Marta, my interpreter, translated the questions into

106. Mostly we bought all the ingredients (vegetables and chicken) at the local market in Cobán and asked beforehand the family that would host the interview if they could cook the warm meal for all the participants. We always bought enough food to provide a meal for all the participants and for the members of the host family. We paid the family for the tortillas they had prepared.

Q'eqchi' using a meaning-based translation instead of a word-by-word translation. The participants responded in Q'eqchi' and Marta interpreted simultaneously into Spanish. During her interpretations I took notes on the sequence of the talk and the content of the answers. I used a semi-structured topic list with brief open-ended questions. Silence after interventions offered time and space for other participants to share their ideas with the group. Further, focus group methodology is a good approach for addressing 'why not?' and 'why don't?' questions and are therefore regularly used to provide a greater understanding of apparently illogical non-compliance health-related behaviour, such as smoking whilst pregnant.<sup>107</sup> Indeed, also in the complex local and cultural reality of Q'eqchi' transitional communities this type of question was crucial to reveal lay understandings of what at first sight seemed illogical beliefs about 'justice', yet 'once viewed from the perspectives of the people involved, are likely to display a coherent and possibly highly sophisticated logic'<sup>108</sup>. The size of the groups varied between five and ten participants. All interviews were transcribed integrally in Q'eqchi' and later translated into Spanish. In total 28 focus groups were conducted between 2007 and 2009.

### **Formal and Informal Personal Interviews**

During the four fieldwork periods numerous formal and informal personal interviews were conducted with community leaders, spiritual guides, and locals with experience of the conflict and social recovery in the different communities and regions. Because of my yearly returns to Guatemala and to the research fields I was able to conduct follow-up interviews with local leaders on for example the progress of the National Reparations Programme (PNR) in the region. These follow-up visits and talks served also to fill in knowledge gaps that I encountered during the analysis of the ethnographic material.

As previously said, from the start it was one of objectives to link up micro level realities with macro level policies and visions. Therefore, during the last two fieldwork periods in 2009 and 2010 I also conducted interviews with key stakeholders of national human rights groups, indigenous victim organizations and interlocutors. These interviews served not only to obtain macro level perspectives, but also for factual information about current transitional justice efforts such as the PNR and the payments to ex-PACs. Increasingly, within qualitative research researchers are realizing that interviews are 'not neutral tools of data gathering but active interactions between two (or more) people leading to negotiated, contextually based results'.<sup>109</sup> Indeed, during these interviews I was able to present and discuss my research findings and confront micro-level experiences with the perspectives and experiences of people working in organizations and institutions with a more top-down approach and with a specific agenda.

107. Barbour, *supra* note 99, 24-25.

108. *Ibid.*, 24.

109. Norman Denzin and Yvonna Lincoln, *Collecting and Interpreting Qualitative Materials. Second Edition*, Thousand Oaks, Sage Publications, 2003, 62.

## Analysis and Reporting Ethnographic Data

The empirical material for interpretation, which resulted from the different methodological approaches, included transcriptions of focus group discussions, personal interviews and linguistic workshops as well as field notes from the focus groups and of the participant observations. This mountain of empirical data in one way or another helped address the research topic.

One of the most used approaches to analyse ethnographic interview data is the grounded-theory approach.<sup>110</sup> The central focus of this approach is ‘on inductively generating novel theoretical ideas and hypotheses from the data as opposed to testing theories specified beforehand’.<sup>111</sup> Thus, grounded theory is concerned with the ‘discovery of hypotheses’ from texts and building of explanatory models from the same or subsequently collected texts<sup>112</sup>, rather than generating theory in the abstract. Processing the transcriptions of the focus group discussions and individual interviews happened on the basis of data-driven coding which is usually called open-coding.<sup>113</sup> Coding involves ‘identifying and recording one or more passages of text or other data items such as the parts of pictures that, in some sense, exemplify the same theoretical or descriptive idea’.<sup>114</sup> Open coding is the process of selecting and naming themes from the analysis of the data and coding the texts for the presence or absence of those themes. Therefore the transcripts have been read reflectively to identify relevant themes and subthemes. The texts have been read phrase by phrase with who, when, where, what, how and why questions in the mind. The transcriptions were also examined on certain words and significant phrases. This analysis process has been complemented with the many field notes and with the insights gained by the preliminary ethnolinguistic study. The validity of the identified themes and the models were checked by presenting them to my usual soundboards and locals with long-term experience with Q’eqchi’ survivors.

As outlined above, analysis and data collection are concurring processes in ethnographic research. Indeed, at the end of the first and longest fieldwork period I had already written an extended research paper about the issue of reparations framed within the broader research topic (*supra*). Another important method in grounded-theory text analysis, besides displaying models and theory, is the presentation of exemplar quotes from respondents as ‘exemplars of concepts of theories or as exemplars of exceptions of your theories’.<sup>115</sup> In fact, those quotes led the reader to understand quickly what it took the researcher months or years to figure out. In this first extensive research paper I have presented illustrative quotes, not only as exemplars of concepts and models, but also to give a direct voice to the Q’eqchi’ survivors.

110. Bernard, *supra* note 5, 492.

111. Gibs, *supra* note 77, 49.

112. Bernard, *supra* note 5, 505.

113. The opposite of concept-driven coding is data-driven coding.

114. Gibs, *supra* note 77, 38.

115. Bernard, *supra* note 5, 503.

The periods in between the fieldwork periods served to process and analyse further the mountain of ethnographic data. At the beginning of 2008 I decided to opt for a PhD on articles instead of a classical book PhD. This decision meant a thorough preparatory reflection on the design of each paper, the linkage between the papers and its respective audience prior to further writing up the research findings. Regarding the design I would use exemplar quotes from the respondents to underpin the analysis of the specific theme of the paper.

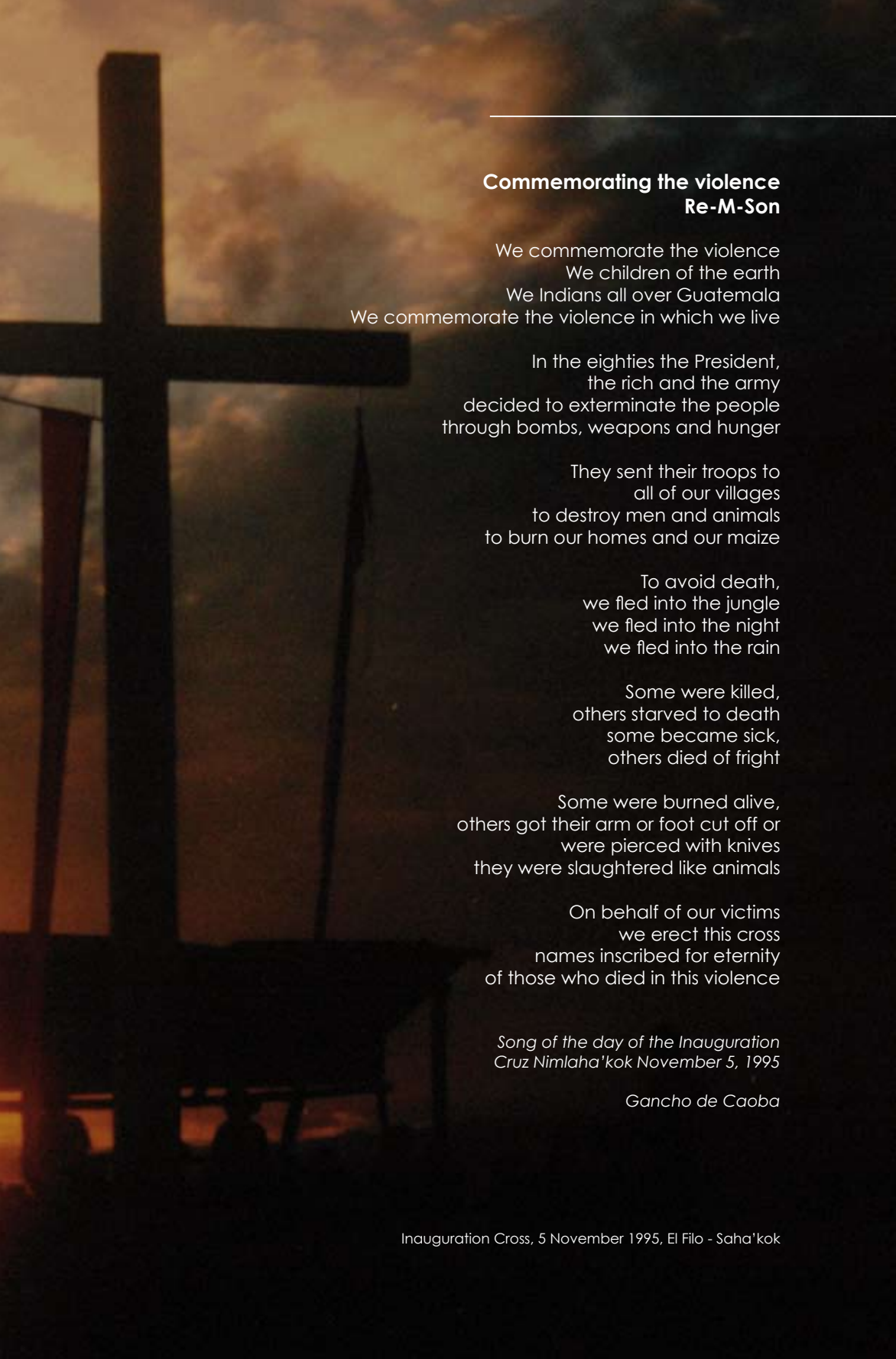
It is important to note that during the periods of analysis and writing up I could benefit from different additional sources to sharpen the presentation of the research findings and the related conclusions. As previously mentioned, during the research project interesting publications regarding the tendency of transitional justice from below and other empirical studies were published which nurtured a critical analysis of the meaning of my own research findings. Second, I have had the opportunity to present my research findings on several topics at different international conferences related to transitional justice, peace building, legal anthropology and human rights.<sup>116</sup> The input from the different audiences on my paper presentations stimulated a further reflection and to interconnect my research finding to other empirical studies and current debates in the different fields. Finally, I could also benefit through the review procedures of the different journals during which I received insightful comments and suggestions from the different anonymous reviewers as well from the editors.

116. Paper presentations at international conferences: '*Legal Subjectivity, Popular/Community Justice and Human Rights in Latin America*', organized by the Centre for Research in the Arts, Social Sciences and Humanities (CRASSH), University of Cambridge, UK, 21-22 January 2010; '*Taking Stock of Transitional Justice*', organized by Oxford Transitional Justice Research, University of Oxford, UK, 26-28 June 2009; '*Diversidad étnica y cultural: desarrollos constitucionales, políticas y prácticas nacionales*', organized by RELAJU, Colombia, Bogotá, 28-31 October 2008; '*Building sustainable futures. Enacting peace and development*', organized by International Peace Research Association (IPRA), Belgium, Leuven, 15-19 July 2008.









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## Commemorating the violence Re-M-Son

We commemorate the violence  
We children of the earth  
We Indians all over Guatemala  
We commemorate the violence in which we live

In the eighties the President,  
the rich and the army  
decided to exterminate the people  
through bombs, weapons and hunger

They sent their troops to  
all of our villages  
to destroy men and animals  
to burn our homes and our maize

To avoid death,  
we fled into the jungle  
we fled into the night  
we fled into the rain

Some were killed,  
others starved to death  
some became sick,  
others died of fright

Some were burned alive,  
others got their arm or foot cut off or  
were pierced with knives  
they were slaughtered like animals

On behalf of our victims  
we erect this cross  
names inscribed for eternity  
of those who died in this violence

*Song of the day of the Inauguration  
Cruz Nimlaha'kok November 5, 1995*

*Gancho de Caoba*



# 3 Dealing with the Legacy of Gross Human Rights Violations in Guatemala: Grasping the Mismatch between Macro Level Policies and Micro Level Processes

Lieselotte Viaene

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## Introduction

Countries emerging from authoritarian rule and periods of gross human rights violations face considerable challenges. During the post-conflict process, questions about the restoration of the rule of law, institutional reforms and security sector reforms are given high priority on the national and international peace building agenda. Another concern is that of how to deal with the legacy of the gross human rights violations. Crucial here is the booming field of transitional justice which covers the different strategies and interventions that states and international actors employ to deal with the legacy of mass atrocities. Currently, there is a preference for a mix of judicial and non-judicial mechanisms which includes criminal prosecution and trials, truth commissions, vetting and reparation programmes.<sup>1</sup> They are designed to achieve the fields' driven goals which are justice, reconciliation, truth recovery, guaranties of non-repetition and reparation. Indeed, since its emergence some fifteen years ago, the trend in the field is towards a new transnational normative system.<sup>2</sup> Yet transitional justice is also undergoing a process of natural maturing from a young but quickly expanding field of inquiry. One of the outcomes of this process is the growing awareness among scholars and practitioners that the current transitional

1. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General* U.N. SCOR, UN doc. S/2004/616 (2004)
2. Contributions to the normative development of transitional justice in international law are for example the UN declaration of basic principles and guidelines on the right to a remedy and reparation for victims of gross human rights violations. There is also a growing body of case-law from both the Inter-American Court of Human Rights and the European Court of Human Rights, which have addressed allegations of human rights violations in a transitional justice context. A clear example of this development is the 'right to truth' as an emerging rule of international law. Further there is also a process of judicial institutionalization with the establishment of International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC).

justice field is highly abstract, general, legalistic and top-down.<sup>3</sup> In a significant pendulum motion, academic thinking has now swung toward bottom-up, interdisciplinary, empirical and concrete approaches. Currently, several interrelated trends that coincide in their attempts to re-orient the field can be seen. First, there is a trend in academic thinking and in the international community to move away from the “one size-fits-all” approach to transitional justice.<sup>4</sup> Because, ‘given the extraordinary range of national experiences and cultures, how could anyone imagine there to be a universally relevant formula for transitional justice?’<sup>5</sup> Second, a consensus has emerged in favour of changing lenses and broadening the scope by looking closer at what is happening at the grassroot level. Concepts that are gaining currency in recent debates include ‘transitional justice from below’, ‘local approach’, ‘bottom-up’, ‘macro-micro’, and ‘local ownership’. Indeed, there is a need for a ‘transitional justice from below’ which aims to explore ways of how ‘from above’ transitional justice institutions and structures ‘can broaden *ownership* and encourage the *participation* of those who have been most directly affected by the conflict.’<sup>6</sup> Indeed, there is an emerging recognition that the expectations and the priorities of the affected people should be taken into account at all stages of transitional justice interventions - conceptualization, design, implementation and management.<sup>7</sup> The underlying premise is that those mechanisms should serve the interests of the survivors in whose name the State and international actors intervene. It is therefore crucial to understand what affected people seek from peace and transitional justice interventions. Further, there is a tendency of using traditional and informal justice systems and revisiting traditional and local culture as a means of coming to terms with mass atrocities.<sup>8</sup> Indeed, cultural challenges also constitute part of this critical reflection process. Nevertheless, there is little information in the field on how survivors perceive the driven goals of transitional justice and its mechanisms in different local and cultural context. Moreover, it remains rare to find empirical studies that base policy recommendations on consultations of future beneficiaries or that examine the difficulties and issues that arise while implementing peace and transitional justice driven processes.

3. Béatrice Pouligny, Simon Chesterman and Albrecht Schnabel, ‘Introduction: Picking up the pieces’, in *After Mass Crime. Rebuilding States and Communities*, eds. Pouligny, Chesterman and Schnabel, (Tokyo: United Nations University Press, 2007), 1-16. Kieran McEvoy & Lorna McGregor, ‘Transitional justice From Below: An Agenda for Research, Policy and Praxis’, in *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*, eds. McEvoy & McGregor (Oxford: Hart Publishing, 2008), 15-45.
4. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General supra* note 1.
5. Orentlicher, Diane, ‘Settling Accounts Revisited: Reconciling Global Norms with Local Agency’, in *International Journal of Transitional Justice*, vol. 1, 2007, 18.
6. McEvoy & McGregor, *supra* note 3 at 5. (Emphasis in original)
7. See: *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General supra* note 1; Orentlicher, *supra* note 5; Patricia Lundy, & Mark McGovern, ‘The Role of Community in Participatory Transitional Justice’, in *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*, eds. McEvoy & McGregor, (Oxford: Hart Publishing, 2008), 99-120.
8. See: Lieslotte Viaene and Eva Brems, ‘Transitional Justice and Cultural Context: Learning from the Universality Debate’, *Netherlands Quarterly of Human Rights*, 2010, Vol. 27 (2), 199-224.

Additionally, based on a case study of post-conflict Guatemala and the issue of financial compensation for people affected by its internal armed conflict, this article asserts that due attention should be paid to the interconnection between macro level driven initiatives and micro level processes when dealing with gross human rights violations. The case of Guatemala's internal armed conflict is another example of what is labelled in post-conflict literature an 'intimate' crime. This concept refers to situations of armed conflicts, such as Mozambique, Bosnia-Herzegovina, Sierra Leone, Peru and Rwanda, marked by a highly localized dimension, mass civilian participation as well as involvement of civilian agents in the atrocities.<sup>9</sup> As Schirmer states in relation to the situation in Guatemala, 'nowhere else in Latin America, an army managed to mobilize and divide an indigenous population against itself to such an extent – even to the point of forcing victims to become accomplices and kill one another'.<sup>10</sup> Indeed, one of the key 'mechanisms of horror'<sup>11</sup> of the Guatemalan counter-insurgency war was the forced mass involvement of civilian population through the imposition of the Civil Defence Patrols (Patrullas de Autodefensa Civil – PAC) in rural indigenous communities.<sup>12</sup> In fact, these PACs became the personification of the militarization of rural indigenous areas. In such contexts of intimate crime, the qualification of who is victim is a thorny question because the violence created more 'grey zones'<sup>13</sup> than the clear victim-perpetrator dichotomy. Indeed, at the local level of indigenous communities the lines between victims and perpetrators were blurred which has had a severe impact on local social recovery processes.

Against this background, the article looks at two recent but distinct state programmes of financial compensation for people affected by the conflict and their impact at the local level. As Theidon argues, 'reconciliation is forged and lived locally, and state policies can either facilitate or hinder these processes'.<sup>14</sup> In Guatemala, there is on the one hand the programme of compensation for ex-Civil Defence Patrollers and the National Reparations Programme that compensates victims of the conflict on the other. Both state programmes emerged in a complex political but very polarized context and address the demands of what at the macro level is seen as two separate and homogenous groups: ex-civil patrollers or perpetrators and victims. However, at the micro level, this victim versus perpetrator dichotomy is much more blurred than it is

9. Béatrice Pouligny, 'Building Peace in Situations of Post-Mass Crimes', *International Peacekeeping*, (2002): 201-220; Kimberly Theidon, 'Justice in Transition: The Micropolitics of Reconciliation in Postwar Peru', *Journal of Conflict Resolution*, (50) (2006): 433-457; Béatrice Pouligny, Simon Chesterman and Albrecht Schnabel (eds.), *After Mass Crime. Rebuilding States and Communities*, (Tokyo: United Nations University Press, 2007).
10. Jennifer Schirmer, *The Guatemalan Military Project: A Violence Called Democracy* (Philadelphia: University of Pennsylvania Press, 1998), 81.
11. Inter-Diocesanal Project for the Recovery of Historical Memory (REMHI), *Guatemala: Nunca Más. Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica*, (Guatemala: ODHAG, 1998). REMHI was the second truth commission organized by the Catholic Church.
12. In Guatemala the large majority of the population belongs to indigenous groups such as the Maya, The Xinka and Garifuna. The majority are Mayan which are constituted by 22 Maya ethnic groups of which the Quiché, Mam, Kaqchiquel and Q'eqchi' are the biggest groups.
13. Primo Levi, *Survival in Auschwitz*, (New York: Touchstone, 1995)
14. Theidon note 9 at 246.

diametrical. In fact, ethnographic accounts from Maya Q'eqchi' victims and ex-PACs reveal that these two state initiatives undermine the fragile local social recovery processes among survivors. This paper seeks to grasp this mismatch between post-conflict macro level policies and micro level processes, discusses the complexities at the different levels and attempts to interconnect both levels. By focusing on the 'social and political life'<sup>15</sup> of the concept of compensation in the specific context of Guatemala, it also attempts to contribute to the knowledge gap in transitional justice literature on localized approaches. The broader research question underlying this paper is about the role of Maya Q'eqchi' culture in post-conflict processes at the local level. To address this research question 21 months of ethnographic research was conducted between July 2006 and March 2010 in the Alta Verapaz department, which is situated in the north central part of the country. It is one of the most affected regions of the conflict and the large majority of the population are indigenous Maya Q'eqchi'. While the current trend in the transitional justice field is to use population based surveys on attitudes on peace and social reconstruction that ensure a broad scope, it is argued that this approach fails to explore the deeper local cultural logics in which needs, perceptions and attitudes are embedded. Indeed, Shaw considers ethnographic research to be the most appropriate approach when studying post-conflict processes at the local level because it seeks to understand processes, events and ideas on the people's own terms and thus is a powerful tool for challenging received wisdom and for understanding events and processes on the ground.<sup>16</sup> Further, ethnographic micro-level research is, according to Pouligny, Chesterman and Schnabel, 'very helpful in understanding the capacity of victims and perpetrators to reconstruct new forms of social ties'.<sup>17</sup> The research was conducted in three regions of Cobán municipality which is part of the Alta Verapaz department: Nimlahak'ok, Nimlasachal and Salacium. To address the complex local and cultural reality multiple data collection techniques, or methodological triangulation, have been used. The research included semi-structured focus group discussions with internally displaced people, war widows, elderly and ex-PACs; linguistic workshops; formal and informal interviews with community leaders, spiritual guides, and local and foreign people with experience of the war and social reconstruction; participant observation during community meetings and commemorative ceremonies were conducted. For most survivors it was their first opportunity to share their opinions regarding coexistence, justice, reconciliation, reparation and truth recovery, especially ex-PACs who regularly expressed their gratitude that someone finally was listening to them.<sup>18</sup> Further, several key stakeholders of national

15. A phrase which I borrow from Kimberly Theidon. Kimberly Theidon, 'Editorial Note', *International Journal of Transitional Justice*, 2009, Vol. 3, 296.

16. Rosalind Shaw, 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *International Journal of Transitional Justice*, Vol.1 (1), (2007): 183-207.

17. Pouligny, Chesterman and Schnabel note 3 at 3.

18. All interviews were in Q'eqchi', conducted with the help of an interpreter and recorded. The survivors' quotes appearing in this paper are extracts from those interviews. These (translated) vignettes attempt to represent an appropriate balance between reflecting the nuance of Q'eqchi oral tradition (the authenticity of the expression of the ideas) and English written language.



human rights groups and indigenous victim organizations and interlocutors of civil society were interviewed.

This article begins with a macro level analysis of how Guatemalan society is dealing with the legacy of gross human rights violations, then shifts to a micro level description of the intimate crime first and ends by linking both levels. The first section begins with a brief sketch of the armed conflict and of the PAC system in Guatemala. The second section outlines several interrelated socio-political variables of the broader macro level context that are crucial in understanding the origin and different dynamics in which the two state programmes are embedded. In the third section, this paper examines the complexities of the conflict and social recovery processes at the micro level. The next section proceeds to examine the perceptions of both ex-civil patrollers and victims regarding the two state programmes. This exposes frustration and incomprehensiveness among the beneficiaries towards both programmes and reveals a mismatch between macro initiatives and micro reality, which undermines the fragile process of rebuilding community trust.

## Guatemala: Dealing with its Past of Intimate Crime

Guatemala has suffered one of the bloodiest and longest internal armed conflicts of the Latin American continent, a conflict between the State's army and left-wing guerrillas who wanted to change fundamentally the exclusionary social, economic and political reality of the majority of the Guatemalans. This resulted in a low-intensity civil war lasting 36 years which finally ended on 26 December 1996 with the signing of comprehensive Peace Agreements between the Guatemalan government and the Guatemalan National Revolutionary Unity (URNG). At the beginning of the 1980's the conflict intensified under the administrations of Generals Romeo Lucas García (1978-1982) and Efraín Ríos Montt (March 1982-August 1983) who launched bloody military campaigns and scorched earth strategies as part of the counter insurgency war. Over 200,000 people were killed or disappeared during this period. According to the UN sponsored Commission on Historical Clarification (CEH), most of the victims were indigenous civilians and acts of genocide against Mayans were carried out in at least four areas of the country.<sup>19</sup> The country suffered 626 massacres, over 400 villages were totally destroyed, 1.5 million people were internally displaced and 150,000 fled to Mexico. Of the killings, massacres, forced disappearances and torture, the CEH found the army responsible for 93 percent. Further, the PACs were responsible for 18 percent of human rights violations. Their main violations were: capture or execution of (so-called) guerrilleros, torture and sexual violations.

19. Comisión para la Esclarecimiento Histórico CEH), *Guatemala: Memoria del Silencio. Tz'itil Na'Tab'Al*. (Guatemala: UNOPS, 1999).

The imposition of the PAC system in the early 1980s was a central element of the military counter-insurgency strategy of total control of the rural indigenous areas. The PACs were created in 1981 by General Lucas García and became part of the National Security and Development Plan of the military government of Efraín Ríos Montt in 1982.<sup>20</sup> They were men between 15 and 60 years who functioned as the ears and eyes of the army in their villages. They were also forced to take over military tasks like sweeping areas for guerrillas and attacking so-called subversive villages. Their total number remains unclear, but at the peak of the war in the mid-1980s they numbered between 1,000,000 and 1,300,000 men, declining over the years to 400,000 in 1995. According to Remijnse, a central aspect of the PAC was ‘their diversity between and within municipalities, and consequently their varied and often unpredictable impact on local society ... Civil patrols were not static entities, but different in background, the type of functions they performed, and their level military activity’.<sup>21</sup> The army has since 1982 continually been asserting the voluntary nature of the PACs. However, early studies showed that throughout the 1980s, the PACs were forced to patrol on penalty of severe punishment or death.<sup>22</sup> Several ethnographic studies on the destructive impact of the conflict have detailed how PACs were victim of the army and at the same time were perpetrators towards their own neighbours.<sup>23</sup> These studies show how this system in some areas created space for chiefs of patrollers to abuse their authority whilst ruling with impunity, to terrorize their village and region and serve their own interests. In 1986, under the civil government of Vinicio Cerezo, the Civil Patrols were renamed Voluntary Committees of Civil Defence (CVDCs), to emphasize the voluntary nature of their work.<sup>24</sup>

During the peace process, which took almost a decade, the demilitarization of the State and civil society and the concern of impunity of those responsible for human rights violations stood high on the international agenda. In fact, the U.N., together with other international actors, played a crucial mediating role in facilitating agreements between the government and the URNG.<sup>25</sup> The mix of Agreements opened up an opportunity for a significant transformation of Guatemalan society and resulted in long-term commitment to change the country into a democratic, inclusive and pluri-cultural state.<sup>26</sup> They covered commitments on socio-economic reforms and the agrarian situation, rights of indigenous peoples, human rights, public security reforms

20. They were actually legalized by Executive Decree 222 in 1983.

21. Simone Remijnse, *Memories of Violence: Civil Patrols and the Legacy of Conflict in Joyabaj, Guatemala*, (Amsterdam: Thela Latin American Series, 2002): 143.

22. Schirmer note 10 and Margaret Popkin, *Las Patrullas Civiles Y Su Legado: Superar La Militarización Y Polarización del Campo Guatemalteco* (Washington: Centro de Derechos Humanos de la Organización Conmemorativa “Robert F. Kennedy”, 1996)

23. Judith Zur, *Violent Memories. Mayan War Widows en Guatemala* (Boulder: Westview Press, 1998); Remijnse note 21; Matilde Gonzales, *Se cambió el tiempo. Conflicto y poder en territorio K’iche’*, (Guatemala: AVANCSO, 2002).

24. This paper still uses the abbreviation ‘PAC’ as this is the commonly used phrase in Guatemala.

25. Susanne Jonas, *Of Centaurs and Doves: Guatemala’s Peace Process*. (Boulder, CO: Westview Press, 2000).

26. For more detailed discussions see *Ibid*.

and resettlement of refugees and displaced persons. The Agreements also demobilized the guerrilla forces and members of different state and parastatal security forces.

During these peace negotiations the future of the PACs was also at issue. Human rights defenders argued that their demobilization and disarmament would put an end to the human rights abuses. It was, however, not clear what would happen to the structures of the system thereafter and there was no political room for a formal demobilization, demilitarization and reintegration (DDR) programme or any other kind of benefits or compensation for the PACs.<sup>27</sup> Several reasons for their exclusion in the Peace Agreements can be traced. First, the URNG opposed equal treatment of the PACs with their own forces for which a DDR programme was elaborated with support of the international community.<sup>28</sup> A second reason is that neither the government nor the army proposed to deal with the PACs during the negotiations.<sup>29</sup> Another reason for the exclusion lies in the fact that the army from 1995 onwards, tried to convert PACs into 'committees of peace and development' maintaining the existing structure for development and public safety in the rural areas. This raised the concern among human rights defenders that the army was trying to maintain unofficial influence and control over important actors and funds in the communities. Therefore, according to Popkin, the international community did not want international help for the development of the rural areas to be transferred to this kind of committee.<sup>30</sup> A final reason is that the negotiations on the agreements on human rights and the establishment of the CEH has been difficult; therefore as Hauge & Thoresen maintain, putting a reintegration and compensation programme for the PAC on the agenda would have been a delicate issue and putting extra negative pressure on the negotiations.<sup>31</sup>

The Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society of September 1996 obliged the Guatemalan government to demobilize and disarm its own forces. According to this Agreement, the PACs had to be demobilized within 30 days and they should cease any relationship with the army and not be converted in any way that might reconstitute that relation. At that time the PACs had already formally been dissolved by the Ramiro de León Carpio government through a presidential decree in 1994.<sup>32</sup> However, reports of the UN verification mission of human rights (MINUGUA) demonstrated that there were

27. J.A. Solomon, *Institutional Violence: Civil Patrols in Guatemala* (Washington, DC: Robert F. Kennedy Memorial Center for Human Rights, 1994).

28. Further reading: Willem Stanley and David Holiday, 'Broad Participation, Diffuse Responsibility: Peace Implementation in Guatemala' In *Ending Civil Wars: The Implementation of Peace Agreements*, ed., Stephan John Stedman (Boulder: Lynne Rienner Publisher, 2002); Wenche Hauge and Beate Thoresen, *El destino de los ex combatientes en Guatemala: ¿Obstaculizadores o Agentes de Cambio?* (Guatemala: Magna Terra, 2007).

29. Hauge and Beate, *Ibid.*

30. Popkin note 22.

31. Hauge and Beate note 28.

32. This was the result of the Global Agreement on Human Rights (Mexico, 24 March 1994), which stated that the participation of the CVDCs should be voluntary.

threats and attacks against patrollers wanting to leave.<sup>33</sup> Further, the reports mention that there were still military commissioners<sup>34</sup> and patrollers controlling rural villages and cases of abuse and violations of the right to live, integrity and security. It was difficult to give a clear answer to whether PACs existed or had been dissolved between 1994 and 1996 as this varied depending on region, department and municipality and their relationship with the army.<sup>35</sup> Further, ethnographic accounts of PAC in the Western Highlands attributes this continuation to fear for the army, a way out of the violence; a means of self-defence and a growth of a sense of sovereignty within the communities.<sup>36</sup> By December 1996, in total 270,906 PAC-members were demobilized under the supervision of MINUGUA.<sup>37</sup> However, some ex-PAC leaders and ex-commissioners maintained their power and control over the communities.<sup>38</sup>

## Compensation for People Affected by the Armed Conflict

De Greiff points out that one of the huge challenges that any reparation and DDR programme faces is to determine the future beneficiaries, namely how to select the rights which the violation will lead to reparation measures and how to avoid the exclusion or over-inclusiveness of ex-combatants.<sup>39</sup> The specific Guatemalan transitional justice context makes this qualification process even more complex. Before moving to the description of the origin and content of the two state programmes of compensation, it is crucial first to sketch briefly several parameters that characterise the social-political climate.

First, it is important to note that, according to the Guatemalan Human Rights defender Helen Mack 'it is clear that a clear reference to reconciliation in the peace agreements was deliberately omitted, despite the fact that such a process is indispensable for overcoming the adverse conditions at the negotiations .... because the concept of 'reconciliation' asks for major social, political and institutional transformations, for which the Guatemalan society is not prepared, especially those groups who have

33. MINUGUA, *La situación en Centroamérica: Procedimientos para establecer la paz firme y duradera, y progresos para la configuración de una región de paz, libertad, democracia y desarrollo*. (UN Documento A/49/856, 1995); MINUGUA, *La situación en Centroamérica: Procedimientos para establecer la paz firme y duradera, y progresos para la configuración de una región de paz, libertad, democracia y desarrollo*. (UN Documento A/50/878, 1996).

34. The commissioners were another cornerstone of the militarization of the rural areas. Initially they served as civilian intermediaries between the local population and the army, but during the war they were responsible for intelligence, surveillance and recruitment and were often chiefs of PAC. See CEH, note 19, vol 2, 158-180.

35. Ricardo Saenz de Tejada, *¿Víctimas o vencedores? Una aproximación al movimiento de los exPAC* (Guatemala: FLACSO, 2004).

36. Schirmer note 10; Zur note 23; González note 23.

37. In 1995 there were 2,643 groups of PAC counted see CEH note 19.

38. González note 23 and Remijnse note 21.

39. Pablo De Greiff, *Contributing to Peace and Justice. Establishing Links between DDR and Reparations* (Bonn: Working Group on Development and Peace, 2007).

the power'.<sup>40</sup> She further states that there is a lack of a shared conceptualization of reconciliation at the national level and a real reconciliation process has never been stimulated. In fact, the lack of a common national peace agenda and concept on reconciliation has its repercussions on the State's efforts to deal with the legacy of the conflict: minimal progress in the accomplishment of the Peace Agreements has been made due to the absence of political will.

Second, since their creation in the early 1980's, the PACs have been subject to two decades of commotion and heated national debates. Importantly however, there has never been an open national discussion about the definition of victimhood or an attempt to nuance the homogeneity of the PACs as perpetrators. In fact, their complexity and diversity has been omitted during the peace process by the negotiation parties and civil society. Actually, the discussion about the PACs during the negotiations in the early 1990s was centred on one question: was the participation in the civil patrols voluntary or not?<sup>41</sup> Early studies<sup>42</sup> had already indicated their involuntary nature and this has later been confirmed by the two truth commissions, the CEH and the project for Recovery of Historical Memory (REMHI) of the Catholic Church. In fact, the final report of REMHI described the PACs as one of the 'mechanisms of horror'.<sup>43</sup> Edgar Gutierrez, ex director of REMHI and ex minister of foreign affairs during the Portillo government, attributes the lack of a discussion about the heterogeneity of the PACs to a one-side reading of the conflict at the macro level as there has been little reflection on military, psychological, cultural, sociological and economical dimensions of the conflict.<sup>44</sup> He in fact states that for civil organizations simplifying the conflict and using the victim-perpetrator dichotomy has been comfortable and politically correct. Human rights groups generally portrayed the PACs as a homogenous group of perpetrators who operated at the local level of the indigenous communities. Another crucial fact in understanding the polemic on the ex-PAC is the hard reality that accountability remains susceptible because as the impunity of the armed forces for past atrocities persists after 25 years. Only in three cases of the 669 documented massacres by the CEH have those materially responsible been successfully prosecuted by the Guatemalan judicial system.<sup>45</sup> Therefore, the fight against the institutionalized impunity is the key concern and focus of human rights organizations. In their discourse, those organizations maintain the polarity between ex-PACs as perpetrators on the one hand and victims on the other. According to Jelin this polarization is inherent to the interpretive framework of human rights violations because 'the polarity is between human

40. Helen Mack, 'La reconciliación en Guatemala: un proceso ausente', In *Verdad, justicia y reparación. Desafíos para la democracia y la convivencia social*, eds., Gilda Pacheco Oreamuno and Lorena Acevedo Narea, (IIDH/IDEA internacional, 2005), 196.

41. Remijnse note 21.

42. Solomon note 27; Popkin note 22 and Schirmer note 10.

43. REMHI note 11.

44. Former Head of the Secretary of Strategic Analysis (2000-2002) during the Portillo government, Minister of Foreign Affairs (2002-2004) and coordinator of the REMHI-project of the Catholic Church (1995-'98), e-mail interview, 15 September 2009.

45. Massacre of Santiago Atitlán (1993), Massacre of Xaman (May 2004), Case Rio Negro (May 2008) .

rights violators on one side and victims on the other'.<sup>46</sup> In fact, Bores states that in human rights discourses 'victims and perpetrators are usually referred to as two completely separate and homogenous sets of people'.<sup>47</sup> However, she further argues that 'differences between the two groups are perhaps not as clear-cut as human rights scholars and activist... tend to portray them and that highlights that the homogeneity that is assumed about the individuals within each group is similarly overstated'.<sup>48</sup> Nevertheless, if against the background of this macro level context of total impunity, national human rights organizations were to start making a plea in favour of a more nuanced reading of the conflict, this would undermine their legitimacy as human rights defenders in their quest for justice. Yet this strategic macro level position of human rights organizations clashes with the complex and blurred micro reality of the affected rural communities as will be shown in the next section. In fact, sticking to a strict victim-perpetrator dichotomy in such a context is what Goveir and Verwoerd describe as 'logically simplistic, ethically unfair, psychologically misleading and prudentially undermining'.<sup>49</sup>

A final important contextual element is that peace building and transitional justice efforts are very top-down driven in Guatemala and do not take into account local and cultural resources. Several human rights professionals working for years in the countryside, have in interviews raised the fact that all governmental and (inter)national NGO policies and programmes are designed in the capital based on 'far away vision'.<sup>50</sup> In fact, in this 'capital-bubble' it is the vision of the *ladino*<sup>51</sup> that still dominates and most of the time is not familiar with the reality of the transitional complexity of rural indigenous areas.

Against this socio-political backdrop and the political commitments of the Peace Agreements two distinct state programmes of compensation for people affected by the conflict were created.

### **Compensation Programme for ex-PACs<sup>52</sup>**

The exclusion of the PACs in the Peace Agreements generated an accumulation of bitterness among some ex-PACs which created a boomerang effect with a strong claim for compensation from the State.<sup>53</sup> The first demand for compensation was publically

46. Elizabeth Jelin, *State Repression and the Labors of Memory* (Minneapolis: University of Minnesota Press, 2003), 53-54.

47. Tristan Anne Borer, 'A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa', *Human Rights Quarterly*, 25 (2003), 1088.

48. *Ibid.*, 1091.

49. Trudy Govier and Willem Verwoerd, 'How Not To Polarize "Victims" and "Perpetrators"', *Peace Review*, 16:3 (2004): 371.

50. A phrase I borrow from González note 23.

51. This term refers mainly to people who identify themselves as non-indigenous, Spanish speaking and US/Europe oriented. Although 60% of the population is indigenous, the ladino culture is the dominant one.

52. Hereafter called: PAC programme

53. Sáenz de Tejada note 35 and Hauge and Thoresen note 28.

made in 1997 in the Petén department. This was the first wave of unrest among former civil patrollers. It was Alfonso Portillo, the presidential candidate for the right wing Guatemalan Republican Front (FRG), who in 1999 again placed the issue of compensation for ex-PACs at the forefront.<sup>54</sup> He promised to pay ex-PACs for their services to defend the country and private property against communism.<sup>55</sup> Ex-PACs used this electoral promise as their main argument in their future compensation claims. Demands for financial compensation resurfaced in June 2002 when ex-PACs in the Petén blocked the airport of Flores and other strategic places. President Portillo travelled to the Petén and gave a speech in which he promised that the government would satisfy their demands. After negotiations an agreement on compensation was reached and the government announced a new special tax to finance this. Consequently, ex-PACs started to remobilize in different regions and municipalities throughout the country. Interestingly, this occurred mainly in regions with low intensity experience or even lack of the internal conflict and thus low ex-PACs presence, whereas those ex-PACs who qualified as perpetrators of atrocities did not remobilize nor demand compensation.<sup>56</sup>

A heated discussion emerged in which human rights organizations accused the FRG government of exploiting the situation in view of the coming elections.<sup>57</sup> Under this pressure the government changed its tax proposal and acquired international loans. Originally, the demand was Q20,000 (\$2,750) per person, but finally the total amount was Q5,214 (\$717) which would be paid in three instalments. Between November 2002 and June 2003 ex-PACs and widows of ex-PACs could register at the administrative centre of each department. The first payment of Q.1,747.20 (\$240) was made during the Portillo government in 2003 and benefited a total of 188,959 people of which 176,123 were ex-PAC and 12,836 widows.<sup>58</sup> There was a huge protest from human rights organizations, the UNRG and international embassies against this payment.<sup>59</sup> As the national human rights organization CALDH formulated it in the press: 'intimidation, torture, disappearances and massacres cannot be considered a dignified and remunerative job'.<sup>60</sup> Civil society was also concerned about the impunity which PAC members enjoyed for human rights violations and about the lack of agreement on reparations for victims.

54. The FRG is the party of ex-general Efraín Ríos Montt. Under his regime (1982-1983) most killings, massacres and disappearances took place and he is seen as the architect of the genocide.

55. Sáenz de Tejada note 35.

56. Edgar Gutierrez, e-mail interview, 15 September 2009.

57. Amnesty International (AI), *Guatemala. The Civil Defence Patrols Re-Emerge* (2002); Remijnse note 21.

58. For a more detailed discussion of the compensation debate, see USAID/CIEN, *Informe sobre el aporte de capital a exPAC* (Guatemala, 2003).

59. AI note 57.

60. Sonia Pere, *Prensa Libre*, 13 July 2002.

Therefore, several human rights organizations brought an action against this measure before the Constitutional Court which in 2005 judged it to be unconstitutional. The main argument was that no labour contract existed between PACs and the State because their service was considered voluntary. The new government of Berger changed the modality of the compensation in 2005 into a programme of “Planting Trees” and provided Q445 million (\$61 million).<sup>61</sup> Seventy million trees were planted by ex-PACs who would receive the promised two other payments as compensation for this reforestation work. In total 544,620 ex-PACs registered for the programme of whom, currently, 15% have not received the third payment.<sup>62</sup> However, not all PACs on the list received all three payments, due to bureaucratic problems and also because some of them refused to work for the government to receive their compensation.

### **National Reparations Programme (PNR)**

The creation of a reparations programme was a long and complex process that faced numerous obstacles and was defined by political struggle.<sup>63</sup> During the peace negotiations, national victim organizations strongly demanded reparation measures for the victims of the conflict. Reparation demands became a state commitment with the General Agreement on Human Rights<sup>64</sup> of 1994 forming part of the Peace Agreements. This states that reparation and/or assistance to victims of human rights violations is a humanitarian obligation. Furthermore, the CEH recommended immediate installation of a reparation programme over ten years which includes restoration of material possessions, compensation, psychosocial rehabilitation and reparation as well as restoration of individual dignity and satisfaction. The CEH defined that the beneficiaries are victims (or their relatives) namely ‘those persons who have personally suffered human rights violations and acts of violence connected with the internal armed confrontation’.<sup>65</sup>

Interestingly, the CEH also recommended collective measures, depending on the type of violation, to foster reconciliation between victims and perpetrators without stigmatizing either:<sup>66</sup>

Therefore, collective reparatory measures for survivors of collective human rights violations and acts of violence, and their relatives, should be carried out

61. Acuerdo Gubernativo 406-2005.

62. Interview with deputy Efraín Oliva Morales, sub-secretary of the Executing Coordination Secretary of the Presidency and responsible for the negotiation commission with PAC during the Berger government, 6 May 2009.

63. MINUGUA, *Informe de Verificación. El estado de cumplimiento de las recomendaciones de la Comisión para el Esclarecimiento Histórico* (Guatemala: 2004); Gustavo Porras Castejon, ‘El Programa Nacional de Resarcimiento: Cómo Se Quiso, Cómo Es y Cómo Debe Ser’, In *Primer Informe Temático 2006-2007 del Programa Nacional de Resarcimiento, La vida no tiene precio. Acciones y Omisiones de Resarcimiento en Guatemala*, (Guatemala: Magna Terra, 2007), 27-36.

64. General Agreement on Human Rights, VIII, Mexico D.F. 29 March, 1994.

65. Recommendations III – 12&13.

66. Recommendations, III-11



within a framework of territorially based projects to promote reconciliation, so that in addition to addressing reparation, their other actions and benefits also favour the entire population, without distinction between victims and perpetrators.

The political conflict on the payment of PACs in 1999 paradoxically made political room for serious negotiations between the Portillo government and civil society for the creation of a reparations programme. Yet the Portillo's government finally approved a National Reparation Programme (PNR) by an Executive Decree in 2003.<sup>67</sup> The PNR had an integral reparation design with five measures: material restitution, economic reparations, psychosocial reparation and rehabilitation, honouring civilian victims and cultural reparations. Due to lack of political will, differences among civil society organizations and the PNR's weak legal basis, its implementation was postponed until 2005 when a new Executive Degree<sup>68</sup> was promulgated containing regulations for a restructured PNR. The Manual of Qualification of the Beneficiaries of the PNR that defines who is the beneficiary of the PNR clearly states that all ex-PAC that appear in the register of the programme for the payment of ex-PACs, even if they have not received any instalment, are excluded from any reparation measure of the PNR.<sup>69</sup> Although the original measures remained, individual financial compensation was prioritized for several reasons. The organization of the implementation of financial compensation is the 'easiest' one of the five and victim organizations also strongly demanded it. The beneficiaries are survivors of torture or sexual assault and relatives of victims of illegal executions, massacres or disappearances. The compensation is Q24,000 (\$3,300) for a deceased relative and Q10,000 (\$1,370) – Q20,000 (\$2,750) for sexual assault and/or torture. Since its start in 2005, the PNR has compensated 26,041 beneficiaries.<sup>70</sup> At the end of 2009, the PNR started with the implementation of the measure of material restitution through pilot projects of housing. In total, 888 stone houses of 6 by 6 meters have been built.<sup>71</sup>

Before looking at how these two state initiatives are perceived by their beneficiaries and their impact on the local reconstruction processes, the ways how Maya Q'eqchi' are dealing with this legacy of intimate violence will be explored. As there exists no monolithic experience of the conflict in Guatemala, first follows a brief contextualization of the conflict in the Alta Verapaz department.

67. Acuerdo Gubernativo 258-2003.

68. Acuerdo Gubernativo 619-2005.

69. Manual de Cualificación de Beneficiarios del Programa Nacional de Resarcimiento, PNR, 2004.

70. Programa Nacional de Resarcimiento, *Informe de la evaluación conjunta del Programa Nacional de Resarcimiento y de los Programas de Apoyo al PNR de GTZ y PNUD* (Guatemala: PNR, 2007), Programa Nacional de Resarcimiento, *Informe de Labores 2008* (Guatemala: PNR, 2008); Programa Nacional de Resarcimiento, *Informe de Labores 2009* (Guatemala: PNR, 2009).

71. *Ibid* (2009).

## Complexity of Transitional Communities at the Micro Level

The CEH report shows that, after El Quiché and Huehuetenango, Alta Verapaz was the third worst-affected department by human rights violations and the Q'eqchi' ethnic group was the second worst-affected.<sup>72</sup> The semi-feudal system on the *fincas* or big plantation farms, characterized by a lack of freedom, miserly low salaries, high work pressure, abuse and absence of schooling, is indicated as the root cause of the conflict in the department (Huet, 2008).<sup>73</sup> Due to the scorched-earth tactics between 1981 and 1983, at least 40 percent of the Q'eqchi' were displaced from their communities and 20,000 were forced to live as hidden refugees in the mountains for months or even years.<sup>74</sup> They struggled to survive in the mountains in extreme conditions and were constantly forced to move place, resulting in death from hunger, disease and *susto* (fright or spirit loss). The most severely hit municipalities were Cobán, Chisec and San Cristobal. In addition to the scorched earth strategy in the regions of guerrilla presence, the army also imposed the formation of the PACs in the rural areas that were under military control. The total amount of the PACs during the conflict is unclear; however during the demobilization in 1996, the department had the second-highest number of patrollers in the country (72,699).<sup>75</sup> Alta Verapaz's PACs were responsible for 7 percent of human rights violations, whereas in El Quiché, 46,995 PACs were responsible for 59 percent of the violations.<sup>76</sup> The reason for this high difference in responsibility is unclear. Probably it is related to lower reporting and less active functioning of the CEH office in Cobán.<sup>77</sup>

With the amnesty offered by Ríos Montt's government in 1982 and the military policy of promoting a large-scale return of internally displaced people, many Q'eqchi', decimated by prosecution and hunger, decided to return from the mountains.<sup>78</sup> Thousands of displaced Q'eqchi' were taken in by the army and moved to military camps or 'Poles of Development' in the region, where they usually received ideological 're-education'.<sup>79</sup> The men were obliged to patrol the camps and had to sweep the area for guerrilla camps and search and convince groups who were still hiding in the mountains to return. Indeed, two groups of PACs can be distinguished in the region: the men who were under military control from the beginning of the scorched-earth campaigns and the internally displaced men who first survived months or years hiding in the mountains and who had to patrol in the military camps and later in their communities.

72. CEH note 19.

73. Alfonso Huet, *Nos Salvó la Sagrada Selva. La Memoria de Veinte Comunidades Q'eqchi'es que sobrevivieron al Genocidio* (Guatemala: Magna Terra, 2008).

74. Carlos Flores, *Bajo La Cruz*, Cobán (Guatemala: Centro Ak'kutan, 2001).

75. CEH note 19.

76. CEH note 19 at vol 2, 230 and 234.

77. Personal communication with ex-collaborator of the CEH-office in Peten, April 2008, Guatemala ciudad.

78. AVANCSO, *¿Dónde está el futuro? Procesos de reintegración en comunidades de retorno* (Guatemala: AVANCSO, 1992).

79. For more see: Centro de Estudios Integrados de Desarrollo Comunal, *Guatemala. Polos de Desarrollo. El caso de la Desestructuración de las Comunidades Indígenas* (México: Editorial Praxis, 1998).

Toward the end of the 1980s, the military camps closed and the internally displaced people had to relocate and reintegrate into the region. This difficult and complex process generally happened in three ways: the return to the old villages, the incorporation into other villages and the creation of new villages.<sup>80</sup> During the initial phases of relocation, displaced people faced humiliations, accusations and threats from PACs and those who had stayed in their villages. The army had created a climate of fear and hostility, as part of its psychological war, causing deep distrust of those 'from the mountains' (aj rub'el pim) who were seen as guerrilleros. The search for land in the region caused friction among survivors and divided groups and families. Returnees from Mexico could count on support from the international community and the State to buy land, whereas the internally displaced were forgotten. The army also forced some displaced people to occupy the land and territory of people who had fled to Mexico, which created conflicts with the returnees who reclaimed their land.<sup>81</sup> Until their formal demobilization in 1996, PACs remained in the villages of the region.

Social reconstruction in the Q'eqchi' region proceeded slowly, due to no aid from the State and little aid from national or international organizations. Places and regions such as Rabinal in Baja Verapaz, the Ixil Triangle and the returnees from Mexico in the Ixcán, both part of the Quiché department, over the years received strong national and international attention. Even today, compared to those regions, a strong presence of international agencies, NGOs or the State in projects designed to support Q'eqchi' in Alta Verapaz is lacking. It was mainly the Catholic Church that played a role in local social reconstruction in some affected areas through the social interventions of the *Pastoral Social* in Cobán and later the work of the REMHI-Alta Verapaz office. Almost 25 years after the massacres, the survivors still face structural inequities. Alta Verapaz counts the highest number of land conflicts of the country.<sup>82</sup> Further, the people must deal with poverty caused by the contrast between the high cost of living and very low incomes, discrimination and abandonment by the State, and finally divisionism provoked by the conflict.<sup>83</sup>

The CEH clearly stated that the magnitude of the violence and the imposition of the PACs had seriously undermined trust within many communities and caused a rupture in the Mayan social fabric and indigenous authority system, disrupting the social norms and elements of the cultural identity.<sup>84</sup> The process of 'picking up the pieces'<sup>85</sup> is very difficult in regions that have suffered intimate crime and where people who have committed atrocities in their own community are living together with their victims. The necessity of interdependent social and economic survival procured an

80. AVANSCO note 78 and Huet note 73.

81. Human Rights Watch/Americas, *Guatemala. Return to Violence. Refugees, Civil Patrollers, and Impunity*, Vol. 8, No 1 (B) (1996).

82. Between 2000 and 2006 there were 464 land conflicts with a concentration in municipalities of Cobán and San Pedro Carcha. Secretaría de Asuntos Agrarios Presidencia de la República Guatemala, *Las ocupaciones de tierra en Guatemala: caracterización y líneas de atención. Informe Final* (Guatemala: 2007).

83. Huet note 73.

84. CEH note 19.

85. A phrase I borrow from Pouligny, Chesterman and Schnabel note 3.

inevitable co-existence of divided people. In the regions of Nimlahak'ok, Salacium and Sachal, people have engaged with the legacy of the mass atrocities. The ways Q'eqchi' victims and ex-PACs have reconstructed new social ties varies between communities depending on how they had been affected, the possibility of obtaining land during the relocation process and the persistent political power of ex-chiefs of PACs. Nonetheless, it is clear, as will be illustrated, that they have not waited for the formal justice system to be rebuilt and/or interventions of national and international actors implemented to start the process of 're-imagining peace'<sup>86</sup> or reshaping social norms, practices and relationships and of finding a new *modus vivendi*.

The expression *nimla rahilal* that Q'eqchi' victims and ex-PACs use when referring to the period of the conflict reveals their cultural understanding of the conflict. *Nimla* is large; *rahilal* means suffering and pain (physical, emotional and spiritual). *Nimla rahilal* always refers to the sort of pain that is the result of a 'final' loss: the loss of a family member or the loss of a harvest or home due to natural disaster. A final loss implies pain that cannot be relieved; it is an irreparable loss. Indeed, the pain and suffering caused by the *nimla rahilal* will never leave the heart of the survivors as one displaced man put it: 'It is like a thorn in our souls, it is like having a knife in our stomachs.'

Furthermore, the conflict not only violated their human rights and caused human suffering; it also violated and transgressed social and spiritual norms established by the communities, leading to the breakdown of their *tuqtuukilal* (tranquillity, harmony, peace). The expression *xoo'èxmux*, which frequently appears during interviews with survivors, means 'they desecrated the cosmos and us as humans'. This reflects the desecration of the natural, social and spiritual world, because of the destruction of the holy maize fields and the sacred mountains (*Tzuultaq'a*).<sup>87</sup>

Despite the abandonment by NGO's and the State, people in the Nimlahak'ok region made remarkable efforts in the mid 1990's to confront the local history of political violence. In November 1995, a huge white cross was erected on the highest hill, with two marble plaques bearing the names of 916 victims. This was the result of an extensive, well-coordinated process that started in 1994 involving 28 communities in an area of 600km<sup>2</sup>. At its origin lays dreams of a number of elders about a large white cross emerging from a mountain, which according to Flores was interpreted as 'a supernatural sign from their disappeared relatives who died during the violence and who had not been buried in accordance with traditional practices'.<sup>88</sup> The names

86. Roberta Culbertson and Béatrice Pouligny, 'Re-imagining peace after mass crime: A dialogical exchange between insider and outsider knowledge', in *After Mass Crime. Rebuilding States and Communities*, eds. Pouligny, Chesterman and Schnabel, (Tokyo: United Nations University Press, 2007), 271-288.

87. *Tzuultaq'a* ("Hill-Valley") or mountain spirits is a central concept determining the identity and being of the Q'eqchi'. It is omnipresent, guiding and overseeing of all actions of daily life. The idea of a personal, transcendent God is not inherent to their cosmivision; however they do not ignore the Christian God, as the majority of Q'eqchi' are Catholic. Esteban Haeserijn, 'Filosofía popular de lo K'ekchi' de hoy', *Guatemala Indígena*, 10 (1975): 44-54; Agustín Estrada Monroy, *Vida esotérica Maya-Kekchi* (Guatemala City: Ministerio de Cultura y Deportes, 1990); Richard Wilson, *Maya Resurgence in Guatemala. Q'eqchi' Experiences*. (Norman: University of Oklahoma Press, 1995).

88. Flores note 74 at 43.

on the marble plaques belong to victims of the massacres, but also to people who disappeared or died from malnutrition, disease or *susto* (fright or spirit loss) in the mountains. Also included are names of victims who were PACs.

Remarkably, although fear still ruled, some PAC members of the neighbouring village Salacium helped with the construction of the cross. Salacium, at that time a three-hour walk across a sloping landscape, had a very different experience of the war. This village was totally controlled by the military base of Playa Grande and formed the limit of the scorched-earth campaigns. So the men were forced to patrol the village and the region. The commissioners and chiefs of PACs of the village provoked terror and fear.<sup>89</sup> In Salacium, similar to other regions under military control, many people converted to evangelical churches during the conflict to save their lives as the Catholics were accused of being 'communists' and 'guerrilleros'. This is the main reason why the people of Salacium did not participate in the construction of the cross. The people from Nimlaha'kok received several threats from commissioners and chiefs of PACs of Salacium that they would destroy the cross. However, despite this, some of their PACs members gave the names of their dead relatives and helped with its construction.

Each year, since 1995, on 3 November and the Saturday before Easter, a Mayan ceremony and community celebration take place near the cross to commemorate the loss of loved ones. An important leader stated that the cross is not only for the community of Sahak'ok but for the entire region and that:

'it is a road to bring us to a dialogue and would lead to a revival among us. So that we would not be longer rejected, not only those who suffered the violence [in the mountains], but also those who did not suffer'.<sup>90</sup>

Some years ago, a non-asphalted road was constructed connecting Cobán with Playa Grande and passes the two villages. The cross is visible from far away when coming from both directions. Now ten years later, these evangelical ex-PACs from Salacium are acknowledging the importance of the cross. As one ex-PAC says:

For me it is not a lie [what happened during the conflict]; that cross has been built because the violence has occurred. So, it is a sign because it happened, it is a sign for the *compañeros*. How many were burned during that violence? That's why they made that sign where the names of those who died appear; it is true all the names are there. (group interview, May 2008)

Other ex-PACs from Salacium say that 'the cross is a sign of the armed conflict, of the problems and everything that happened during those times', 'it is a sign and a testimony that cannot wipe out the violence which happened among us' and 'it reminds us that what happened is true'. The cross is an important locally and culturally driven experience of memorialisation, recovery and dissemination of historical memory.

89. As a reaction, the guerrillas attacked the village on 10 May, 1982 ending in the massacre of 22 people including two children.

90. Personal interview, May 2008.

Another important sign of the slowly proceeding social recovery process in the region is the fact that currently, in the Nimlaha'kok region, the two main local authorities administrating the region are an ex-PAC who never hid in the mountains and an ex-guerrilla leader. For seven years this ex-PAC has been the president of an important regional council and in 2008 an ex-guerrilla leader became the mayor of the region. Both were asked by the people to take up this important responsibility.<sup>91</sup> Fostering unity in the region is what binds these two leaders. However, here a too-romanticized and harmonious reading of such local social reconstruction processes must be avoided. Complex social, economical and power realities should not be overseen in understanding the ways of social recovery.

As one local leader from Sahak'ok explains:

There are people who did understand; there are people who want to life united, who want to be in community [together]. But there are also people who don't want to be in the community, there is divisionism and there are confrontations. There is divisionism because of the different religions in the different regions. There is no goodness; there is no tranquillity. (Personal interview, May 2008)

An ex-Pac compares the impact of the conflict on communal life with a destroyed beehive:

It is difficult now; it is difficult for us to come together as one, because it has all fallen apart, yes. You could say that it is like an ants' nest that was destroyed or a beehive, they all go their own way - you cannot bring them together anymore. (Group interview, July 2007)

For example, Salacium, with its mix of victims on both sides and strong presence of ex-PACs, is still a conflictive village and region. Before the war, economic power belonged to several ladino families who owned almost all of the land. The conflict has not changed this unequal power relation between ladinos and indigenous people, as the majority of indigenous families in Salacium still rent parcels from them to provide their basic needs. The presence of eight different evangelical churches in the centre of the village does not really foster unity.

In Xalab'e, a remote community in the Nimlasachal region, another large cross was erected in 1999 to commemorate 468 victims from 24 communities. This cross, surrounded by mountains, stands in the middle of the region where the massacres took place. Also here, ex-PACs from the neighbouring villages helped with the construction of the cross and names of PAC victims appear. One leader of this community who lost family members when hiding says that at first there were many accusations from ex-PACs towards them, those 'from the mountains'. Yet, over the years their behaviour has changed and the reproaches have stopped. As he says: 'we

91. The function of the ex-PAC is unpaid, whereas the mayor receives a salary from the Cobán municipality.

are seeing each other as equals ... now there exists again some usilal'. This leader even proposed that it would be good to engage a mutual understanding of the different experiences with the conflict.

Besides these overt and visible local experiences on social recovery and reconciliation ethnographic accounts reveal that beneath that surface there is substantial activity that at first glance is invisible. In fact, Maya Q'eqchi' survivors have managed to mobilize local and cultural practices on justice and reconciliation to face the legacy of the atrocities and to find a new *modus vivendi*.<sup>92</sup> At the local level of Q'eqchi' communities, impunity, as defined by international law, is not the end of accountability, nor truth recovery or reparation. Here, the internal logic of the cosmos through an invisible force creates a space in which local perpetrators can reintegrate into communal life and through which victims' pain and suffering are acknowledged.

In the next session the perceptions of both Q'eqchi' groups regarding the programme of compensation for the ex-PACs and the PNR will be discussed.

## **The Mismatches Between Post-conflict Macro Level Policies and Micro Level Processes**

As mentioned, State interventions can foster or hinder processes of local social recovery. Ethnographic accounts from Q'eqchi' victims and ex-PACs reveal that both State programmes seriously crosscut and undermine the fragile social recovery process, stirring up emotions amongst them and even leading to an incomprehensiveness toward the State as such.

### ***Frustrations towards the PAC Programme and the PNR***

There is a growing awareness among victims that ex-PACs were forced to participate in the conflict and also suffered. However, the victims are deeply frustrated and disillusioned that ex-PACs have already received compensation. Most PNR beneficiaries have to wait for financial compensation, sometimes for over four years. For victims it is difficult to understand how the government can 'reward' those who are co-responsible for their suffering and pain. As one victim says: 'they are not dignified to receive this aid'. The fact that ex-PACs managed to be heard through manifestations by several presidential candidates and governments, offended victims. Victims, who participated in the CEH or the REMHI investigation, stated that they had heard for years that help was coming, but the promises remained unfulfilled. It affronted victims that during the political debate on PACs compensation, the PAC stated that they had suffered. Victims acknowledge the suffering, but it was certainly not equal. According to the victims the suffering of the PACs was different because, as they stated during

92. For an in-depth analysis on local Maya Q'eqchi' practices and attitudes on justice and reconciliation: Lieselotte Viaene, 'The Internal Logic of the Cosmos as 'Justice' and 'Reconciliation'. Micro-perceptions from Post-Conflict Guatemala', *Critique of Anthropology*, 2010, Vol. 30 (3), 287-312.

interviews, 'they never lost their houses', 'they could "come home" after patrolling', 'they did not starve from hunger', 'they did not live as animals in the mountains' and 'if they had lost someone, they could bury their loved ones properly'. Further, many displaced people recall that ex-PACs had financial benefits during the war as they regularly cleared out the houses that they had left behind. So, although the passage of time makes victims aware of the heterogeneity of ex-PACs and the forced character of their violent acts, the victims are internalizing and using strategically the macro-level victim-perpetrator dichotomy in discussions about PAC compensation.

Among ex-PACs, several perceptions exist in relation to their compensation. Most ex-PACs think that they deserved the payment because they were forced to patrol, during which they could not work and could not provide for their families. The army also prohibited them from going to their fields in the mountains, because they could be seen and accused of being one of 'those from the mountains'. The men suffered physically as they had to patrol in the cold, rain and mud. Several elders complained that they are still suffering. As one ex-PAC says:

For our children it served, for our wives it served, but for us men, no, there is nothing. The only thing we had was hunger, having to put up with thirst in the little post, during the whole night, every day. (Group interview, May 2008)

There are many complaints about the bureaucratic problems of the PAC programme. Several elders could not fulfil the bureaucratic requirements because of a lack of the required documents. Others have only received one or two instalments. There are also ex-PACs who disagreed with the "Planting Tree" programme, because they found it incorrect that they had to work again to receive the rest of the instalments, as they had patrolled already during the conflict.

The strict bureaucratic requirements also affected many war widows whose husbands patrolled during the conflict. The representative of the ex-PACs in the region of Salacium explains that some of the war widows applied for the PAC programme, but could not present the necessary documents such as the PAC identification card of their husband or the marriage act, so did not receive the PAC compensation.<sup>93</sup> In fact, as he further explains, because these widows now appear on the PAC lists, they have lost the right to be beneficiaries of the PNR, even if they are internally displaced and thus victims.

Further, ex-PACs feel deceived by the government, because much higher levels of compensation were promised. They were not informed that the reforestation programme included the maintenance of the planted trees. The travel costs and food during working days is not reimbursed. Many ex-PACs, certainly in Salacium, expressed their discontent about the continuing demonization of them in the national press and by human rights organizations.

Also the PNR with its prioritization on individual financial compensation fails to provide real satisfaction for both the remedied victims and those whose cases are still

93. Personal interview with dirigente ex-Pac in Salacium (May 2008)



pending.<sup>94</sup> It creates a sentiment of guilt not only toward deceased relatives, but also toward others who have suffered, but who, for bureaucratic reasons have not obtained compensation. As an internally displaced man says:

Paying for violence. We do not like it either, it is like I said, they are only paying for the dead: it is like for my mother, they are going to pay me for her. I will eat my mother, I will chew my mother. What I would like is for all those who suffered from the violence to be helped. (Personal interview, August 2007)

Evidence from the interviews suggests widespread endorsement of complementary collective reparation measures. A beneficiary of the PNR says:

But I don't like the fact that they are helping those who have died. For us it would be, that everyone who suffered from the violence, that they should receive help. I don't like the fact that they are not being helped. (Group interview, September 2007)

Further, victims asked for restitution or compensation from the government for destroyed material possessions, such as houses, livestock, cornfields, beans, clothes, millstones and traditional instruments. One major request of victims and ex-PACs is that they be granted title to land. Because of the finca system, most Q'eqchi' do not possess any land, not even a small parcel. Heated land conflicts continue to this day in Guatemala, with the highest concentration in Alta Verapaz.

Remarkably, during the interviews, no compensated ex-PAC complained about the smaller amount received in comparison with the beneficiaries of the PNR, but several ex-PACs expressed their concern that not all widows receive the financial compensation from the PNR.

A local authority, once ex-PAC leader, states:

I hear that not all the señoras are receiving compensation. There should be a law that executes that, because they also are poor. Or they should give them a house so that they can live well. (Group interview, July 2007)

However, with the older ex-PACs much frustration and disappointment exist for never having received any help from the government, whereas returnees from Mexico have received houses and development projects in the 1990's and currently displaced people receive houses from the PNR. An old ex-PAC says that the government is acting as a father that only loves one of his sons and not both:

94. For a fuller discussion of Mayan Q'eqchi' perceptions on the PNR see Lieselotte Viaene, 'Life is Priceless: Maya Q'eqchi' Voices on the Guatemalan National Reparations Program, *International Journal of Transitional Justice*, Vol. 4, no 1, 2010, 4-25.

We are old and we patrolled, but where is the goodness, where is the welfare that the president talked about? No one loves us; they love the one but not the other. It is like a father that loves one son but not the other. That is what they are doing to us and we don't have money. On what are we going to live when we don't have money, and we are already elders, so we cannot manage to work anymore. (Group interview, April 2008)

This image reflects a more profound frustration among ex-PACs, namely that during the conflict they did not have the opportunity to choose their role as PAC/perpetrator. Now, when finally social and financial benefits are arriving to the communities affected by the conflict, again they are modelled in a role that they cannot choose.

### **'We are all Sons of the Government'**

As the PAC programme succeeded prior to the creation of the PNR, several internally displaced people, who later had patrolled in the military camps, registered them on the PAC lists in the course of 2002 and 2003. In some communities there was, at the time of the registration, an internal critical reflection about this compensation which made displaced men who had patrolled in the military camps not register, because they identified themselves more as victims than as PAC. In fact, this critical reflection occurred mainly in communities in which the Catholic Church by the Pastoral Social or the REMHI-Alta Verapaz office had worked. In other regions this critical reflection did not take place and displaced people registered on the PAC lists because of economic needs. Indeed, the extremely poor conditions of the indigenous people were an important motive to apply to the PAC programme even though they were victims. In fact, 41.2 percent of the population of Alta Verapaz live in extreme poverty, the highest percentage in the country, and Alta Verapaz (84.1%), together with El Quiché (84.6%), houses the greatest number of people living in total poverty.<sup>95</sup> At the time of the PAC registration there were already national negotiations going on about a national reparation programme, but this was information that did not reach the communities. Indeed, the fact that those appearing on the PAC lists would lose future rights of being a beneficiary of such a reparation programme was unknown. The harsh micro reality of the blurred line between victim and PAC/perpetrator is not taken into account when taking the political decision to exclude all PACs from the PNR. Therefore, men who had lost family members through the army's actions, but were still forced to patrol applied to the PAC programme, but therefore also lost the right to be a beneficiary of the PNR.

Even more, the recent implementation of the measure of material restitution is confronted at community level with this blurred line and the heterogeneity among ex-PACs. In Alta Verapaz 19 communities have benefited from the housing project of the PNR and in several communities families have been excluded from the project

95. PNUD, *Informe Nacional de Desarrollo Humano. Diversidad étnico-cultural: la ciudadanía en un estado plural* (Guatemala:PNUD, 2005), 332.

because they appear in the PAC register.<sup>96</sup> For example in one community of the Nimlahak'ok region, only 6 of the 25 families who applied for this reparation measure will receive a house due to this exclusion. However, those 25 families all lost their houses during the scorched-earth campaigns of the army and family members hid for several years in the mountains. Those men define themselves as victims because they have lost everything and define the PAC as those who helped the army to massacre them, but for purely economic reasons they applied under the PAC programme.<sup>97</sup>

In fact, at the micro level the PACs is no longer an active mechanism of physical horror that is involved with human rights violations towards its own people. Now it is an active mechanism of psychological horror towards individuals and their families. The two distinct compensation programmes confront not only the internally displaced men who patrolled in the camps with this perverse reality; they also confront others whose conflict experience left other blurred traces.

A striking account is that of Juan, from Salacium whose mother, father, sister and brother were killed by soldiers and whose uncle, father-in-law and brother-in-law died in a massacre carried out by guerrillas. He was forced to participate as a patroller, so was a victim of both sides and is ex-PAC. For Juan the most important thing is that aid reaches every survivor, because 'we are all children of the government':

Hopefully the government, yes, I wish that they help us with the suffering that we had to live with, that they help us with this pain, because I don't want, and I don't like, that only some are helped. And I, as I'm not a son of the government, because all of us are sons of the government, not only me, not only those who suffered violence in the mountains, we are all children of the government. (Group interview, May 2008)

As several key stakeholders of civil society have stated in interviews, the old ideological divisions remain playing an essential role at the level of national politics and civil society. Therefore, the question of whether ex-PACs may also be viewed as victims and the reality of forced perpetrator are taboo. This has serious consequences. The State's unequal treatment not only generates disappointment among victims and ex-PACs but also frictions in the communities. In fact the specific design and management of both programmes re-victimizes victims and ex-PACs. Here, it is important to note that the recommendation of the CEH to promote local reconciliation and overcome stigmatization of victims and perpetrators has never been assumed, nor by the succeeding governments, nor the international or national human rights organizations. In turn, they adopted the definition of victims of the CEH including returnees and internally displaced people, but excluded PACs who were victims of human rights violations.

Further, although many ex-PACs are also traumatized and face inevitable psychological challenges, it appears that major national NGOs giving psychosocial attention in affected communities are excluding them from their sessions, both because they

96. Interview, Coordinator Regional Office PNR, Cobán, 15 February 2010.

97. Interview, Roqha' Pasacuc, February 2010.

perceive ex-PACs as perpetrators and because the NGOs see it as the army's responsibility to give mental health support to their (ex)forces. Over the years, as interlocutors have pointed out, a more nuanced vision on ex-PACs seems to have been adapted by some human rights defenders. For example, the current representative of the National Victim Movement, acknowledges difficulties that survivors are facing with the PNR regarding 'victim/ex-PAC' and favours focusing on the violation of human rights as departure criteria and not 'who is victim (returnee and internally displaced person)' and 'who is PAC', certainly in the case of widows.<sup>98</sup> This opinion is shared by a State representative directly responsible for the management of the PNR; however he states that he holds a minority position in the whole discussion.<sup>99</sup>

## Conclusions

This bottom-up analysis of the way Guatemala is dealing with its past of gross human rights violations shows the importance of understanding and interconnecting the socio-political and cultural complexities on both macro and micro levels. It reveals how macro level initiatives can cross-cut local social recovery processes when there is a mismatch between those two levels. In fact, in the absence of a more localized approach, macro-level policies will not succeed and may even undermine those local recovery processes. Further, the above assessment attempted to demonstrate that defining who the victims are is a thorny question in societies dealing with the legacy of 'intimate' crime, marked by a highly localized dimension and mass civil participation of atrocities that created blurred lines between victims and perpetrators. Similarly, post-conflict Peru has been confronted with the difficult question of who deserves to be victim and who does not. During the design of the Integral Plan of Reparations (PIR), a debate broke loose on the concept of 'Clear Hands' as elaborated under international human rights law which dictates that people who ask for redress should have clear hands.<sup>100</sup> In the Peruvian case this refers to the exclusion of members of illegally armed groups, such as the Shining Path, and their families who suffered state abuse from the PIR. Yet, this debate has led to strong tensions between legal considerations and political realities. The law codifying the PIR has adopted the Clear Hands Doctrine through which the PIR's implementation is faced with inquiring at the local level who deserves reparations. Laplante, however, wonders what type of instability and new conflict this will introduce in local communities who have achieved a delicate local peace and reconciliation environment.<sup>101</sup>

Yet, this transitional-justice-from-below analysis of Guatemala also raises several pertinent questions.

98. Interview, President National Victims Movement Q'anil Tinamit, 6 May 2009.

99. Interview, Public Functionary of the PNR, 18 March 2009.

100. For a fuller discussion: Lisa Laplante, 'The Law of Remedies and the Clean Hands Doctrine: Exclusionary Reparation Policies in Peru's Political Transition', *American University International Law Review*, Vol. 23, 2007, 51-90.

101. *Ibid*, at 81.

If the State and civil society had taken into account the recommendation of the CEH to provide collective reparation measures to foster reconciliation among victims and perpetrators at the local, could this have led to a more nuanced perception of the homogeneity of PACs? Could this have stimulated the creation of a typology of PACs in which those who abused their power could be distinct from those who acted under coercion? What probably would have occurred would be the real confrontation between on the one hand the 'top down' institutions and organizations and the local blurred accounts, such as presented here, on the other. This confrontation with the harsh local reality could have nurtured an elaboration of subcategories of PACs among the designers and financial donors of both state programmes. This would have been very helpful in defining the beneficiaries of a reparation programme and in defining perpetrators that should be prosecuted for human rights violations. Yet, this assumption implies that survivors have sufficient political agency and power to influence enough those top down institutions and interventions to change their agenda and interests by taking into account the real needs and priorities. It remains an open question whether survivors, such as the Maya Q'eqchi', have built sufficient citizenship capacity to play at the forefront of those macro level policies. Currently, both victims and ex-PACs are more likely the playthings of the different political parties to gain votes in the elections than their aspirations being taken seriously. Not only the ex-PACs are an interesting fish pool for political parties, victims are too. 'Both groups are politically manipulated'.<sup>102</sup> Due to its weak legal status, the PNR is very sensitive to political interest. Several victim organizations have already openly complained about the politicization of the PNR and its departmental offices since the government of Colom took power in 2008.<sup>103</sup>

Another significant and interrelated question is whether this typology at the macro level would have avoided new political polarization and the resurgent divisionism at the local level? This is highly probable. It would have significantly empowered the political agency of both victims and ex-PACs and fostered a shared identity of people affected by the conflict. The presented ethnographic accounts reveal that in the complex reality of transitional communities people are not passive, but actively confront the violent past and its legacy. Reflecting on Guatemalan's micro reality, the conception of Mamdani as 'survivor', instead of victim vs ex-PAC, is very useful as it refers 'all those who continue to be blessed with life in the aftermath of civil war', i.e. people should move beyond the dichotomy of victim-perpetrator as a way of searching for new forms of justice and coexistence.<sup>104</sup>

102. Interview deputy Efrain Oliva Morales, sub-secretary of the Executing Coordination Secretary of the Presidency and responsible for the negotiation commission with PAC during the Berger government, 6 May 2009.

103. See the public statements of several human rights organizations and victim organizations, on the National Day of the Dignification of the Victims of the Conflict, 25 February, 2009.

104. Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press 2001): 273.

This bottom-up account shows further that the analysis and interpretation of the survivors' own perceptions and ideas are therefore a necessary precondition and fundamental step in the design and creation of whatever kind of benefits programme. In post-conflict societies dealing with a legacy of intimate crime, this is an important step in fostering local reconciliation and mutual understanding of grey zones among survivors and helping to overcome stigmatization of victims and perpetrators.

The following words of an elder ex-PAC demonstrate how transitional justice efforts should be designed:

Well, [if] the government would take us [victims and ex-PAC] into account, would love us, then there would be peace. [Indeed] that broken bowl would be reconstructed, I would say, because we would be in a community. But now, it seems that we are still in [the situation] of that bowl being broken, because we have not yet figured out where we are in this, yes. (Group interview, May 2007)





Regional mayejak Saturday before Eastern, 11 April 2009, El Filo – Saha'kok







## 4

## Life is Priceless. Mayan Q'eqchi' Voices on the Guatemalan National Reparations Program

Lieselotte Viaene

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### Introduction<sup>1</sup>

We want the president to listen to us, that our words may reach him, that he may know what happened. That he should pay attention to our words and believe that this truly happened. It is not a lie; we would never lie about what happened to us. If it had not happened, we would not have been able to come up with such a lie. Truly, that is what I want, for him to respond.

—Q'eqchi' widow, focus group discussion, 28 August 2007

The challenge of redress for gross human rights violations invariably arises in post-conflict societies that are in transition. One of the initiatives that a government is obligated to consider in response to survivor demands is a reparations program. Nonetheless, empirical studies that evaluate transitional justice efforts such as reparations programs from the perspective of the needs and preferences of survivors are rare.<sup>2</sup> This article attempts to fill this gap by analyzing the Guatemalan National Reparations Program (*Programa Nacional de Resarcimiento*, or PNR) through the eyes

1. An earlier version of this article was published as a chapter in the first report on the Guatemalan National Reparations Program. Lieselotte Viaene, 'La justicia transicional y contexto cultural en Guatemala: Voces Q'eqchi'es sobre el Programa Nacional de Resarcimiento,' in *Primer informe temático 2006–2007 del Programa Nacional de Resarcimiento: La vida no tiene precio: Acciones y omisiones de resarcimiento de Guatemala* (Guatemala City: Magna Terra, 2007).
2. Sarah Cullinan, *Torture Survivors' Perceptions of Reparation: Preliminary Survey* (London: RE-DRESS, 2001); Due Process of Law Foundation, *Después de procesos de justicia transicional: ¿Cuáles la situación de las víctimas?: Los casos de Chile y Guatemala* (2007).

of Mayan Q'eqchi' victims, a group heavily affected by Guatemala's internal conflict.<sup>3</sup> In addition, it seeks to shed light on the role of cultural context in transitional justice programming, as well as to contribute to an emerging academic debate on the potential role of 'traditional justice' and broader cultural contexts in the politics of peace and reconciliation.<sup>4</sup>

Guatemala suffered the bloodiest armed conflict on the Latin American continent from 1960 until the peace agreements of 1996. State repression reached its peak between 1979 and 1983, when the government employed counterinsurgency tactics such as scorched earth campaigns and an imposed village patrol system known as the Civil Defense Patrols (*Patrullas de Autodefensa Civil*, or PACs). This resulted in the militarization of social life in rural indigenous areas.<sup>5</sup> The conflict led to the death or disappearance of an estimated 200,000 people. It included 600 massacres, the destruction of over 400 villages, the internal displacement of one million people and a refugee stream of 150,000 to Mexico.<sup>6</sup>

According to the final report of the Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*, or CEH), released in 1999, the Guatemalan state was responsible for 93 percent of the conflict's human rights violations, while the guerrillas were responsible for just 3 percent. Furthermore, the Commission located the root causes of the conflict in historical structural injustice toward and economic exclusion of the indigenous population. This was evidenced by the concentration of productive wealth in the hands of a privileged, nonindigenous minority, a history of racism and discrimination and increasingly exclusionary and antidemocratic state institutions. A further significant finding was that the majority of victims (83.3%) were of indigenous Mayan origin.<sup>7</sup>

3. In light of my work, I prefer to use the term 'survivor,' which includes victims, returnees and internally displaced persons, as well as former PAC members. First, I agree with Mahmood Mamdani, who asserts that people should move beyond the dichotomy of victim-perpetrator as a way of searching for new forms of justice and coexistence. See, Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton, NJ: Princeton University Press, 2001). Second, the label 'victim' carries with it the connotation of a harmed person who is passive and even helpless, whereas 'survivor' implies an active party. In fact, in Guatemala in particular, the international community and national organizations have stimulated a victimized vision by emphasizing the suffering of the victims and ignoring their capacity to make choices, to resist and even to participate politically. See, for example, Matilde González, *Se cambió el tiempo: Conflicto y poder en territorio K'iche'* (Guatemala City: AVANCSO, 2002). When referring to the beneficiaries of the PNR, however, I use 'victim' because this is the term used in Guatemalan governmental and human rights discourses on reparation.
4. Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008); Lars Waldorf, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice,' *Temple Law Review* 79(1) (2006): 1–87.
5. See, Angela Delli Sante, *Nightmare or Reality: Guatemala in the 1980s* (Amsterdam: Thela Publishers, 1996); Jennifer G. Schirmer, *The Guatemalan Military Project: A Violence Called Democracy* (Philadelphia, PA: University of Pennsylvania Press, 1998).
6. Robert Carmark, ed., *Harvest of Violence: The Maya Indians and the Guatemalan Crisis* (Norman, OK: University of Oklahoma Press, 1992); *Nunca Más: Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica* (Guatemala: Oficina de Derechos Humanos del Arzobispado de Guatemala, 1998) [hereinafter 'REMHI']; Comisión para el Esclarecimiento Histórico (CEH), *Guatemala: Memoria del silencio (Tz'inil Na'Tab'Al)* (Guatemala: CEH, 1999).
7. CEH, supra n 6 at vol. 2.

The broader research question underlying this article is how specific particularities of the Mayan Q'eqchi' culture could play a role, or are already playing a role today, in postconflict processes at the local level. In Guatemala, the indigenous Mayan population, most of which is almost entirely monolingual, constitutes the majority of the population.<sup>8</sup> The Q'eqchi', the second-largest Mayan group in the country, were among the most severely affected by the conflict.

To address this question, extensive ethnographic field research was conducted in the Cobán municipality in the Alta Verapaz department,<sup>9</sup> specifically the regions of Nimlasachal, Nimlaha'kok and Salacuim. Research took place over 20 months between July 2006 and May 2009. Methodological triangulation, or multiple data collection techniques, was used to reinforce an in-depth understanding of the research question. Over 25 semistructured focus group discussions with survivors, witnesses and former PAC members were organized in different communities.<sup>10</sup> Opinions were canvassed regarding issues of violence, justice, reconciliation, coexistence, reparation and truth recovery. For the majority of the participants, this was the first opportunity to express their opinions regarding these issues. A few had testified to the CEH or the Recovery of Historical Memory (REMHI) project, headed by the Guatemalan archbishop's Human Rights Office, in the late 1990s.

To determine proper Q'eqchi' terms and concepts, a preliminary consultation was conducted with two linguists, as well as widows, elders, spiritual guides and two foreign aid workers who between them had more than 30 years of experience working with the Q'eqchi' people, in particular on projects of community reintegration. Furthermore, numerous formal and informal individual interviews were conducted with community leaders, spiritual guides and local and foreign individuals with experience of the conflict and the social reconstruction process. Participant observation took place during community meetings, ceremonies and commemorative activities. The linguistic analysis in the third and fourth sections of the article are based on the results of three linguistic workshops conducted with legal translators, linguists and elders; on additional focus groups with elderly men and women; and on interviews with Q'eqchi' linguists and other Q'eqchi' individuals who have experience with Q'eqchi' internally displaced persons.

The first section of this article briefly explains the difficult road to reparation in Guatemala. In the sections that follow, the point of view of affected Mayan Q'eqchi' is explored. To frame this, a short background summary of the impact of the conflict

8. Rachel Sieder and Jessica Wittchell, 'Advancing Indigenous Claims through the Law: Reflections on the Guatemala Peace Process,' in *Culture and Rights: Anthropological Perspectives*, ed. Jane K. Cowan, Marie-Bénédicte Dembour and Richard A. Wilson (Cambridge: Cambridge University Press, 2001). Guatemala has 22 Mayan ethnic groups, of which the Quiche, the Q'eqchi', the Kaqchikel and the Mam are the largest.
9. According to a 2002 national census, the Mayan population represents just 43.6% of the entire population. It is acknowledged, however, that the statistics measuring the ethnic and cultural diversity in the country have severe limitations. See, UN Development Programme (UNDP), *Diversidad étnico-cultural: La ciudadanía en un estado plural* (2005). According to the Municipal Planning Office in 2008, Cobán had the third-highest rural population density, with 414 villages.
10. A total of 173 people participated in the focus groups. All interviews were in Q'eqchi', with an interpreter, and were recorded.

in Alta Verapaz is provided. Next, the logical relations and semantic fields hidden in Q'eqchi' words that refer to the conflict are analyzed. The linguistic tangles between the Q'eqchi' and Spanish languages regarding redress, reparation and compensation are unraveled. An analysis is then provided of the PNR based on what emerged from the focus groups and research. This analysis yields concrete suggestions regarding the real preferences of the program's beneficiaries, including the necessity that the PNR be more locally and culturally sensitive.

## The Complicated Road to Reparations in Guatemala

Peace negotiations in Guatemala spanned a total of 11 years and consisted of numerous agreements, with the 12th and final peace agreement being signed in December 1996. During the negotiations, the country was confronted with civil society demands to address the conflict's gross human rights violations. Reparation became a state commitment with the signing of the Comprehensive Agreement on Human Rights in 1994, which confirmed that assistance to victims of human rights violations is a humanitarian obligation.<sup>11</sup> The CEH recommended the rollout, over 10 years, of an ambitious reparations program that would include restoration of material possessions, compensation, psychosocial reparation and rehabilitation, as well as restoration of individual dignity.<sup>12</sup> A reconstruction of the creation of the PNR is beyond the scope of this article. Suffice to say it was a complex process that faced numerous obstacles and was defined by political struggle.<sup>13</sup>

Before looking at the PNR, it is necessary to shed light on some semantic issues regarding reparation in the Guatemalan context. *Resarcimiento* and *reparación* are the two Spanish terms commonly used in the debate on reparations. The term *resarcir* appeared for the first time in the Agreement on Human Rights. Since then, *resarcimiento* has been the term used by the Guatemalan state and civil society when referring to the reparations program. According to the Real Academia Española dictionary, *resarcir* means *indemnizar* (to compensate economically), *reparar* (to repair) and *compensar un daño, perjuicio o agravio* (to compensate for damage, a disadvantage or injustice). In the agreement, *resarcimiento* is interpreted only as economic compensation for victims. The use of *resarcimiento* in the Guatemalan context refers to what Pablo de Greiff describes as the narrower sense of the English term 'reparation,' which is used in the design of programs with mass coverage and refers to 'attempts to provide benefits directly to the victims of certain types of crimes.'<sup>14</sup> Notably, the use of the verb *resarcir* and its noun, *resarcimiento*, were uncommon in daily language in Guatemala prior to

11. Comprehensive Agreement on Human Rights, Mexico City, Mexico (29 March 1994).

12. CEH, supra n 6 at vol. 5.

13. See, UN Mission in Guatemala (MINUGUA), *Informe de verificación: El estado de cumplimiento de las recomendaciones de la Comisión para el Esclarecimiento Histórico* (2004); Gustavo Porras Castejon, 'El Programa Nacional de Resarcimiento: Como se quiso, como es y como debe ser,' in *Primer informe temático 2006–2007 del Programa Nacional de Resarcimiento: La vida no tiene precio: Acciones y omisiones de resarcimiento en Guatemala* (Guatemala City: Magna Terra, 2007).

14. Pablo de Greiff, 'Justice and Reparations,' in *The Handbook of Reparation*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006), 453.

the national debate on the creation of the PNR. Today, people associate these words with the conflict and, more specifically, with the financial compensation provided by the PNR.

The term *reparación* in the Guatemalan context denotes the conjunction of the search for justice, truth-seeking efforts (such as exhumations of clandestine graves for forcibly disappeared people) and initiatives to recover historical memory. The debate on *reparación* alludes to the term 'reparation' in international law, which refers to all reparation measures aimed at redressing human rights violations.<sup>15</sup>

The debate on *resarcimiento* gained momentum in 1999, when the presidential candidate for the Guatemalan Republican Front,<sup>16</sup> Alfonso Portillo, promised to pay former PAC members for defending the country and private property against communism.<sup>17</sup> This and subsequent demands for payment by ex-civil patrollers in several areas of the country in 2002 made political room for negotiations between the Portillo government and civil society for a reparations program. In 2003, based on the obligations assumed by the state in the peace agreements and in the CEH recommendations, Portillo's government approved the PNR with an Executive Decree.<sup>18</sup>

The PNR had an integral reparation design that consisted of five measures: material restitution, financial reparations, psychosocial reparation and rehabilitation, honoring civilian victims and cultural reparation. Because of a lack of political will, differences among civil society organizations and the PNR's weak legal basis, implementation was postponed until 2005, when a new Executive Decree was promulgated that contained regulations for a restructured PNR.<sup>19</sup> Although the original measures remained, individual financial compensation was prioritized for several reasons, including that the implementation of individual financial compensation is the 'easiest' to implement of the five measures recommended, and because victim organizations strongly demanded it. The beneficiaries were survivors of torture and sexual assault and relatives of victims of illegal executions, massacres and forced disappearances. The amounts offered were 24,000 Guatemalan quetzals (\$3,300) for a deceased relative and 10,000–20,000 quetzals (\$1,370–\$2,750) for sexual assault and/or torture. Between 2005 and December 2007, the PNR compensated 12,126 beneficiaries, most of whom were elderly women.<sup>20</sup> The total amount of beneficiaries increased in 2008

15. Ibid.

16. This is the party of General Efraín Ríos Montt, accused of genocide and massacres perpetrated during his 1982–1983 dictatorship. The PAC system was imposed under his command. As many as a million individuals are estimated to have patrolled the villages at the peak of the conflict. Margaret L. Popkin, *Las Patrullas Civiles y su legado: Superar la militarización y polarización del campo Guatemalteco* (Washington, DC: Robert F. Kennedy Memorial Center for Human Rights, 1996).

17. See, for example, Ricardo Sáenz de Tejada, *¿Víctimas o vencedores? Una aproximación al movimiento de los ex PAC* (Guatemala City: Facultad Latinoamericana de Ciencias Sociales, 2004).

18. Acuerdo Gubernativo 258/2003.

19. Acuerdo Gubernativo 619/2005.

20. The total amount of economic compensation was \$37 million. See, National Reparations Program, *Informe de la evaluación conjunta del Programa Nacional de Resarcimiento y de los Programas de Apoyo al PNR de GTZ y PNUD* (2007).

(10,477 individuals),<sup>21</sup> and in the five first months of 2009, the PNR compensated approximately 10,500 beneficiaries.<sup>22</sup>

## The Conflict in Alta Verapaz: Some Facts and Figures

Few guerrilla movements operated in Alta Verapaz until the early 1980s, when the Guerrilla Army of the Poor moved into the area near the El Quiché department.<sup>23</sup> The Alta Verapaz department suffered its first massacres in 1976, followed by massacres in the Chisec and Panzós municipalities in 1978. These massacres were caused by conflicts over land, and they occurred prior to the arrival of the guerrillas. A study of the historical memory of 20 Q'eqchi' communities chiefly located in the Cobán municipality found that the semifeudal system in place at the time on the *fincas* (large plantations or farms) was the main cause of conflict.<sup>24</sup> The system was characterized by a lack of freedom, miserly salaries, high workloads, abuse and a lack of educational opportunities.

From 1981 to 1983, Chisec, Cobán and San Cristobal were severely affected by the internal conflict. The CEH report indicates that 55 massacres occurred in Alta Verapaz during this period, while the REMHI report records 63 massacres.<sup>25</sup> The CEH found that Alta Verapaz was the third-most affected department in terms of human rights violations, after El Quiché and Huehuetenango, and that the Q'eqchi' were the second-most affected ethnic group.<sup>26</sup> The REMHI report notes that Alta Verapaz was the second-most affected department in terms of the number of registered victims and acts of violence, and that the Q'eqchi' were the worst-hit ethnic group in the country in terms of the number of victims.<sup>27</sup> According to Monseigneur Flores, the bishop of Cobán during the 1980s, at least 40 percent of the Q'eqchi' were displaced from their communities and some 20,000 were forced to live as internally displaced persons, hidden for years in the mountains.<sup>28</sup> These people struggled to survive in extreme conditions and were constantly forced to move from camp to camp, resulting in deaths from hunger, disease and *susto*.<sup>29</sup> The military set up PACs in the department

21. The total amount was almost \$32 million. See, Claudia V. Samayoa, 'Análisis de las medidas de resarcimiento a las víctimas como parte del proceso de reconciliación 1996–2008,' in Secretaría de Paz, *Entre pasado y olvido: Políticas de reconciliación en Guatemala, 1996–2008* (2009).

22. Personal interview, Miguel Itzep, president, National Victims' Movement *Q'anil Tinamit*, Guatemala City, Guatemala, 6 May 2009.

23. Richard Wilson, *Maya Resurgence in Guatemala: Q'eqchi' Experiences* (Norman, OK: University of Oklahoma Press, 1995); Alfonso Huet, 'La diócesis de la Verapaz y el conflicto armado,' in *Rescatando la memoria del camino: Diócesis de Verapaz 1935–2003* (Cobán: Centro Ak'kutan, 2003).

24. Alfonso Huet, *Nos salvó la sagrada selva: Memoria de veinte comunidades Q'eqchi'es que sobrevivieron al genocidio* (Guatemala City: Imprenta Maya Na'oj, 2008).

25. CEH, supra n 6 at vol. 3; REMHI, supra n 6 at vol. 4.

26. CEH, supra n 6 at vol. 2.

27. REMHI, supra n 6 at vol. 4.

28. Carlos Y. Flores, *Bajo la cruz* (Cobán: Centro Ak'kutan, 2001).

29. Huet, supra n 24. The closest translation of *susto* is fright or spirit loss. Among the indigenous peoples of Mesoamerica, illness is more often associated with losing one's spirit than with being possessed by a spirit. The causes of *susto*, or the loss of one's spirit, vary and may include falling on a riverbank or in the forest, undergoing a stressful event, receiving a justified punishment for one's sins and witchcraft. The loss of the spirit can be temporary or permanent. See, Wilson, supra 23; Agustín Estrada Monroy, *Vida esotérica Maya-Kekchi* (Guatemala City: Ministerio de Cultura y Deportes, 1990).



in order to extend its control over the region. By the time the patrols were dismantled in 1996, this department had the second-highest number of patrollers in the country at 72,699.<sup>30</sup>

The army also manipulated various symbols and names in Q'eqchi' culture and spirituality for its own purposes.<sup>31</sup> Mayan Q'eqchi' spirituality surrounds daily activities such as agriculture and health issues. *Tzuultaq'a* ('Hill-Valley' or mountain spirits) is a central concept determining the identity and being of the Q'eqchi'. It is omnipresent and guides all actions of daily life. The idea of a personal, transcendent God is not inherent in this cosmovision; however, the Q'eqchi' do not ignore the Christian god and the majority are Catholic. *Tzuultaq'a* 'yo'yo' means that *Tzuultaq'a* lives and is keeper of the earth and all its inhabitants.<sup>32</sup> The Q'eqchi' must ask permission from *Tzuultaq'a* with an offering (*majejak*) to cultivate land. One clear case of the army's manipulation is a sign above the entrance to the Cobán military base, which reads, 'Military Base of Cobán, Home of Soldier *Tzuultaq'a*' As one colonel stated, 'We are like the spirits of the mountain, because, just like them, we control the land and have dominion over all those who dwell in our territory.'<sup>33</sup>

Toward the end of the 1980s, social reconstruction was proceeding slowly because of a lack of aid from government and national and international organizations. Even today, the state, international development aid agencies and nongovernmental organizations are not strongly represented in projects designed to support survivors in Alta Verapaz as compared with other regions. Nevertheless, in the 1990s, two communities from different microregions in Cobán did set up initiatives. In November 1995, in the Saha'kok region, a huge white cross was erected on the hill of El Filo, with two marble plaques bearing the names of 916 victims. This was the result of an extensive, well-coordinated process involving 28 communities across an area of 600 square kilometers. In 1994, a number of elders had dreamed of a large white cross emerging from a mountain, which was interpreted as 'a supernatural sign from their disappeared relatives who died during the violence and had not been buried in accordance with traditional practices.'<sup>34</sup> Each year since 1995, on 3 November and the Saturday before Easter, a Mayan ceremony and community celebration takes place near the cross to commemorate the loss of loved ones.<sup>35</sup>

30. CEH, supra n 6 at vol. 2.

31. The CEH report recognizes that the conflict caused a rupture in the Mayan social fabric and the indigenous authority system, and that it disrupted social norms and elements of cultural identity. It also describes how the army deliberately destroyed sacred places. CEH, supra n 6 at vol. 4.

32. See, Estaban Haeserijn, 'Filosofía popular de los K'ekchi' de hoy,' *Guatemala Indígena* 10(3–4)(1975): 44–54; Carlos Rafael Cabarrus, *La cosmovisión Q'eqchi'e en proceso de cambio* (San Salvador: UCA Editores, 1979); Monroy, supra n 29; Wilson, supra n 23.

33. Quoted in Wilson, supra n 23 at 242.

34. Flores, supra 28 at 43.

35. This began in the same year that the agreement on the establishment of a commission to clarify past human rights violations was signed in Oslo, Norway. At that time, no communication occurred between macro- and micro-level initiatives.

Several years later, in Xalab'e, a remote community in the Nimlasachal region, another large cross was erected to commemorate 468 victims from 24 communities. This cross, surrounded by mountains, stands in the middle of the area where the massacres took place. This initiative was given support by REMHI in Alta Verapaz, the *Asociación de Desarrollo Integral Comunitario Indígena* and the *Secretaría de la Paz*.

Both crosses are the result of spontaneous, community-based and local processes of reconstruction of historical memory.<sup>36</sup> The names on the marble plaques belong not only to victims of the massacres but also to people who disappeared or died from famine, malnutrition, disease or *susto* in the mountains. Both plaques also include the names of victims of PACs in the regions.

### **Nimla Rahilal: The Conflict as Great Suffering and Pain<sup>37</sup>**

According to the UN Development Programme, 92.8 percent of the population in Alta Verapaz is indigenous, with the majority being Q'eqchi' and monolingual.<sup>38</sup> For a better understanding of Q'eqchi' perceptions of reparation, it is necessary to examine the logical relations and semantic fields hidden in Q'eqchi' words referring to the conflict.<sup>39</sup> This explains Q'eqchi' survivors' cultural understanding of the conflict and provides a background for analyzing the linguistic tangle regarding redress and reparation attempted below.

Although the majority of Q'eqchi' are Catholic, and despite the presence of evangelical churches, Mayan spirituality is maintained.<sup>40</sup> In the Mayan worldview or cosmovision, no distinction is made among the social, natural and sacred spheres that make up the cosmos.<sup>41</sup> The concept 'sacred' refers to 'that which is considered superior, worthy of respect and worship, and with regard to which all people and communities are required to carry out a specific duty,' and which 'assumes that interrelations exist

36. These can be seen as examples of local-level initiatives as described in Laura Arriaza and Naomi Roht-Arriaza, 'Social Reconstruction as a Local Process,' *International Journal of Transitional Justice* 2 (2) (2008): 152–172.

37. For this section, linguistic workshops were conducted with survivors (April 2007), legal translators from different judicial institutions (April 2007) and linguists (August 2007). In addition, the dictionary of Esteban Haeserijn, *Diccionario K'ekchi' Español* (Guatemala City: Piedra Santa, 1979), was consulted.

38. UNDP, supra n 8. The level of monolingualism is 65.7 percent – the highest in the country.

39. Edgar Esquit Choy and Carlos Ochoa García's argument that this method is a fundamental step in the analysis of the Mayan order is useful. Therefore, this author suggests that applying it to such issues as reparation, reconciliation, healing, justice and truth is necessary. See, Edgar Esquit Choy and Carlos Ochoa García, eds., *Yiqalil q'anej kunimaaj tzijij nimaq tzij: El respeto a la palabra: El orden jurídico del pueblo Maya* (Iximulew, Guatemala: Centro de Estudios de la Cultura Maya, 1995).

40. Nonetheless, the idea of a Mayan (Q'eqchi') culture as a homogenous whole is problematic. Instead, the complex, fluid and hybrid character of culture should be acknowledged. See, for example, Jane Cowan, Marie-Bénédicte Dembour and Richard Wilson, eds., *Culture and Rights: Anthropological Perspectives* (Cambridge: Cambridge University Press, 2001); Pedro Pitarch, Shannon Speed and Xochitl Leyva Solano, *Human Rights in the Maya Region: Global Politics, Cultural Conditions and Moral Engagements* (Durham, NC: Duke University Press, 2008).

41. See, Coordination of Organizations of the Maya People of Guatemala Saqb'ichil (Saqb'ichil-COPMAGUA), *Mas allá de la costumbre: Cosmos, orden y equilibrio: El derecho del pueblo Maya de Guatemala* (Guatemala City: Editorial Servicios San Antonio, 1999); Esquit Choy and Ochoa García, supra n 39.

between all elements of Creation and that all elements of Creation have a role in maintaining a Natural balance.<sup>42</sup> In Q'eqchi', the word *loq'* refers to the sacred, or holy.

An analysis of transgressions of the sacred and of the Q'eqchi' normative system is beyond the scope of this article,<sup>43</sup> but it is useful to highlight the concept of *muxuk*, which refers to desecration, defilement and violation of the sacred or spiritual value of something. The term also carries the connotation of sexual assault, as in the expression, *xmux ru li ch'ina ixqa'al*, which means 'the girl was raped.' It is also possible to desecrate *Tzuultaq'a*, corn, a rock, a tortilla or a house by displaying unacceptable behavior. An example of *muxuk* of food is when children enter a house and defile food given to visitors. As people do not always own a table, visitors put their coffee or bowl of food on the ground. If children suddenly enter, dust from the ground can fall onto the dishes. In this sense, the expression, *xoo'e'xmux*, which occurs frequently in interviews with survivors, means 'they desecrated the cosmos and us as humans' and clearly reflects the desecration of the natural, social and spiritual worlds caused by the conflict. One interviewee who was internally displaced noted,

I can say, the muxuk. First they defiled our lives, which means that they dishonoured lives, they killed our parents and they raped our women, we can say, our family. Maybe we can say that the ladies were raped, all of us, this is muxuk. They desecrated the deity of our subsistence, they burned it ... They burned the holy cornfields. This is desecration: they desecrated the holy beans, burned all the holy calabash.

The impact of the conflict was so disastrous that surviving Q'eqchi' victims, including former PAC members, use the term *nimla rahilal* when referring to the war period. *Nimla* means 'large' and *rahilal* means 'suffering' and 'pain' (physical, emotional and spiritual). *Nimla rahilal* refers to pain that is the result of a 'final' loss; for example, the loss of a family member or of a harvest, home or money as a result of natural disaster. A final loss implies a pain that cannot be relieved – an irreparable loss. We may assume that the affected Q'eqchi' perceive the conflict as a problem of extraordinary dimensions and as a great suffering that led to permanent losses. Conveying this view, one internally displaced interviewee said,

But we will never forget the real pain, our deceased mother and father, because they will be with us always. It is like a thorn in our souls. It is like having a knife in our stomachs.

Another interviewee, a former PAC member, said,

It is difficult now. It is difficult for us to come together as one, because it has all fallen apart, yes. You could say that it is like an ants' nest that was destroyed or a beehive: they all go their own way, you cannot bring them together anymore.

42. Saqb'ichil-COPMAGUA, supra n 41 at 68.

43. For an in-depth analysis of Mayan Q'eqchi' normative system and Q'eqchi' survivors' perspectives on justice and reconciliation, see, Lieselotte Viaene, 'The Internal Logic of the Cosmos as "Justice" and "Reconciliation": Micro-Level Perceptions in Post-Conflict Guatemala,' *Critique of Anthropology* (forthcoming 2010).

The conflict strongly affected the social, material and spiritual worlds of the Q'eqchi'. The counterinsurgency measures violated not only their human rights but also social and spiritual norms established by the communities, which led to the destruction of their *tugtukilal* (tranquility, peace and harmony).

## Linguistic Tangle: Redress, Reparation and Compensation

Since 2005, two PNR offices have been active in Alta Verapaz, one in Cobán and the other in Panzós. The regional office in Cobán deals mainly with Q'eqchi' and Poqomchi' victims, but, as the Q'eqchi' are the largest group, the language generally used for administrating the program is Q'eqchi'. As the PNR was designed and implemented in Spanish, the regional office had to translate such concepts as *resarcimiento*, *reparación* and *compensación* (compensation) to explain the PNR's mission and purpose. This was not a simple task. For example, the key concept, *resarcimiento*, does not exist in the Q'eqchi' language, so the office head requested aid from the Academy of Mayan Languages in Cobán in finding an adequate Q'eqchi' term.<sup>44</sup> The academy proposed *k'irtasink*, which means 'healing.' The office disagreed with this translation, noting that in accordance with Q'eqchi' thinking it is impossible 'to heal the past of the armed conflict.' After discussion, it decided on *xiitinkil li raylal (rahilal)*,<sup>45</sup> which means 'mending the suffering, the pain,' although the verb *xiitink* generally refers to mending damaged fabric.

According to the Q'eqchi', it is impossible to 'repair' damaged fabric, as one can only mend the tear. The office director argues that *xiitinkil li raylal* alludes to 'repairing/mending' the current social tissue, as the PNR's objective is not to create a new identity or culture or to reverse the situation to what it was before the conflict, as what was lost during the conflict can never be 'repaired' or regained. While the expression may be used as a metaphor to indicate the 'repairing/mending' of social tissue, it does not truly reflect the affected people's views on the conflict, as was made clear in a statement by a Q'eqchi' individual who has had much experience in dealing with the elders of various affected communities:

Mending (*xiitink*) is as if one small part were damaged and in need of mending. However, this is not a small part, what [the army and government] did. Yes, what they did was enormous.

In order to understand the lived experiences expressed in the interviews presented in the next section, a provisional semantic analysis is provided of two key concepts that appear in the oral and written discourses of Q'eqchi' survivors, of PNR administrators

44. Personal interview, Francisco Pop, coordinator of the PNR regional office, Cobán, Guatemala, August 2007.

45. In the popular Q'eqchi' version of the PNR's official documents, *raylal* is used, but according to the Academy of Mayan Languages' official grammatical rules, the appropriate word is *rahilal*.

and in the popular Q'eqchi' version of the PNR brochure.<sup>46</sup> These concepts, *reeqaj* and *k'ajk'amunk*, refer to the mechanisms used to maintain balance in interpersonal relationships and are expressions of reciprocity.

*Reeqaj* usually overlaps two semantic fields. Its English translation is 'compensation' (or refund) and 'substitution' (or replacement). One context in which *reeqaj* is used is compensation for material damages. If a cow has been grazing in a cornfield, the cow's owner compensates the affected family for the damage. This compensation can take the form of money or of a single task, such as weeding the field or helping to build a house. The form and timing of compensation depends on the agreement reached by the parties. Furthermore, compensation must equal the material value of the damage. As a result of the internal logic of the cosmos, however, *reeqaj* can also be negative compensation, for example, when it takes the form of an incurable disease that strikes someone as a result of improper conduct, such as humiliating, insulting, mistreating or killing someone. The other meaning of *reeqaj* is replacement, for example, when a father calls the child who bears his name *weeqaj* (my replacement). *Reeqaj* also refers to a special doll that is left at a place where someone experienced *susto* and thus lost his or her spirit.<sup>47</sup>

The word *k'ajk'amunk* refers to the recognition and gratitude expressed by one person toward another for a task performed, help given or service rendered. One example would be the gift of 20 corncobs each to those who helped a family harvest its crops. The form of this acknowledgment depends on one's economic situation. It is assumed to be a symbol of reciprocity and of mutual aid. As a result of economic changes, the practice of offering corncobs has been replaced by giving money, although when offering money, people still say, *a'in lixk'ajk'amunkil li xabunu we*, or 'Here is a token of recognition for what you did for me.' This shows that *k'ajk'amunk* has a significance beyond simple payment, implying recognition and gratitude.

## Toward an Inclusive and Culturally Sensitive PNR

Everything we have said today, I hope that it gets into the hands of the president. Because nobody else had come to listen to us, nobody had come, it is possible that he [the president] does not know of our suffering.

—Compensated widow, focus group discussion, 5 September 2007

This section provides an overview of five critical points regarding the functioning of the PNR that emerged during various focus groups and individual interviews

46. National Reparations Program, *Un camino hacia la dignidad* (2007); National Reparations Program, *Xmolam li awab'ejilal re xiitinkil li raylal: Jun xbe'bil li loq'al* (2007).

47. This human-shaped doll is made from *pom* (resin with a strong aroma), beeswax and a lock of hair from the person who experienced *susto*. Leaving this doll behind is part of the *boqok xmu'bel* (calling the spirit) ritual, which is carried out to help the spirit return to the person. Thus, *reeqaj* also has a spiritual connotation.

with Q'eqchi' survivors.<sup>48</sup> Although they reveal the program's inadequacy, the points raised offer suggestions for feasible ways in which to attune the PNR to its beneficiaries' needs and improve its local and cultural sensitivity.

The five key concepts are: life is priceless; compensation should be offered for lost material possessions; collective remedies should be available; access to and divulgement of the historical memory of the communities are necessary; and the lost spirit must be called. The views expressed here are not necessarily representative of what all Q'eqchi' victims think about reparation, but the uniformity of the interviewees' views regarding certain issues suggests that these views are widespread.

### **Life Is Priceless**

Financial compensation is the only measure that the PNR has thus far implemented. The PNR regional office in Cobán uses the expression *k'ajk'amunk chi tuminal* (recognition and gratitude through money) to refer to financial compensation. *K'ajk'amunk* should not be used in this context, however, because the state caused the *nimla rahilal* (great suffering and hurt) and is now offering monetary compensation. Its offer could be considered aid, but not recognition and certainly not gratitude. Therefore, the use of *k'ajk'amunk* in the context of reparation for the conflict is a distortion of the word, which should be used in a positive context, describing when a person who receives help gives something in return. Moreover, 'the checks,' as the government's monetary compensation is commonly called, fail to provide real satisfaction for either the remedied victims or for those whose cases are still pending.

One reason for this is that payment generates a strong feeling of guilt among Q'eqchi' victims in relation to their lost loved ones. One internally displaced man stated,

K'ajk'amunk, paying for violence, we do not like it either. It is like I said, they are only paying for the dead. It is like for my mother, they are going to pay me for her, I will eat my mother, I will chew my mother. What I would like is for all those who suffered from the violence to be helped.

48. The field data used in this article was mainly collected during the time of the Oscar Berger government. With the new Alvaro Colom government of 2008, the discourse on *resarcimiento* was revised, and now pretends to be *resarcimiento integral*, implementing all five measures. In the field, no profound changes are yet visible. According to the current director of dignification measures of the PNR, Rafael Herrarte, the head office is designing a methodology of community intervention, but implementation is still pending. Personal interview, Rafael Herrarte, Guatemala City, Guatemala, 18 March 2009. Further, in 2009; the PNR started implementing the measure of material restitution through a pilot project of house building. The budget is \$12.5 million and will benefit in total 70 communities throughout the country, which will each receive 20 houses. Personal interview, Miguel Itzep, Guatemala City, Guatemala, 6 May 2009. Currently, in the Alta Verapaz department. The PNR is implementing two pilot projects (Chisec and Nimlaha'kok) on housing restitution. Personal interview, Diana de Buena Fé, coordinator, PNR regional office, Cobán, Guatemala, 28 April 2009.

Another reason is the cost of applying for compensation. The PNR states that the procedure for requesting any form of *resarcimiento* is free, but in practice, it demands a large monetary investment in travel, documentation, translators and so forth. Often, victims must incur debt to complete the process. According to one compensated widow,

It is as though the president took it [the compensation] away again, because the president said, 'For this compensation you need to show these documents.' They say, 'If you do not show all these documents,' they say, 'you cannot get any help' ...And where do you need to get these documents? From the municipality. Some cost six [quetzals], some cost fifteen, some cost five. We paid a lot of money.

The biggest obstacles victims face in the process are their lack of necessary official documents, such as identity cards and birth and death certificates, and mistakes made in the first and last names on the documents that do exist. It should be mentioned that on the *fincas* and in certain small villages, people used to lend their documents to others for tasks such as birth registration, partly because they were afraid of the country's severe anti-vagrancy law.<sup>49</sup> Thus, many children were registered under incorrect surnames. In some cases, civil registrars were negligent and misspelled people's names.<sup>50</sup> One compensated victim noted,

The money that I spent in the municipality, that is money that was coming to us. If the government had really wanted to help us, they would not have asked us for a single document, because when they killed our parents, they did not ask for their papers either. And they are considering giving me a little bit of aid, but they want a lot of documents in return. This means that the money we gave to the municipality is simply the money that they then gave back to us.

Moreover, many victims face racism and discrimination in their contact with municipal registries. While most beneficiaries of the PNR are monolingual Q'eqchi', municipal administrators have little knowledge of the Q'eqchi' language. Therefore, victims must hire *tramitadores*, individuals who speak Q'eqchi and are familiar with legal procedures, to address the administrators. Act 19/2003 recognizes the official use of indigenous languages and states that they must be used in all public services. In practice, this remains problematic.

49. In 1930, the government under the dictator, General Jorge Ubico, passed the Act against Vagrancy, which stated that all farmers not employed by a landlord or owning a certain amount of land were to be considered vagrants. Vagrancy was punishable by forced labor on public works. The indigenous population thus faced the choice of either working on the *fincas* or doing forced labor in road construction.

50. Civil registrars were always Spanish speakers and unfamiliar with the Q'eqchi' language, which has no similarities with Spanish. As the vast majority of Q'eqchi' were illiterate, they could not correct the spelling of their names.

These narratives show that the process of applying for financial compensation costs victims time and money. Many discover that they lack the correct documents to complete it. Instead of facilitating the process for those already in a vulnerable position, economically and legally, the PNR complicates things. With its strict bureaucratic requirements, the program is revictimizing the victims instead of executing its intention of redressing the past and healing wounds.

Field research data shows that victims perceive monetary compensation as aid (*tenq*) from the state, rather than as the reparation due to them. Moreover, many believe that assistance is coming very late – more than 20 years after the *nimla rahilal*. Victims who participated in the research done by the CEH and REMHI stated during focus group discussions that they had been told for years that help was on the way, but that the promises remained unfulfilled.<sup>51</sup> During the first years after losing their spouses, their houses and all their belongings, widows, survivors of massacres and internally displaced persons struggled to live, only managing to do so with great difficulty and suffering. Therefore, they see the current monetary compensation as a form of aid for their children, and especially for their grandchildren, in recovering lost opportunities. As one widow said,

My children suffered. If their father had been alive today, maybe I could, maybe I would have been a nurse. Maybe he would have been a teacher or something else. Maybe he would have been a lawyer, because their father was a really good man, the father of my children.

A major reason for criticism of the PNR is that former PAC members have already received their payments,<sup>52</sup> while the majority of program beneficiaries have been kept waiting, sometimes for over two years. The state's unequal treatment often generates friction in communities and reopens old wounds. In some cases, the *resarcimiento*, as now executed, serves to reveal the war's complexity. During field research several cases came to light of men who had lost family members through the army's actions but were still forced to patrol their villages. These men appear on the PAC lists and therefore have lost the right to be beneficiaries of the PNR. In Guatemala, the harsh reality of the 'victim-perpetrator' identity is seriously underestimated and even neglected, not only by the state but also by civil society and specific organizations that work with victims.

The idea articulated by interviewees that life is priceless reveals frustration with economic compensation. Nevertheless, the interviewees offered several suggestions for complementary approaches to the actual reparation policy.

51. Indeed, as Lisa Laplante and Kimberly Theidon note, an implicit contract exists between giving testimony to a truth commission and demands for acknowledgment and redress. Lisa J. Laplante and Kimberly S. Theidon, 'Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru,' *Human Rights Quarterly* 29(1) (2007): 228–250.

52. The total payment of \$700 was awarded in three instalments from 2003 to 2007, depending on the region. Not all PAC members received all three payments because of bureaucratic problems.



## Restitution for Destroyed Possessions

During the interviews, victims asked for restitution or compensation from the government for destroyed material possessions, such as houses, livestock, cornfields, beans, clothes, millstones and traditional instruments. One internally displaced woman stated,

Our things, our livestock, our chickens, all our belongings, the cups, crates, pots, mill stones, our corn, our cornfields, they took it away and left us with nothing. And our clothes, we do not have clothes anymore, all our clothes were burnt, nothing is left, we only managed to save two items, nothing was left of my children's clothes. With a lot of effort, the flesh was saved, the person as such, but we have nothing left. And now we need to replace all these things, all our belongings, our animals, the seeds that were destroyed, that were taken away by the soldiers. This needs to be compensated, it does not stop here.

Remarkably, survivor interviewees used the word *reeqaj* when making such statements. The term *reeqaj* arguably has a deeper meaning in the context of the conflict. The state cannot return deceased relatives to grieving families, but by giving monetary compensation for their losses, it causes feelings of guilt. When victims request *reeqaj* for their lost possessions, they are not referring only to material compensation. The possessions equally had spiritual meaning: a house symbolizes warmth, love, a place to rest, a place where values and culture are transferred and a place containing the altar where a family can make contact with the spirits of its deceased relatives. In order to meet victims' demands for *reeqaj* of their belongings, the state must not only replace their material possessions but also enable them to regain their lives in the atmosphere of *tuqtukilal*—of tranquility. According to a compensated widow,

They [the PNR] redressed very little. They should give us our own place, they should give us our homes, everything. Maybe they will compensate us for a little, when they will, it will be very little. Even if it was a little, a pinch. They already compensated a little, they should give us various things. That way our hearts could rest, we would have our house.

Following the semantic logic of the term *reeqaj*, victims want restitution that equals the value of their lost possessions. The interviewees implied a high degree of dissatisfaction among the displaced people regarding the houses that the PNR claims it will be offering, as these small cubes do not have the same value (material or spiritual) as the houses they lost.<sup>53</sup>

One major request of survivors is that they be granted titles to land, as titles are a precondition of obtaining a house and a key requirement for rebuilding one's life. Because of the *finca* system, most Q'eqchi' do not possess any land. Heated land

53. The houses of the pilot project are only six meters by six meters. Personal interview, Diana deBuena F'ce, Cob'an, Guatemala, 28 April 2009. Prior to the conflict, survivors had one or two wooden houses that were on average 12 by 15 meters.

conflicts continue to this day in Guatemala, with the highest concentration in Alta Verapaz.<sup>54</sup>

### **'We All Suffered': Collective Reparation**

Evidence from the interviews suggests widespread endorsement of complementary collective reparation measures. Currently, financial compensation is awarded on an individual basis, and the narratives show that this has caused a great deal of criticism and incomprehension among victims, both those already compensated and those whose applications are pending. Individual compensation creates guilt in relation not only to deceased relatives but also to others who have suffered but who, for bureaucratic reasons, do not receive compensation. Victims believe that all have suffered from the conflict, as demonstrated by the comments of one compensated interviewee:

And all my friends who are here are very sad because they have not even received a little bit of help. Our brothers have seen nothing. This is very painful what we are going through. There are elderly people here, very elderly, who still have not been helped with their dead.

Many Q'eqchi' had to flee their villages because of scorched earth campaigns. They hid in the mountains for years, with many dying of hunger, malnutrition and *susto* due to the poor living conditions. These victims have problems understanding and accepting that the PNR distinguishes between victims who died from these causes and those who died from bullets or machetes, as all deaths were a result of persecution during the conflict.<sup>55</sup> Research on the reintegration of internally displaced persons shows that this relative homogeneity is a characteristic of all the displaced communities that returned to Cobán.<sup>56</sup> Members of communities who shared the experience of displacement want everyone to receive both financial compensation and restitution for their destroyed belongings. A leader of Chicoj Raxquix, a community of internally displaced people who received individual economic compensation, explained:

We should all be given something, we all suffered under the violence equally, we were all attacked. There is a sense of urgency now, the government should meet with everybody or should give out all the aid. Well, in order for us to have peace, like when we were living in the mountains, when we shared our tortillas, shared our bananas, we all had very little

54. Between 2000 and 2006, 464 cases of land conflicts were recorded with a concentration in Cobán and San Pedro Carcha. Secretaría de Asuntos Agrarios Presidencia de la Republica Guatemala, *Las ocupaciones de tierra en Guatemala: Caracterización y Líneas de Atención: Informe final* (2007).

55. At the end of 2007, the National Reparation Commission (*Comision Nacional de Resarcimiento*, or CNR) approved the measure of individual financial compensation for relatives of those who died as a result of forced internal displacement. The complete implementation of this measure is still pending. In Alta Verapaz, only a few individuals have received this compensation, although there are many cases pending. Personal interview, Diana de Buena Fé, Cobán, Guatemala, 28 April 2009.

56. Association for the Advancement of the Social Sciences in Guatemala, *¿Dónde está el futuro? Procesos de reintegración en comunidades de retorno* (1992).

and we shared it with everyone. Nobody was left without food, there was always a little, we ate a little, we tasted a little. Well, that is how the government should act as well, so that we might all get a little from what the government is handing out ... Only those of us who suffered violence are brought together, but what I want now is aid and for it to come directly to our village and to let us deal with it. We will coordinate it, we will oversee it, we will divide it among our friends and we will know who is entitled to how much. But the government is only giving aid to one person at a time, so we are not at all satisfied.

In February 2007, Chicoj Raxquix filed a petition with the PNR, signed by 120 people, to obtain material compensation and houses as a group. They have not yet received any response.<sup>57</sup>

### **Recovering Historical Memory**

The interviews reveal not only victims' aspiration to receive material compensation but also a desire and need to recover historical memory and share experiences in affected communities. One internally displaced interviewee said,

We still attach great value to telling these stories, the truth, because we do not want to let the names of our friends be forgotten by not mentioning them, we have to mention them, because they are not to blame. They are not to blame, because they didn't do anything, I mean, our friends who were killed and tortured and today we want to hear about them.

Although the CEH recommended the organization of a large-scale campaign to disseminate its final report, neither the original version nor the Q'eqchi' version has been distributed on a large scale in Alta Verapaz.<sup>58</sup> Only Sister Rosario Celis and her group of reconciliation promoters from a number of Alta Verapaz's affected communities have continued this work, within the framework of the follow-up phase of REMHI. Together, they have managed to spread the Q'eqchi' version throughout the communities with which they work. Sister Rosario has even introduced it in communities with a large PAC presence. This effort by REMHI is greatly valued by victims and former PAC members alike. Furthermore, an interesting initiative arose thanks to the dynamic created by a research project about the recovery of historical memory in 20 communities in Cobán.<sup>59</sup> In 2006, after four years of research, the participants decided to create their own organization, the Resistance Committee of Surviving Q'eqchi'. The committee's central goal is to disseminate historical memory throughout the various communities of Alta Verapaz because its members feel that the suffering caused by the conflict should not be forgotten.

57. 'Documento Memorial de la Aldea Chicoj Raxquix del Municipio de Cobán, Alta Verapaz,' received by the PNR, 21 February 2007.

58. CEH, *supra* n 6 at vol. 5.

59. Huet, *supra* n 24.

As mentioned above, the two memorial crosses erected by local communities were a result of local efforts to recover historical memory and to commemorate victims. These efforts have yet to receive official acknowledgment, however, whether from the mayor, the governor or a PNR representative, even after all these years. The state's lack of interest and recognition revictimizes the victims, as one elderly man from Saha'kok noted:

It is true, yes, that we saw this violence, that we suffered as a result of it. If we had not suffered this violence, then we would not have a cross [here in Saha'kok] with all the names of our deceased. And the government has never come to look at this cross, even though it is standing there. There they would see the names of our dead mothers, of the parents, the elders, our grandfathers and grandmothers who were murdered, you know, with the bombs, with everything, with machetes, also.

In fact, the four key points presented above fit closely with the original design of the national reparations program, which was never implemented, and contains the five measures mentioned above: material restitution, financial reparations, psychosocial reparation and rehabilitation, honoring civilian victims and cultural reparations.

### **Calling for the Spirit that Stayed in the Mountains**

A final key point raised by interviewees was the importance of the spiritual side of healing wounds of the past. Healing rituals rooted in the Q'eqchi' cosmovision could address the problem of the wandering spirits of many internally displaced people. According to Q'eqchi' spirituality, the *Tzuultaq'a* lives. They also believe that each person – as well as many animals, plants and material objects – possesses a spirit (*muhel*) that accompanies him or her even after death.<sup>60</sup> The root of *muhel* is *mu*, which means 'shadow.' A typical characteristic of *muhel* is the fragile link with its host; thus, one can lose one's *muhel* quite easily, with children running a greater risk of this than adults.

The loss of *muhel* can be temporary or permanent. If the loss becomes permanent, the person dies, because the *muhel* has left the body to reach its final destination in the mountains, to be with *Tzuultaq'a*. If the loss is temporary, it may manifest as a physical or mental illness or as muteness. These manifestations are regarded as characteristics of the state of *susto*.<sup>61</sup> To regain one's *muhel*, a Q'eqchi' usually needs to carry out the ritual of *b'oqok xmuhel* or 'calling for the spirit.' The ritual may return one's spirit and restore all one's energy.

60. Ruth Carlson and Francis Eachus, 'El mundo espiritual de los Kekchies,' in *Estudios cognitivos del Sur de Mesoamérica*, ed. Helen L. Neuenswander and Dean E. Arnold (Dallas: Summer Institute of Linguistics Museum of Anthropology, 1977); Monroy, supra n 29; Wilson, supra n 23.

61. Monroy, supra n 29.

Many who had to flee and survive in the mountains regularly suffered from losing their spirit. *Susto* was one of the major causes of death.<sup>62</sup> Even today, some internally displaced persons suffer from the *susto* they had during their years in the mountains. This manifests itself mainly in their dreams, in which they relive persecution at the hands of soldiers and the PAC, the constant fleeing and their suffering. As one internally displaced elder explained,

Even today, even this week, two weeks already, I dreamed that we were once again up in the mountains. The soldiers came, we were up in the mountains and started to flee, we were running through the hills once again. That has been my dream ever since we suffered this violence, more than 20 years have passed. Almost 25 years, always this dream, only this is what I dream.

Another noted,

Our spirits remained up in the mountains, nobody brought them back down, nobody, nobody, nobody has gone up to see our spirits there. Who will go up to see, who would have thought of that? Our spirits have stayed there. That is why we dream. It is as though we were up there in the mountains once again, it is as though the soldiers are still haunting us when we sleep.

A Q'eqchi' spiritual guide (*aj ilonel*, or 'he who sees what is hidden') explained the cause, impact and means of redress for the spirit lost during the conflict:

Their spirits were not returned to them, that is why they still dream. It appears that they are suffering once again, it is as though the war has started again ... [You need to] recover the energy that you have lost, because being without the *muhel*, the spirit, this means that the person will be sick all the time, they will be thinking all the time about what happened, where it happened, where they were hiding, where they were found, where they were persecuted. This spirit is no longer inhabiting the person, it is no longer present in them. It is walking up there in the mountains, which is why they are dreaming, seeing, walking, feeling as though the problem, the armed conflict, is still there or will return. Why? Because their spirit has broken away. Now, carrying out the *b'oqok xmuhel* means recovering this spirit, making it return to its rightful [place], to where it should live, to where it used to live.

To recover spirits that are still wandering in the mountains, people need to go back to the places where each took fright and lost his or her *muhel* and carry out rituals. However, many of these places are now private property. During the conflict, many *fincas* were abandoned, but since then the owners have returned. Alternatively, because of displacement, new communities may have taken up residence there. Consequently, displaced persons need official permission to return to the sites where they experienced *susto*.

62. Huet, *supra* n 24.

Despite the deep impact of such beliefs, organizations that offer psychosocial assistance to victims show a lack of interest in and respect for resources of indigenous healing. For example, the Guatemalan Forensic Team always appeals to one of the recognized organizations that offer psychosocial counseling, such as the Team of Communitarian Studies and Psychosocial Action, the Maya Center *Saq'be*, *Utz K'aslemal* and the Group for Mutual Support, to assist victims before, during and after exhumations. Only *Saq'be*, a Kakchiquel organization of Chimaltenango, exclusively applies Mayan knowledge on health and illness during its sessions. Unfortunately, because of the language barrier, the organization cannot be a real help in other Mayan regions at this point.

## Conclusion

Few will contest that optimal redress should address the real needs and experiences of those affected by gross human rights violations. In fact, the success of a reparations program and its ability to alleviate the pain and suffering of survivors depends on whether victims can relate to its design and implementation. Therefore, the analysis and interpretation of victims' perceptions regarding the conflict are a necessary precondition and fundamental step in the design of the program. Unfortunately, in practice, victims' perspectives are often overlooked.

From a Q'eqchi' victim viewpoint, the PNR faces the impossible task of repairing the irreparable. Moreover, as is apparent from interviewee narratives, the PNR tends to elicit further suffering and frustration rather than gratitude or satisfaction in its intended beneficiaries. The perceived inadequacy of the program is mainly rooted in its prioritization of individual financial compensation, stringent legal and bureaucratic requirements and exclusion of those who died in the mountains from malnutrition, hunger and *susto*. Analysis of victims' perceptions and aspirations shows that the PNR also clashes with fundamental Q'eqchi' norms and values and that its implementation methods disregard both local and cultural dynamics and realities.

According to the logic of the Q'eqchi' cosmovision, as shown in the analysis above of the word *reeqaj*, a fundamental step toward repairing any damage is to reach an agreement, via negotiations and discussions, between the victim and the perpetrator on the conditions of reparation. This first step in the reparation process was omitted in the implementation and management of the PNR. Moreover, the problem of translating the key concept *resarcimiento* into Q'eqchi' and the semantic analysis of the words *reeqaj* and *k'ajkamunk* demonstrate that the expectations of Q'eqchi' victims (and probably those of victims from other Mayan groups) were not considered or included in the PNR's design.

The interviewees' frustrations illustrate the challenges facing any reparations program, namely achieving completeness, comprehensiveness, complexity and

coherence.<sup>63</sup> Notwithstanding the fact that the critiques made by Q'eqchi' victims are not exclusive to the Q'eqchi', victim statements reveal the PNR's underestimation and undervaluation of cultural understanding and different conceptions of reparation.<sup>64</sup> Little research has been done on this issue, but some examples are available from other communities. For instance, survivors of a massacre in the Afro-Colombian community of Bojayá in 2002 show similar feelings of guilt for receiving individual economic compensation. Moreover, according to the researchers, this reparation measure produced a sensation of being in debt to one's ancestors.<sup>65</sup> In Chile, a study on the impact of financial reparations on the Mapuche communities reports that these reparations distorted family relations and negatively affected family and community networks.<sup>66</sup> It also mentions that this culture's conceptions of reparation were disregarded.

Although this article has presented several concrete points of criticism and frustration, it also suggests alternatives for improving Guatemala's reparation policy. The PNR should take up the thread of integral *resarcimiento* and tackle the practical challenges to making it more inclusive and culturally sensitive. A good starting point would be for PNR administrators to gain an understanding of beneficiaries' aspirations through community meetings.

Given that psychosocial assistance is part of comprehensive *resarcimiento*, the PNR should acknowledge the resources available in Mayan beliefs and practices, and the role of traditional leaders and healers in dealing with health issues. It should start exploring how it can reinforce indigenous knowledge about healing, and it should urge the civil society organizations involved to respect and include indigenous healing knowledge in their projects.

As experiences of the conflict differed from region to region, the PNR should be rooted in communities in order better to address specific local and cultural needs.

This would not only stimulate the aspirations and empowerment of the people and communities but also help the PNR and its beneficiaries deal with and go beyond the discord caused within communities by the conflict. As the historical socioeconomic exclusion of indigenous people was one of the root causes of the conflict, it cannot be excluded from the debate on redress and reparation. The CEH has stated clearly

63. Pablo de Greiff, 'Introduction,' in *The Handbook of Reparation*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

64. For example, a study in which victims from Chile, Argentina, El Salvador, Guatemala and South Africa were interviewed stresses that the significance of monetary compensation is controversial and problematic and that victims ask for acknowledgment that they were wronged, knowledge of perpetrators, justice and moral reparations, not necessarily for economic compensation. See, Victor Espinoza Cuevas, María Luisa Ortiz Rojas and Paz Rojas Baeza, *Comisiones de verdad: ¿Un camino incierto?: Estudio comparativo de comisiones de la verdad en Argentina, Chile, El Salvador, Guatemala y Sud Africa desde las víctimas y las organizaciones de derechos humanos* (Santiago: Corporation for the Promotion and Defense of the People's Rights/Association for the Prevention of Torture, 2002).

65. Martha Nubia Bello, ed., *Bojayá, memoria y río: Violencia política, daño y reparación* (Bogotá: National University of Colombia, 2005).

66. Elizabeth Lira, 'The Reparations Policy for Human Rights Violations in Chile,' in *The Handbook of Reparation*, ed. Pablo de Greiff (Oxford: Oxford University Press, 2006).

that indigenous people's collective rights were fundamentally violated, so the implementation of locally adapted collective reparation measures should be seriously considered.

In a broader context, we should not lose sight of the fact that the healing of wounds and national reconciliation will require both society's and the state's relations to be fundamentally restructured. This would be the root of the truly pluricultural state aimed at in the peace agreements. The powerful words of a Q'eqchi' widow reflect Guatemalans' ultimate aim in this regard: 'We do not want to suffer anymore, we want tranquility.'









Community mayejak, presentation activity of Q'eqchi' book '*Xooxkol li loq'aj Tzuul, loq'aj K'iche'*', 31 October 2006, Chicoj Raxquix



# 5 Recovery and Dissemination of Historical Memory in Guatemala. Locally and Culturally Driven Experiences

Lieselotte Viaene and Alfonso Huet

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## Introduction

Most societies recovering from dictatorial regimes, violent conflicts or periods of gross human rights violations are confronted with questions of how to deal with the legacy of mass atrocities. Peace, justice and truth are the main cornerstones of societal demands in post-conflict societies and form key concepts in reconciliation and transitional justice processes. One of the most popular truth-seeking and truth-telling mechanisms is the establishment of truth commissions. This recently developed mechanism took shape in the Latin-American continent during the 1980s and 1990s. Latin-American transitions from military regimes to democracy were marked by negotiations between demands for justice and truth.<sup>1</sup> The key players in this balancing act between truth and justice were national human rights groups and victims' associations.<sup>2</sup> They were the main drivers of creating novel approaches to the thorny question of how to come to grips with the legacies of mass human rights abuses. The political context was not a fertile ground for official accountability processes, yet it aimed to create non-judicial inquiries into past widespread abuses. The need for truth in Argentina gave way to the first-ever truth commission, the National Commission on the Disappeared which presented its final report in 1984. Other post-conflict countries such as Brazil, Chile, El Salvador and Guatemala created commissions of inquiry or truth commissions. The growing experiences with truth commissions in different post-conflict societies encouraged the academic discussion in the transitional justice field about the complexity of the concept of truth. The South African Truth and Reconciliation

1. For more on the evolutions in the 'justice vs truth' debate see Naomi Roht-Arriaza, 'The New Landscape of Transitional Justice', in Naomi Roht-Arriaza & Javier Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (Cambridge 2006).
2. Elizabeth Jelin, *State Repression and the Labors of Memory* (Minneapolis 2003), Rachel Sieder, 'War, peace and memory politics in Central America', in Brito, Alexandra Barahona (ed.), *The politics of memory. Transitional justice in democratic societies* (Oxford 2001), 161-189.

Commission has identified four types of truth telling which can be considered a key set of analytical distinctions.<sup>3</sup> The first type is 'forensic or factual truth' that refers to factual, impartial and objective evidence that most truth commissions have understood to be their mandate. 'Personal or narrative truth' seeks 'to capture the widest possible record of people's perceptions, stories, myths and experiences'<sup>4</sup> and is closely linked with the concept of direct testimony. Further, it distinguishes 'social or dialogue truth' which refers to the mechanism of public hearings and involvement of the media through which the public was engaged in truth telling. And finally 'healing or restorative truth' is the kind of truth that places facts and what they mean within the context of human relationships.

In Latin America, the human rights movements not only claimed justice and truth, but also memory as activists insisted on not forgetting the atrocities committed in their society. The human rights slogan *Nunca Más* or Never Again implies 'an association between past violations and the will of a different future', suggesting that memory is the key to preventing future atrocities.<sup>5</sup> This slogan has gained iconic status and is the symbol of the struggle against impunity. Jelin defines the concept of memory in the context of transitional processes as 'the ways in which people construct sense or meaning of the past, and how they relate that past to their present in the act of remembering'.<sup>6</sup> It is a process which involves subjectivities as it is always active and socially constructed in interaction and dialogue. Further, Beristain states that 'memory does not only have a collective therapeutic value, but also that of social recognition and justice'.<sup>7</sup> Memory is often perpetuated through memorialisation initiatives such as monuments, torture centres, museums and commemorative celebrations which 'facilitate processes of remembrance and recognition of victims and survivors of conflict'.<sup>8</sup> Memorialisation is seen as 'a process that satisfies the desire to honour those who suffered or died during conflict and as a means to examine the past and address contemporary issues'.<sup>9</sup> Closely linked with the concept of memory is the notion of historical memory which is widespread in human rights discourses in Latin America. The conjunction of the terms of history and memory refers, according to Oglesby, to a certain privileging of direct testimony by victims of human rights violations.<sup>10</sup> Indeed, in the 1980s, the human rights movements created political space for victims to speak out directly about their experiences. Truth commissions welcomed testimonies, which

3. Truth and Reconciliation Commission Report, Volume 1, Chapter 5, Concepts and Principles, 110-117.
4. Ibid, 112.
5. Jelin, supra 2 at 3.
6. Elizabeth Jelin, 'Public Memorialisation in Perspective: Truth, Justice and Memory of Past Repression in the Southern Cone of South America', *International Journal of Transitional Justice*, Vol. 1, (2007), 141.
7. Carlos, Beristain, *Reconstruir el tejido social. Un enfoque crítico de la ayuda humanitaria*, (Barcelona, 2004), 253.
8. Ereshnee Naidu, *The ties that bind: Strengthening the links between memorization and transitional justice*, The Centre for the Study of Violence and Reconciliation (South Africa 2006), 2.
9. Judy Barsalou and Victoria Baxter, *The Urge to Remember. The Role of Memorials in Social Reconstruction and Transitional Justice*, United States Institute of Peace (Washington DC 2001), 1.
10. Elizabeth Oglesby, 'Historical Memory and the Limits of Peace Education: Examining Guatemala's *Memory of Silence* and the Politics of Curriculum Design', In Elizabeth Cole (ed.), *Teaching the Violent Past. History Education and Reconciliation*, (Lanham 2007), 192.

helped to restore 'the elemental right to remember, a right that was systematically denied through the imposition of terror'.<sup>11</sup>

This paper focuses on the recovery of historical memory in post-conflict Guatemala. It examines locally and culturally driven experiences on memorialisation, remembrance, recovery and dissemination of historical memory in the Alta Verapaz department which is one of the most affected regions. This paper is framed in the recent trend in the transitional justice and peace building field to approach post-conflict processes from a more local and bottom-up perspective instead of a top-down, abstract and general approach. In fact, there is growing awareness that if post-conflict interventions and policies are to be truly meaningful to recovering societies, they should be based on the needs and perceptions of survivors.<sup>12</sup> Here, the term of local ownership of those interventions has become increasingly part of post-conflict discourses,<sup>13</sup> but few attempts have been made to grasp its meaning, especially when it is related to different fields of coming to terms with past atrocities. Further, there exists a huge knowledge gap about how survivors in different local and cultural contexts perceive post-conflict processes and interventions.<sup>14</sup> International and national external actors or outsiders are playing an important role in rebuilding fragmented societies. These outside actors have much to offer in terms of human and financial resources, bringing skills and perspectives that may not be available in the survivors' community.<sup>15</sup> Yet, among scholars and practitioners there is growing concern about the successes and failures of these transitional justice and peace building interventions.<sup>16</sup> The slowly growing body of ethnographic studies on post-conflict processes reveals that outsiders' interventions using the globalised language of justice, truth, reparation and reconciliation fail in their appropriation in a specific local and cultural context.<sup>17</sup> These studies elucidate that the encounters are accompanied by frictions, short circuits and even clashes between different frames of reference or logics and that at a deeper level, even more fundamental issues arise. For example, anthropologist Shaw shows in her study on the

11. Marcie Mersky, 'History as an instrument of social reparation: reflections on an experience in Guatemala', *The Just Word* (The Ignacio Martín-Baró Fund for Mental Health & Human Rights 2000).
12. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, U.N. SCOR, UN doc. S/2004/616 (2004), Pouligny, Chesterman and Schnabel (eds), *After Mass Crime. Rebuilding States and Communities* (Tokyo 2007)
13. *Report of the Secretary-General on peacebuilding in the immediate aftermath of conflict*, Report of the Peacebuilding Commission, A/63/881-S/2009/304, June 2009. Timothy Donais, 'Empowerment or Imposition? Dilemmas of Local Ownership in Post-Conflict Peacebuilding Processes', *Peace and Change*, Vol. 34, No 1, 2009, 3-26.
14. Sarah Cullinan, *Torture Survivors' Perceptions of Reparation: Preliminary Survey* (London REDRESS 2001); Due Process of Law Foundation (DPLF), *Después de procesos de justicia transicional: ¿Cuál es la situación de las víctimas?: Los casos de Chile y Guatemala* (Washington 2007).
15. Barsalou and Baxter, supra 9 at 13.
16. Pham Phuong & Patrick Vinck, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms', *International Journal of Transitional Justice*, Vol1. (2007), 231-248.
17. Pouligny, Chesterman and Schnabel supra 12; Lieselotte Viaene, 'Life is Priceless: Maya Q'eqchi' Voices on the Guatemalan National Reparation Programme', *International Journal of Transitional Justice*, Vol 4 (1), (2010); Victor Igreja and Beatrice Dias-Lambranca, Restorative justice and the role of magamba spirits in post-civil war Gorongosa, central Mozambique, in Luc Huyse and Mark Salter (eds), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, (2008), 61-83; Kimberly Theidon, 'Justice in Transition: The Micropolitics of Reconciliation in Postwar Peru', *Journal of Conflict Resolution*, 50, 436 (2006).

implementation of the Sierra Leone's Truth and Reconciliation Commission (TRC) in local contexts that frictions of engagement occur and that those struggles concern a perceived incommensurability between the redemptive verbal remembering paradigm of the TRC and the local arts of forgetting.<sup>18</sup> Although the friction between the two different memory projects have created, in some ways, new forms of remembering and forgetting, she states that the TRC was not able to respond to the needs of the survivors.

This paper discusses local and cultural perceptions and approaches to memorialisation, truth telling and historical memory recovery projects drawing upon long-term interpersonal contact and experiences of the authors with Maya Q'eqchi' survivors in Guatemala. In fact, we follow Culbertson and Pouligny when they state that 'outsiders can support insiders' efforts in that direction [of rebuilding post-conflict societies] if they understand both local roots of past conflicts and local resources for rebuilding – including those of local and cultural symbologies and imaginaries'.<sup>19</sup> First, we describe briefly the two national efforts of truth telling in Guatemala. Next, we discuss several locally and culturally driven experiences of memorialisation, and the recovery and dissemination of historical memory among Maya Q'eqchi' survivors of the northern region of the Alta Verapaz department. These practices form part of a large process of remembrance, truth recovery and transmission which started in 1994 and which is still ongoing. We discuss the process of the creation of two local and cultural sites of memory in the region in the mid-1990s, the research project on the recovery of local memories of resistance and survival of 20 Maya Q'eqchi' and the elaboration of educational material based upon that research. Finally, we reflect upon such experiences and attempt to grasp the meanings and practices of local ownership in the processes of memorialisation, truth telling and historical memory.

## Recovering of Historical Memory in Transitional Guatemala

Guatemala suffered the longest - 36 years - and bloodiest internal armed conflict on the Latin-American continent. The complex process of Guatemala's political transition and peace process spanned a decade and included a dozen accords. This large process culminated in a final peace agreement between the Guatemalan government and Guatemalan National Revolutionary Unity (URNG) on 26 December, 1996. During this process of substantial political transition there was a strong societal demand for truth and justice. The Catholic Church, national human rights organisations and UN

18. Rosalind Shaw 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *International Journal of Transitional Justice*. Vol.1, (2007) 183-207. Other interesting ethnographic studies about the function and impact of truth commissions: Richard Wilson, *The politics of truth and reconciliation in South-Africa. Legitimizing the post-apartheid state* (Cambridge 2001); Lisa Laplante and Kimberly Theidon, 'Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru', *Human Rights Quarterly*, 29 (1) (2007), 228-250.

19. Culbertson, Roberta and Pouligny, Béatrice, 'Re-imagining peace after mass crime: A dialogical exchange between insider and outsider knowledge', In Pouligny, Chesterman and Schnabel (eds), *After Mass Crime. Rebuilding States and Communities* (Tokyo 2008), 272.



played a central role in securing a mandate to create a commission of investigation into past human rights violations. Similar to other transitional Central American countries, official truth-telling initiatives in Guatemala did not accompany a negotiated transition to elected civilian government, but rather were part and parcel of the end of the conflict.<sup>20</sup> Sieder states that ‘the widespread involvement of civil society in reconstructing memory is perhaps the single most distinguishing feature of the Guatemalan truth-telling process’.<sup>21</sup>

The agreement to create a UN-sponsored Historical Clarification Commission (*Comisión para el Esclarecimiento Histórico*, or CEH) was signed in Oslo in 1994.<sup>22</sup> In the wake of the negotiations, several civil society organisations helped to uncover the truth about past atrocities prior to the start of the CEH. Several national victim organisations started exhumations of clandestine mass graves in the affected rural areas. With the support of human rights organisations, some of the massacre cases have been presented in genocide trials at national and international level.<sup>23</sup> The Guatemalan Catholic Church set up the Inter-Diocesan Project for the Recovery of Historical Memory (REMHI) in 1995. Members of the Catholic Church were clear target groups of the counter-insurgency strategies of the Guatemalan state during the conflict. Therefore the Catholic Church was committed to processing investigations into past human rights violations. Further, they wanted to support the CEH which had a very narrow mandate. The REMHI collected 6,000 testimonies in parishes across the country during the course of three years. The four-volume report ‘*Guatemala: Nunca Más*’ was released in 1998, a year earlier than the final report of the CEH.<sup>24</sup> It documented over 55,000 victims and more than 25,000 murders, attributing 80 percent to the state and 9 percent to the URNG. The role of the Catholic Church in promoting the politics of recovering historical memory has been decisive, not only at national level but also at local level. With the REMHI project they initiated and promoted through their extensive network of catechists a grassroots dynamic of recovery of historical memory and reconciliation. Several local NGOs in cooperation with the Church organised and built memorials of different types in the most affected areas.

After 18 months of investigation, the CEH presented its 12-volume report, ‘*Guatemala: Memory of Silence*’ in February 1999.<sup>25</sup> The report documented the origins, characteristics, and consequences of the war and included a detailed analysis

20. Sieder *supra* 2.

21. Rachel Sieder, ‘War, Peace and the Politics of Memory in Guatemala’, in Nigel Biggar (ed.) *Burying the Past: Making Peace and Doing Justice after Civil Conflict*. (Washington 2002), 191

22. Agreement for the Establishment of the Commission of Historical Clarification of Human Rights Violations and Violent Acts that have Caused Suffering to the Guatemalan Population (Oslo, 23 June 1994)

23. See Inter-American Court of Human Rights, case of *Plan de Sánchez Massacre v. Guatemala*, 29 April, 2004 and the case of *Las Dos Erres la massacre v. Guatemala*, 24 November, 2009. Convictions by national courts: Case Choatalum (31 August 2009) and case El Jute (3 December 2009)

24. REMHI/ODHAG, *Guatemala: Nunca Más*. Informe del Proyecto Interdiocesano de Recuperación de la Memoria Histórica (Guatemala 1998).

25. Comisión para el Esclarecimiento Histórico (CEH), *Guatemala: Memoria del Silencio*. *Tz’inil Na’Tab’Al* (Guatemala 1999).

of paradigmatic cases. The report drew upon 8,000 testimonies received by the commission's field researchers around the country, as well as historical documents and interviews with key witnesses. The CEH estimated that 200,000 people had been killed or had disappeared during the conflict and documented over 600 massacres and the destruction of over 400 villages. In line with the mandate, the report attributed responsibility for human rights violations to institutions rather than individuals, stating that the Guatemalan state was responsible for 93 percent, while the guerrillas were responsible for 3 percent. The CEH located the root causes of the conflict in historical structural socio-economic inequalities, a history of racism and discrimination against the indigenous majority, and increasingly exclusionary and anti-democratic state institutions. It determined that the State violence between 1981 and 1983 constituted acts of genocide and found that the majority of victims (83.3%) were of indigenous Mayan origin.

Given that a decade has passed since the release of both reports, an evaluation of their long-term societal impact on the national and local level would be very challenging. Although this challenge is beyond the scope of this article, two important observations are relevant.

Firstly, to most survivors the CEH's multivolume report is inaccessible due to its volume. Further, the recommendation of the CEH to organise a large-scale campaign to disseminate its final report has never been implemented. According to Oglesby, the structural limitations of truth commissions can create a lack of dissemination, because after completing the report, commissions disband and doubts arise about how their reports will be distributed.<sup>26</sup> The succeeding governments have never taken the responsibility to disseminate the reports among civil society. Nonetheless, several national human rights organisations, such as the *Grupo Apoyo Mutuo* (GAM) and Fundación Myrna Mack, engaged in the mediation of the report by elaborating resumed and popular versions of its final report. However, in the Alta Verapaz department, one of the most affected departments, neither the original version nor the popular version has been distributed on a large scale. The REMHI did not have the same structural limitations as the CEH, because the dissemination of the report was already included in its design. The fourth and final phase of the project involved dissemination of the report findings and extensive follow up, including activities to address the trauma caused by the human rights abuses committed. It included the exhumations of mass graves to allow for both the gathering of forensic evidence and ceremonial reburial of victims. However, several coinciding circumstances<sup>27</sup> delayed the implementation of this phase and ultimately it depended on the internal dynamics in the different dioceses in the country. In the first years after the release of the report, the Human Rights Office of the Archbishopric of Guatemala (ODHAG) and other human rights organisations elaborated a resumed and popular version. Although the presence of this material stimulated its dissemination, it happened on a very small

26. Oglesby, *supra* 10 at 176.

27. The murder of Monsignor Gerardi and the departure of key persons to the CEH or to the government of Portillo. See: ODHAG, *Movilizando la memoria: a 10 años del REMHI*, (Guatemala 2008), 34.

scale. It is important to note that a clear methodology or guidelines on how the reports should be disseminated at the local level by these organisations was not elaborated. In practice, its dissemination happened mainly at the level of local human rights organisations and less directly at the level of survivor. So, although the involvement of survivors through their testimony was imperative for both reports, it seems that the direct return of the outcome of the reports for survivors did not occur in an organised, systematic way.

Another critical point is related to the missing link between the CEH, REMHI and education of history in Guatemala. Both reports recommended the state to develop curricular projects on historical memory. In the case of the CEH the state never took ownership of the report or its recommendation. The ODHAG elaborated a pedagogic proposal '*Eduquémonos para el Nunca Más*' with the support of UNICEF in 2003. However, the Ministry of Education has never realised a formal and large inclusion of the reports in the educational curriculum, nor is there a national project to address the teaching of historical memory.<sup>28</sup> In fact, the political establishment prefers social amnesia and the implicit impunity of the atrocities during the conflict, so that in Guatemala 'attempts to reform history teaching focus on introducing new curricula on civics or citizenship instead of revising history education'.<sup>29</sup> In the transitional justice field, the idea that the representation of past matters in a recovering society is generally recognised; however the two fields of truth recovery and education in practice rarely intersect.<sup>30</sup>

Next we describe and analyse several initiatives in the Alta Verapaz department that reveal the local and cultural practices of memorialisation and recovery of historical memory. First, a brief background of the conflict in Alta Verapaz and the process of social reconstruction are described. Then, we discuss the process of the creation of two local and cultural sites of memory in the region in the mid-1990s: the crosses in the villages of Sahak'ok and Xalab'e. The research process and publication vis-a-vis the recovery of local memories of resistance and survival of 20 Maya Q'eqchi' communities is examined. Finally, the process of elaboration of educational material based upon that research and its link with memorialisation is considered. These three locally and culturally driven practices embody a large process of memorialisation, recovery and dissemination of historical memory.

## Locally and Culturally Driven Practices of Recovery of Historical Memory

In the Alta Verapaz department, situated in the northern central part of the country, 92.8 percent of the population is Maya indigenous. The majority of these people are

28. Ibid., 84-87; Oglesby supra 10 at 183.

29. Elizabeth Cole and Judy Barsalu, *Unite or divide? The Challenges to Teaching History in Societies Emerging from Violent Conflicts*. United States Institute of Peace, Special Report, (Washington DC 2006), 2.

30. Elizabeth Cole, 'Transitional Justice and the Reform of History Education', *International Justice of Transitional Justice*, Vol 1 (2007), 115-137.

Q'eqchi'<sup>31</sup> and monolingual.<sup>32</sup> The CEH found that it was the third-most affected department in terms of human rights violations during the armed conflict, after El Quiché and Huehuetenango, and that the Q'eqchi' were the second-most affected ethnic group.<sup>33</sup> The REMHI report notes that Alta Verapaz was the second-most affected department in terms of the number of registered victims and acts of violence, and that the Q'eqchi' were the worst-hit ethnic group by number of victims.<sup>34</sup> From 1981 to 1983, the municipalities of Chisec, Coban and San Cristobal were severely affected by the conflict. The CEH report indicates that it suffered 55 massacres, while the REMHI report records 63.<sup>35</sup> Recent research reveals that Cobán suffered 33 massacres with 40 villages destroyed.<sup>36</sup> According to Monsignor Flores, the bishop of Cobán during the 1980s, at least 40 percent of the Q'eqchi' were displaced from their communities and 20,000 were forced to live as displaced persons, hidden for years in the mountains.<sup>37</sup> They struggled to survive in extreme conditions and were constantly forced to move between camps, resulting in deaths from hunger, disease and *susto* (fright or spirit loss).<sup>38</sup> In Alta Verapaz the army set up the imposed village Civil Defence Patrol system (PAC)<sup>39</sup> which became the personification of the militarisation of rural areas. The semi-feudal system on the *fincas* or big plantation farms, characterised by a lack of freedom, miserly salaries, high work pressure, abuse and absence of schooling, is indicated as the root cause of the conflict.<sup>40</sup>

Towards the end of the 80s, social reconstruction in the region proceeded slowly, due to no aid from the government and little aid from national or international organisations. Places and regions, such as Rabinal in Baja Verapaz, the Ixil Triangle and the returnees from Mexico in the Ixcán, both part of the Quiché department, received over the years, strong national and international attention. Even today, compared to those regions, a strong presence of international agencies, NGOs or the State in projects designed to support survivors in Alta Verapaz is lacking.<sup>41</sup> Almost 25 years after the massacres, survivors still face structural inequities. Alta Verapaz had the highest number of land conflicts. Between 2000 and 2006 there were 464 land conflicts with a concentration in the municipalities of Cobán and San Pedro Carcha.<sup>42</sup> People must deal with poverty caused by the contrast between the high cost of living

31. PNUD, Informe Nacional de desarrollo humano. Guatemala: Diversidad étnico-cultural: La ciudadanía en un estado plural, (Guatemala: PNUD, 2005), 325-344.

32. 65.7%, the highest in the country. *Ibid.*, 350 and 399.

33. CEH, *supra* 28 at vol. 2

34. REMHI, *supra* 24 at vol. 4.

35. CEH, *supra* 28 at vol. 3; REMHI, *supra* 24 at vol. 4.

36. Alfonso Huet, *Nos Salvó La Sagrada Selva. Memoria de Veinte Comunidades Q'eqchi'es que sobrevivieron al Genocidio* (Guatemala 2008).

37. Carlos Y. Flores, *Bajo la cruz* (Coban 2001).

38. Huet *supra* 36.

39. Officially, participation in the patrols was voluntary; in fact, it was obligatory for all males between 15 and 60, on penalty of severe punishment or death. They were responsible for numerous human rights violations as they were forced to take over military tasks like sweeping areas for guerrillas and attacking so-called subversive villages. At the peak of violence they numbered 1,000,000 men and were dismantled in 1996.

40. Huet *supra* 36.

41. Exceptions are Panzós (massacre in 1978) and Community Xaman in Chisec (massacre in 1996) where several national and international human rights organisations set up projects.

42. Secretaría de Asuntos Agrarios Presidencia de la República Guatemala, 2007.

and very low incomes, discrimination and abandonment by the State, and finally divisionism provoked by the conflict.<sup>43</sup>

It was mainly the Catholic Church that played a role in local social reconstruction. First, the Pastoral Social in Cobán supported displaced people and refugees from Mexico during the 80s and 90s. Its social workers were involved in helping thousands of people in the late 80s relocate and organised workshops on labour rights in *fincas*, human rights and Peace Agreements. In 1995 the ODHAG set up with support from the Pastoral Social of Cobán the Office of Peace and Reconciliation to organise the work of REMHI in Alta Verapaz. The Spanish Sister Rosario Celis coordinated this REMHI-Alta Verapaz office. The Office organised workshops to train more than 40 local investigators who collected 862 testimonies in total for the REMHI. They organised, as the first REMHI office in the country, collective testimonies in affected communities through which survivors shared and reflected at community level their experiences during the conflict.<sup>44</sup> Sister Celis and her group of reconciliation promoters from a number of Alta Verapaz's affected communities continued within the framework of the follow-up phase of REMHI. The Office elaborated a Q'eqchi' version of the popular REMHI version and spread this throughout the communities with which they worked and returned the collected collective testimonies to the respective communities. They organised workshops with survivors discussing topics such as reconciliation, reconstruction and forgiveness, and provided psychosocial assistance during exhumations. Sister Rosario introduced the findings of the REMHI in communities with a large PAC presence. This effort is greatly valued by victims and former PAC members. Her efforts helped survivors not only to understand better the mechanisms of the conflict, but also to see that what they had faced was part of a larger phenomenon.

Social reconstruction is very difficult when people who have committed atrocities in their own community are living together with their victims. The necessity of interdependent social and economical survival procured an inevitable way of co-existence of divided people. The way survivors reconstructed different social ties varied between communities depending on how they had been affected, the possibility to obtain land during the relocation process and the persistent political influence of ex-PAC chiefs. In this complex process of social reconstruction Q'eqchi' survivors mobilised 'local and cultural practices and attitudes'<sup>45</sup> to understand the violence, and reshape social and spiritual ties and relationships. In fact, they have not waited for the formal justice system to be rebuilt and/or interventions of national and international actors implemented before starting the process of finding a new *modus vivendi*. Locally and culturally driven practices of remembrance, truth telling and historical memory

43. Huet supra 36.

44. This happened in eight communities of Cobán and also with survivors of the military camp Acamal.

45. Currently there is a tendency in transitional justice and peace building to integrate local/traditional views and mechanisms; however, this is contested. The phrase 'local and cultural practices and attitudes' is used because this bypasses the – largely irrelevant – debates on what is traditional and what is not, and is broad enough to encompass a wide range of phenomena. Eva Brems and Lieselotte Viaene, *Transitional justice and cultural context: learning from the universality debate*, *Netherlands Quarterly of Human Rights*, forthcoming

form part of this. The following descriptions show that each type or new phase in this long memorialisation process address the different changing needs of survivors over time. Further, the crosses, the commemorative ceremonies and rituals, and the different steps in the research process and educational material are what Dwyer and Santikarma calls 'sites of ambivalent memory'.<sup>46</sup> Because, 'all become scars on a social body that may scab but rarely heal, for to close off the wounds would be foreclose the possibility of memory, and to stop remembering would mean to stop participating in the world that has made survival possible'.<sup>47</sup>

### **Local and Cultural Sites of Memory: Cross of Sahak'ok (1995) and Cross of Xalab'e (1999)**

Despite the abandonment of the region by the State and human rights organisations, two communities from different regions in Cobán made remarkable efforts to confront the history of political violence in their region in the 1990s, which implied the beginning of a still ongoing local and cultural memorialisation process.

In November 1995, in the Saha'kok region of Cobán, a huge white cross was erected on the hill of El Filo, with two marble plaques bearing the names of 916 victims. This was the result of an extensive, well-coordinated and locally driven process of recovery of names of the people who died during the conflict involving 28 communities across an area of 600 square kilometres. In 1994, a number of elders, *k'amol b'e* (he/she who guide the way) had dreamed of a large white cross emerging from a mountain, which according to Flores was interpreted as 'a supernatural sign from their disappeared relatives who died during the violence and had not been buried in accordance with traditional practices'.<sup>48</sup> In the Maya Q'eqchi' cosmovision it is the *Tzuultaq'a* (Hill-Valley)<sup>49</sup> who communicates with the people through dreams. The *Tzuultaq'a* transmitted in those dreams the restlessness of the spirits (*xmuhel*) of the disappeared people and that they should be brought together at the hill to find tranquillity and peace (*tuqtuukilal*). This spiritual message encouraged the elders to challenge the ruling fear and silence, which was still under military control, and to visit the neighbouring communities to collect the testimonies and names of those who had died. This process was supported by a Belgian cooperant, Bernard Dumoulin,

46. Dwyer, Leslie and Santikarma, Degung, 'Speaking from the shadows: Memory and mass violence in Bali', In Pouligny, Chesterman and Schnabel (eds), *After Mass Crime. Rebuilding States and Communities* (Tokyo 2008) 190-214.

47. *Ibid.* 209.

48. Flores, *supra* 37 at 43.

49. *Tzuultaq'a* or mountain spirits is a central concept determining the identity and being of the Q'eqchi'. It omnipresent, guiding and oversees all actions of daily life. The idea of a personal, transcendent God is not inherent to their cosmovision; however they do not ignore the Christian God, as the majority of Q'eqchi' are Catholic. In fact, God and the *Tzuultaq'as* are overlapping and indivisible. *Tzuultaq'as* own the land and everything on its surface. Permission should be asked of the spirits to cultivate the land, or build a house or a road. See Estaban Haeserijn, 'Filosofía popular de lo K'ekchi' de hoy,' *Guatemala Indígena*, 10 (1975), 44-54. Carlos Rafael Cabarrús, *La cosmovisión Q'eqchi'e en proceso de cambio* (San Salvador 1979); Ruth Carlson and Francis Eachus, 'El mundo espiritual de los Kekchies,' in *Estudios cognitivos del Sur de Mesoamérica*, ed. Helen L. Neuenswander and Dean E. Arnold (Dallas 1977); Richard Wilson, *Maya Resurgence in Guatemala: Q'eqchi' Experiences* (Norman 1995).

who arrived in 1988 with his wife in Salacium, the neighbouring village. The couple worked in the region under the umbrella of the Catholic Church that had never been permanently present there. The Church wanted to revive its presence, organise the catechists and Catholics, and observe and register the situation. Through their long-term engagement, the couple had gained the trust of people which was a mix of displaced people and PAC. Their work was focused not only on the catechists of the region, but also the elders, the former traditional leaders.<sup>50</sup> Only after years of presence, did the couple hear the unspeakable testimonies of the conflict in the closed and safe space of the houses of the people. In 1994, elders had asked Dumoulin to accompany them on their community visits and to make up lists of names of the dead.

This memorialisation process is embedded in a complex political, social and cultural context. The region of Sahak'ok was destroyed by the scorched-earth campaigns of the army in the early 80s from which the majority of the people fled into the mountains for years. With the amnesty offered by Ríos Montt's government in 1982 and the military policy of promoting a large-scale return of displaced people, many Qeqchi', decimated by prosecution and hunger, decided to return.<sup>51</sup> Thousands of people were taken in by the army and moved to military camps, where they usually received ideological 're-education'. Toward the end of the 80s, the different military camps closed and the residents had to relocate and reintegrate into the region. This difficult and complex process happened generally in three ways: they returned to the old villages, by incorporation into other villages and the creation of new villages.<sup>52</sup> During the initial phases of relocation, they faced humiliations, accusations and threats from PAC and those who had stayed in their villages. The army had created a climate of fear and hostility, as part of its psychological war, causing deep distrust of those 'from the mountains' (*aj rub'el pim*) who were seen as guerrilleros. Until their formal demobilisation in 1996, PAC remained in the villages. The neighbouring village Salacium, at that time a three-hour walk across a sloping landscape, had a very different experience of the war. This village was totally controlled by the military base of Playa Grande and formed the limit of the scorched-earth campaigns. The people did not seek refuge in the surrounding mountains, so the men were forced to patrol the village and region. The commissioners and chiefs of PAC of the village provoked terror and fear.<sup>53</sup> In Salacium, similar to other regions, many people, foremost PAC, converted to evangelical churches during the conflict to save their lives as the Catholics were accused of being 'communists' and 'guerrilleros', whereas people who fled remained Catholics. This is the main reason why the people of Salacium did not participate in the construction of the cross as the participants received several treats from commissioners and chiefs of PAC of Salacium that they would destroy the cross.

50. According to the CEH the magnitude of violence and imposition of PAC had seriously undermined trust within many communities and caused a rupture in the Mayan social fabric and indigenous authority system, disrupting social norms and elements of cultural identity. CEH, supra 25 at vol. 4.

51. AVANCSO, *¿Dónde está el futuro? Procesos de reintegración en comunidades de retorno* (Guatemala 1992)

52. *Ibid* and Huet supra 36.

53. In reaction, the guerrillas attacked the village on 10 May, 1982 ending in the massacre of 22 people including two children.

However, despite this, some of their PAC members gave names of their dead relatives and helped with its construction. Remarkably, in this long process with 500 people's collaboration, there started in the same year, the agreement on the establishment of the CEH, which was signed in Oslo, but there was no communication between macro and micro-level initiatives.

This process culminated on 5 November 1995 with two ceremonies which reveals one of the complexities of local and cultural particularities and realities: an intertwining or syncretism between Mayan rituals and Christian symbols. In fact, the cross has become a centre for personal and communal spiritual life. During the nightly ceremony, a *wa'vesinq* or feeding ritual is performed. This is always performed for any major construction such as a church, a house or a bridge, but also the first use of agricultural tools such as machetes. According to Q'eqchi' spirituality, people but also many animals, plants and material objects possess a spirit (*muhel*). The root of *muhel* is *mu* and means 'shadow'. In fact, the feeding ritual is performed with all first use of material objects which possess a spirit (*mu*) and implies an offering of the blood and raw flesh of a chicken, cacao and *b'oj*<sup>54</sup>. The offering creates a contract with the *Tzuultaq'a* (Hill-Valley) and the raw material, securing a licence to use the raw material and land.<sup>55</sup> These objects also have power (*wankilal*) and according to Wilson, have therefore an 'ambivalent power to be propitiated and harnessed to ensure life'.<sup>56</sup> In the context of the cross of Sahak'ok, Flores states that by this feeding ritual the cross receives a protecting spirit (*xyoxil*) and a moment is created by which the spirits (*xmuhels*) of the disappeared who wander around can enter the realm of the *inframundo* or world of ancestors.<sup>57</sup> The ceremony the following morning has a more political undertone because, in the presence of a national and international public, the people openly denounce the atrocities. As one of the elders said during this ceremony: 'Now, the people will know that we are not telling lies!'<sup>58</sup>

An important leader states that the cross is not only for the community of Sahak'ok but for the entire region and that it would lead to a dialogue<sup>59</sup>:

Why was the cross built? Well, I think it is not only for this village [Sahak'ok], but for all the villages in the region. It is a road to bring us to a dialogue and would lead to a revival among us. So that we would not be longer rejected, not only those who suffered the violence [in the mountains], but also those who did not suffer.

This memorial became a physical and spiritual site of memory, which made room not only for spiritual healing and public mourning; this cross also created space for openly challenging and offering a counter-narrative against the army discourse that

54. A homemade alcoholic drink made from fermented maize and sugar cane.

55. Wilson, supra 49 at 245.

56. Ibid., 107.

57. Flores supra 37 at 52-57.

58. Fieldnotes Alfonso Huet on the day of the inauguration of the Cross, November 1995.

59. Fieldnotes Lieselotte Viaene, April 2008.



all the people who hid in the mountains were guerrilleros (*aj rub'el pim*) and therefore responsible for the atrocities. In fact, such public ceremonies for those who died have also what Beristain calls 'a value of dignifying their sacrifice'.<sup>60</sup> They go beyond the mystification of the suffering or the conversion into heroes, as 'the remembrance and the dignification of the dead are also forms of giving meaning to their social participation or what they mend to their groups and communities'.<sup>61</sup>

Each year since 1995, on 3 November and the Saturday before Easter, a Mayan offering-sacrifice ceremony (*mayejak*) and community celebration takes place near the cross of Sahak'ok to commemorate the loss of loved ones. However, participation at these celebrations has declined which some attribute to the conversion of several communities to evangelical churches. Some years ago a non-asphalted road was constructed connecting Cobán with Playa Grande and passes the two villages of Sahak'ok and Salacium. This and the deforestation of the hills made the cross visible from far away from both directions. Interestingly, now ten years later, those evangelical ex-PAC of Salacium say that 'the cross is a sign of the armed conflict, of the problems and everything that happened during those times', 'it is a sign and a testimony that cannot wipe out the violence which happened among us' and 'it reminds us that what happened is true'.<sup>62</sup> Since the construction of the cross in 1995 several different activities and projects have taken place on and around the hill El Filo. It is important to note that this cross is not a fixed place of memorialisation, frozen in the past, but rather a dynamic place of living memory, oral history and spiritual life. Recently, relatives of three exhumed bodies have decided to rebury the coffins in the chapel on the hill beneath a transparent glass plate, instead of reburying them in the cemetery of the community where other reburied remains are. Several survivors want to create a formal cemetery on the top of the hill where exhumed bodies can be reburied.

In 1999, in Xalab'e, a remote community in the Nimlasachal region, another large cross was erected to commemorate 468 victims from 24 communities. The names of the victims are written on its base, which also bears a short but very powerful poem (Q'eqchi' and Spanish version) written by a young man who had witnessed the conflict as a child. This extract of the poem reveals the strong will of survivors to transmit their experiences:

We are ready to pass on to  
 Youngsters and children  
 What we have faced  
 So that never again returns  
 a repeat of what we have suffered

Here the initiative rose from the idea of local leaders who wanted to set up a similar process as in Sahak'ok. Likewise, the elders and local leaders visited the surrounding

60. Beristain, *supra* 7 at 254.

61. *Ibid.*

62. Fieldnotes Lieselotte Viaene, focus group discussion with ex-PAC of Salacium, May 2008.

communities to collect the names of the dead. Several ex-PAC from the neighbouring villages helped with the construction and names of PAC victims that appear. This cross, surrounded by mountains, stands in the middle of the region where the massacres took place. This initiative was given support by REMHI in Alta Verapaz, the *Asociación de Desarrollo Integral Comunitario Indígena* (ADICI) and the Secretariat of Peace of the Guatemalan state (SEPAZ). The original dynamic of the process interfered with the agenda of the SEPAZ, which adopted this local initiative as part of a pilot programme of reparation from the state in the Alta-Verapaz department. Apparently, the SEPAZ took over the process by, for example, enforcing the design of the memorial, a Christian cross, although survivors had originally a Mayan cross of wood in mind. The date of inauguration was set by the SEPAZ, although two key persons with long-term engagement with survivors of that isolated region and with the process of recovery of the names, namely Sister Rosaria and Alfonso Huet, could not attend the ceremony on that specific date. Despite its isolation, the cross of Xalab'e is regularly used as a commemoration site and space to perform community celebrations.

Interestingly, both crosses are the result of spontaneous and locally and culturally driven processes of reconstruction of local historical memory and advancing local reconciliation. The names not only belong to victims of the massacres and people who disappeared or died from famine, malnutrition, disease or *susto* in the mountains, but also include the names of dead relatives who were PAC. The above-mentioned reflections of ex-PAC from Salacium regarding the cross of Sahak'ok reveal the concern that the suffering should not be forgotten, that the next generations should know what occurred and the need to share different experiences.

Despite the efforts of truth seeking at national level in the late 90s, currently there still exists a great need to not only reconstruct and transmit experiences, but also to understand better the highly localised forms of violence that divided families and communities. As a war widow explains<sup>63</sup>:

Maybe someone should come here, who would say: I will tell you how this violence started. Maybe he could also clarify some things; maybe we can listen and learn how it made its way here. And in which village this problem started. Whereas we do not hear this, we do not know this. And maybe this would make us happy again, or maybe not, because we would feel that we are still not complete.

### **Research and Publication: "The Sacred Mountains Saved Us"**

To address this real need, an in-depth research project to recover local memories of resistance and survival of 20 Maya Q'eqchi' communities of displaced people was set up in 2001. The researcher Alfonso Huet is a Belgian cooperant who arrived in the region in 1980 and worked initially in several rural areas of the Cobán municipality through the Catholic Church. This project had its origin in a research proposal that Huet had elaborated with the Guatemalan anthropologist Myrna Mack in 1990 when

63. Fieldnotes Lieselotte Viaene, focus group discussion widows, Samac, July 2007

they worked together in the region with displaced people. At that time, Huet worked as executive secretary of the Pastoral Social de la Diócesis de La Verapaz and was closely involved with the relocation in the region in the late 1980s and early 1990s. Myrna Mack raised the necessary funds whereas Huet looked for a Q'eqchi' researcher to conduct the research. The brutal murder of Myrna Mack in September 1990, however, cancelled this research. Huet was the co-founder with Sister Rosario Celis of the Office of Peace and Reconciliation of the REMHI-project in Alta Verapaz. Further, he collaborated with a small team of the REMHI national office which was created to investigate the cultural implications of the violence; however this team was dismantled. Huet's engagement with the research project is not only rooted in those experiences, but lies also in his awareness of the disappointment among many survivors who had given their testimony to the REMHI on its final report. The REMHI report had a national focus and did not include many details about the different regions and even less the local and cultural experiences in the communities, as one survivor expressed<sup>64</sup>:

We told everything that we went through so that would know who had the laws and power, but we got a book which is no longer about us; it is something else that is written down.

The research methodology focused on personal testimonies and family and community narratives and relied on the intertwining of the four types of truth as distinguished by the South African TRC. The forensic truth was important; however, in the specific local and cultural context of oral tradition and where the concept of time is closely linked to agriculture, the recovery of this type of truth is complicated. For example, for survivors it was difficult to recall the exact date of the massacre that was carried out in their community; they settled on the time of year that their *milpa* (maiz fields) was flourishing. The different forms of interviews provided an environment for survivors to tell their stories in their own languages.<sup>65</sup> This narrative truth allowed the capturing of people's perceptions, stories, cultural understanding and experiences. The family and community interviews and also the workshops or discussion groups created spaces of 'dialogue truth' and even 'healing truth'. Those moments created not only an in-depth understanding of the local and cultural complexities of the testimonies through interaction, debate and discussion, but also offered a physical space of affirmation and acknowledgment of a person's pain, which is central to the reparation of human dignity. Interestingly, at a certain moment of the research, several ex-PAC members living in the community of Chicoj Raxquix, where the majority are originally from the region of Xalab'e, approached Huet. Those ex-PAC had heard that Huet was carrying out research on the conflict and insisted on being heard. Although the focus of the research was the perceptions of displaced people, Huet decided to do this and on a Sunday morning, a group of 20 ex-PAC came to his house to give their testimony. These voices created an additional subchapter about the PAC in the book.

64. Fieldnotes Alfonso Huet, workshop TC 24,116

65. The interviews were conducted in the Q'eqchi' language in 20 participating communities using a semi-structured topic list.

The research was first published in 2006 in the Q'eqchi' language and in 2008 followed the Spanish version of the book with the title 'The Sacred Mountains Saved Us'. It was the author's commitment to survivors to publish the research first in their own language to reciprocate for their testimonies and acknowledge their cultural identity. Both books, unlike many books on the historical memory of conflicts, are punctuated with extracts of the testimonies. This offers not only a very direct voice for survivors, but also creates a lively inside reconstruction of historical memory. This allows also communities and investigators to get access at the local sources, while the REMHI-testimonies were sent to Guatemala City where they remain inaccessible. This research forms part of a growing body of local studies about the impact of the armed conflict and the recovery of historical memory in other regions such as Rabinal<sup>66</sup>, Ixcán<sup>67</sup>, Ixil region<sup>68</sup>, and Panzós<sup>69</sup>.

The Q'eqchi' publication was presented to the broader public of survivors in two villages around the celebrations of All Saints Day and All Souls Day, at the end of October and beginning of November in 2006. The 20 representatives organised a two-day programme in both communities with a nightly ceremony where the books received a *wátesinq* (feeding ritual), Catholic celebration of the word, projections of several documentaries about the conflict, communal dinner and breakfast and communal *mayejak* (offering-sacrifice ritual). Many families from the surrounding communities attended. Afterwards the book was disseminated among local authorities, catechists and heads of communal committees responsible for education.

The feeding ritual *wátesinq* is normally only performed to feed certain material objects which possess a spirit to enhance the inherent force and power (*wankilal*) of that object. It is clear that the testimonies and lists of names make the book contain a spirit which should be fed to strengthen his subsistent power. Therefore, this ritual feeding of the books embodies the spiritual value of the written historical memory. During the actual public presentation of the book, several participants in the research gave their testimony on the conflict and research. One elderly man made a very strong statement when declaring that the book 'is a Holy Scripture, a sacred writing because our dead *compañeros* are sacred'. The books also symbolise the important transformation of oral knowledge to written knowledge. The publication converts the memory of their lived experiences from a perishable to factual form. Similarly, the marble plaques of the crosses embody an even stronger transformation because stone does not decay.

Importantly, during the communal *mayejak* ceremony new powerful symbolic elements of historical memory were introduced. A *mayejak* or offering-sacrifice

66. Tecú Osorio Jesús, *Memoria de las Masacres de Río Negro. Recuerdo de mis Padres y Memoria para mis Hijos* (Guatemala 2002) and Museo Comunitario Rabinal Achi, *Oj K'astik. Estamos Vivos. Recuperación de la memoria histórica de Rabinal (1944-1996)*, (Guatemala, Rabinal 2003)

67. Falla Ricardo, *Masacres de la Selva*, Ixcán, *Guatemala (1975-1982)*, (Guatemala 1992)

68. Cabanas Andrés, *Los Sueños Perseguidos. Memoria de las Comunidades de Población en Resistencia de la Sierra. Tomo I*, (Guatemala 1999).

69. Paredes Carlos, *Té llevaste mis palabras. Tomo II "Testimonios de sobrevivientes de la violencia política en comunidades del pueblo Q'eqchi'"*, (Guatemala 2006).

ceremony is the main ritual in Q'eqchi' spiritual life and is performed individually, within families or with the participation of the entire community. People offer candles and *pom* to the *Tzuultaq'a* to ask for support in their agricultural activities, in the house, well-being of the family or an illness. A *mayejak* can be a phase in a conflict resolution process. People always pray and petition to the four cardinal directions or corners of the cosmos which reflects their social and spiritual connection with the universe. During the ceremony in Chicoj Raxquix all the names were pronounced in a loud voice during the prayers. An elderly man of the community had dreamt a few days before that this should be done to remember all the people who died in the surrounding mountains without being buried. In fact, this practice in the *mayejak* ritual bears similarities to one of the sewing rituals of maize, the sacred alimentation for the Maya, performed in the centre of a field. During the *chapok k'al* or 'to grab the crop' ritual,<sup>70</sup> the Q'eqchi' prays and petitions in the direction of the four cardinal directions of the cosmos. In his prayers he mentions not only God, the *Tzuultaq'a*, the names of the surrounding hills, the moon and sun, but also the names of the families living nearby and in neighbouring villages and of deceased relatives. The prayers go further to all the villages, countries and seas beyond the visible horizon. This reflects the Q'eqchi' collective engagement with people and cosmos because his petition asks that not only he may sow, but that everyone may sow, harvest and eat. Therefore, the act of pronouncing the names of the dead and of destroyed villages may imply that the people participating in the *mayejak* ask that not only their dead relatives find tranquillity and peace (*tuqtuukilal*), but that everyone who died during the conflict can find this *tuqtuukilal*. So, survivors cannot find tranquillity and peace unless everyone can.

The above rituals show that people attribute new symbolic meanings to old rituals and reveal their flexibility to adapt to new social realities. Indeed, as Culbertson and Pouligny argue, local groups return to traditional means to cope with atrocities but 'innovation is part of every culture's reality, and borrowing and grafting ideas from the outside and reshaping old concepts to new experiences are also important strategies'.<sup>71</sup>

When the research concluded, the participants decided to create their own organisation, the Resistance Committee of Q'eqchi' survivors (CORESQ). The committee's central goal is to disseminate historical memory throughout the various communities of Alta Verapaz through three kinds of networks: schools, local authorities and elders, and catechists. The members felt that the suffering should not be forgotten, but be transmitted to the next generations. The publication in Q'eqchi' was an important first step in writing up oral history about the conflict. During the first meeting of CORESQ in January 2007, ideas and views about the future steps were shared and several members mentioned that teachers and local leaders had shown interest in and appreciation for the work. However, they were concerned

70. See Wilson supra 49 at 102-103.

71. Culbertson and Pouligny supra 19.

that a voluminous textbook in Q'eqchi' is not feasible where the majority of people are illiterate and schools teach mainly in Spanish. There rose the wish to elaborate a popular version in Q'eqchi' of the book to advance its accessibility, which formed the seed for the next important step. The group of CORESQ fits in Jelin's idea of 'memory entrepreneurs' or people, such as Mothers of the Plaza de Mayo in Argentina, 'who seek social recognition and political legitimacy of one (their own) interpretation or narrative of the past. We find them engaged and concerned with maintaining and promoting active and visible social and political attention of their enterprise'.<sup>72</sup>

At the time of the presentation of the books in Q'eqchi' in 2006, a Belgian PhD researcher, Lieselotte Viaene started to conduct research about how particularities of the Mayan Q'eqchi' culture could play a role, or are already playing a role today, in post-conflict processes at local level. Between 2006 and 2009, she conducted 20 months of ethnographic field research among Maya Q'eqchi' survivors in three regions of the Cobán municipality (Nimlahak'ok, Salacium and Sachal). She used methodological triangulation to achieve an in-depth understanding of the research question.<sup>73</sup> Her work is that of a committed scholar, grounded in engagement with local and cultural perceptions and struggles in post-conflict processes. Therefore, she engaged directly with the concern and demand of CORESQ to elaborate a popular version of the Q'eqchi' book.

### ***The Pedagogic of Local Historical Memory***

This wish lifted the outcome of the research to another stage of memorialisation which aimed to address the local need of dissemination among other survivors and youths. As one elder expressed:<sup>74</sup>

The children and youngsters of now, well, sometimes they say that it is true, but sometimes that it is not true. So there are those who believe us, there are those who do not believe us, and all of this, well, we have lived this violence.

Many survivors are highly concerned about the doubts that live among youths about the certainty of the suffering. Many youths in the villages do not believe that a conflict of that magnitude occurred in the country. The historical memory of the conflict is not formally integrated into the educational curriculum.

This new phase was completed two years later, on 28 May, 2008 with the presentation of educational material, a set of five posters, that represented visually the five chapters of the book. Its organic features marked this long process as there was constant interaction and interchange of ideas and proposals between us and the

72. Jelin, *supra* 2 at 33-34.

73. She organised semi-structured focus group discussions with survivors (displaced people, widows, the elderly and ex-PAC); conducted formal and informal individual interviews with community leaders, spiritual guides and elders; and organised linguistic workshops. Opinions were canvassed regarding issues of violence, justice, reconciliation, coexistence, reparation and truth recovery. For the majority of participants, this was their first opportunity to express their opinions regarding these issues. She also performed participant observation during community meetings and commemorative ceremonies.

74. Fieldnotes Lieselotte Viaene, focus discussion group, Nimlahak'ok, August 2007.

members of CORESQ. It was a participative process because the members participated as actors and executors of their own ideas, whereas we functioned as supporters and facilitators. We engaged in this process because we believe that social researchers should consider the Mayan practice of reciprocity, meaning that if researchers aspire to obtain cooperation and interesting topics for their investigation, they also should collaborate actively with local initiatives and projects.

Five different phases can be distinguished in the elaboration of this educational material.

First, during a brainstorm among members, several ideas were suggested to publish a popular and visual version of the book. The idea that convinced all was that of the elaboration of posters with pictures that retell the content of the book. Many NGOs use posters during their workshops because they can hang them in communal meeting centres. Posters have several advantages. They have a strong visual effect and unlike brochures, they cannot get lost in other paper or run the risk of being untouched like photo books. The second phase embraced a discussion of the design and content of the posters. CORESQ decided that there should be five posters representing the five chapters. Each poster should contain four pictures which express the four main ideas of the chapter accompanied by a short explanation in the Maya Q'eqchi' language. In the centre of each poster should appear a drawing or picture that captures the main theme.

The third phase contained the search for original photographic material. Survivors are concerned about the doubts that permeate youths; therefore they insisted on using original photos of the different moments of the conflict: the massacres, destruction of villages, survival in the mountains, etc. However, this search was not very successful. The Guatemala Fototeca of the Centre of Mesoamerican Research (CIRMA) which is the main historical photograph collection in the country has a small number of important historical pictures of the conflict. However, they are mainly taken in the Communities in Resistance (CPR) in other regions and showed other experiences. We had access to the private collection of 800 slides taken by a Belgian couple who lived for three months in the CPR of Ixcán in 1987. Together with members of CORESQ we browsed through the collection, but only four pictures represented their survival in the mountains. Indeed, unlike the CPR of Ixcán, the displaced Q'eqchi' did not receive support from international and national organisations and their settlements were less equipped. Many pictures showed women dressed in different ethnic clothing.

Because of the lack of original photographs, the members decided to organise a two-day reconstruction of several scenes of the period before and during the conflict with the goal of taking the missing pictures. This idea was inspired by a video of a sociodrama about the conflict performed by youths in Rabinal, Baja Verapaz, which members of CORESQ had seen when visiting the communal museum in that village. The two-day reconstruction in the community in Sa'nimtaq'a was organised in September 2007. Only members of CORESQ, in total 25 people (elders, men, women and children), participated by acting out the scenes and Viaene was the photographer. During the two days, seven scenes were acted: exploitation in the

*fincas*, spy-commissioner (*oreja*), the abduction of community leaders, destruction of the *milpa* by PAC, rape of women, burning down of a house, flight/refuge to the mountains and life in the military camps such as Acamal. For the several scenes the appropriate materials were gathered such as old and worn-out clothing, sacks of *magey* (sisal) in which people previously carried coffee in the *fincas* and old *mecapals*. The participants did not need an elaborate scenario of each scene to play, because their inspiration and imagination came from the heart.

The fifth and final phase was the discussion, compilation and selection of 25 photos or drawings from those collected from members of CORESQ. During the first meeting after the reconstruction, the participants shared their experiences with others of the group which made for a very enriching meeting. During the following meetings, members discussed the subtitles that should accompany the 20 pictures, the background colour of each poster and four Maya *nawbals* of the Maya calendar that represent the main theme of each poster. Finally, three drawings made by survivors, four pictures from the private collection about the CPR in 1987, four pictures from the early 80s of one of the authors and 14 of the reconstruction were selected. Three thousand sets of five posters in Q'eqchi' were printed and five hundred of the Spanish version.

Here the content and background of the second poster with the subject 'the massacres and the flight to the mountains' is briefly discussed. The four main themes of the poster are: abduction of community leaders, they raped and desecrated our people, massacres and scorched-earth campaigns, and the flight up to the mountains. The background colour of the poster is red which expresses the blood that ran through the communities during the attacks of the army and it carries the Maya *nawhal K'eme*, the symbol of death.

One proposed scene by CORESQ was the rape of a woman by a soldier, which came particularly from the female members of the group. However, at the moment of the reconstruction of that scene, the participating community leaders objected to the idea in that the youngsters, who played the role of the soldiers during the two days, would 'learn reprehensible conduct'. This scene was cancelled; however upon the insistence of the participating women, a solution was found in that one of the participating women would dress up as a soldier. All the other scenes were reconstructed in the presence of everyone; only the two women and female photographer played this particular scene. The survivor, who offered to play the raped woman, had actually been raped in the wake of the conflict. The selected picture shows the back of a soldier with a woman struggling in his arms in the grass. During the discussion of the phrase that should accompany this picture the participating elders proposed the subtitle: '*nimal ru xmuxuk li qatenamiit*', which means 'the huge violation and desecration of our people'. The concept of *muxuk* means to desecrate, defile and violate the sacred or spiritual value of something. The term also carries the connotation of sexual assault. It is also possible to desecrate *Tzuultaq'a*, maize, a tortilla or house by displaying unacceptable behaviour. In this sense, the expression, *xoo'e'xmux*, which occurs frequently in interviews with survivors, means 'they desecrated the cosmos and us as



humans', and clearly reflects the desecration of the natural, social and spiritual world. One displaced person explains:<sup>75</sup>

I can say: the *muxuk*, first they defiled our lives, which means that they dishonoured lives, they killed our parents. And they raped our women, we can say, our family, maybe we can say that the ladies were raped, all of us, this is *muxuk*. They desecrated the deity of our subsistence, they burned it ... They burned the holy cornfields. This is desecration, they desecrated the holy beans, burned all the holy calabash.

Regarding the third central theme of the poster that represents the massacres and the scorched-earth campaigns, a consensus among members existed from the beginning that this should be symbolised by a burning house with dead people outside. Therefore, a member especially constructed a wooden house in Sa'nimtaq'a to burn it down during the reconstruction. Members agreed to reconstruct a house according to the features that this house had in that period. Currently, the wooden houses are made of boards, whereas two decades ago they used to be constructed of wooden poles.

In May 2008, the set of posters and Spanish version of the book 'The Sacred Mountains Saved Us' was presented at a public gathering of representatives of local civil society, NGOs, and schoolteachers in Cobán. Also, a *wátesinq* ritual was performed to feed the posters and books before their first use. The elders of CORESQ explained that without this feeding ritual the posters would not be treated with the necessary respect and dignity. As a trial, some members of CORESQ presented the posters in two communities, namely Sahak'ok and Salacium. The presentation in Sahak'ok, where the large majority are displaced people, was during a regional meeting of local authorities. The reactions were very positive in that people could recognise them in the visual presentation of the historical memory. As expected, the reactions were more critical towards the kind of truth embedded in the posters in Salacium.<sup>76</sup> The group who attended the presentation had a strong representation of ex-PAC, ex-PAC leaders and evangelical people. Also, the representative of the victims of the army attended the presentation. The posters do not include a picture or a subtitle that refers to the actions of the guerrillas, although the role of the guerrillas is largely discussed in the book. Members of CORESQ recognised this lack in relation to the group in Salacium and invited them to send a representative to attend their own meetings.

The publication of the set of posters in Q'eqchi' brought about another new step in the process of remembrance, memorialisation and recovery of historical memory. The posters were a catalyst for the creation of a local and autonomous curricular project. After the publication of the research in Q'eqchi' in 2006, the Departmental

75. Fieldnotes Lieselotte Viaene

76. The agitation laid mainly in the fact that members of CORESQ who presented the posters in Salacium were from Nimlhak'ok and in Salacium existed the rumour that some people of Nimlahak'ok had actively participated in the massacre of 10 May 1982.

Head Office of Intercultural Bilingual Education (JEDEBI)<sup>77</sup> of Alta Verapaz showed interest in the book because of the lack of educational material in Q'eqchi' for the course of social science which also includes history lessons. However, JEDEBI raised the issue of useful educational material. An official convention (November 2007) was reached with JEDEBI to include the historical memory of the Q'eqchi', based upon the book 'The Sacred Mountains Saved Us' and the set of posters in the National Curriculum for primary schools. Originally, JEDEBI covered only schools in rural areas where the education system is obligatory bi-lingual education. Yet, since 2009 the Intercultural Bilingual Education includes all official urban and rural primary schools in Alta Verapaz, with around 3,000 schools and more than 150,000 students.

In the framework of this convention other educational material in Q'eqchi' has been elaborated: a brochure in Q'eqchi' for children with clarification and tasks related to the posters and also a textbook in Spanish for teachers. In January and February 2009, four workshops were organised to train 150 teachers working for JEDEBI and a group of catechists and religious leaders of the indigenous communities. Participants evaluated the training as very interesting and appreciated the topic, methodology and received educational package which included the book in Q'eqchi', posters, brochure and textbook. They highly appreciated the personal testimonies of some CORESQ members during the training and demanded more similar training. This education package stimulates teachers to engage the public and schoolchildren in dialogue about the past of the conflict and to discuss even contemporary problems and challenges such as environmental problems, intra familiar violence, and transmission of cultural values and traditions. However, the results of monitoring in September 2009 conducted among 88 teachers in 34 schools revealed that 46% of teachers did not use the material and 70% had not applied the methodology. A preliminary interpretation of these disappointing results points to the deficiency of JEDEBI, but mainly to the ambivalent engagement of many teachers, mostly urban and ladinos, and the living resistance toward the issue of the armed conflict. The results invite further in-depth research and more regular monitoring. In January another group of teachers, mainly Q'eqchi' and those working in the more isolated villages will receive training.

## Reflections: Lessons Learned

Nonetheless in the recent trend in the transitional justice and peace building field to promote local and bottom-up perspectives, there is still a lack of in-depth empirical research around survivors' aspirations and perceptions in different local and cultural contexts on post-conflict processes and interventions. Therefore, we will end this paper with several reflections on the meanings and practices of locally and culturally driven projects of memorialisation, truth telling and historical memory, and the idea of local ownership, drawn from the above discussed experiences and our own experiences with Maya Q'eqchi' survivors in different contexts, settings and moments.

77. JEDEBI Alta Verapaz is one of the subdepartments of General Direction of Bilingual Intercultural Education (DIGEBI) which is one of the directorats of the Ministry of Education.

An important point is the ability of outside actors to acknowledge and take into account local perceptions and practices about coming to grips with the legacy of atrocities in the design and implementations of their interventions. In Guatemala, the international community and national organisations have stimulated a victimised vision by emphasising the suffering of the victims and ignoring their capacity to make choices, to resist and even to participate politically.<sup>78</sup> According to Jelin, this is inherent to the interpretive framework of human rights violations because 'the polarity is between human rights violators on one side and victims on the other'. In this discourse, a victim is perceived as a 'passive being, harmed by the actions of others. The victim is never an active agent'.<sup>79</sup> However, as Laplante argues in the case of the Peruvian TRC it 'is not only the voice but the agency of victim-survivors in keeping collective memory alive after a truth commission concludes its work'.<sup>80</sup> The above described locally and culturally driven practices of remembrance and recovery of historical memory reveal clearly the agency of Q'eqchi' survivors. Therefore we prefer the term 'survivor' which refers to all the people affected by the internal armed conflict in Guatemala: returnees, internally displaced persons, as well as ex-PAC members, above the word 'victim' to stress their agency. In fact, acknowledging their agency fosters not only the 'de-victimisation' of the victims, but also implies further in-depth research to grasp the role of deeper cultural and spiritual forces and values that survivors exert to survive the lived atrocities. Consultation processes are imperative in the design of interventions; however, as Naidu point out, they currently 'undermine local capacities by using a top-down approach to 'rubber-stamp' pre-determined agendas'<sup>81</sup>. The described construction process of the Xalab'e cross is an example of this approach. Therefore those consultation processes should focus on 'community empowerment strategies that seek to contribute to the empowerment of the key stake holders to whom the project is aimed'<sup>82</sup>. However, an important challenge for outsider interventions is to incorporate culturally based views and expectations into their policies of fostering local social reconstruction processes. They should be actively involved at every stage of their projects as 'knowledge brokers',<sup>83</sup> that is people who understand both worlds and who can look both ways. This ability to understand in-depth local and cultural complexities implies a long-term engagement with local communities and regions which, however, cut across the common timetable of the international community that works with three to four-year projects. Therefore, outside interventions should extend their project timelines and funding commitments, and advance a balanced power relationship between them and their beneficiaries.

Second, it is clear that inserting local narratives and survivors' testimonies in history education, as a specification of the general findings of the Truth Commissions,

78. Matilde González, *Se cambi'ó el tiempo: Conflicto y poder en territorio K'iche'* (Guatemala: AVANCSO, 2002).

79. Jenin supra 2 at 54.

80. Lisa Laplante, 'The Peruvian Truth Commission's Historical Memory Project: Empowering Truth-Tellers to Confront Truth Deniers', *Journal of Human Rights* (2007) 448.

81. Naidu, supra 8 at 2.

82. Ibid.

83. Sally Engle Merry, 'Transnational human rights and local activism: mapping the middle', *American Anthropologist*, (2006) Vol 108(1), 38-51.

and moreover using the local language and cultural concepts, should be considered as an integral part of transitional justice. The active involvement of local 'memory entrepreneurs' is key because they are a group directly involved with its memory project generating commitment from others, fostering participation and organising efforts of a collective character and generating new ideas and creative initiatives<sup>84</sup>. These local narratives contribute to unmasking 'dangerous moral relativism – for example, equating mass killings by a state's military and police forces with fewer killings by guerrillas or resistance groups as in South Africa or Guatemala'<sup>85</sup> and is an important contribution to local social reconstruction and strengthens the vigilance against future violence.

Finally, not only the receptivity to local and cultural sensitivity forms a building block of local ownership of memorialisation and historical memory processes, but also the awareness that the passage of time embodies a process and nurtures what the South African TRC called 'healing or restorative truth' among survivors with different experiences with a conflict. Indeed, the passage of time enables survivors to achieve perspective on their lived experiences and the broader context. As Biggar states, 'in public life as in private, remembering and dealing with the past is likely to be process rather than an event. We can do it bit by bit over years, and probably generations'.<sup>86</sup> Laplante even argues that it is not just the product of memory that has potential for healing and preventive purposes, but that also the process of memory recovery empowers formerly silenced people to become agents.<sup>87</sup> As one leader of Xalab'e who lost family members when hiding says, at first during the relocation process there were many accusations from ex-PAC towards them, that is those 'from the mountains'. Yet, over the years their behaviour has changed and the reproaches have stopped. Now, 'we are seeing each other as equals', and 'now there exists again some usilal, goodness'. He even proposed that it would be good to engage a mutual understanding of the different conflict experiences<sup>88</sup>:

It would be good if they [the patrollers] would have understood what the reality was, but there are some who realized how it was or why it happened to us. The people are comprehending it little by little. There are also many patrollers who talked to me: 'it was not our idea to get involved with the violence, they [the army] forced us to do it', 'it is true this was not the way', 'we were forced to help the rich people'. This is what patrollers told me. ... 'We just helped the army commit violence against our own poor brothers'. There are a lot of brothers [patrollers] who are telling me this now.

84. Jelin, *supra* 2.

85. Cole and Barsalu, *supra* 29 at 9.

86. Nigel Biggar, 'Concluding remarks', in Nigel Biggar (ed.) *Burying the Past: Making Peace and Doing Justice after Civil Conflict*, (Washington DC 2001), 271.

87. Laplante, *supra* 80.

88. Lieselotte Viaene, fieldnotes, personal interview, May 2009.





5

Secuestraron a los líderes



6

Nos violaron y profanaron a nuestro pueblo

## LAS MASACRES Y LA HUIDA A LA MONTAÑA



Nos salvó la sagrada montaña



7

Masacres y 'tierra arrasada'



8

Set of posters which are part of the educational material about the local historical memory of twenty communities of internally displaced Q'eqchi' (elaborated in 2007-2008)







## 6

## The Internal Logic of the Cosmos as 'Justice' and 'Reconciliation'. Micro-perceptions in post-Conflict Guatemala

Lieselotte Viaene

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An important and recent development in peacemaking and transitional justice policies has been the use of traditional and informal justice systems. For all its shortcomings, the implementation of the *Gacaca* courts in Rwanda, a local dispute settlement mechanism to address the legacy of the genocide, is recognized world-wide as an emblematic experience and ambitious exercise in mobilizing 'traditional' justice in post-conflict societies (Penal Reform International [PRI], 2002; Waldorf, 2006). Also other countries have mobilized traditional mechanisms of conflict resolution in post-conflict processes. The most well-known examples are the *mato oput* rituals, part of the Acholi justice system in northern Uganda, and the incorporation of traditional leaders in the truth and reconciliation commissions in Sierra Leone and Timor-Leste. Even Kofi Annan, the then UN Secretary-General, officially acknowledged that: 'due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their vital role and to do so in conformity with both international standards and local tradition' (UN, 2004: 12). International non-governmental organizations (NGOs) and donor countries have supported and even promoted those traditional justice instruments: 'a hype was born' (Huysse, 2008). However, it is remarked that: 'It is common place to hear that culture and context "matter", and that any intervention – peace-building or otherwise – must be "culturally sensitive". This has been truer of rhetoric than reality' (Poulligny et al., 2007: 3).

These experiences with the mobilization of traditional approaches to justice and reconciliation into transitional justice strategies have contributed to the growing awareness among transitional justice scholars that the transitional justice template is highly abstract, general, legalistic and top-down. Recently, a consensus has emerged in favour of changing lenses and broadening the scope to local approaches (McEvoy and McGregor, 2008). Indeed, it is crucial to acknowledge the indivisibility of the local and international dimensions of transitional justice. As Engle Merry (1997, 2006) has emphasized, it is necessary to take into account transnational processes

to understand and theorize on local legal phenomena. Therefore, similar to the 'localization/vernacularization' of human rights (Engle Merry, 2006; Goodale, 2007), the transitional justice field too should focus more on what happens when the global (transitional justice efforts from the state or international actors) meets the local (communities and survivors), and vice versa (Viaene and Brems, 2010). The current trend in this field is to use population-based surveys to ensure a broad scope when informing and evaluating transitional justice policies (Pham and Vinck, 2007). Yet this methodology fails to explore the deeper local and cultural logics in which needs, perceptions and attitudes are embedded. Only a few in-depth studies, based on ethnographic field research, have examined the encounter between globalized discourses on justice, reconciliation, truth and reparations on the one hand, and their appropriation or failure in a specific local and cultural context on the other (though see Honwana, 2005; Johnston and Slyomovics, 2009; Pouligny et al., 2007; Shaw, 2007; Theidon, 2006).

This article contributes to filling this gap of ethnographic studies in relation to transitional justice issues. It explores local Mayan Q'eqchi' understandings from Guatemala on justice and reconciliation. This forms part of a broader research project on the role of cultural context in transitional justice, which examines how particularities of Q'eqchi' culture could play or are already playing a role at the local level in the aftermath of the internal armed conflict. The Q'eqchi' were one of the Mayan groups severely affected by the conflict and are currently the second-largest Mayan group of Guatemala. I draw upon over 20 months of ethnographic research between July 2006 and May 2009 in the Alta Verapaz department, specifically the micro-regions of Nimlasachal, Nimlaha'kok and Salacuim, which are part of the municipality of Cobán. In post-conflict processes an ethnographic approach is very appropriate since it helps to understand those processes on the people's own terms, to study sensitive topics and to move beyond black and white views (Shaw, 2007; Theidon, 2007). I have chosen to use methodological triangulation, or multiple data collection techniques to reinforce an in-depth understanding of the research question. First, to disentangle the language tangle of Spanish–Q'eqchi', preliminary consultation determined the proper Q'eqchi' terms and concepts with two linguists, widows, elders, spiritual guides and two foreigners with more than 30 years' experience with Q'eqchi'. Here it is worth noting that external actors, such as (inter)national NGOs and donor agencies, often perceive language tangles as just a consequence of insufficient understanding of local languages and oral traditions. However, a close scrutiny of the semantic logics of terms related to justice, reconciliation, truth and reparation can open windows to cultural understandings that are beneath the visible surface.<sup>1</sup> Furthermore, several linguistic workshops with legal translators, linguists and elders, and additional focus groups with elders were held. Indeed, the analysis of logical relations and semantic fields hidden in Q'eqchi' words and expressions that refer to their normative system, is very helpful in understanding the cultural perception of the conflict and its impact.<sup>2</sup> Over 25 semi-structured focus group discussions with victims, witnesses and ex-PAC were organized in different communities.<sup>3</sup> Opinions and concerns regarding issues of justice, reconciliation, coexistence, reparation and truth recovery

were examined. For the majority of the participants it was their first opportunity to express their opinions regarding these issues. Further, numerous formal and informal interviews were conducted with community leaders, spiritual guides, and local and foreign people with experience of the conflict and social recovery in the communities. Participant observation took place during daily life activities, community meetings and commemorative ceremonies in the different regions. Also, key stakeholders of national human rights groups, indigenous victim organizations and interlocutors of civil society were interviewed.

The first section of this article sketches the armed conflict, the perception of justice and reconciliation at macro-level, and transitional justice efforts with impact at the micro-level. Next, the basic principles of the Mayan normative system are examined to better frame Q'eqchi' perceptions of justice and reconciliation. The third section discusses survivors' local and cultural understandings of the conflict. Further, the analysis of ethnographic data reveals the absence of a demand for justice for those responsible for atrocities. The following section explores the underlying reason for this. This local and cultural analysis demonstrates that beneath the surface there is substantial activity that, at first glance, is invisible. Indeed, without falling into an overly romanticized reading, Q'eqchi' survivors have managed to mobilize 'local and cultural practices and attitudes'<sup>24</sup> to face the legacy of the atrocities and to find a new *modus vivendi*. The final section localizes justice and reconciliation at Maya Q'eqchi' community level and reveals that impunity, as defined by international law, is not the end of accountability, nor truth recovery or reparation. Apparently, the internal logic of the cosmos through an invisible force creates a space in which the perpetrator can reintegrate into communal life and through which victims' pain and suffering are acknowledged.

## **Guatemala: Dealing with the Legacy of 36 Years of Internal Armed Conflict**

In December 1996, comprehensive Peace Agreements were signed between the Guatemalan government and guerrilla forces, which brought an end to 36 years of conflict. During the military regimes of Generals Lucas García and Ríos Montt (1978–83), the counter-insurgency strategy, with its forced disappearances, large-scale massacres and scorched-earth campaigns targeted the rural Mayan population, resulting in the death or disappearance of approximately 200,000 people, 600 massacres, 400 destroyed villages, mass displacements and a refugee stream to Mexico. According to the final report of the UN-sponsored Commission for Historical Clarification (CEH, 1999), the Guatemalan state was responsible for 93 percent of human rights violations and guerrillas accounted for 3 percent. The report acknowledged that between 1981 and 1983, 'the Army identified groups of Mayan people as the internal enemy, because it considered that they constituted or could constitute the basis of support for the guerrillas', and concluded that the acts of the Guatemalan state against the Mayan people amounted to genocide (CEH, 1999:

Conclusions). The great majority of victims (83.3 percent) were indigenous Mayans. The organization of Mayan men in PACs in the early 1980s to defend villages against guerrilla attacks was one of the key 'mechanisms of horror' (REMHI, 1998) of this counter-insurgency war. Officially participation in the patrols was voluntary; in fact, it was obligatory for all males aged between 15 and 60, on penalty of severe punishment or death. The PACs were the embodiment of the militarization of rural areas and, at the peak of violence, they numbered some 1 million men. They were responsible for numerous human rights violations as they were forced to take over military tasks like sweeping areas for guerrillas and attacking so-called subversive villages (Popkin, 1996; Remijnse, 2002). There was nowhere else in Latin America where 'an army managed to mobilize and divide an indigenous population against itself to such an extent – even to the point of forcing victims to become accomplices and kill one another' (Schirmer, 1998: 81). According to the CEH, this conflict was rooted in the historical and structural marginalization of and discrimination against the majority indigenous Maya population, and the economic and political dominance of the non-indigenous minority.

With regard to the Alta Verapaz department, the CEH report shows that, after El Quiché and Huehuetenango, it was the third worst-affected department in terms of human rights violations and the Q'eqchi' ethnic group was the second worst-affected (CEH, 1999: vol. 2, 321). The most severely hit municipalities in the Alta Verapaz department were: Cobán, Chisec and San Cristobal. Due to the scorched-earth methods, at least 40 percent of the Q'eqchi' were displaced from their communities and some 20,000 were forced to live as refugees hiding in the mountains for months or years (Flores, 2001). During the early 1980s Cobán suffered 33 massacres, with 40 villages destroyed and burned (Huet, 2008).

In the wake of the peace negotiations, Guatemala undertook official and unofficial initiatives to deal with its past atrocities in response to demands from civil society. While a discussion of Guatemala's efforts is beyond the scope of the present article, it is important to describe the perception of justice and reconciliation at the macro-level, and the interventions at micro-level.

Accountability remains fragile because the impunity of the armed forces for past atrocities persists after more than a quarter of a century. Of the 669 documented massacres by the CEH, only in three cases have those materially responsible been successfully prosecuted. There is a clear lack of interest in the judicial system in investigating and prosecuting the people responsible, which contributes to the feeling of omnipresent impunity. The absence of major changes resulted in a weak state responding to interests of the elite in opposing transformation of the root causes of the conflict (Impunity Watch, 2010). Further, the term 'reconciliation' remains contested for several reasons. Reconciliation has been used by the military to promote amnesty. Following the example of countries in the region, in 1996 an amnesty law – the Law of National Reconciliation – was proclaimed to protect perpetrators from prosecution.<sup>5</sup>

Further, the Catholic Church, through follow-up of the project for Recovery of Historical Memory (REMHI),<sup>6</sup> promoted the word in their discourses on

truth, justice and forgiveness. A striking statement is: 'Sow the truth, and justice and reconciliation will be the harvest.' Nonetheless, human rights activist Helen Mack states that a shared conceptualization of reconciliation is lacking and a real reconciliation process has never been stimulated (Mack, 2005).

At micro-level the involvement of individuals and communities was remarkable in the processes of truth recovery through collecting testimonies that were set up by the truth commissions, CEH and REMHI, in the mid 1990s.<sup>7</sup> In that time, civil society was active in promoting exhumations of mass graves and building local memorial monuments in the different affected regions (Sieder, 2002). In some regions exhumations are still taking place and are supported by civil society groups. Currently, state interventions which have direct influence on local communities are the National Reparations Programme (PNR) for victims, active since 2005 and the compensation of the ex-PACs since 2003.<sup>8</sup>

It is important to note that the Peace Agreements of 1996 not only ended the conflict, but also presented a commitment to redefine the nation-state as 'multi-ethnic and pluri-cultural'. Indeed, the Agreement on the Rights and Identity of Indigenous Peoples (signed in 1995) expresses this official commitment, calling for constitutional and legal recognition of Mayan organizational forms, political practices and customary law, plus the cultural and socio-economic rights of indigenous people. Yet, as Sieder and Witchell (2001) note, indigenous movements, by advancing their claims through the law, have used legal discourses of international human rights and multiculturalism, projecting an essentialized, idealized and atemporal vision of harmonious and millenarian Mayan culture for greater autonomy and representation. Significantly, both truth commissions recognized that the majority of victims were Mayans, and in the same period of the 1990s there was a strong demand from indigenous movements for collective rights. However, neither the state nor human rights organizations nor indigenous victim organizations made any reference to the role or potential of Mayan cultural resources and practices in dealing locally with the atrocities.<sup>9</sup> Recent empirical research is lacking in the different affected regions as to how communities are 'picking up the pieces',<sup>10</sup> and how survivors, victims and ex-PACs, perceive the official and non-official efforts or lack of response.<sup>11</sup>

Before moving on to a discussion of Maya Q'eqchi' perceptions on 'justice' and 'reconciliation' in the post-conflict context, a brief review of the cornerstones of what has been conceptualized as a Mayan normative system, is now presented.

## **Maya Normative System: the Sacred, Harmony, Respect and Shame**

Here it is important to note that the idea of a 'Maya culture' as a homogeneous whole is problematic. Instead the complex, fluid and hybrid character of culture should be acknowledged (Cowan et al., 2001; Pitarch et al., 2008). Indeed, as will be discussed in the next sections, the impact of the internal armed conflict, and influences of Christianity and of human rights discourses, should not be overlooked. Only a few local studies have addressed in depth the philosophical base of the Mayan normative

system and its forms of administration of justice (Esquit and Ochoa, 1995; IDIES, 1998; Saqb'ichil-Copmagua, 1999). These studies, mainly conducted during the 1990s, should be seen as active attempts at reconstruction of this system.

The legitimacy of the Mayan normative order lies in oral history, because that is where its foundations are located (Esquit and Ochoa, 1995). It also resides in the community and its institutions, such as the family, elders and traditional authorities.

According to the Mayan cosmovision, no distinction is made between the social, natural and sacred spheres that make up the cosmos. All norms reference the sacred aspect or part of any possible level. Here the concept of the sacred, 'assumes the existence of interrelations between all elements of Creation and that all elements of Creation have a function related to the balance in Nature. The human species is just one of the links in this totality' (Saqb'ichil-Copmagua, 1999: 68). Maize, family altar, caves, churches, hills and millstones are sacred. The sacred is not only limited to the relationship with the deity, such as the *Tzuultaq'a* (lit. 'Hill-Valley') or mountain spirits for the Q'eqchi', but also assumes the character of asocial and holistic relationship (Esquit and Ochoa, 1995).

The focus is not the struggle between order and chaos but on reaching harmony between these two concepts through shame, respect and obedience. Shame, respect and obedience are intimately associated with the maintenance of order presented in an ideology of harmony, and they play central roles in the organization of social relations. Shame is understood as 'the powerful feeling that wounds the mind in a very painful manner' (Esquit and Ochoa, 1995: 21). The attitude of obedience and respect identifies a recognition of and dutifulness towards the norms. Being disrespectful implies a loss of shame.

Transgression is understood as the result of an action derived from or evidence of having committed a fault, or from the presence of inadequacy or badness (Esquit and Ochoa, 1995). A fault can be defined as an attitude of disrespect provoked by inattention and/or ignorance. Inadequacy or badness is behaviour that arises from an individual's own will. Further, every transgression of the norm embarrasses the perpetrator and also his family, by showing them to the community as people 'outside the order, the straight path' (Saqb'ichil-Copmagua, 1999: 37). The acts which deviate from the straight path shatter the internal balance and harmony of the person, and between the person and the community, and/or between the person and the deity. So, every transgression leads inevitably to a sanction, whereby the person is punished by the community or supreme being (Esquit and Ochoa, 1995).

Conflict resolution in the Mayan normative system is reconciling and compensating, seeking to restore social harmony. Crucial is the use of extended discussions and dialogue to reach a mutually satisfactory solution, where family, local authorities and elderly as spiritual guides can be consulted as third parties. The character of sanction is mainly reparative and the common mechanisms include: calling attention to and acknowledgement of wrongdoing or lack of respect, restitution of compensation and community work. Only in extreme cases, such as causing the death of another through witchcraft, are the accused and their family expelled by the community (IDIES, 1998).

## **Survivors' Local and Cultural Understanding of the Conflict: Maya Q'eqchi' Perceptions**

Currently, 92.8 percent of the population in Alta Verapaz is indigenous and the majority are Q'eqchi' and monolingual (PNUD, 2005).<sup>12</sup> Mayan Q'eqchi' spirituality surrounds daily activities such as agriculture and health issues. *Tzuultaq'a* is a central concept determining the identity and being of the Q'eqchi' (Cabarrús, 1979; Haeserijn, 1975; Wilson, 1995). It is omnipresent, guiding and overseeing all actions of daily life. The idea of a personal, transcendent God is not inherent to their cosmology; however they do not ignore the Christian God, as the majority of Q'eqchi' are Catholic. *Tzuultaq'a 'yo'yo'* means *Tzuultaq'a* lives and is keeper of the earth and all its inhabitants. The Q'eqchi' must ask permission from *Tzuultaq'a* with a *majejak* (an offering-sacrifice ceremony) to cultivate land. According to Wilson (1995), all the influences on the Q'eqchi' identity, such as the pre-Columbian period, the colonial experience, the Catholic Church and the conflict, are projected upon the collective figure of the *Tzuultaq'a*. He states that (1995: 15): 'The mountain spirit is a "recurring" symbol that disappears and emerges reinvented in each strategic context.'

It is important to note that, towards the end of the 1980s, social reconstruction in the Q'eqchi' region proceeded slowly because there was little aid from government and national or international organizations. Today, compared to other regions, Alta Verapaz lacks a strong presence of international agencies, NGOs or the state in projects designed to support survivors. Almost 25 years after the massacres, the survivors still have to face structural inequities. Alta Verapaz has the highest number of land conflicts in the country.<sup>13</sup> Further, the people must deal with poverty caused by the contrast between the high cost of living and very low incomes, discrimination and abandonment by the state, and finally disunity provoked by the conflict (Huet, 2008). Further, social reconstruction is very difficult when people who have committed atrocities in their own community and region are living side by side with the victims. However, the necessity for social and economic survival makes it inevitable that people divided by the violent conflict will find a way to coexist. The way survivors reconstructed different social ties varied from community to community, depending on the different ways in which they had been affected by the conflict, the possibility of obtaining land during the reallocation process and the persistent clout of ex-chiefs of the PAC.

In this complex process Q'eqchi' survivors mobilized local and cultural practices and attitudes to understand the violence and to reshape social and spiritual ties and relationships. Here, an examination of the lived experiences gives a more holistic understanding of those forms and strategies.

### **The Conflict as *Nimla Rahilal*: Huge Suffering and Pain**

Q'eqchi' victims and ex-PAC members, use the term *nimla rahilal* when referring to the period of conflict. *Nimla* is large; *rahilal* means suffering and pain (physical,

emotional and spiritual). *Nimla rahilal* refers to suffering or pain that is the result of a 'final' loss, for example, the loss of a family member or harvest, home or money due to natural disaster. A final loss implies a type of pain that cannot be repaired; it is an irreparable loss. Indeed, the scars left by the *nimla rahilal* will not disappear, as a survivor explains: 'It is like a thorn in our souls, it is like having a knife in our stomachs.' An ex-PAC member compares the impact of the conflict on communal life with a destroyed beehive: 'because now everybody is going their own way and you cannot bring them together any more'.

Counter-insurgency measures not only violated people's human rights and caused human suffering; it also violated and transgressed social and spiritual norms established by the communities, which led to the breakdown of their *tuqtuukilal* (tranquillity, harmony, peace).

### ***Beyond human rights violations: 'They desecrated the cosmos and us as humans'***

*Muxuk*, *maak* and *q'etok aatin* are concepts that refer to different types of transgressions and cause imbalance and disharmony on the personal, interpersonal and community level, and also in relation to the cosmos.

The word *muxuk* means to desecrate, defile and violate the sacred or spiritual value of something. When the dignity (*loq'al*) of a person is desecrated, the people say that *muxuk* has occurred. This concept refers to sexual assault and rape. Yet, it is also possible to desecrate *Tzuultaq'a*, maize, a rock, tortilla or house by displaying unacceptable behaviour. Significantly, *xoo'əxmux*, a term which frequently appears during interviews with survivors, means: 'they desecrated the cosmos and us as humans'. This reflects the desecration of the natural, social and spiritual world, because of the bombings and the destruction of the holy maize fields and other crops.

*Muxuk* has been done in various ways; they [the army] dishonoured all the sacred hills [*Tzuultaq'a*]. Because they threw big bombs, big grenades on the sacred hills, the sacred valleys, true, there we saved ourselves in the sacred hills, the mountains have a deity, true and we defended ourselves over there. Everybody defiled our dignity. (woman)

During the conflict, the army manipulated various symbols and concepts of the Q'eqchi' culture such as *maak*. In the military camp Acamal, through which many thousands of displaced people passed, the army implemented a formal programme of ideological re-education.<sup>14</sup> The army trifled with the concepts of sin, guilt (*maak*) and paying for this guilt (*tojok maak*). As a result, the Q'eqchi' identified the cause of events of the conflict in a context of sins and transgressions, rather than in the army's scorched-earth strategy (Huet, 2008; Wilson, 1995). In other words, the conflict was presented as an evident expression of the sin of the population of having opposed the state. Nevertheless, the ideological brainwashing in the camps failed, because now the survivors are saying: '*Li tojok maak sa' kampaameent. 'Ka' ta wi' qamaak? Maak'a!*', which means: 'Paying for guilt in the camp. What is our sin? We don't have any!'



Also, the militarization of the concept of *chaq'rab* (the code of norms) is significant. One official explained his interpretation of the *chaq'rab* to a community, stating that:

God created heaven and Earth and put them under his rule to maintain balance and harmony between all the elements. This same God supervises the Law from the heavens, but he entrusted the observance of this law on earth to the army. (Huet, 2003: 69)

A last concept is *q'etok* (to bend, to fail to do something), which refers to disrespecting and disobedience to norms that are socially and spiritually accepted. *Q'etok aatin* is a profound expression and means 'to bend the word', signifying disobedience, breaking one's word or ignoring someone's counsel. 'Respect the word' is a key norm in Mayan culture and is considered an ethical sign of familial and communal obedience (Esquit and Ochoa, 1995: 21). This expression appears in people's complaints regarding constant non-compliance with promises made by politicians and the state. The CEH (1999) stated that the conflict, with its brutal violence and imposition of the PACs caused a rupture in the Mayan social fabric and indigenous authority system, disrupting the social norms and elements of their cultural identity. The army deliberately destroyed sacred places. So it is argued that the counter-insurgency tactics almost completely dismantled and destroyed nature and the sacred, leading to *q'etok* of their world.

## No Vengeance, no Demand for 'Justice'

Only God knows it. He will compensate for it. God will take vengeance. We can't do it, this one [Rios Montt] we can't bring him to court. Never can we bring one of our brothers to court. Only God will return the compensation for the suffering that he caused to the communities, to the villages. We are not saying one word of what he did, that what he did, without knowing who really did this. Only God knows who led this idea to bring the problems. Only God knows who directed it, who brought this problem to us. (elderly woman)

How do survivors feel toward the people responsible, materially and intellectually, for the *nimla rabilal* suffered?

Survivors almost never spontaneously demand prosecution of the perpetrators during the focus group discussions and interviews. Once they actually start speaking about justice, they almost never express a wish to sue the responsible national or local authorities. Only a few people, leaders who have received training in human rights issues from the REMHI-Alta Verapaz team, the UN Verification Mission (MINUGUA) or local NGOs, mention justice as being necessary as it is not their first concern.

Analysing the field data, several reasons can be identified in order to understand this. First, many victims still do not know the reasons for this conflict, or even who

was in power at the time. Second, regarding the offences committed by the PACs, many survivors are aware that these patrollers were commanded to act by the army.

Survivors raise the question: what benefit would a prosecution bring for them? If the intellectual perpetrators are in prison they cannot help victims.

I would like [Rios Montt] to help us: he left us in difficulty. He destroyed our houses; they destroyed our belongings, our millstone, so they should give us a replacement.  
(elderly woman)

Significant is the opinion of a survivor whose father, sister and brother were killed by soldiers, and whose uncle, father-in-law and brother-in-law died in a massacre carried out by guerrillas. He was forced to participate with the patrollers. This man does not think about taking vengeance or demanding justice. Instead, the most important thing for him is that aid reaches every survivor:

Hopefully the government, yes, I wish that they help us with the suffering that we had to live with, that they help us with this pain, because I don't want, and I don't like, that only some are helped. And I, as I'm not a son of the government, because all of us are sons of the government, not only me, not only those who suffered violence in the mountains, we are all children of the government.

The National Reparations Programme (PNR) pays compensation to the relatives of a limited category of victims that were killed. Yet, as discussed elsewhere, to receive money for your dead, as well as the procedures, generate sentiments of guilt, frustration and dissatisfaction among victims (Viaene, 2010). What victims actually ask is for the government to restore their destroyed possessions and to give them title to their lands.

As mentioned, complex social, economic and power realities should not be overlooked in understanding social recovery at the local level. Here, a too romanticized and harmonious reading of those local social reconstruction processes must be avoided. Therefore other explanations for the lack of demand for prosecutions could be: the lapse of time between the massacres and the resettlement, fear of the local perpetrators, lack of familiarity with the official justice system and lack of presence of human rights organizations that advocate demands for justice.

However, analysis of the interviews uncovered a more influential reason: people know that those responsible bear the guilt of having exceeded their position and of elevating themselves to a place of supreme being by deciding between life and death, and are paying for their faults in this life. Survivors say: '[The] blood of the dead, and our tears, will fall down on those people.' This reflects the meaning of *q'oqonk*: the internal logic of the cosmos that, through an invisible spiritual force, fosters a new *tuqtuukilal* or tranquillity.

## The Internal Logic of the Cosmos as 'Justice' and 'Reconciliation'

We are doing *q'oqonk*, let's say, justice for those who were president before. I reflected on this well that we aren't doing this [demanding justice]; there will be no justice because we leave it in the hands of God how much we suffered. (widow)

### **An Invisible Spiritual Force: Manifestations of Transgressions**

Whereas concepts such as *muxuk*, *maak* and *q'etok aatin* refer to types of transgressions, the concepts that reveal that there was a transgression are *awas*<sup>15</sup> and *q'oqonk*.

It is stated that both concepts belong to the domain of the *secretos* or secrets of the Mayan cosmivision, which are guarded by the elderly and transmitted orally to other generations.<sup>16</sup> Applying these secrets led to an improvement of social life and a realization that certain things cannot be done because their consequences directly affect the transgressor, his family and the community (Saqb'ichil-Copmagua, 1999). These *secretos* are conveyed when the time is ripe for it and can therefore be seen as levels in an educational process. Both concepts are considered to imply a prohibition that should be respected; otherwise an imbalance is provoked and a sanction is the consequence. Therefore it can be stated that they refer to an ethical and moral code.

Here, the notion of *q'oqonk* (the stem is *q'oq*) is examined more profoundly as it arose in relation to the notion of justice during the interviews. It is a phenomenon that relates closely to transitional justice in a broader sense. Given that it belongs to a different philosophical, epistemological and ontological frame of reference, it remains complex to translate it and understand its profound meaning. A unique written description was found in Haeserijn's dictionary (1975: 203), in which he describes *q'oq* as 'pain or sadness that somebody or something feels for being treated badly/ wrongly and that will be converted into a retributive punishment of the causer of the pain or sadness'.

Crucial in Maya cosmivision is the dynamic understanding of balance and harmony. A transgression cannot be repaired as it is impossible to return to the original situation. So the imbalance of social relations created by this transgression cannot be repaired, though it may be transformed into a new balance or harmony by instilling shame in the causer, offering him advice and guidance so that he recognizes his fault and asks for forgiveness. In this process of correction and education, the family, the elderly and local authorities play a significant role.

However, sometimes a person consciously and intentionally harms someone and does not acknowledge the transgressive attitude. Behaviour that affects someone's dignity, such as mistreatment, contempt, humiliation, disrespect, adultery, discrimination, not sharing food, murder and also exceeding one's position in the community provokes a situation where the causer receives *q'oq* of the hurt person. In fact, the person will suffer *q'oq* once his deviant behaviour has accumulated to a certain level. The elders use the image of a ceremonial bowl that fills up with the tears

of hurt parents, and say that one day their child, as the cause of their suffering, will drink from it when it is full. In the eyes of Q'eqchi', this *q'oqonk* is like a 'scientific law: it will happen'. Q'eqchi' know that unresolved conflicts related to certain transgressions against other humans or things with sacred value will be resolved by spiritual interventions which transcend their human capacity.

A striking narrative is that of an elderly woman in which she relates the mistreatment and contempt she and her husband suffered for a long time from their son-in-law, the father of the son-in-law and their own daughter. The father-in-law and his son mistreated and disrespected the girl for a long time and, under pressure from her family-in-law, this girl disrespected her own parents. As a consequence, their seven grandchildren, the children of the daughter, died when they were still babies. The elderly woman says that the daughter and the husband received her *q'oq* through the children.

Not only humans suffer pain and distress caused by the behaviour of others. Also, the *Tzuultaqa'*, the maize, the spirits of the dead and animals can cry, suffer, and feel pain. Therefore, the causer of this suffering can also receive the *q'oq* of these things. For example, a very significant expression is 'the maize weeps', when people treat sacred maize without respect.

But the maize is making the *q'oqonk*; it is crying there; they [small animals] hear when the maize is crying; the small animals come to pick it up. But it is crying and it is *q'oqonk* – that's what it's doing. The sacred corn that we've sowed in the earth is doing *q'oqonk*, but why? Because it is not the right way we sow the earth: maybe there is no pom and no candle; it is because we just threw [the seeds]. . . . Then what do its [*Tzuultaqa'*] animals do? There it comes again: it sends its animals. They enter to defend the sacred maize. (elderly man)

The interviewees explained also that the result of *q'oqonk* is that the causer will suffer a fatal accident, incurable illness and/or will live in poverty. In addition, it is important to distinguish *q'oq* from witchcraft. Witchcraft is the effect of a conscious attitude, as when a person contacts a witch to make somebody ill or kill someone; *q'oq* is the invisible spiritual force of the pain, tears and sadness that somebody or something feels due to being treated wrongly.

The retributive consequence is not suffered in some afterlife but now, in this world, by the person who behaved wrongly or one of his children or grandchildren. All those interviewed concurred that it isn't possible to cure somebody who is suffering *q'oq* either by medical treatment or ritual.

But *q'oq* doesn't have a remedy. It doesn't have a remedy any more because God gave it. It is like a poison that was thrown over a person. He remains suffering the *q'oq*. It hurts a lot – this *q'oq* that he started to suffer. It doesn't have a remedy. (elderly man)

In short, when a person deliberately and persistently harms someone or something and does not recognize his transgression nor seek to rehabilitate someone's dignity, it appears that an internal logic of the cosmos ensures that the imbalance created in

social and spiritual relations is substituted by a new balance. *Q'oqonk* can be seen as a consequence of transgressions of norms and implies prohibitions that are to be respected. So, these invisible spiritual forces can be grasped as consequences of the internal logic of the cosmos. Survivors, from remote as well as more urbanized communities, related that there has been an increase of cases of *q'oq* since the conflict. *Q'oqonk* also affected specific chiefs of PACs or commissioners who, by jealous enjoyment of power or pride, exceeded their position during the conflict and caused terror and fear in the communities. These cases of *q'oq* related to the armed conflict reveal that, during the conflict, certain key values of the Q'eqchi' ethical and moral code have been severely and repeatedly transgressed. The conflict had created a space wherein certain people deliberately and persistently could harm others.

I turn next to a discussion of a specific case related to the conflict from a community at 30 minutes drive from Cobán city that ties together the insights presented above. It is the case of an ex-commissioner, responsible for a massacre and several disappearances, who in 1990 became blind and lame.

### ***Emblematic Case of the Ex-Commissioner who Became Blind and Lame***

Before he was commissioner. Yet now he isn't any more; he is now very little, he doesn't see any more, he doesn't see any more because his eyes are changed. His eyes are changed, but he lifts himself up with a post; this man walks. And he is the one who ordered my husband. . . . And now he is alive, but maybe he is paying for it now, because he doesn't see any more. He does his needs in his house; he doesn't leave the house any more. (widow)

In June 1982, a few soldiers dressed as civilians killed 34 people on the road from Sanimtaq'a community to Samaq cooperative, to which their land belonged. From the cooperative, a letter had been sent to call the people to work in the cooperative. While the people were walking toward the cooperative, the soldiers attacked. It seems that a commissioner from Samaq accused these people of helping the guerrillas. Every man of the cooperative had to patrol the community. Some of them were obliged to guide soldiers into the mountains to seek out guerrilla camps or camps of refugees who sought protection in the mountains. According to the people, some of the chiefs of the patrollers and commissioners exceeded their duties and abused their power. In 2002 an exhumation of the massacre was performed. None of the people who disappeared ever came back. The massacre and disappeared men are mentioned in the database of the final report of the CEH.

Twenty years ago, the man responsible for the massacre became blind and lame. He rarely leaves his house because he can only walk with crutches and needs assistance and help with everything he does.

The opinions of widows who were victims of the massacre and also the widows' ideas regarding the leaders of this man's own community whom he caused to disappear, are here presented.

He accused them over there in the [Military] Base, and now harm is done to him. All at once, it is no longer him; he doesn't see his way any more; his leg hurts, they say.

Moreover, all of them know that the man is now suffering *q'oq*: he is paying for his errors (*tojok maak*):

He is responsible for those who died. Therefore, he is suffering *q'oq* now in this world. But, as the word of God says, what you do in this world you will suffer for, not in another place. And those who were killed by his words, from his mouth, are already with God and he is still paying for his guilt in the world. Because he called those who were killed, they don't have any guilt. . . . Now he is suffering *q'oq* of them [who died] . . .

It is striking that during the interviews none of the widows of either group of victims demanded justice. They expressed the fact that they were not reacting, because it was not their role to judge him, as only God may judge.

God knows what happened and where He will place it and how long the punishment will be. For us, it doesn't matter, neither do we hate him.

At this point, we might question the reason for a general absence of demands for justice, and an unwillingness to demand it. As previously explained *q'oqonk* refers to and is related to prohibitions that one must respect to maintain balance and harmony. If the widows actually respond to what the man has done, they, or one of their children or grandchildren will receive *q'oq* for their own behaviour towards this man. So the widows fear receiving retributive punishment for the suffering and pain that they will cause the ex-commissioner and his family by sending him to jail. It is argued that the internal logic of the cosmos through *q'oqonk* puts to an end the vicious cycle of human vengeance, pain and suffering.

Yes they have fear of *q'oq*, as said the *compañeras*; it is true that we have fear of *q'oq*, because we have heard that it is not good to respond to what you are suffering. Maybe it is like this: maybe you as a mother will not suffer it, maybe you have passed it on already, you are already an elderly woman, but your children are grown. They are the ones who will suffer for you, for what you are doing as a mother. And so I understand the word that it is not good to respond, it is not good to take vengeance. . . . The things we do, we take revenge and so we are bringing this problem down to us; we are bringing it; we are sowing the problem for our children. . . . God has it really clear; that is how I'm feeling it; I'm afraid of *q'oq*. It doesn't matter to me. I'm not the one who will judge: it is God who will judge us.

The widows also stated that they do not hate the man and behave in a good manner toward him (*k'amok ib' sa usilal*). The widows of his community talk with him and help him by giving him food.

We are good to him, we do not hate him. We talk with him, as the other lady said, he suffers too much in his house, yes, he suffers a lot. He is left without anything, so we are helping him; we are seeing him in his suffering, with his illness, yes. Like this we are talking good with this brother. Therefore we have forgiven him, not only for the big injury he made. The lady brings aid, maybe maize, beans, sugar, so we are going, yes. We leave this with him. So, we talk good to him, we don't hate him.

The fact that there is communication again and some widows give him food indicates that there is again a relation between them and the man, a new *modus vivendi* or *tuqtuukilal*. Food and *li aatin*, the word or dialogue, are signs that there is *sumaatin* or relationship,<sup>17</sup> because food invites the word or dialogue. For example, a *majejak* always ends with a meal for the participants; without that there is no *majejak*.

### **'Reconciliation': to Bear the Fault and Behave Toward Each Other in a Good Manner**

Reflecting on the presence of *q'oqonk* in this specific case, it is interesting to explore if there exists a notion of reconciliation with the transgressor who is now suffering for his behaviour during the conflict.

The issue of reconciliation in Mayan culture and in this study on the Q'eqchi' is a very complicated theme. Nevertheless, some reflections are interesting in order to comprehend the way survivors are dealing with the persons who are suffering *q'oq*. A detailed examination of syncretism between elements of an ancient Mayan culture and of Christianity is beyond the scope of this article. Yet one cannot ignore the close relationship between the concept of reconciliation and the Christian concept of forgiveness.<sup>18</sup> For example, in the Catholic liturgy in Q'eqchi', the following phrase is used to express forgiveness: *xkuyb'al xsach'b'alli maak* (*kuyuk* = to bear; *sach'oc* = delete; *maak* = sin). Indeed, as result of the Catholic appropriation of the word *maak* it is generally translated as sin or guilt. Further, this concept has been discussed by Cabarrús (1979), who distinguishes two types of *maak* or sin/guilt. One originates from doing things that are inherently bad and punishable; the other is deduced from a lack of performing the necessary ritual acts. In his interpretation of *maak* as sin, he notes that the Q'eqchi' move in a world of prohibitions in which everything is a sin or could be regarded so. Cabarrús has a very critical view of this symbolic order and states that: 'the Q'eqchi' lives in a state of fear and proof of this is the excessive ritualization which surrounds their lives'. Sieder (1997: 61), however, argues that it should be emphasized that these notions of prohibitions and guilt are not:

merely 'autochthonous', a product of some primordial essentialist order, but have historically been manipulated by external forces, be they the Catholic Church, German plantation owners at the end of the nineteenth century or the army during the height of the civil war.

Significantly, as pointed out above, *maak* has been severely manipulated by the army during the conflict.

Hence, it is important to emphasize that currently among Q'eqchi' linguists and spiritual guides there exists much criticism against the Jesuit Cabarrús's concept of *maak* as sin. His interpretation is very Catholic-inspired, thus denying the profound Q'eqchi' spiritual connotation. Interestingly:

in the Mayan religion, this concept of sin originally did not exist because there is no God outside this world who commands humans and the world. If there was a concept of sin, then it would only be the fracture in the relations between humans and in the relation between humans and nature' (Marco Antonio Paz, quoted in Esquit and Ochoa, 1995: 42)

Therefore, it is arguable that *maak* refers more to a fault, error or infraction of the norm through inattention or ignorance, than to sin. Further:

That is the reason that, in the ceremonies of the Mayan religion, respect is being asked, forgiveness is being asked, it is not from God, they ask forgiveness from the companion, from the brother, the father, the mother, from the friends who are there, against those who had committed a fault, and they ask forgiveness from nature, because one might have abused her. (Ibid)

In this post-conflict context, it is important to note that the coordinator of the REMHI-Alta Verapaz team affirms that the use of the term 'reconciliation' rose and has been spread largely in the region through her work with REMHI and her group of animators of reconciliation during the 1990s. It has been strongly related to the concept of giving forgiveness, pardon or *kuyuk maak* to the perpetrators.

Nonetheless, in the Q'eqchi' language, a clear equivalent for the term 'reconciliation' does not exist. Based on the analysis of the linguistic data, it is argued that the unity of the expressions *kuyuk maak* and *k'amok ib sa usilal* reflects this idea of reconciliation.

*Kuyuk maak* means 'to bear a fault, an error' and *k'amok ib sa usilal* is interpreted as 'behave toward each other in a good manner'. These are inseparable, as they have an internal cohesion.

It is the same in which they result: the *kuyuk maak* as *k'amok ib' sa usilal*, result in the same two, because when a brother steals something from me, just as we said earlier, he took something of me; it is not possible to quarrel with him just for this; it is better to forgive, to talk to him in goodness. I forgive him and I talk in goodness, so this is *kuyuk maak*; it makes the goodness [usilal]; the two words mean the same. (elderly man)

The causer of the fault or the pain and suffering, is the person who in the first instance must bear fault. The processes of correction help the causer to recognize this fault. Indeed, recognizing one's fault is the acceptance of one's responsibility for the fault.

The affected person is the one who will behave toward and together with the causer of his suffering in a good manner, after having accepted the fault. Also, the affected person needs to bear the other's fault. The *majejak* or ceremony is generally



the space where both parties meet to reunite their thoughts and to seek tranquility and goodness between them. A spiritual guide (*aj iliionel* – who sees the hidden) explains this with the following expressions: *xjunajinkil wi chik li qanaleb'*, *k'amok ib sa' usilal*. This means: to reunite our thoughts, to behave toward each other in a good manner.

So, how can the imbalance reflected in *q'oq* that someone is suffering, be restored?

As previously explained, *q'oq* that one suffers cannot be cured. The only solution is an offer to God/*Tzuultaq'a*/supreme being, which should result in creating tranquility in the hearts of each person, between the people and the deity:

They'll cure themselves with a ceremony, because this is *q'oq* between you [and the God/*Tzuultaq'a*/supreme being], so he'll do it. Immediately God's word comes, it comes and reunites the rest. Then they meet with the one that had a fight: they go down on their knees, they perform the ceremony among them, the men and the women who had the fight, then God's word comes, then the rest [of the participants] put on the ceremony – they pray about that to ask for its cure, that those ideas are forgotten. Then, that's how they remain in the eyes of God, and with that they stay in peace. Then the other believes it in his heart. That's how *q'oq* exists; that is how they see the meaning of *q'oq*; that's how we are before God. (elderly man)

Therefore, as another elderly man explains: 'He [someone who is suffering from *q'oq*] mistreated the other one, so the other one bore the guilt, so he didn't reply. He didn't reply, neither with a fight, with anger; no, it just remained in his heart.' Indeed, as the widows expressed above, it is not up to them to respond.

As previously said, originally there existed in the Maya cosmovision no conception of sin like that found in Christianity, because there exists only the idea of imbalance in the relations between men and between men and nature. Yet syncretism between Mayan cosmovision and Christianity cannot be denied, as, in the opinions on reconciliation regarding the perpetrators, the expressions of *kuyuk maak*, Dios (God), *q'oq*, *majejak* and *k'amok ib sa' usilal*, *tojok maak* (to pay your fault), are frequently intertwined.

This discussion of the case of the blind and lame ex-commissioner reveals the existence of multiple ways of understanding justice, reconciliation and truth recovery in post-conflict processes.

### **Other Narratives of Q'oqonk in the Context of the Conflict**

As mentioned above, many narratives were collected of ex-PACs and commissioners suffering from *q'oq* throughout the different regions.

Interestingly, some survivors remember the circumstances in which 83-year-old General Lucas García died in 2006 and interpret this also as *q'oqonk*. Apparently, he suffered during his last years from Alzheimer's disease and became totally immobile (see La Prensa Libre, 2005).

I think that it is *q'oq* that this person received, like General Lucas, who died. How many years was he ill – ten years or twelve years? How many doctors and hospitals are there in the United States? He couldn't be cured, because he ordered to kill people in Guatemala. He is the cause of the conflict. Let's say, also the cause of Rios Montt. I think he will pay for this also, because here [in this life] we pay for what we do. And I think that it is also *q'oq* of little girls, the people and women who were pregnant. This is what they will receive, because it is true. Because the people that died don't have any guilt. (man)

Important to note is that this invisible spiritual force not only has its effects in the social sphere, but also in the natural sphere. Significantly, elderly people gave explanations for the failed corn harvests and unhealthy poultry over the years. The elders attribute this to the loss of knowledge of rituals and *q'oq* of the food destroyed during this conflict.

Because there is more *q'oqonk* before God, let us say, that what was done, or the holy maizecobs, the holy maize, the holy beans, they [soldiers] took away their existence, without guarding them. Sometimes maybe there was no sowing and there wasn't any harvest; they died in the mountain. And it came over us, *q'oq* came over us. (elderly man)

Some people even attributed the massive wave of violence in the capital by youth gangs (*maras*) and murders of women (*feminicidio*) to *q'oq* or 'the consequence of all the blood of people without guilt that coloured the country during the conflict'.

## Localizing Justice and Reconciliation at Maya Q'eqchi' Community Level

The ways Q'eqchi' survivors deal with the impact of extreme abuse and transgression of the social and spiritual order in their own community or region affirms that: 'transitional justice is not the monopoly of international tribunals or of states: communities also mobilize the ritual and symbolic elements of these transitional processes to deal with the deep cleavages left – or accentuated – by civil conflicts' (Theidon, 2006: 436).

The various stories of those who are suffering *q'oq* contain similar elements. The protagonists are people who collaborated with the army by giving them names of suspected guerrilleros, which led to the death of those people. Most of them killed civilians with *ganas* or pleasure. Jealous pride and enjoyment of power made them exceed and abuse their position as chief of the patrollers and commissioner. These people decided on the life or death of the villagers.

Some have died in strange circumstances and others are suffering from incurable illnesses. The people of the community, and also the villagers of communities nearby, have heard of these people and understand very well what the origin of their suffering is. The people who are still alive are blind, lame, poor and dependent on others to perform simple actions, to move about in the community and survive. They are in a powerless situation totally opposite to their position during the conflict. The internal

logic of the cosmos put them in a shameful situation, not only for themselves, but also for their family. Indeed, as outlined above, inducing shame is one of the basic principles of the Mayan normative system. At first sight surprisingly, in the case of the blind and lame ex-commissioner, even his own victims are helping him which reveals the existence of a new *modus vivendi* or *tuqtuukilal*.

In addition, the situation in which these people are found, is comparable to the image of 'to drop his head' or *kubsiik aawib*. This invisible spiritual force lets them 'bend – kneel' in public, in front of those who suffered: the community and the deity. The image of kneeling is very strong in the Mayan cosmovision, because this attitude shows respect and humility to the cosmos. The act of making an offer to the deity in a cave, in front of an altar, in a church or during a *majejak*, is always performed while kneeling.

The presence of *q'oqonk* exposes the fact that the suffering or dead exceeded their positions and helps to uncover the truth and wrongdoing. It also has a reparative effect because survivors receive recognition of their pain and harms. An invisible space is created through which perpetrators reintegrate into the community, paving the way for reconciliation among survivors. This helps to explain how victims and 'perpetrators' are living side by side. Indeed, as Honwana states: 'Beyond the verbal sphere, an inclusive use of symbols and symbolic actions can be an equally important road to reconciliation' (2005: 98). *Q'oqonk* does not simply attend to an individual problem, it lifts the problem to community level. Thus, *q'oqonk* has interrelated functions. It serves to prevent transgressions as it implies a prohibition that should be respected and thus has an educational function. Once somebody is suffering *q'oqonk* it has a retributive and restorative effect on the person, the family and the community. At least, at the local level of the Q'eqchi' communities, impunity, as defined by international law, is not the end of accountability nor truth recovery, reparation or reconciliation.

## Conclusions

This local and cultural analysis reveals the existence of multiple ways of understanding justice and reconciliation and challenges strongly the international obligation to prosecute the perpetrators of gross human rights violations. Indeed, it challenges the assumption among transitional justice scholars and practitioner that all victims of atrocities want to see the perpetrators brought to court. In fact, Q'eqchi' perception not only does not support this assumption, but may even hinder this, for fear of *q'oqonk*. Further, this is, in fact, a cultural equivalent of retributive and restorative justice and this should be acknowledged; nevertheless, a risk must not be overlooked. The history of the armed conflict has shown there is a real danger of manipulation and politicization of elements of Mayan culture by the army, and therefore this cultural knowledge can be abused, becoming a justification for the prevalent impunity.

Hence, it is worth clarifying that *q'oqonk* should not be seen as a response to the failure of state institutions to provide accountability, but rather as 'well-established

local tradition(s) of settling accounts with histories of individual and collective violence' (Igreja and Dias-Lambranca, 2008: 81). Indeed, the survivors managed to mobilize local and cultural practices and attitudes to face the legacy of the atrocities and to find a new *modus vivendi*. Similarly, in the context of post-conflict reconstruction Culbertson and Pouligny demonstrate that local groups 'return to tradition' to solve conflict after mass crime, but also recognize (2007:272): 'that innovation is part of every culture's reality, and that borrowing and grafting ideas from the outside and reshaping old concepts to new experiences are also important local strategies. . . . They should be understood as such and not romanticized.'

Here, the absence of demanding justice among Q'eqchi' survivors stands in strong contrast with other regions, or Mayan groups such as the Maya Achi of Rabinal, where there is a strong demand for justice. In fact, survivors of the RíoNegro massacre near Rabinal filed criminal complaints against the military and several PAC members to the court of Salamá in 1993.<sup>19</sup> Also, survivors of the Plan de Sanchez massacre near Rabinal received compensation from the state as a result of two judgments of the Inter-American Court of Human Rights in 2004. Both cases were initiated by national and international human rights organizations using the frame of international human rights law.

So this raises the very intriguing question of whether this absence of a demand for justice is related to the specificities of the Q'eqchi' cosmovision and/or the historically lower presence of human rights organizations that, among other issues, strongly advocate justice. Indeed, the idea of a culture 'uncontaminated' by external influences and transnational discourses is problematic. In fact, it is interesting to what extent and how (inter)national legalistic discourses of transitional justice penetrate and reshape local and cultural views embedded in a normative system where harmony and tranquility are central, rather than retributive justice. Indeed, the transnational character of transitional justice should be acknowledged.

Nevertheless, the most pressing question of this research is: what is to be done with these multiple ways of understanding justice, reconciliation, reparation and truth in peacemaking and transitional justice policies? To the extent that room is made for accommodation of non-Western mechanisms to deal with the past, are we ready to acknowledge that these mechanisms may be situated in a field that makes Westerners decidedly uncomfortable, i.e. the spiritual? For those who originate from societies that have struggled to achieve secularism, this may be the hardest bit: accepting the strong presence and role of spiritual and symbolic processes of dealing with the past in certain post-conflict societies, and taking them as seriously as the Western credo of courts and prisons. It may be similarly hard for those whose mindset is determined by Western conceptions of international law to realize the importance of building transitional justice interventions on the local perceptions of justice, truth, reparations and reconciliation

## Notes

All translations are the responsibility of the authors.

1. Similarly, Tim Allen (2006: 131) explains in his research on northern Uganda that in the Lwo language 'ideas about "amnesty", "forgiveness", "reconciliation" and the setting aside of punitive judgment are not conceptually distinct'. Rather, the concept *timo-kicac* can be used for all of them. Therefore, talk of "forgiveness" may not mean what it suggests in English'.
2. I agree with Esquit and Ochoa (1995) that this method is a fundamental step in the analysis of the Mayan order and that it is necessary to apply it to such issues as reparation, reconciliation, healing, justice and truth.
3. All interviews were in Q'eqchi', with an interpreter, and were recorded.
4. This phrase is used in order to bypass the – largely irrelevant – debates in transitional justice on what is traditional and what is not, and is broad enough to encompass a wide range of phenomena (see Viaene and Brems, 2010).
5. However, amnesty was ruled out for the internationally proscribed crimes of torture, genocide and forced disappearance.
6. REMHI was the second truth commission organized by the Catholic Church and was set up to support the CEH; it was initiated in 1995 and presented its report *Guatemala: Nunca Más* in 1998, a year before the report of the CEH.
7. However, the results of the CEH, though in lesser way of the REMHI, have rarely been diffused throughout the country or even given back to the people who testified.
8. For a fuller discussion of the encounter between these state interventions and local cultural realities see: (Viaene, forthcoming).
9. Whereas, as outlined above, this is currently the case in the African continent.
10. A phrase which I borrow from Pouligny et al. (2007).
11. See for example the studies of Zur (1998), González (2002) and Sanford (2003), though their research was conducted in the 1990s.
12. Monolingualism among the Q'eqchi' is 65.7 percent, the highest in the country.
13. Between 2000 and 2006 there were 464 land conflicts, with a concentration in the municipalities of Cobán and San Pedro Carcha (Secretaría de Asuntos Agrarios Presidencia dela República Guatemala, 2007).
14. Another example of these manipulations was the sign above the entrance to the Cobán military base, which reads, 'Military Base of Cobán, Home of Soldier *Tzuulhaq'a*.'
15. Haeserijn (1975: 51) described *awas* as:

the positive effect produced when a thing is used or treated according to its nature. . . and the bad effect, the punishment which that thing gives, when it is used against its nature. People generally judge '*awas*' according to its negative effect.

Further:

the pedagogic effect. . . of the concept of '*awas*' is very broad. Man learns that, in his actions, he must take into account the rights of the others and of things, if he does not, the '*awas*' is there to punish the transgressor.

Sieder (1997: 61) argues that 'the relative absence of punitive sanctions among Q'eqchi' communities – at least in part – is linked to the concept of *awas*'. *Awas* also exists in similar form with the Maya Quiche' and Kaqchikel (Esquit and Ochoa, 1995).

16. There exists an array of secrets which are related to the cycle of sowing, harvesting and the use of maize or protecting the maize against harm or they are related to the forces of the cosmos that can act over people.
17. *Sum aatin* is also the word for a couple as husband/wife. One wonders to what extent there is a syncretism or a coexistence between two similar value systems. Personal Interview Dario Caal, Q'eqchi' and Catholic priest, La Tinta, 1 April 2009; Dario Caal is one of the few Q'eqchi' Catholic priests, he was also involved with the reallocation of internally displaced Q'eqchi' during the end of the 1980s and the early 1990s.
18. In 2008 six ex-PACs were sentenced to 780 years' imprisonment.

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## Some Reflections about the Maya Q'eqchi' Normative Order

As outlined in the previous chapter, the cornerstones of the Maya normative system are shame, harmony and respect. Solares points out that semantically, in Mayan languages the concept of respect has a closed link with the Western concept of human rights.<sup>1</sup> Dialogue, prevention and reparative sanctions are the main forms of the administration of justice at the local level of indigenous communities. Yet, many puzzles remain to tackle regarding the functioning and application of Mayan indigenous normative practices in contemporary local contexts. In order to understand indigenous norms and practices, Sieder, in her study on customary law in Alta Verapaz, pointed out that it is crucial to 'analyze cultural ideas expressed in the local cosmovision pertaining to concepts of order, transgression and sanction'.<sup>2</sup> Indeed, also the present study has demonstrated that this research methodology is very useful in gaining deeper insights into indigenous normative systems. In fact, the ethnographic data of the present study offers new insights which allow reflection on these foundations and may review some considerations that have been made in earlier studies and texts. Here, an attempt is made to excavate further the philosophical, epistemological and ontological fundamentals of the Q'eqchi' normative system, although this must be considered as 'work in progress'. First, several other narratives of *q'oqonk* related to the armed conflict are presented. In the second section, attempts are made to interconnect both concepts of *awas* and *q'oqonk* and shed light on deeper logics of the Q'eqchi' normative order.

### ***Narratives of q'oqonk in the context of the conflict***

During the focus groups in the different regions of research, the participants shared many stories of men who had died in an accident or who were suffering from an incurable illness. To Q'eqchi' survivors, these people are suffering *q'oq* for what they did during the armed conflict. They are in a power position totally opposite to that which they enjoyed during the conflict; in fact, they have totally lost their authority within the community. Here, I describe some additional narratives.

1. Jorge Solares, *Derechos Humanos desde la Perspectiva Indígena en Guatemala*, Guatemala, Flacso, 1995, 15 and 40-53.
2. Rachel Sieder, *Customary Law and Democratic Transition in Guatemala*, London, University of London, Institute of Latin American Studies, 1997, 59.

*Social spiritual sphere*

On Sunday, 20th September, 1981, the army destroyed a village near Chisec. The military commissioner who, with his face covered, accompanied the army and helped them to locate the village, died later in an accident. The accident happened when a microbus lost control when crossing a pipe and crashed into a lamppost. The ex-commissioner had parked his car at the side of the road and the microbus ran into him while he was waiting outside his car. He died immediately, yet the microbus was not damaged. This happened at 5am, the same hour of day at which the atrocities had taken place.

In Salacium, two military commissioners not only terrorised their own community, but also the entire region. During the guerrilla attack in May 1982, a massacre in which 22 people died, one of the commissioners was also killed. Shortly after, the other commissioner died in strange circumstances. At that time, there was no road, so all transport was carried on by river. Some weeks after this massacre, the river swelled to a higher degree, causing a canoe carrying several villagers to be overtaken by the current. According to the survivors, only one person fell overboard and drowned. It happened to be the other military commissioner.

Currently, in Salacium two men are suffering greatly. One who used to be an assistant of one of the military commissioners, became lame some years ago. Now he lives a bit outside the centre of the village. Normally, it takes 10 minutes to reach the centre on foot, but he needs almost an hour. When he wants to go to the centre, somebody has to bring him with a pickup. Also in this case, the internal logic of the cosmos forced the men to kneel in front of the survivors and his community. Also another man appears to live in the same kind of situation. This man was known during the conflict as 'the devil' because he moved very easily and quickly through the jungle between Salacium and the military base. Now this man lives in poverty and survives by selling medicine.

*Natural spiritual sphere*

As mentioned previously, *q'oqonk* is not only related to humans, yet, elderly people attributed the failed maize harvest and the bad growth of poultry that have been happening for years also to *q'oq* of the food destroyed during this conflict.

How many *q'oq* of our brothers, or how many *q'oq* of the holy maize field that was cut off by the soldiers. So it is very hard what we are suffering now. .. Therefore it [crops] grow a little bit, it [the crops] is small.

They [the animals] aren't growing anymore, yes the animals now, because they have the *q'oq*. The chickens, turkeys, pigs, cows were killed. Cows, horses were shot instead of us. This is what exists.

A concluding reflection about *q'oq* in the context of the armed conflict is related to the issue of syncretism. During one focus group in Salacium with the elders who were all evangelic, also the issue of *q'oqonk* surfaced. Evangelical churches generally not only criticise Q'eqchi' agricultural rituals and the performance of *majejak* as devil worship and paganism, but also reject the existence of the *Tzuultaq'a*.<sup>3</sup> Interestingly, during that focus group the elders indeed rejected the power and existence of the *Tzuultaq'a*; nevertheless they affirmed the existence of *awas*, spirit loss (*xiwak*) and *q'oqonk*. They even confirmed the above described narratives and attributed the deaths and illnesses in this life to *q'oqonk* for what those men had done during the conflict. Apparently, in the eyes of evangelicals, *Tzuultaq'a* undermines the Bible's message of one personal and transcendent God, yet other cosmological and normative logics are deeply rooted and can coexist with their religious evangelical beliefs and practices.

### Maya Q'eqchi' Normative System

Sieder has stressed that 'certain elements of existing Maya-Q'eqchi' cosmovision can be understood as an ideological manifestation of a culturally specific normative order'.<sup>4</sup> In the light of this, Haeserijn's analysis that the ethical principle in Q'eqchi' cosmovision is that, 'you have to treat, to use everything that exists according to its nature' is crucial.<sup>5</sup> This means that to Q'eqchi' a good life in the world depends upon the good use of things. Similarly, Estrada Monroy argues that using everything according to its nature is the way which leads to 'life in goodness', namely a human existence of peace and of interior tranquillity.<sup>6</sup> Indeed, as demonstrated in the present study, the concepts *usilal* (goodness) and *tuquukilal* (peace, harmony and tranquillity) are strongly intertwined and reflect important core moral values of the Maya Q'eqchi' ethical code and normative system. This implies that a Q'eqchi' needs to know the nature of everything. Here, the parents, elders and spiritual guides play the important role of cultural knowledge guardians and transmitters.

As a result, when Q'eqchi' don't treat people and things according to their nature, this behaviour implies a transgression. In the Q'eqchi' normative order several kinds of transgressions can be distinguished, yet all are related to disobedience and disrespectful behaviour toward others and things. As mentioned, the concepts of *maak*, *muxuk*

3. Richard A. Wilson, *Maya Resurgence in Guatemala. Q'eqchi' Experiences*, Norman, University of Oklahoma Press, 1995, 170-171 and Hans Siebers, 'We Are Children of the Mountain', *Creolization and Modernization among the Q'eqchi'es*, Amsterdam, CEDLA, 1999, 48-50.

4. Sieder, supra note 2, 59.

5. Esteban Haeserijn, 'Filosofía popular de lo K'ekchi' de hoy', *Guatemala Indígena*, Vol. 10, 1975, 50.

6. Augustin Estrada Monroy, 1990, *Vida esotérica Maya-K'ekchi'*, Guatemala: Ministerio de Cultura y Deportes, 356.

and *q'etok* seem to refer to different types of transgressions, whereas the concepts of *awas* and *q'oqonk*, expose unbalance or reveal that transgressions have occurred. Both concepts, *awas* and *q'oqonk*, can be seen as consequences of the transgressions of certain social and spiritual norms and imply prohibitions that are to be respected. So, they constitute part of a moral and ethical code which includes a dual notion of prohibition and punishment. Moreover, these concepts entail the interventions of an invisible spiritual force as a consequence of the internal logic of the cosmos.

Interestingly, Sieder attributes the relative absence of punitive sanctions among Q'eqchi' partially to the concept of *awas*.<sup>7</sup> Haeserijn formulates it even more strongly: 'a society where reigns the concept of '*acuas*' can do without laws, police and prisons.'<sup>8</sup> Importantly, Haeserijn attributes a 'the pedagogic effect' to *awas*. He states that 'man learns that, in his actions, he must take into account the rights of the others and of things, if he does not, the '*awas*' is there to punish the transgressor'.<sup>9</sup> The present research has demonstrated that these assumptions can surely be complemented by the existence of *q'oqonk*. In fact, this concept reveals a deeper and more profound layer of the Q'eqchi' normative system and offers new venues to reflect upon punishment, reconciliation and justice. In my interpretation, *q'oqonk* has a similar pedagogic effect and, in comparison with *awas*, this concept is related to 'major' and also accumulated transgressions. As a result, its impact is further reaching than that of *awas*. Indeed, different kinds of *rawasinkil* rituals can be performed to cure the different types of *awas*, but there exists no medical treatment or a specific ritual to cure someone who is suffering from *q'oqonk*. As mentioned, both concepts belong to the domain of *secretos* or secrets which are knowledge that are transmitted orally to other generations when the time is ripe for it. This mainly happens when someone infringes certain social and spiritual norms and relations. Then, the cultural guardians and transmitters play a crucial role in orienting that person and prevent further transgressions. In my interpretation, the concepts of *awas* and *q'oqonk* are inherently intertwined; however, it remains a complex endeavour to unravel their interconnecting threads. *Awas* has been denoted as a 'polysemic concept'<sup>10</sup> and the same is true for *q'oqonk*.

Haeserijn describes *acwas* as<sup>11</sup>:

- 1) the inherent force in all things, natural or biological phenomenon's, human ways of acting (such as hunting, sowing, building a house, etc.) words, magic formulas, etc., that can act in contra or in favour of the people who are using them in contra or in accordance with his nature;
- 2) the effect of an *acwas*, normally used in the meaning of punishment for not having used things according to their nature.'

7. Sieder, supra note 2, 61.

8. Haeserijn, supra note 5, 51.

9. Ibid.

10. Wilson, supra note 3, 64.

11. Estaban Haeserijn, *Diccionario K'ekchi' Español*, Editorial Piedra Santa, Ciudad de Guatemala, 1979, 26.

Estrada Monroy and also Wilson have elaborated an extended list of typologies of *awas*.<sup>12</sup> Wilson relates *awas* to illness and argues that *awas* can occur in two distinguished spheres: in agricultural production (*awas* in the planting) and human reproduction (*awas* in humans).<sup>13</sup> He argues that both are conceptualised according to the same principles and this correlation is most evident in the sphere of illness. *Awas* and spirit loss (*susto* or *xiwak*) are two main types of human diseases. Human *awas* illnesses are especially those occurring during pregnancy and infancy. According to Wilson the majority of these cases involve human foetuses contracting an *awas* illness during gestation if their mother is repulsed by an object, animal or human. The child will then be born with a physical feature that is likened to one aspect of the offensive food, animal or person. Thus, an offensive object or act, whose characteristics are 'inherited', is the causal agent of a constitutional change in the affected child. Wilson demonstrates that *awas* can also occur in two different types in agricultural production: one that leads to an abnormality in the physical features of the maize plant, another which infuriates the *Tzuultaq'a* who send their animals to eat the crop which he calls the *awas* of mountain.<sup>14</sup> Furthermore, in his interpretation, the concept of *awas* encompasses 'the punishment or outcome of an offensive action as well as the action itself'.<sup>15</sup>

A well-known example of *awas* in human production is the *awas chicharon* (pork skin) of which the symptoms are that the child has a raised, darkened, hairy patch of skin with an infection. The cause of this illness is that the pregnant mother was repulsed by a pig or a piece of pork, or she desired to eat pork but was not offered any. Normally, it is possible to cure the *awas* of the child by performing the *rawasinkil* ritual which means 'getting the *awas* out'. This ritual is merely homeopathic and serves as both divination and cure. In a *rawasinkil* ritual for *awas chicharon* mother and child have to go to a fork in a path during the night while the moon is waning. Then, which is one of the three methods, mother and child should each taste, chew or lick, but not swallow, a piece of pork from a pig that has been killed for the occasion. Other common types of human *awas* are: *awas kar* (fish), *awas o* (avocado), *awas pix* (tomato).

In contrast with *awas*, Haeserijn describes *q'oqonk* as 'pain or sadness that somebody or something feels for being treated badly/wrongly and that will be converted into a retributive punishment of the causer of the pain or sadness'.<sup>16</sup> An elderly woman describes this as follows:

12. See Estrada Monroy, *supra* note 6, 54-68. Also Wilson has elaborated a typology of *awas* in humans and in agricultural production. See: Wilson, *supra* note 5, 117, 126 and 127.

13. Wilson, *supra* note 3, 90-157.

14. *Ibid.*, 115-120.

15. *Ibid.*, 116.

16. Haeserijn, *supra* note 5, 203.

*Q'oqonk* is the pain that a brother feels for what he did to him. So, maybe something will happen to me, maybe I will be hurt, something may happen to me, then I'll receive the *q'oq* of the poor one for what I did to him.

*Q'oqonk* is associated with the performance of deliberate and persistent disobedience and disrespectful behaviour towards others and things such as mistreatment, humiliation, adultery, discrimination, not sharing food, murder and exceeding one's position in the community.

An elderly man explains:

If you speak very hard, the word is also like a machete, they tell you a word and it seemed that a machete entered your heart. Like the word says, it is not like a punch. The pain of a punch goes quickly, but the word they tell you is very painful.

Similarly:

A person who does the worst, who speaks too badly, will suffer it here, on earth.

To Q'eqchi' sharing food with visitors and relatives is an important social norm that should be respected, otherwise *q'oqonk* will occur as a woman explains:

The *q'oq*, as I hear, your mother may have it, may be your father, maybe you didn't let him rest, maybe he is hungry, maybe you've hidden his food, and you didn't want to give it to him, you may have seen it wrongly. You may have hidden her food from her, at the moment of eating, and you left it, and you didn't want to give to her a bit. Maybe she feels bad, the poor mother; my father will feed bad. Maybe he is hungry, maybe I don't give him food, water. And he is in need, maybe she doesn't have *q'oq*. It is a pain that I will receive, in my own place I can hang myself, because it is the *q'oq* of my mother. And that is the power of my mother and father." (woman)

This pain or sadness that somebody or something feels is expressed by weeping, as an elderly man relates:

My grandmothers told me not to discriminate against your parents and if they cry, you'll pay hard for that - that was told to me before.

In fact, the elders use a strong image of a ceremonial bowl that fills up with the tears of the hurt parents and that one day their child, as causer of their suffering and pain, will drink this bowl when it is full.

You pay for the tears of your parents and they are kept in a ceremonial bowl [*b'ukleb*]; they say, in a ceremonial bowl everything is kept till it's full and that is for you to take one day; that has been said in relation to *q'oqonk*.

It can take a long time until this bowl is filled with the tears of the person or people that are suffering until *q'oqonk* occurs to the causer of the suffering. The ethnographic accounts are in line with Haeserijns' general interpretations about the moral code among Q'eqchi'. Haeserijn has already remarked that Q'eqchi' are very patient which has been interpreted by outsiders as a fatalistic attitude.<sup>17</sup> Similarly, the lack of an active demand for justice over those responsible for the armed conflict can also be interpreted as a fatalistic attitude by leaving justice 'in the hands of God' or divine justice. Yet, as Haeserijn points out, to Q'eqchi', it is not up to humans to take vengeance, but it is nature that will act for itself.<sup>18</sup> In the light of this, the *q'oqonk* narratives show that, indeed, the internal logic of the cosmos takes care of unresolved conflicts in the social-material world.

In this context it is important to note that time conception in Mayan cosmovision differs clearly from Western notions. Haeserijn has for instance observed that in Q'eqchi' cosmovision distance and time are one concept which is expressed by one term (*najt*).<sup>19</sup> Tedlock, in his analysis of the sacred book of the Maya Popol Vuh, states that the difference of time conception between the Maya and the West is not simply reducible to a contrast between cyclical and linear time. In fact, 'Mayans are always alert to the reassertion of the patterns of the past in present events, but they do not expect the past to repeat itself exactly'.<sup>20</sup> In my interpretation, *q'oqonk* is a reassertion of past behaviour, yet Q'eqchi' don't know in which form or way it will repeat. But they do know that *q'oqonk* will occur, that is as a scientific law.

Interestingly, *q'oqonk* can not only affect one individual, but also the whole community because, as an elderly man explains, the causer of the suffering and the pain can also be the community.

Like the maize that is thrown everywhere, over there, at the feet, on the earth, everywhere it is thrown. But, with that comes the *q'oq*. Not only me, it is the other that is doing it, but then not only me. It is the *q'oq* of the sacred maize, of the sacred beans and the things. And that has to be in the community - they will be receiving the *q'oq* of our things, our tortillas, our water. That is the little bit I understand; let's say that if *q'oq* is in the community then we will receive it.

17. Haeserijn, supra note 5, 52.

18. Ibid.

19. Ibid., 49. Estrada Monroy makes the similar point. See Estrada Monroy, supra note 6, 352.

20. Tedlock Dennis, *Popol Vuh: The Definitive Edition of the Mayan Book of the Dawn of life and the Glories of Gods and Kings. Revised and expanded*, New York, Touchstone, 1985, 59.

Crucial is to remark that in Maya cosmovision, as Molesky-Poze emphasises, ‘the human’ must be understood ‘a relational being’<sup>21</sup>. Mayans are not individuals, but are conceived of multiple relations: with one’s family and community, the earth, all created elements, other persons, the living and dead. Moreover, she states that these relationships evoke and cultivate distinct sensibilities and responsibilities.<sup>22</sup>

Indeed, Mayans have not only responsibilities to others and the community but also towards nature and the cosmos. In Maya cosmovision many things live (*yo’yo*), and not only humans can suffer pain and distress caused by the behaviour of others. Also, the *Tzuultaq’a*, the maize, the spirits of the dead and animals can cry, suffer, and feel pain. Therefore, the causer of this suffering can also receive the *q’oq* of these things. Thus the sacred maize (*loq’aj li ixim*) weeps when people have profaned (*muxuk*) the maize and thus not treated it with the according dignity. When this occurs then the *Tzuultaq’a* punishes the people who have desecrated the maize by sending mountain animals. The following quotes are testimonies of an elderly man that relate the interventions of the *Tzuultaq’a* with the maize that is doing *q’oqonk*.

Yes, the maize is crying. And then you see that the wild cat of the mountains starts to take it, but he doesn’t take it, it is just to give you a fright, like he puts you in a shameful position, like, a shame on you. Let’s say that at the border of the path he started digging, scratching but he didn’t eat it - he didn’t eat it to reveal your shame.

That is it, that is what it [maize] sends and maybe it was not asked, maybe it is due to just sowing. The permission of *Tzuultaq’a* was not asked, we just threw [the seeds] there and the small animals entered to defend the maize; the sacred maize is crying in the earth.

These narratives about the sacred maize doing *q’oqonk* are very similar to Wilson’s interpretation about the *awas* of the mountains. It is clear that both concepts are very interrelated: both occur in the human sphere as well in the natural sphere and are related to disrespect. In this context, the line between *awas* and *q’oqonk* is not sharp. Yet, I have not found evidence for the existence of a typology of *q’oqonk* similar to the different types of *awas*.

The presence of *q’oqonk* with an individual or at community level reveals that relationships are deeply disturbed. In order to determine why someone is ill and suffering, people generally consult an *aj ilionel* (he who sees what is hidden) or traditional healer. The main role of an *aj ilionel* is to ‘restore disturbed relations’<sup>23</sup> by praying and making offerings during a *majejak*. Yet, during such a ceremony the offender and the offended person through mediation of the spiritual guide can

21. Jean Molesky-Poz, *Contemporary Maya Spirituality. The Ancient Ways are Not Lost*, Austin, Texas University Press, 2006, 41.

22. Ibid.

23. Siebers, supra note 3, 57.



‘reunite their thoughts again’. Thus a *majejak* serves as an important first step in conflict resolution, but the thoughts and the words must be accompanied with changed behaviour, otherwise the imbalance remains. Q’eqchi’ know that unresolved conflicts and harms will be resolved by spiritual intervention (*q’oqonk*) that go beyond their human capacity.

Many issues remain however unclear about *awas* and *q’oqonk*. Haeserijn, Wilson and Siebers have for instance raised the question about the relationship between *muhel* or spirit of humans and *tioxil* or spirit of maize with *awas* and whether there exist benevolent and malignant spirits. In my conversations with elders, I haven’t found evidence that people attribute *q’oqonk* to the intervention of *muhel* and *tioxil*, nor to other malignant spirits. Apparently, it is not the *xmuhel* of the hurt person that gives the bowl filled with tears back to the causer of the pain and suffering. It is an invisible spiritual force that moves that bowl at the right moment. We should, however, be aware, that Q’eqchi’ elders may also prefer to keep certain ritual and cosmological knowledge in the spheres of *secretos*.

A final remark is about the broader existence of these notions about transgressions, justice and reconciliation among other Mayan groups. According to Esquit and Ochoa the concept of *awas* also exists in a similar form among Mayan Quiché and Kaqchikel groups.<sup>24</sup> In the literature on the normative systems of other Mayan groups I haven’t found a similar concept of *q’oqonk*. However, during conversations with José Serech Sen, Maya Kaqchikel and the director of the Maya Centre of Documentation and Investigation (CEDIM) and also with Mario Domingo, Maya Popti, and the lawyer in the Gerardi case for the ODHAG, all having lived in the capital for a long time, they recognised the logic of *q’oqonk*. Yet they couldn’t determine whether a specific term exists in their own Mayan Language nor whether this logic also plays a role in daily life and in conflict-torn communities in their own region of origin when dealing with past atrocities.

24. Edgar Esquit Choy y Carlos Ochoa García (eds.), *Yiqalil q’anej kunimaaj tziiij niman tzij, El Respeto a la Palabra, El Orden Jurídico del Pueblo Maya*, Guatemala, Centro de Estudios de la Cultura Maya, 1995, 61.



Wa'tesing or feeding ritual of educational material and Spanish book publication about 'The Sacred Mountains Saved Us', 27 May 2008, Cobán





# 7 Transitional Justice and Cultural Contexts: Learning from the Universality Debate

Lieselotte Viaene and Eva Brems

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## 1. Introduction\*

Whenever a society faces the difficult process of substantial political transition after a period of large-scale human rights violations, the concept of transitional justice appears on the agenda. The term 'transitional justice' is used to indicate the ways societies deal with the atrocities of the past.<sup>1</sup> Over the past 15 years or so, transitional justice has become a booming field and has gradually come to impose its concepts and frames on debates on democratisation, justice and reconstruction after the demise of authoritarian regimes. The term has been appropriated by human rights and political science scholars, as well as by the United Nations (UN) and international non-governmental organisations (NGOs). While transitional justice historically was associated with extraordinary post-conflict conditions, it has now become institutionalised, mainstreamed and normalised.<sup>2</sup>

Among scholars and practitioners of transitional justice, a consensus is emerging on its essential functions. These include accountability, truth recovery, reconciliation, reparation, guarantees of non-repetition and institutional reform as complementary and mutually reinforcing goals. Overcoming an

\* All case-law from the Inter-American Court of Human Rights referred to in this article can be consulted at: [www.corteidh.or.cr](http://www.corteidh.or.cr) and those from the European Court of Human Rights referred to in this article can be consulted in the HUDOC database at: [www.echr.coe.int](http://www.echr.coe.int). All internet sources were last accessed on 21 April 2010.

1. There is no single definition of transitional justice. The *Macmillan Encyclopedia of Genocide and Crimes Against Humanity* states that '[t]ransitional justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future'; *Macmillan Reference USA*, Vol. 3, 2004, pp. 1045–1047. Key references are: Kritz, Neil (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, USInstitute of Peace, Washington DC, 1995, Vols I-III; Mendez, Juan, 'Accountability for Past Abuses', *Human Rights Quarterly*, Vol. 19, No. 2, 1997, pp. 225–282; and Teitel, Ruti, *Transitional Justice*, Oxford University Press, Oxford, 2002.
2. Teitel, Ruti, 'Transitional Justice Genealogy', *Harvard Human Rights Journal*, Vol. 16, Spring 2003, pp. 69–94, at p. 69.

initial polarisation between adherents of truth commissions and believers in criminal prosecution,<sup>3</sup> current preference is for a mix of judicial and non-judicial, official and non-official strategies and approaches. Indeed, a recent UN report on the rule of law and transitional justice in conflict and post-conflict societies states that transitional justice ‘includes both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.’<sup>4</sup> Prosecution and trials, truth commissions, vetting, institutional reform and reparation programmes are seen as tools in the transitional justice toolbox at the disposal of societies handling a legacy of atrocities. The field increasingly tends toward models for dealing with the past. At the same time, it is acknowledged that one-size-fits-all formulas are to be avoided.<sup>5</sup> From the outset the need for contextualisation of transitional justice processes has been acknowledged, as each country in political transition has its own specific political, economical and social context.

The legal basis of transitional justice initiatives such as truth commissions or reparation programmes is currently found in national law. Yet an international legal framework for transitional justice is increasingly taking shape. The most prominent example of hard international law in this field is the Statute of the International Criminal Court (ICC), established to prosecute war crimes, genocide and crimes against humanity under international law. Another sign of the translation of transitional justice experiences and models into international law – as yet still ‘soft law’ –, is the UN declaration of basic principles and guidelines on the right to a remedy and reparation for victims of gross human rights violations.<sup>6</sup> In addition, both the Inter-American Court of Human Rights<sup>7</sup> and the European Court of Human Rights,<sup>8</sup> have addressed allegations of human rights violations in a transitional justice

3. Roht-Arriaza, Naomi, ‘The New Landscape of Transitional Justice’, in: Roht-Arriaza, Naomi and Mariezcurrena, Javier (eds), *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, Cambridge University Press, Cambridge, 2006, pp. 1–16.
4. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, UN Doc. S/2004/616, 23 August 2004, at p. 4.
5. *Idem*.
6. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: Resolution Adopted by the General Assembly*, UN Doc. A/Res/60/147, 21 March 2006.
7. For example Inter-American Court of Human Rights, *Myrna Mack Chang vs Guatemala*, 25 November 2003, IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr)); *Maritza Urrutia vs Guatemala*, 27 November 2003, IACHR database; *Plan de Sánchez Massacre vs Guatemala*, 29 April 2004, IACHR database; and *Escué-Zapata vs Colombia*, 4 July 2007, IACHR database.
8. For example European Court of Human Rights, *K-H W vs Germany vs Germany*, 22 March 2001, Application No. 37201/87, HUDOC database ([www.echr.coe.int](http://www.echr.coe.int)); *Sireletz, Kessler en Krenz vs Germany*, 22 March 2001, Application Nos 34044/96, 35532/97 and 44801/98, HUDOC database; *Velikovi and others vs Bulgaria*, 15 March 2007, Application Nos 43278/98, 45437/99, 48380/99, 48014/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, HUDOC database; *Pincová and Pinc vs Czech Republic*, 5 November 2002, Application No. 36548/97, HUDOC database; *Viaşu vs Romania*, 9 December 2008, Application No. 75951/01, HUDOC database; *Matyjek vs Poland*, 24 April 2007, Application No. 38184/03, HUDOC database; and *damsons vs Latvia*, 24 June 2008, Application No. 3669/03, HUDOC database.

context. This growing body of case-law also contributes to the normative development of transitional justice in international law. A clear example of this development is the ‘right to truth’ as an emerging rule of international law.<sup>9</sup> It is to be expected that this tendency to develop the normative component of transitional justice and to root it in international human rights law, will expand in the near future. Given the enormous proliferation of norms setting out international human rights standards, the need to add clear rules stipulating appropriate remedies in case of violations of those standards is felt. Arguably, rules setting out how to deal with a legacy of widespread and gross violations may be seen as a priority in this field. The emergence of a global paradigm of transitional justice and its increasing legal embedment however do not do away with a host of unresolved and contested issues. These concern for example real or perceived tensions between justice and peace, or between truth and accountability. The nexus between transitional justice and development requires clarification, and the professed need to engender transitional justice has not yet been developed in all transitional justice tools. This article addresses another challenge to the emerging paradigm of transitional justice; one that is based on cultural diversity. The rise of global models of transitional justice is increasingly met with a criticism based on local and cultural particularities. The involvement of international actors in transitional justice efforts strengthens perceptions that Western models are being imposed or at least promoted in non-Western contexts. Empirical field research shows the existence of culture-based views on justice, reconciliation, truth and reparation that differ fundamentally from mainstream interpretations. These ‘local’ and ‘cultural’ challenges will need to be addressed by transitional justice scholars and practitioners. In this article, it is argued that they can draw useful lessons from the universality-diversity debate in international human rights law. Obviously the issues are not quite the same: transitional justice might be seen as secondary to human rights, as it is about dealing with human rights violations that have been acknowledged. A cultural critique contesting the finding of a violation is of a different nature than one challenging the appropriate way to address that violation. Yet the cultural diversity claims one encounters reveal significant thematic similarities, for example the issue of individualism versus community values. Moreover, the cultural and political context from which they originate is also similar, as ‘pragmatic’ arguments of local relevance interlock with ‘principled’ arguments of cultural authenticity. In the light of these parallels, it is useful to draw some lessons from the universality-diversity debate in international human rights discourse (section 2), and confront them with the cultural challenges that arise in a transitional justice context (section 3). It seems that the ideal of inclusiveness that remains hard to realise in human rights law, despite theoretical consensus, might have better chances of being put in practice in transitional justice initiatives.

9. *E.g.* Inter-American Court of Human Rights, *Trujillo-Oroza vs Bolivia*, 27 February 2002, IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr)).

## 2. Avoiding a Sequel to the Universalism-Relativism Deadlock

Human rights scholars and activists have long been familiar with culture-based challenges to the relevance and adequacy of ‘Western’ human rights in non-Western societies. It should not come as a surprise that similar challenges are now confronting the emerging field of transitional justice. Transitional justice is strongly linked to human rights, as it concerns the way a society deals with gross human rights violations of the past. Moreover, human rights increasingly function as a framework for transitional measures, as is demonstrated by the European and Inter-American case-law cited above. Moreover, human rights standards establish the obligation to bring perpetrators of human rights violations to justice and to provide reparation to victims.<sup>10</sup> Even though human rights law does not provide answers to many of the questions raised by transitional justice practice – as these have strong political, moral and social dimensions – ‘transition’ is becoming a concept of human rights law.<sup>11</sup> Hence, human rights lawyers naturally move occasionally into transitional justice, and transitional justice practitioners at times have to address human rights concerns. This section will explore the comparability of the two debates, as well as the main insights that can be gained from several decades of debating cultural difference in the human rights context.

### 2.1. Comparing Starting Positions: Transitional Justice versus Human Rights

Confronted with allegations of Western bias and with claims for the accommodation of cultural diversity, transitional justice compared to human rights brings better cards to the table.

In the first place, Western dominance is less pronounced in transitional justice. This is related to the context in which the transitional justice paradigm is emerging. The normative dimension of transitional justice remains modest; and the models that are being promoted are based on field practice that is largely concentrated in the South. For example, the transitional justice flagship model of the ‘truth commission’ did not originate in the West, but took shape in Latin America and South Africa. It can thus not be claimed that transitional justice is based solely on Western models and concepts. In the area of human rights on the other hand, both the idea of a right as an enforceable claim upon a duty holder, and the format of a list of rights supposedly corresponding to a common human nature, are historically and conceptually Western. Moreover the adoption of the Universal Declaration of Human Rights – mother text of international human rights law – in 1948 took place in a context when most of the Southern hemisphere was under colonial domination by the North. In

10. Human Rights Committee, General Comment No. 31 ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, paras 16–18.

11. Marton, Varju, ‘Transition as a Concept of European Human Rights Law’, *European Human Rights Law Review*, No. 2, 2009, pp. 170–189, at p. 170.



today's world, dominance of the West/North remains strong, yet the rise of the BRIC countries<sup>12</sup> is the mantra of the day and spokespersons of non-Western societies – Islamic countries amongst others – assertively defend their culturally inspired worldviews in international fora. In comparison to international human rights, the impact of Western bias on transitional justice is significantly attenuated.

In the second place, the stake is lighter for both sides in the debate when it concerns transitional justice, enhancing the potential for compromise. Cultural diversity claims in transitional justice do not in the least intend to question the utter unacceptability of the gross human rights violations that happened in the past. The discussion concerns merely the reaction to those violations. Whereas cultural claims questioning the qualification of certain entitlements as human rights or of certain behaviour as a human rights violation have been interpreted by defendants of the dominant international model as threats that risk undermining the universality of human rights, claims that are restricted to remedies need not raise similar concern. A consensus on universal norms need not necessarily be accompanied by universally prescribed reactions to violations of those norms.

Another factor concerns the authors of cultural specificity claims or critiques. In the human rights debates, criticism is voiced in both academic and political fora by authors who are both insiders and outsiders of the cultures concerned. By comparison, the cultural critique in transitional justice is mostly of outsider, academic origin. While this may create issues of legitimacy – but so does an insider discourse that is largely elite-based – it also has the advantage of academic serenity. While academic criticism can be fierce, it remains rational and well argued, which offers significantly better prospects for constructive outcomes than many of the political debates that have taken place on issues opposing 'the West' and 'the rest'. Finally, the fact that international law on transitional justice is still being developed, offers the opportunity to integrate cultural diversity and flexibility from the outset. Moreover, any norms on transitional justice necessarily provide for contextualisation, as transitional justice is conceived as a response to a particular abusive past in a specific society. In transitional justice, the need for contextualisation is widely recognised. The challenge then consists of recognising an additional contextual dimension, that is the cultural dimension. In contrast, the iusnaturalist origins of human rights create obstacles to contextualisation per se, with their reference to a mythical 'essential human'. Also, when making the case for contextual flexibility (cf. *infra* section 2.2.) with respect to norms that have not been drafted for that purpose, one encounters other hurdles, such as dependence on interpreters (judges, policy makers and others) willing to 'see' the room for diversity, and ideological resistance to activist jurisprudence. The a priori awareness that contextual accommodation is necessary in transitional justice is therefore an invaluable asset, as it allows norm makers to integrate this concern explicitly in the norms. While both the urgency and the opportunity to do this are there, the political will however remains to be secured.

12. Brazil, Russia, India and China.

## 2.2. Lessons Learned: How Far Have We Got in the Human Rights/Cultural Diversity Debate?

In addition to the advantageous starting position described above, another important reason why it should be easier to address cultural diversity claims in respect of transitional justice than in relation to human rights, is the fact that the more recent debate on transitional justice can benefit from the lessons learned during several decades of debate on the universality and/or cultural relativity of human rights.

### 2.2.1. Principle: Betweenness and Hybridity

In human rights mythology as well as in some of the literature, the latter debate is presented as a trench war between ‘universalists’ and ‘relativists’. Universalists are defenders of uniform human rights throughout the world, based on a belief in the commonality of human nature and human needs – whereas cultural relativists reject the idea of universal human rights, because they see human rights as a Western construct that cannot have any validity in non-Western societies. While this framing makes for an excellent starting point for classroom discussions, it holds human rights hostage in a deadlock that appears impossible to resolve. This leads to the conclusion that cultural relativism needs to be defeated so as to enable human rights to spread throughout the world.

This black-and-white picture is a distortion of a debate that in reality is much more nuanced. The – Western – anthropologists who coined the term ‘cultural relativism’ in the first half of the 20th century may well have recognised themselves in the above description. Yet their views have few if any adherents among contemporary anthropologists.<sup>13</sup> The term ‘cultural relativism’ has frequently been extended from this anthropological context to the discourses of representatives of non-Western societies in both political and academic fora accusing human rights of Western bias. This is misleading, as an analysis of contemporary non-Western particularist critiques of human rights reveals at least two fundamental differences with ‘classical’ cultural relativism. First and foremost, these critics do not reject the idea of human rights, but rather question their concrete shape, their interpretation and application, as well as political choices and actions taken in the name of human rights. By claiming the validity of alternative ‘non-Western’ views of human rights, they may be attacking dominant interpretations of human rights, but at the same time they express support for or at least acceptance of the concept of human rights. In addition, non-Western particularist critiques are rarely based on cultural difference alone. As arguments of economic and political specificities are intertwined with arguments of cultural

13. Cf. the replacement of the famous relativist anti-human rights statement of the American Anthropological Association by a new statement adopted in 1999: American Anthropological Association, ‘Statement on Human Rights’, *American Anthropologist*, Vol. 49, No. 4, 1947, pp. 539–543, reprinted in: Winston, Morton E. (ed.), *The Philosophy of Human Rights*, Wadsworth, Belmont, 1989, pp. 116–120; and American Anthropological Association, ‘Declaration on Anthropology and Human Rights’, 1999, at: [www.aaanet.org/stmts/humanrts.htm](http://www.aaanet.org/stmts/humanrts.htm).

diversity, their central claim is best described as promoting the contextualisation of human rights.

At the same time, proponents of universal human rights have realised that, if one sets aside abusive use of the particularist discourse by authoritarian governments trying to fend off international scrutiny of their human rights record, promoters of contextualism have a point. Sixty years after the adoption of the Universal Declaration of Human Rights, human rights hold a sufficiently strong position for their proponents to be able to admit to shortcomings. One of these is the fact that efforts to model human rights on an abstract human being are inevitably prone to distortion. It is now generally realised that the impossibility of a neutral vantage point from which to picture this abstract human being, has led to human rights being tailored largely to the dominant human being: one who is adult, male, heterosexual, not disabled and Western. Several non-dominant groups have successfully campaigned for new additions to or interpretations of human rights standards that would redress such imbalances.<sup>14</sup> Likewise, the relevance of taking into account the societal context in human rights is now recognised both in theory and in practice, even if many unresolved issues remain. In the literature, the crucial insight is that universal human rights can accommodate cultural and other contextual differences; it is not an either/or issue: we can promote universal human rights and respect diversity at the same time. Universality does not require uniformity. A consensus has emerged in the literature on this issue, even though each author uses his or her own terminology and phrasing to express it. It is particularly interesting to find that across academic disciplines, similar conclusions are reached through different methodologies. Roughly, a distinction can be made between authors who have examined the issue in a top-down manner and others who have used a bottom-up approach. The former, mainly lawyers and political scientists have taken international human rights standards and the international human rights protection system as a starting point and have argued that it is both desirable and feasible to integrate contextual diversity within those. Donnelly, one of the leading voices in this debate, has long defended 'weak cultural relativism'.<sup>15</sup> More recently, he proposed the concept of 'relative universality of human rights' to express the view that 'universal human rights, properly understood, leave considerable space for national, regional, cultural particularity and other forms of diversity and relativity'.<sup>16</sup> Brems has used the term 'inclusive universality', emphasising that the accommodation of contextual factors is intended to remedy the exclusion experienced by people who do not correspond to the implicit reference point of human rights.

14. In addition to the spectacular successes of women's human rights groups in putting issues such as domestic violence, sexual violence and reproductive rights on the agenda, other groups have sought inclusion of their specific concerns through group-specific instruments, such as the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2006).

15. Donnelly, Jack, 'Cultural Relativism and Universal Human Rights', *Human Rights Quarterly*, Vol. 6, No. 4, 1984, pp. 400–419.

16. Donnelly, Jack, 'The Relative Universality of Human Rights', *Human Rights Quarterly*, Vol. 29, No. 2, 2007, pp. 281–306, at p. 281.

The exclusion consists of the fact that the needs, concerns and values of members of non-dominant groups are not taken into account to the same extent as those of the members of dominant groups when human rights standards are formulated or interpreted, and when human rights policies are determined. Inclusive universality proposes to remedy this situation by accommodating particularist claims from those excluded people.<sup>17</sup>

Others prefer to talk about 'a pluralist conception of human rights', conceived as a combination of common leading principles with a national margin of appreciation in recognition of a right to be different.<sup>18</sup>

At the same time, those examining human rights in action in the field – mainly anthropologists – have described how local communities instrumentalise and adapt human rights discourses, norms and procedures in their quest for justice and fairness, and have argued the value and legitimacy of such 'vernacularisation'<sup>19</sup> or 'localisation'<sup>20</sup> of human rights. It is stated that 'human rights is an open text, capable of appropriation and redefinition by groups who are players in the global legal arena'.<sup>21</sup> Goodale has situated human rights 'between the global and the local', in an 'intentionally open conceptual space which can account for the way actors encounter the idea of human rights through the projection of the legal and moral imagination'.<sup>22</sup> Hellum has used the term 'cultural pluralism' to describe the space 'between universalism and relativism as well as individualism and communalism'<sup>23</sup> where human rights and non-Western cultures can be reconciled. Crucial learnings from anthropology have gradually been integrated in legal and political debates on human rights and cultural diversity. The main point of those is that representations of culture as sta-

17. Brems, Eva, 'Reconciling Universality and Diversity in International Human Rights: A Theoretical and Methodological Framework and Its Application in the Context of Islam', *Human Rights Review*, Vol. 5, No. 3, 2004, pp. 5–21, at pp. 11–12.
18. Cohen-Jonathan, Gérard, 'Universalité et singularité des droits de l'homme' [Universality and singularity of human rights], *Revue Trimestrielle des Droits de l'Homme*, 53, 2003, pp. 1–13, at p. 11; and Delmas-Marty, Mireille, 'De la juste dénomination des droits de l'homme' [On the right denomination of human rights], *Droit et Cultures*, Vol. 35, 1998, pp. 105–116.
19. Merry, Sally Engle, 'Legal Pluralism and Transnational Culture: The Ka Ho'okolo-kolonui Kanaka Maoli Tribunal, Hawai'i, 1993', in: Wilson, Richard (ed.), *Human Rights, Culture & Contest; Anthropological Perspectives*, Pluto Press, London, 1997, pp. 28–48, at p. 29. Merry, Sally Engle, 'Transnational Human Rights and Local Activism: Mapping the Middle', *American Anthropology*, Vol. 108, No. 1, 2006, pp. 38–51.
20. De Feyter, Koen, 'Localizing Human Rights', Discussion paper, Institute of Development Policy and Management, Antwerp University, 2006, available at: [www.ua.ac.be/objis/00152976.pdf](http://www.ua.ac.be/objis/00152976.pdf).
21. See Merry, 'Legal Pluralism and Transnational Culture: The Ka Ho'okolo-kolonui Kanaka Maoli Tribunal, Hawai'i, 1993', *loc.cit.* (note 19), at p. 30.
22. Goodale, Mark, 'Locating rights, envisioning law between the global and the local', in: Goodale, Mark and Merry, Sally Engle (eds), *The Practice of Human Rights; Tracking Law Between the Global and the Local*, Cambridge University Press, Cambridge, 2007, pp. 1–38, at p. 22.
23. Hellum, Anne, 'Women's Human Rights and African Customary Laws: Between Universalism and Relativism – Individualism and Communitarianism', in: Lund, Christian (ed.), *Development and Rights; Negotiating Justice in Changing Societies*, Routledge, Oxford, 1999, pp. 88–104, at p. 96.

tic and homogenous cannot hold. Anthropology uses a far more sophisticated and complex concept of culture:

Over the last two decades, anthropology has elaborated a conception of culture as unbounded, contested, and connected to relations of power. (...) Its boundaries are fluid, meanings are contested, and meaning is produced by institutional arrangements and political economy. Culture is marked by hybridity and creolization rather than uniformity or consistency. Local systems are analyzed in the context of national and transnational processes and are understood as the result of particular historical trajectories.<sup>24</sup>

In this light, mainstream human rights views of culture as 'a barrier to the reformist project of universal human rights'<sup>25</sup> soon reveal themselves as overly simplistic. Merry has provided the vital insight that 'recognizing the extent to which the human rights project is itself a cultural one, and that it can build upon culture rather than only resist it, would foster its expansion and use by local activists'.<sup>26</sup> Indeed, many in the mainstream human rights world have now come to the conclusion that the accommodation of cultural diversity is key to strengthening the universality of human rights as a real factor for the good in people's lives – as opposed to a mere theoretical construct. What is more, the continuing tension between the uniformising tendencies inherent in universalism and the vocal – at times assertive or even aggressive – claims for contextualisation and diversity need not be a cause for alarm or even be identified as a problem. Rather it should be seen 'as part of the continuous process of negotiating ever-changing and interrelated global and local norms'.<sup>27</sup> Rather than bemoaning this tension, or trying to ignore it, human rights must recognise it and deal with it.

### 2.2.2. Practice: Dialogue and Flexibility

The theoretical breakthrough in transcending the universalism-relativism deadlock has not been matched by equal success in the practice of contextualising human rights standards. Yet important progress has been made nevertheless. We list some of the main breakthroughs.

One view on how to deal with diversity claims in human rights that seems to gather wide support, is An-Na'im's emphasis on dialogue.<sup>28</sup> Several dialogues need to be conducted. Dialogues within societies are needed to allow both the contextualisation of human rights and the reinterpretation of cultural rules and

24. Merry, Sally Engle, 'Human Rights Law and the Demonization of Culture (And Anthropology Along the Way)', *Political and Legal Anthropology Review*, Vol. 26, No. 1, 2003, pp. 55–76, at p. 67.

25. *Ibidem*, at p. 72.

26. *Idem*.

27. Cowan, Jane K., Dembour, Marie-Bénédicte and Wilson, Richard A., 'Introduction', in: Cowan, Jane K., Dembour, Marie-Bénédicte and Wilson, Richard A. (eds), *Culture and Rights: Anthropological Perspectives*, Cambridge University Press, Cambridge, 2001, pp. 1–26, at p. 6.

28. An-Na'im, A.A. (ed.), *Human Rights in Cross-Cultural Perspectives: a Quest for Consensus*, University of Pennsylvania Press, Pennsylvania, 1991, pp. 4–5.

practices in the light of human rights. And dialogues between societies are needed to reach agreement on the nature and extent of contextualisation that is acceptable within a universal human rights framework. Both dialogues strengthen local ownership and legitimacy of human rights.

Expectations and agendas for a dialogue among civilisations are sometimes set unrealistically high, when it is assumed that an agreement should extend not only to human rights standards, but also to their underlying foundations. Several influential authors now defend the position that a human rights system based on an ‘overlapping consensus’ of foundations that are each rooted in the context of a society, may be stronger than a system that purports to derive its legitimacy from a single – necessarily contested – foundation.<sup>29</sup> This is based on the finding that in practice, despite the lack of consensus over the foundation of human rights, the consensus surrounding the validity of human rights is overwhelming. This consensus is based on non-universal foundations: ‘human rights has gone global by going local’.<sup>30</sup> Borrowing from Walzer,<sup>31</sup> Chan has argued that thick accounts of human rights have to be developed from inside societies, grounded in the society’s political morality, whereas outsider condemnations of human rights violations need to adopt a thin account, of minimal universalistic human rights terms.<sup>32</sup>

Another aspect that is widely promoted, is the integration of a measure of flexibility in human rights standards. Donnelly distinguishes between human rights concepts, conceptions and implementation.<sup>33</sup> Diversity is not needed at the level of the broad formulations that make up rights concepts. Yet each concept has multiple defensible conceptions, and any particular conception has many possible implementations. At the latter level, diversity of contextualised solutions is not merely defensible but desirable. As broad as the agreement on the need to leave room for contextualisation, is the consensus that such room should not be unlimited. A lot of the discourse on this topic refers to the untouchability of an – as yet undefined – hard core or essential substance of human rights.<sup>34</sup>

Somewhat more contested, several authors adopt the position that even though an emphasis on communalism over individualism is one of the main themes in non-Western diversity claims, individual autonomy should be central in a human rights approach to diversity. This implies that groups are not allowed to

29. See Gutmann, Amy, ‘Introduction’, in: Ignatieff, Michael (ed.), *Human Rights as Politics and Idolatry*, Princeton University Press, Princeton, 2001, pp. vii-xxviii, at pp. xviii-xix. See also Appiah, K. Anthony, ‘Grounding Human Rights’, in the same volume, pp. 101–116 and Ignatieff, Michael, ‘Human rights as Politics and Human Rights as Idolatry’, also in the same volume, pp. 3–100.

30. Appiah, *loc.cit.* (note 29), p. 106, borrowing the quotation from Ignatieff.

31. Walzer, Michael, *Thick and Thin. Moral argument at home and abroad*, University of Notre Dam Press, Notre Dame, 1994.

32. Chan, Joseph, ‘Thick and Thin Accounts of Human Rights – Lessons from the Asian Values Debate’, in: Ryden, Edmund (ed.), *Human Rights and Values in East Asia. Proceedings of the Fujen International Conference on Human Rights and values in East Asia*, Fujen Catholic University, John Paul II Institute for Research into dialogue for Peace, Taipei, 1998, pp. 45–63.

33. Donnelly, *loc.cit.* (note 16), at p. 299.

34. See Cohen-Jonathan, *loc.cit.* (note 18), at p. 11.

impose restrictive rules on dissident members, and that the human rights system should support the 'right to opt out' of the latter.<sup>35</sup> In a similar vein, Brems has suggested the insider perspective of the (potential) victim of human rights violations as a methodological tool to deal with diversity in human rights.<sup>36</sup>

Among lawyers, some work has been done to show how existing legal flexibility tools can be used to accommodate contextual diversity in human rights. In the area of children's rights for example, it has been argued that the central criterion of the 'best interest of the child' (Article 3(1) Convention on the Rights of the Child (CRC)) exemplifies elastic language that offers 'enormous scope' for cultural difference to be taken into account in the implementation of CRC norms at the domestic level.<sup>37</sup>

In addition to the contextual interpretation of elastic provisions or vague and general concepts, it has been suggested that the 'margin of appreciation doctrine'<sup>38</sup> and the rule of progressive realisation<sup>39</sup> might be developed into valuable tools for the accommodation of contextual factors. The margin of appreciation frames the room for domestic variation among the 47 member States of the European Convention on Human Rights. As applied by the European Court of Human Rights, it explicitly takes cultural and religious sensitivities into account. While is not uncontested and far from a full-fledged doctrine, it offers a useful basis on which to build a tool that can be transposed to the universal level. Progressive realisation is a flexibility tool that is currently limited to economic diversity and to the area of economic, social and cultural rights. Brems has argued that it is worth considering extending this tool to other types of diversity and to all human rights.

Contextualising human rights remains a hotly debated challenge in many fields. Yet at the same time it is happening, not only in the discourse and practice of local actors as described by anthropologists, but also in the work of regional and domestic human rights monitoring bodies. The African Charter on Human and Peoples' Rights is famous for its deliberate 'Africanisation' of human rights, including both collective rights and individual duties, such as the duty to respect one's parents (Article 29(1)). The Inter-American Court of Human Rights has integrated cultural context in its interpretation, in particular when dealing with indigenous peoples.

35. Howard, Rhoda E., *Human Rights in Commonwealth Africa*, Rowman & Littlefield Publishers, Totowa, 1986, pp. 198–200.

36. Brems, Eva, *Human Rights: Universality and Diversity*, Martinus Nijhoff Publishers, Leiden/Boston, 2001, p. 323.

37. Alston, Philip, 'The best interests principle: towards a reconciliation of culture and human rights', in: Alston, Philip (ed.), *The Best Interests of the Child: Reconciling Culture and Human Rights*, Clarendon Press, Oxford, 1994, pp. 1–25, at p. 19.

38. Brems, Eva, 'The Margin of Appreciation Doctrine of the European Court of Human Rights: Accommodating Diversity within Europe', in: Forsythe, David P. and McMahon, Patrice C. (eds), *Human Rights and Diversity: Area Studies Revisited*, University of Nebraska Press, Lincoln/London, 2003, pp. 81–110.

39. Brems, Eva, 'Accommodating Diversity in International Human Rights: Legal Techniques', in: Meerts, Paul (ed.), *Culture and International Law*, Hague Academic Press, The Hague, 2008, pp. 63–81.

In the *Awás Tingni Case*, it found amongst others a violation of property rights due to the exploitation of the territories of an indigenous people. The Court interpreted the property right in the Inter-American Convention in a novel way, integrating both a collective component and a spiritual dimension.<sup>40</sup> At the domestic level, the Constitutional Court of Colombia went so far as to qualify corporal punishment (lashes on the legs) practiced by an indigenous people as falling outside the scope of torture or ‘inhuman or degrading punishment’ on account of its cultural meaning.<sup>41</sup> In other cases, domestic bodies have used the space between the local and the global to re-interpret cultural norms in the light of human rights. An inspiring example is the *Bhè* ruling of the Constitutional Court of South Africa.<sup>42</sup> In this case, the rule of male primogeniture in codified customary inheritance law was overruled in the light of constitutional provisions on gender equality, based on an argument of cultural dynamism: the Court contrasted ‘official’ customary law with ‘living’ customary law that adapted to fit changing circumstances, and consecrated the latter.

### 3. Cultural Challenges to Transitional Justice in the Field

In transitional justice, cultural challenges are part of a critical evaluation and reflection that is going on as part of the maturation process of the field. One of the outcomes of this process is the growing awareness among transitional justice scholars that the transitional justice template is highly abstract, general, legalistic and top-down. In a significant pendulum motion, academic thinking currently swings toward bottom-up, interdisciplinary, empirical and concrete approaches.

#### 3.1. Shifting Lenses

Currently, several trends may be distinguished in the academic literature that coincide in their attempts to re-orient the transitional justice field.

A first point of critique concerns the dominance of legal discourse, despite the origins of the field in political studies of regimes in democratic transition. It is argued that ‘a narrow, legalistic lens (...) impedes both scholarship and praxis’.<sup>43</sup> Instead, McEvoy calls upon lawyers in the field to develop a ‘thicker version of transitional justice’ and to ‘let go of legalism’. This implies the recognition of the limitations of a legal approach and a greater willingness to give space to other actors apart from State

40. Inter-American Court of Human Rights, *Mayagna (Sumo) Awás Tingni Community vs Nicaragua*, Judgment of 31 August 2001, IACHR database ([www.corteidh.or.cr](http://www.corteidh.or.cr)).

41. Constitutional Court of Colombia, T-523, 15 October 1997, confirmed in T-934 (1999), [www.corteconstitucional.gov.co/](http://www.corteconstitucional.gov.co/).

42. Constitutional Court of South Africa, *Bhè and others*, case CCT 50/03, 15 October 2004, [www.constitutionalcourt.org.za/](http://www.constitutionalcourt.org.za/).

43. McEvoy, Kieran, ‘Letting Go of Legalism: Developing a “Thicker” Version of Transitional Justice’, in: McEvoy, Kieran and McGregor, Lorna (eds), *Transitional Justice from Below. Grassroots Activism and the Struggle for Change*, Hart Publishing, Oxford, 2008, pp. 15–45.



or 'State-like' institutions as well as to insights from other disciplines and forms of knowledge.

Second, there is a trend in academic thinking and in the international community to move away from the 'one size-fits-all' approach to transitional justice.<sup>44</sup> 'Given the extraordinary range of national experiences and cultures, how could anyone imagine there to be a universally relevant formula for transitional justice?'<sup>45</sup> A consensus has emerged in favour of broadening the scope of transitional justice to local approaches. Concepts that are gaining currency in recent debates include 'transitional justice from below', 'local approach', 'bottom-up', 'macro-micro', and 'local ownership'.<sup>46</sup>

Third, inherently related with this is the emerging recognition of the need to take into account the expectations of the affected people in all stages of transitional justice policies – conceptualisation, design, implementation and management.<sup>47</sup> The underlying premise is that a transitional justice process should respond to the needs of the survivors. Nevertheless, it remains rare to find empirical studies that base policy recommendations on consultations of future beneficiaries or that evaluate transitional justice efforts – such as reparations programmes, truth commissions or trials – in the light of survivors' needs and preferences.<sup>48</sup> Several suggestions have been made to improve responsiveness of transitional justice processes. Pham and Vinck propose 'evidence-based transitional justice' based on systematic monitoring and evaluation of the context and impact of interventions.<sup>49</sup> Shaw on the other hand considers ethnographic research to be

44. See *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, *supra* note 4.

45. Orentlicher, Diane, 'Settling Accounts Revisited: Reconciling Global Norms with Local Agency', *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, pp. 10–22, at p. 18.

46. See United Nations Assembly, *The Nuremberg Declaration on Peace and Justice*, UN Doc. A/62/885, 19 June 2008, outcome of the International Conference 'Building a Future on Peace and Justice', Nuremberg, Germany, June 2007. McEvoy, Kieran and McGregor, Lorna, 'Transitional justice From Below: An Agenda for Research, Policy and Praxis', in: McEvoy and McGregor (eds), *op.cit.* (note 43), pp. 1–13; Pouligny, Béatrice, Chesterman, Simon and Schnabel, Albrecht, 'Introduction: Picking up the pieces', in: Pouligny, Béatrice, Chesterman, Simon and Schnabel, Albrecht (eds), *After Mass Crime. Rebuilding States and Communities*, United Nations University Press, Tokyo, 2008, pp. 1–16; and International Conference Oxford Transitional Justice Research, 'Taking at Stock Transitional Justice', University of Oxford, Oxford, June 2009.

47. See *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, *supra* note 4; Orentlicher, *loc.cit.* (note 45); and Lundy, Patricia and McGovern, Mark, 'The Role of Community in Participatory Transitional Justice', in: McEvoy and McGregor (eds), *op.cit.* (note 43), pp. 99–120.

48. The Redress Trust, 'Torture Survivors' Perceptions of Reparation: Preliminary Survey', 2001, available at: [www.redress.org/publications/TSPR.pdf](http://www.redress.org/publications/TSPR.pdf). Due Process of Law Foundation, 'Después de procesos de justicia transicional ¿Cuál es la situación de las víctimas?' [After transitional justice processes. What is the situation of the victims?], 2007, available at: [www.dplf.org/uploads/1225809541.pdf](http://www.dplf.org/uploads/1225809541.pdf).

49. Phuong, Pham and Vinck, Patrick, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms', *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, pp. 231–248.

the most appropriate approach, because it seeks to understand processes, events and ideas on the people's own terms and thus makes a powerful tool for challenging received wisdom and for understanding events and processes on the ground.<sup>50</sup>

A fourth tendency, which is often intertwined with the third, is the idea of using traditional and informal justice systems and revisiting traditional and local culture as a means of dealing with the legacy of gross human rights violations. Kofi Annan, then UN secretary-general, officially acknowledged that 'due regard must be given to indigenous and informal traditions for administering justice or settling disputes, to help them to continue their vital role and to do so in conformity with both international standards and local tradition.'<sup>51</sup> This trend has its roots in a number of experiences with the mobilisation of traditional approaches to justice and reconciliation into transitional justice strategies. The most well-known examples are the Gacaca tribunals in Rwanda, the use of *mato oput* rituals, part of the Acholi justice system in northern Uganda and the incorporation of traditional leaders in the truth and reconciliation commissions in Sierra Leone and Timor-Leste. International non-governmental organisations and donor countries have supported those traditional justice instruments and 'a hype was born'.<sup>52</sup> Yet its impact should not be overstated. Discussions on the role of traditional mechanisms in transitional justice are mainly located in Sub-Saharan Africa. Debates on Rwanda and Northern Uganda moreover polarise between scholars and practitioners 'in favour' and those opposed. Finally, there is a gap between rhetoric and reality. It has been remarked that '[i]t is commonplace to hear that culture and context "matter", and that any intervention – peace-building or otherwise – must be "culturally sensitive". This has been truer of rhetoric than reality.'<sup>53</sup>

### 3.2. Theory: From Terminology to Substance

The integration of local/traditional views and mechanisms in transitional justice is not uncontested. Some of the debates appear to centre on the qualification of certain practices as 'traditional' and on the meaning of that term. This is

50. See Shaw, Rosalind, *Rethinking Truth and Reconciliation Commissions. Lessons from Sierra Leon*, United States Institute of Peace Special Report, Washington DC, 2005; and Shaw, Rosalind, 'Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone', *International Journal of Transitional Justice*, Vol. 1, No. 2, 2007, pp. 183–207, at pp. 187–189. Theidon equally argues that an ethnographic approach allows studying sensitive topics and subjective processes in a climate a great distrust, whereas the utility of surveys is limited in these contexts; Theidon, Kimberly, 'Transitional Subjects: The Disarmament, Demobilization and Reintegration of Former Combatants in Colombia', *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, pp. 66–90.

51. See *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, *supra* note 4.

52. Huuse, Luc, 'Introduction: tradition-based approaches in peacemaking, transitional justice and reconciliation policies', in: Huuse, Luc and Salter, Mark (eds), *Traditional Justice and Reconciliation after Violent Conflict. Learning from African Experiences*, IDEA, Stockholm, 2008, pp. 1–24, at p. 1.

53. Pouligny, Chesterman and Schnabel, *loc.cit.* (note 46), at p. 7.

related to the Rwandan experiment that officialised and adapted a traditional dispute resolution mechanism (Gacaca). Many have questioned how much 'tradition' is left in the 'modern and new' Gacaca jurisdictions.<sup>54</sup> A recent study, examining the role of traditional justice mechanisms in five post-conflict countries in Africa, put forward the notion of 'tradition-based practices'.<sup>55</sup> The authors explicitly acknowledge the dynamic processes that drive the form and content of those practices. Yet they continue to struggle with the concept as they clarify 'all indigenous justice and reconciliation practices are, strictly speaking, no longer traditional. But some are newer than others.'<sup>56</sup> Some field researchers avoid the term 'traditional justice', which they consider to have an inherent essentialist connotation. In order to move beyond the polarised debate between 'modern' and 'traditional', they choose to employ the concept of local approaches or local justice.<sup>57</sup> Other terms such as customary, informal, and indigenous justice systems also appear in empirical research. The present authors prefer a reference to 'local and cultural practices and attitudes'. This phrase bypasses the – largely irrelevant – debates on what is traditional and what not, and is broad enough to encompass a wide range of phenomena.

Contemporary anthropological views on the dynamic and hybrid character of culture and tradition (cf. *supra* 2.2.1) are helpful in this respect. More specifically, insights from legal anthropologists studying legal pluralism may clarify terminology. For example, de Sousa Santos highlighted the importance of legal hybrids, which are 'legal entities or phenomena that mix different and often contradictory legal orders or cultures, giving rise to new forms of legal meaning and action.'<sup>58</sup> Similarly, in the context of post-conflict reconstruction, Culbertson and Pouligny demonstrate that local groups 'return to tradition' to solve conflict after mass crime, but also recognise 'that innovation is part of every culture's reality, and that borrowing and grafting ideas from the outside and reshaping old concepts to new experiences are also important

54. See Penal Reform International (PRI), 'Gacaca Research Report, Rapport 1: Gacaca Jurisdictions and Its Preparations', 2002, available at: [www.penalreform.org](http://www.penalreform.org); Reyntjes, Filip and Vandeginste, Stef, 'Rwanda: An Atypical Transition', in: Skaar, Elin (ed.), *Roads To Reconciliation*, Lexington Books, Lanham, 2005, pp. 101–127; and Waldorf, Lars, 'Mass Justice for Mass Atrocity: Rethinking Local Justice as Transitional Justice', *Temple Law Review*, Vol. 79, Spring 2006, pp. 1–87.

55. Huyse and Salter (eds), *op.cit.* (note 52), p. 203.

56. Huyse, *loc.cit.* (note 52), at p. 16.

57. See Waldorf, *loc.cit.* (note 54); and Baines, Erin, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', *International Journal of Transitional Justice*, Vol. 1, No. 1, 2007, pp. 91–114.

58. De Sousa Santos, Boaventura, 'The Heterogeneous State and Legal Plurality', *Law & Society Review*, Vol. 40, No. 1, 2006, pp. 39–71, at p. 46. He also clarifies the dichotomies of official/unofficial, formal/informal and traditional/modern. For example, 'traditional/modern variable relates to the origins and historical duration of law and justice. A form of law is said to be traditional when it is believed to have existed since time immemorial, when it is impossible to identify with any accuracy the moment or the agents of its creation. Conversely, a law is said to be modern when it is believed to have existed for a shorter period of time than the traditional and when its creation can be identified as to time and/or author.'

local strategies. (...) They should be understood as such and not romanticized.<sup>59</sup>

Therefore, debates on cultural diversity in transitional justice should be able to transcend the dichotomy between 'traditional' and 'new, modern'. This would allow a more useful focus on understanding local forms and the logic of social ties, their transformations and the manner in which local actors have tried to survive and understand mass atrocities.<sup>60</sup> This empirical bottom-up point of view can be compared to the 'vernacularisation/localisation' of human rights. This 'localisation/vernacularization of transitional justice' questions whether debates on 'traditional' mechanisms in transitional justice should focus as much as they currently do on their strengths and weaknesses, their effectiveness and legitimacy, their potentials and limitations, or even the availability of checks-and-balances. These issues may be top-of-mind from the viewpoint of States, international law and international donors, yet one might ask to what extent these are the concerns of the survivors at the local level. The insights from post-colonial studies on the role of the 'locus of enunciation' are relevant here: the context from which one speaks shapes the knowledge the person produces.<sup>61</sup> Finally, it is crucial to acknowledge the indivisibility of the local and international dimensions of transitional justice. Merry has emphasised the need to take into account transnational processes to understand and theorise local legal phenomena.<sup>62</sup> Discussing peace talks in northern Uganda, Baines stated the challenge as that of uncovering 'how local approaches to justice and reconciliation inform and shape international approaches. This might involve adapting aspects of local justice that meet international standards, but will also require that international strategies be transformed to fit local socio-cultural and economic realities.'<sup>63</sup> Indeed, as Goodale and Clarke argue, 'it is not enough to simply counterpose the international or transnational to the local, as the scales of contemporary normative practice are both more interpenetrating and mutually constitutive'.<sup>64</sup>

### 3.3. Practice: When the Global Meets the Local and Vice Versa

It is thus crucial to explore what happens when the global – transitional justice efforts from the State or international actors – meets the local – communities and

59. Culbertson, Roberta and Pouligny, Béatrice, 'Re-imagining peace after mass crime: A dialogical exchange between insider and outsider knowledge', in: Pouligny, Chesterman and Schnabel (eds), *op. cit.* (note 46), pp. 271–287, at p. 272.

60. Pouligny, Chesterman and Schnabel, *loc. cit.* (note 46), at p. 7.

61. Bhabha, Homi, *The Location of Culture*, Routledge, New York, 1994; and Mignolo, Walter, *Local Histories/Global Designs. Coloniality, Subaltern Knowledges, and Border Thinking*, Princeton University Press, Princeton, 2000.

62. See Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', *loc. cit.* (note 19).

63. See Baines, *loc. cit.* (note 57), at p. 114.

64. Goodale, Mark and Clarke, Kamari Maxine, 'Introduction: Understanding the Multiplicity of Justice', in: Clarke, Kamari Maxine and Goodale, Mark (eds), *Mirrors of Justice. Law and Power in the Post-Conflict War Era*, Cambridge University Press, Cambridge, 2010, pp. 1–27, at p. 18.

survivors – and vice versa. A huge knowledge gap remains on the concrete (potential) role of ‘traditional’ justice systems in dealing with massive human rights violations in different post-conflict contexts. What can be derived at this stage from the slowly growing body of ethnographic field research is that the process of vernacularisation of transitional justice is facing difficult encounters and that the global discourses on justice, reparation, reconciliation and truth seems to overlook what is happening beneath the surface at the local level.

### 3.3.1. *Difficult Encounter*

Few in-depth studies have examined the encounter between globalised discourses on justice, reconciliation, truth and reparations on the one hand and their appropriation or failure in a specific local and cultural context. The studies that are briefly presented below elucidate that those encounters are accompanied by frictions, short circuits and even clashes between different frames of reference or logics.<sup>65</sup>

Shaw, in her study on truth-telling as practiced in the Truth and Reconciliation Commission (TRC) in Sierra Leone, explores the frictions of engagements that occur when transitional justice mechanisms are implemented in local contexts.<sup>66</sup> She finds that in addition to the contestation of the content of the memory of the conflict, struggles concern a perceived incommensurability between the redemptive verbal remembering paradigm of the TRC, and the local arts of forgetting. This had implications for processes of personal and national reconstruction. Although the friction between the two different memory projects created in some ways new forms of remembering and forgetting, Shaw states that the TRC was not able to respond to the needs of the survivors.

In another study on the public hearings of the TRC in Sierra Leone, Kelsall argues that in certain circumstances ritual may be more important to reconciliation than truth.<sup>67</sup> According to his findings, truth was told only partially in cross-examination, and moreover was largely ineffectual. In contrast, the reconciliation ceremony of repentance and forgiveness at the end of a hearing which was based on a multicultural

65. Other interesting ethnographic research is the work of the anthropologist Alcinda Honwana on traditional healing and local concepts of mental health in post-conflict Mozambique and Angola: Honwana, Alcinda, ‘Healing and Social Reintegration in Mozambique and Angola’, in: Skaar (ed.), *op.cit.* (note 54), 2005, pp. 83–100; Green, E. and Honwana, A., ‘Indigenous Healing of War-Affected Children in Africa’, *The World Bank: I.K., Notes, 1999*, World Bank, Washington DC, 1999; and Honwana, Alcinda, ‘Healing for Peace: Traditional Healers and Post-War Reconstruction in Southern Mozambique’, *Journal of Peace Psychology*, Vol. 3, No. 3, 1997, pp. 293–305. Other field-based studies are of Quinn, Joanna, ‘Social Reconstruction in Uganda: the Role of Customary Mechanisms in Transitional Justice’, *Human Rights Review*, Vol. 8, No. 4, 2007, pp. 389–407; and Stovel, Laura, ‘There’s no bad bush to throw away a bad child: “tradition”-inspired reintegration in post-war Sierra Leone’, *Journal of Modern African Studies*, Vol. 46, No. 2, 2008, pp. 305–324.

66. See Shaw, *loc.cit.* (note 50).

67. Kelsall, Tim, ‘Truth, Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone’, *Human Rights Quarterly*, Vol. 27, No. 2, 2005, pp. 361–391.

mix of Christian, Islamic and traditional religious forms, had a remarkable impact on the hearings, transforming the atmosphere from one of virtual crisis to one of emotional release and reconciliation.

Similarly, Ingelaere, in his work on the Rwandan Gacaca jurisdictions, argues that a problematic quest for truth causes short-circuits in post-genocide Rwanda.<sup>68</sup> He locates one of the frictions in a clash between an imposed model with forensic 'truth'-telling as a cornerstone and a socio-political environment mediated by a culture of deceit and dominated by a war victor. In the wake of the genocide a natural process of cohabitation between victims and perpetrators has taken place. According to Ingelaere,

[T]he arrival of the Gacaca and the necessity to speak the 'truth' created an overall 'crisis of transparency', a tension worsening social cohesion and attitudes towards the 'other group' – a crisis due to a clash between an imposed model with forensic 'truth' – telling as cornerstone on the one hand, and different communication principles informed by cultural sensibilities and political circumstances on the other.<sup>69</sup>

Further, in a study on Mayan Q'eqchi' perceptions and aspirations regarding the National Reparations Programme (Programa Nacional de Resarcimiento (PNR)) in Guatemala, Viaene shows that the critiques of Q'eqchi' survivors reveal the underestimation and undervaluation of cultural understanding and conceptions of reparations in the PNR.<sup>70</sup> Its design clashes with fundamental Q'eqchi' norms and values while its implementation disregards both local and cultural dynamics and realities. For example, as the PNR has been designed and implemented in Spanish, the PNR had to translate the key concept *resarcimiento* or reparation into Q'eqchi' to explain its mission and purpose. However, translating this terminology is not straightforward as this concept does not exist in the Q'eqchi' language. Further, the individual economic compensation, which is its main reparation measure, generates a strong sentiment of guilt amongst the beneficiaries not only towards the deceased relatives, but also toward others who have suffered, but who, for bureaucratic reasons do not obtain compensation. There is also a lack of interest and acknowledgement of resources of Mayan beliefs and practices and the role of traditional leaders and healers in dealing with health issues of survivors.

### 3.3.2. *Beneath the Surface*

Other empirical studies suggest that at a deeper level, even more fundamental issues arise. Beneath the surface there is a hive of activity which at first and quick sight is invisible.

68. Ingelaere, Bert, "Does the Truth Pass Across the Fire Without Burning?" Locating the Short Circuit in Rwanda's Gacaca Courts', *Journal of Modern African Studies*, Vol. 47, No. 4, 2009, pp. 507–528.

69. *Ibidem*, p. 524.

70. Viaene, Lieselotte, 'Life is Priceless: Mayan Q'eqchi' Voices on the Guatemalan National Reparation Program', *International Journal of Transitional Justice*, Vol. 4, No. 1, 2010, pp. 4–25.

In the wake of the civil war in Mozambique (1976–1992) the political authorities opted for politico-legal measures to secure impunity for war crimes and gross human rights violations and war survivors were simply advised to forget what happened and to forgive one another. A study on central Mozambique uncovered however the emergence of beliefs and practices concerning magamba spirits. These are spirits of dead soldiers who return to the realm of the living to fight for justice.<sup>71</sup> Those spirits break with the post-war conspiracies of silence regarding a violent past. According to Igreja and Dias-Lambranca:

In the social spaces that are created in the magamba healing ceremonies, the violence of the past is re-enacted: the grudges, bitterness and discontentment in the hearts of the survivors can be conveyed without the risk of starting a fresh cycle of abuse and violence. They channel negative feelings and restore the dignity of individual war survivors and their families.<sup>72</sup>

In that region, reconciliation is a multidimensional phenomenon and these spirits reveal the multiplicity of reconciliation processes and achievements. They illustrate how survivors managed to develop socio-cultural practices that took the form of restorative justice and reconciliation to deal with the aftermath of the civil war. Honwana in her study of local concepts of mental health in Mozambique and Angola, confirms that '[b]eyond the verbal sphere, an inclusive use of symbols and symbolic actions can be an equally important road to reconciliation', and that 'reconciliation processes need to be locally driven and "owned"'.<sup>73</sup>

Also in post-conflict Guatemala, impunity of the armed forces for past atrocities persists after 25 years. Viaene's study among the Maya Q'eqchi reveals that, impunity, as defined by international law, is not the end of accountability, nor truth recovery or reparation. Her findings suggest that this can be explained by the Q'eqchi belief in an internal logic of the cosmos in which an invisible spiritual force (q'oqonk), fosters social and spiritual repair at community level.<sup>74</sup> Q'oqonk is pain or sadness that somebody or something feels for being treated badly/wrongly and that will be converted into a retributive punishment on the causer of the pain or sadness. It occurs when a person deliberately and persistently harms someone or something and does not recognise his transgression nor seek to rehabilitate anyone's dignity. Q'oqonk affected specific perpetrators who caused terror and fear in the communities. Some of them died in strange circumstances, while others were struck by disability, poverty and dependency on others. The internal logic of the cosmos through an invisible

71. Igreja, Victor and Dias-Lambranca, Beatrice, 'Restorative justice and the role of magamba spirits in post-civil war Gorongosa, central Mozambique', in: Huyse and Salter (eds), *op.cit.* (note 52), pp. 61–83.

72. *Ibidem*, p. 79.

73. Honwana, 'Healing and Social Reintegration in Mozambique and Angola', *loc.cit.* (note 65), at p. 98.

74. Viaene, Lieselotte, 'The internal logic of the cosmos as "justice" and "reconciliation". Maya Q'eqchi' perceptions from post-conflict Guatemala', *Critique of Anthropology*, Vol. 30, No. 3, 2010(forthcoming).

force put them in a shameful situation and creates an invisible space in which the perpetrator can reintegrate into communal life through which victims are acknowledged for their pain and suffering. This indicates an extension of q'oqonk to situations where an external power, the army, created a space wherein certain people deliberately and persistently harmed others. The presence of q'oqonk exposes the fact that the suffering or dead exceeded their positions and helps to uncover the truth and wrongdoing. It also has a reparative effect because survivors receive recognition of their pain and harms. An invisible space is created through which perpetrators reintegrate into the community, paving the way for reconciliation among survivors. Q'oqonk lifts the problem to the community level. Once somebody is suffering q'oqonk it has a retributive and restorative effect on the person, the family and the community.<sup>75</sup>

It is worth clarifying that neither the magamba spirits nor q'oqonk should be seen as a response to the failure of State institutions to provide accountability measures, but rather as 'well-established local tradition(s) of settling accounts with histories of individual and collective violence.'<sup>76</sup> It is clear that survivors do not wait until the formal justice system is rebuilt and/or interventions of national and international actors are implemented to start a process of reshaping social norms, practices and relationships and of finding a new *modus vivendi*. Furthermore, in both studies, the authors warn for manipulation and politicisation of those phenomena, as justifications of the ruling impunity.<sup>77</sup>

Both studies suggest that there are multiple ways of understanding justice, reparation, reconciliation and truth. They also affirm what Theidon stated in her study of local justice practices in rural post-war Peru:

[T]ransitional justice is not the monopoly of international tribunals or of states: communities also mobilize the ritual and symbolic elements of these transitional processes to deal with the deep cleavages left – or accentuated – by civil conflicts.<sup>78</sup>

#### 4. Toward Inclusive Transitional Justice

Several conclusions can be drawn from the above presented exploration of the comparability of the universality debate in human rights and the cultural challenges to the transitional justice paradigm in the field. They relate to the international perspective on transitional justice, to its implementation at the national level, and to further research in this field.

75. *Idem*.

76. Igreja and Dias-Lambranca, *loc.cit.* (note 71), at p. 81.

77. *Idem*; and Viaene, *loc.cit.* (note 74).

78. Theidon, Kimberly, 'Justice in Transition: The Micropolitics of Reconciliation in Postwar Peru', *Journal of Conflict Resolution*, Vol. 50, No. 3, 2006, pp. 433–457, at p. 436.



#### 4.1. The International Perspective

Claims for cultural diversity and localisation need not be an obstacle to the ongoing development of an ‘international law of transitional justice’. Drawing lessons from the universality-relativism debate, the starting point should be that universal standards can and should accommodate diversity and be responsive to local realities. Instead of meeting cultural arguments with suspicion, they should be taken seriously. At the same time, a double caution is warranted. One concerns the need to avoid incorrect simplistic notions of culture or tradition. The other relates to the risk of abuse of cultural arguments in international relations by governments attempting to cover up their shortcomings in dealing with the past. A crucial factor avoiding both risks is the need to give a central place to the insider perspectives of survivors. In line with developments in the area of indigenous rights<sup>79</sup> and the right to development,<sup>80</sup> a global normative framework on transitional justice needs to emphasise the participation rights of the people who are directly concerned. Respecting participation rights ties in with the need for international dialogue – including the choice of representative participants in that dialogue acknowledging the diversity among survivors’ voices.

Unfamiliar discourses and practices – including spiritual phenomena – and Western discomfort about them need not be an obstacle. The existence of multiple ways of understanding the driving goals of transitional justice, located in different philosophical, epistemological and ontological frames of reference, is a reality that has to be accepted. Here, a distinction between ‘thick’ and ‘thin’ accounts of transitional justice appears crucial to understand how optimal integration of local and global views can take shape. International norms and discourse concern a thin version of transitional justice, which is ‘thickened’ in local cultural contexts. Philosophical and ontological foundations as well as spiritual dimensions concern the thick versions, whereas the thin norms rest on an overlapping consensus. As norms are drafted, room for contextual flexibility should be explicitly provided for. In the process of demarcating a margin of flexibility, its limits should also be made clear. The growing experience of national and international human rights monitoring bodies in this field is a useful resource in this process.

A number of lessons can also be drawn from the current wave of interest among scholars, practitioners and external actors in the role and potential of local and cultural practices and attitudes for future transitional justice interventions.<sup>81</sup>

79. See ILO 169 Indigenous and Tribal Peoples Convention, 27 June 1989. *United Nations Declaration on the Rights of Indigenous Peoples*, General Assembly Resolution, UN Doc. A/Res/61/295, 13 September 2007.

80. *United Nations Declaration on the Right to Development: Resolution Adopted by the General Assembly*, UN Doc. A/Res/41/128, 4 December 1986.

81. See the references to empirical studies discussed in section 3.3.

First, empirical data from different regions reveal difficulties caused by the 'localisation/vernacularisation of transitional justice' or the interplay between the globalised discourses on justice, reconciliation, truth and reparation with local and cultural practices and norms. Moreover, the global level seems to overlook the complexities of what is happening beneath the surface.

Further, there appear to be several risks. One is the risk of biased restriction. It implies that outsider efforts to deal with the legacy of mass atrocities are inclined to make room more easily for local and cultural practices and attitudes that are visible, understandable and manageable to them – 'mechanisms' rather than worldviews. Hence the risk of oversimplification through neglect of the underlying profound and complex cultural logic or frame of reference is real. Next is the risk of essentialism. When initiatives are taken that do not rely on in-depth studies, particular cultural norms and values are easily generalised and promoted as 'the' norms and values of a certain culture or society. This may happen when attractive local proverbs are converted into slogans and used in campaigns to promote reconciliation with the premise of being 'culturally sensitive'. However, disconnecting those proverbs from their deeper local cultural logic creates a superficial 'cultural sensitivity' and ignores the complex, fluid and hybrid character of culture. Another risk is to simplify linguistic tangles and perceive them as a consequence of insufficient understanding of local languages and oral traditions. However, linguistic tangles can indicate tensions between different cultural understandings of key concepts of transitional justice.<sup>82</sup> Finally there is the risk of fixation. This is well-known among legal anthropologists: when inherently dynamic traditions are institutionalised, they become fixed and therefore altered. The complexities and particularities of local and cultural practices and norms come under threat when they are converted into another tool of the transitional justice toolbox.

#### 4.2. The National Perspective

While examples in this article were drawn both from Sub-Saharan Africa and from Latin America, it is worth remarking that there are important differences between the continents with respect to the role of local and cultural practices and attitudes. In Latin America, the debate concerns the collective rights of indigenous peoples. In Sub-Saharan Africa, on the other hand, this is not in the first place a minority issue as the coexistence of 'Western' and customary law and authorities – whether institutionalised or de facto – affects the entire population.

82. For example Lesly Dwyer and Degung Santikarma show in their study on mass violence in Bali that there are no terms in the Balinese language that correspond to 'forgiveness', 'amnesty' and 'witnessing' embedded in the models of truth-telling and reconciliation. Dwyer, Lesly and Santikarma, Degung, 'Speaking from the shadows: Memory and mass violence in Bali', in: Pouligny, Chesterman and Schnabel (eds), *op.cit.* (note 46), pp. 190–214, at p. 197. Similarly, Tim Allen explains in his research on northern Uganda that in the *Lwo* language 'ideas about of "amnesty", "forgiveness", "reconciliation" and the setting aside of punitive judgment are not conceptually distinct. Rather, the concept *timo-kica* can be used for all of them. Therefore, talk of "forgiveness" may not mean what it suggests in English.' In: Allen, Tim, *Trial Justice. The International Criminal Court and the Lord's Resistance Army*, Zed Books, London, 2006, p. 131.

To the extent that societies are internally diverse, the above recommendations relating to the international level are relevant on the national level as well. In particular, it is both desirable and feasible to draft transitional justice norms and policies in a way that makes room for diversity. This implies in the first place a need for substantial dialogue and real participation: the ideas and expectations of survivors are to be taken seriously. Any national transitional justice policy should address local dynamics of social reconstruction in addition to nation-wide dynamics.

In addition to first-hand accounts of survivors, there appears to be a useful role for experts – in the first place cultural and legal anthropologists – in the drafting of transitional justice policies. In particular, they can help to identify and translate cultural meanings and to advise on how to incorporate culture-based views and expectations into policy. Moreover, the involvement of independent experts can protect against power games by traditional authorities and against the manipulation of tradition for political purposes. An example of good practice in the mobilisation of legal anthropological expertise to determine appropriate remedies in an indigenous context, is the *Escué Zapata Case* of the Inter-American Court of Human Rights, in which anthropologists delivered an expert opinions that clearly inspired the judgment.<sup>83</sup>

### 4.3. The Academic Perspective

Successful transitional justice policies must adopt a holistic approach. The same applies to research on transitional justice. The questions that are faced today in the transitional justice field have to some extent already been answered in other disciplines. Hence a targeted effort to collect the insight of neighbouring fields – such as legal anthropology and human rights law – can avoid the reinvention of the wheel.

The discussions above have revealed the crucial need for in-depth cultural knowledge and to excavate the complexity of local social and political realities in which this knowledge is embedded. Yet there is a shortness of ethnographic data in this area. The current trend to use population based surveys in transitional justice

83. *Escué Zapata vs Colombia*, *supra* note 7. The Court referred to the expert report of Dr Sanchez when it stated that for the Paez people the loss of this leader meant ‘dismemberment and harm to the integrity of the collective; frustration due to the all of the trust deposited in him to help them achieve a good life; and feelings of loss due to the collective effort undertaken with the support of his [C]ommunity to be able to carry out his mission as a special person’ (para. 124). Moreover, the Court recognised the spiritual and moral repercussions on family members of the four-year wait for the State to turn over the remains of the victim, stating that in accordance with Paez culture ‘once a Nasa child is born, the umbilical cord is planted in the Mother Earth (...) in order to germinate life. Now, when he dies, we also plant him, as opposed to burying him, so life will be there. But to take him away is disrespectful of the culture, of Mother Earth. Taking him from his bosom is like cutting out the womb of the woman who saw him conceive, procreate, and grow. It is a considerable cultural affection and creates deharmonization and decontrol of the territory’ (para. 153 – quote from testimony).

ensures a broad scope yet fails to explore the deeper cultural logics in which needs, perceptions and attitudes are embedded. The development of appropriate methodologies combining breadth and depth and drawing strength from the complementarity of quantitative and qualitative research methods would allow to uncover and understand the complexity in the field.

To the extent that ethnographic field research is used, the experience of the authors is that it is advisable to use multiple data collection techniques or methodological triangulation to achieve an in-depth understanding of local and cultural complexities of post-conflict processes. This implies that participant observation is complemented with informal interviews, as well as focus group discussions and even ethno-linguistic studies when this is necessary to disentangle language knots. Language tangles are not merely a consequence of insufficient understanding of local languages and oral traditions. Close scrutiny of the semantic logics of terms related to justice, reconciliation, truth and reparation can open windows to cultural understandings that are beneath the visible surface.

Transitional justice processes are to be seen as transnational. It is therefore necessary to investigate not only what happens when the global meets the local, but also what happens with the local when meeting the global. An interesting question in researching the process of 'localisation/vernacularisation of transitional justice' is to what extent and how (inter)national legalistic discourses of transitional justice penetrate and reshape local and cultural views embedded in normative systems which deviate strongly from international law discourses. For example in Guatemala, it is remarkable that the demand for justice seems significantly weaker among the Maya Q'eqchi' compared to other regions or Mayan groups such as the Maya Achi of Rabinal.<sup>84</sup> More research is needed to reveal whether this is related to the specificities of the Q'eqchi' cosmovision or rather to the historically lower presence in the Q'eqchi' region of human rights organisations advocating justice. Therefore, in a broader context, attention should also be paid to the role of what Goodale and Clarke call 'moral agents',<sup>85</sup> such as peasant intellectuals, indigenous leaders or local human rights activists who drive the process of vernacularisation.

84. Survivors of the 1982 Río Negro massacre near Rabinal filed criminal complaints against the perpetrators before the court of Salamá. In 2008, six accused were sentenced to 780 years' imprisonment. Moreover, survivors of the Plan de Sanchez massacre near Rabinal received compensation from the State as a result of two judgments of the Inter-American Court of Human Rights in 2004. See *Plan de Sánchez Massacre vs Guatemala*, *supra* note 7.

85. Goodale and Clarke, *loc.cit.* (note 64), at p. 8.

#### 4.4. Conclusion

Countries recovering from authoritarian regimes and gross human rights violations are likely to use the language of human rights and of transitional justice to help rebuild their fragmented societies. The emerging paradigm of transitional justice is not only undergoing a maturation process in which it tends to look closer at what happens at the grassroots, but it also tends toward a new transnational normative system. One of the challenges of the transitional justice field is the reality of local and cultural complexities of post-conflict processes. Insights and lessons learned from related fields such as human rights law and legal anthropology can usefully inform current debates on the use of 'traditional/local' approaches in transitional justice interventions. Many questions remain about the optimal integration of local and cultural practices and attitudes into transitional justice initiatives. However, the main lesson to date is that international and national actors should be cautious with converting those local and cultural practices into another tool of the transitional justice toolbox. A more fruitful approach for both practitioners and scholars is to focus more on the process of vernacularization of transitional justice efforts in search for a truly inclusive transitional justice paradigm.





## COLOURS

Some place in time, beyond time, the world was grey.  
Thanks to the Ishir Indians, who stole colour from the gods,  
Today the world is resplendent;  
And the colours of the world burn in the eyes of all who look at them.

Ticio Escobar accompanied a film crew from Spanish TV  
That came to the Chaco to shoot scenes of daily life among the Ishir.

An Indian girl pursued the director,  
A silent shadow that stuck to his body  
And stared into his face from up close,  
As if she wanted to get inside his strange blue eyes.

The director turned to Ticio, who knew the girl,  
And that very curious one confessed:  
'I want to know what colour you see things.'  
'The same as you,' smiled the director.  
'And how do you know what colour I see things?'

*Eduardo Galeano*





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## Conclusions and Recommendations

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This doctoral dissertation aspired to make a contribution to the knowledge gap about our understanding of how cultural context plays or could play a role in transitional societies. The journey of this doctoral study ends by reconnecting the major outcomes of this doctoral study. First, the main findings from the Guatemalan case study, at the national level and the local level, will be outlined. Then they are linked up to the general level of transitional justice field and some reflections are formulated about the practical and conceptual challenges policy makers should take into account when elaborating 'transitional justice from below' approaches in post-conflict societies.

### **On the Guatemalan Case Study**

#### ***At the National Level: Towards a Bottom-up Approach***

When taking stock of a quarter century of democratic transition, Guatemala has implemented many pieces of the transitional justice agenda. Two national-level truth recovery projects have been carried out to unveil the truth about the internal armed conflict from 1960 till 1996 and the scale of the human rights violations. A UN-sponsored Historical Clarification Commission (CEH) gathered between 1997 and 1999 over 8,000 testimonies and presented a multi-volume report to Guatemala's civil society detailing the historical roots, nature and consequence of the conflict. This official truth-recovery mechanism was created in the framework of the peace negotiations between the Guatemalan government and the guerrilla forces. Another large-scale yet non-official effort was made by the Catholic Church with the Recovery of Historical Memory Project (REMHI), released in 1998, which made another important contribution to the process of uncovering the truth about the armed conflict. A decade after the release of the CEH's final report, little advance has been made regarding the implementation of its recommendations. For instance, the inclusion of this historical memory in Guatemala's educational curriculum has not been realised until today. In the wake of the peace negotiations and the work of both truth commissions, several national human rights groups and victim organisations have carried out many exhumations of clandestine mass graves in affected rural indigenous areas which have substantially contributed to truth recovery. These exhumation processes are continuing up to date and are now even accompanied by mental health programmes offered by specialised national NGOs for the relatives. The issue of justice and accountability remains fragile as little progress has been made in bringing to trial those responsible for the atrocities during the conflict. In 1996 a National Reconciliation Law was

enacted that includes several amnesty provisions, yet excludes genocide, torture and forced disappearances. Regarding prosecutions related to the massacres, only in three cases have those materially responsible been convicted by national courts. In 2009 there were two trials of cases about forced disappearances which resulted in milestone judgments giving new hope to human rights groups to break the cycle of impunity. Nonetheless, despite several reforms the Guatemala's justice system remains ineffective and unreliable. Since 2005, a National Reparation Programme (PNR) has been distributing individual financial compensation to a number of categories of victims and started in 2009 to implement the measure of material restitution through projects of house building. Further, in 2003 the Portillo government started to pay financial compensation to ex Civil Defence Patrollers (PAC) which has been continued by the succeeding governments of Berger and Colom. In sum, Guatemala's transitional justice efforts entail a mix of official and non-official mechanisms in which civil society plays a crucial role in putting the thorny issues of justice, truth and reparation on the political and judicial agenda. However, a clear transitional justice policy is lacking which induces Guatemala's transitional justice landscape to look very much like a patchwork of different, disconnected and crosscutting official and non-official transitional justice efforts. In fact, neither the Peace Agreements nor the succeeding post-conflict governments have outlined a clear roadmap to achieve the main transitional justice goals of justice, truth, reparation and reconciliation. Moreover, human rights defenders have also underlined that a common conceptualisation of reconciliation is lacking and a real reconciliation process has never been stimulated. It is important to note that, indeed, Guatemala's transitional justice relies mainly on initiatives of civil society, but the different national human rights groups and victim organizations follow their own agenda.

Importantly, the epicentre of conceptualising and designing transitional justice efforts has been to date located in the capital and is mainly characterised by a top-down approach and a far away vision. Besides the lack of a transitional justice agenda in which all involved national and international actors work towards the design and implementation of a coordinated transitional justice policy, this research points out that currently, a 'transitional justice from below' approach is also absent. Generally, little effort has been undertaken by the main stakeholders in Guatemala's transitional justice process to broaden local ownership by consulting and encouraging the direct participation of the survivors. The ethnographic accounts of this research have pointed out a painful gap and mismatch between macro-level policies and micro-level processes regarding the transitional justice goal of reparation and reconciliation. As will be recapitulated in more detail in the next section, this study has for instance demonstrated that the survivors' voices at the grassroots level of the communities were hardly consulted when designing the PNR. As a result, its designers have not adopted a multicultural and pluriethnic perspective and during its implementation the PNR was not redefined to take into account the local cultural realities. Further, the harsh local reality of the legacy of intimate crime that survivors, families and communities are facing, has been neglected by the succeeding post-conflict governments and civil society. For instance, when tackling the issue of compensation and reparation

for survivors, the victim-perpetrator dichotomy has been upheld by these national actors ignoring the heterogeneity of the ex-PACs and the transitional complexity of rural indigenous communities. In fact, the present study points out that both state initiatives, the PNR and also the PAC compensation programme, are re-victimising its beneficiaries and are undermining, instead of fostering, local reconciliation and mutual understanding of grey zones among survivors. Moreover, reparation and compensation issues are highly politicised and electorally exploited in Guatemala. Survivors are rather playthings of the different political parties to gain votes in the past and upcoming elections than people whose real needs and priorities should be taken into account. This study demonstrates that in the absence of a transitional justice approach tailored to local cultural realities, macro-level policies regarding truth, reparation, justice and reconciliation will not succeed and will even undermine the local social recovery processes that are unfolding in the affected communities. Therefore, the involved actors in Guatemala's transitional justice field should change lenses to a transitional justice from below policy and focus on what is happening at the level of grassroots conflict-torn communities. Policy makers should pay specific attention to the study of local and cultural survivors' understandings of justice, truth, reparation and reconciliation in different regions and communities. To fill in this knowledge gap these external actors should include academic researchers, national and international, to unfold different research agendas related to transitional justice from below.

### ***'Understandings from Within': Complex and Multilayered Maya Q'eqchi' Perceptions***

The highly localised dimension of the internal armed conflict resulted in a heavy burden that the affected rural indigenous communities have to deal with. The objective of this research was to foster a better 'understanding from within' on how Maya Q'eqchi' are picking up the pieces and whether the cultural context of Mayan cosmovision plays a role in this process. Through extensive ethnographic fieldwork in different conflict-torn Q'eqchi' communities I have traced circulating ideas and opinions related to transitional justice issues and translocal processes of social recovery. This research unravels the complex, multidimensional and multilayered process of how individuals and communities are dealing with the atrocities suffered. A crucial finding of this study is that this process is embraced and permeated by a strong cosmological and spiritual dimension. In Maya cosmovision no distinction is made between the social, the natural and the spiritual spheres and this is reflected in the ways Maya Q'eqchi' survivors perceive and act or do not act when dealing with the legacy of the past. Furthermore, from a survivors' perspective the transitional justice issues of justice, reconciliation, truth recovery, memory and reparations are clearly intertwined and mutually reinforcing.

This section recapitulates and rethreads the main research findings which have been presented in the different publications. First, the ways that Maya Q'eqchi' survivors have culturally understood the gross human rights violations they have suffered during the armed conflict will be pointed out. Next, the meaning and significance they give

to the central transitional justice concepts and how these are embedded in Maya Q'eqchi' cosmovision and normative order will be rethreaded. Here, I argue that survivors mobilise a hybrid entirety of practices, attitudes and engagements both on the individual as well as the collective level to deal with the legacy of the conflict. Third, the main points of the difficult encounter between on the one hand the globalised concepts of reparation and compensation that are modelled in a National Reparation Programme and the PAC compensation Programme, and the local cultural reality of survivors on the other, will be highlighted. Finally, some directions and new pathways are suggested to advance a transitional justice from below approach.

### **Cultural Understandings of the Internal Armed Conflict: Individual and Collective Pain and Suffering (Physical, Emotional and Spiritual)**

The phrase *nimla rabihal* is commonly used by internally displaced Q'eqchi' and also ex-PACs when talking about the lived experiences during the years of the internal armed conflict. This expression reflects the cultural representation and understanding of Maya Q'eqchi' during this conflict. In fact, its semantics disclose that their suffering and pain is huge and must be situated not only on the individual physical and emotional level but also on a spiritual and collective level. Indeed, an examination of the cultural significance that Mayan Q'eqchi' survivors assign to the conflict reveals that its impact goes beyond merely human rights violations of individuals. The massacres, bombings, sexual violations, displacements and the forced compliance of the men in these atrocities have desecrated (*muxuk*) the dignity (*loq'al*) of Q'eqchi' women and men. Another impact of the conflict was the destruction and contamination of maize, hills and valleys, millstones, water, crops, chickens and houses. Maya Q'eqchi' perceive these not only as material losses but moreover as transgressing, dishonouring and desecrating the dignity (*loq'al*) of these material things. Indeed, to Q'eqchi' these things have a spiritual sacred value; therefore the *nimla rabihal* entails also suffering that must be located in natural and sacred spheres.

At the same time, at the level of Maya Q'eqchi' communities, the different counter-insurgency strategies have induced disrespect and disobedience to socially and spiritually accepted norms (*q'etok*) and therefore undermined communal social structures, the indigenous authority system and the entire Maya social fabric. In this way the impact of *nimla rabihal* is like 'an ants' nest that was destroyed', as an ex-PAC explains, because the social unity (*junajil*) in the communities has been fragmented. Therefore it is important to acknowledge that the identity of victims goes beyond the individual level of suffering, and has provoked collective trauma at the communal level. As internally displaced Q'eqchi' say, 'we all suffered' and 'equally we suffered the violence'. The conflict thus not only violated Q'eqchi' individual human rights; it also violated (*muxuk*) and transgressed (*q'etok*) social and spiritual norms, which led to the breakdown of the personal and communal *tuqtuukilal* or tranquillity, harmony and peace. In this context, the phrase '*li rabihal ma joq' ta'elq sa' qach'ool*' is crucial which literally means 'the pain will never leave our hearts'. Indeed, for the Maya Q'eqchi' the

scars of *nimla rahilal* will never disappear because it is like 'a torn in our souls'.

The lived atrocities during the armed conflict have been, indeed, destructive, but as the present study reveals 'in the hands of time and culture they are also transformative'.<sup>1</sup> Adopting an anthropological perspective has enabled the disclosure of diverse individual and collective practices, meanings and attitudes which are at first sight invisible. In fact, this research has demonstrated that in the context of social recovery after mass atrocities 'humans are capable of devising and employing a great diversity of conflict prevention and management techniques'.<sup>2</sup> One of the connecting threads running through this study is that Maya Q'eqchi' are not passive victims, but by contrast, survivors - people who actively confront the tragedy of the *nimla rahilal* in diverse ways and at different levels, individually, collectively, socially and spiritually. Yet, the complex local social, economic and power post-conflict realities in which these social recovery processes are developing should be acknowledged and a harmonious reading of such local social reconstruction processes should be avoided.

The wounds left by *nimla rahilal* left may heal, yet the scars of these wounds will never disappear. It is based upon these scars that Maya Q'eqchi' intend to create a new personal, collective and spiritual space of *tuqtuukilal*, harmony, peace and tranquillity. Indeed, in Maya cosmovision the dynamic understanding of balance and harmony is crucial. To conclude, it is impossible to return to the original situation before the *nimla rahilal* which means that the life-world of the Q'eqchi' can be transformed into a new space of harmony which will result in a new *modus vivendi*.

### **Hybridisation of Transitional Justice Resources**

A major outcome of this doctoral research is that to reach such a new balance Maya Q'eqchi' survivors mobilise a hybrid entirety of practices, attitudes and engagements on the individual as well as collective level to unveil the truth and attain justice, reparation, memory recovery and reconciliation. Within this hybrid operates a complex, interrelated and fluid mixture of local cultural practices, attitudes and engagements which are rooted in the Maya Q'eqchi' cosmovision and related to normative order as well as being grafted onto transitional justice mechanisms provided by the Guatemalan state and activities organised by outside actors. Maya Q'eqchi' reshape existing rituals and concepts to new experiences and graft them onto new external ideas to deal with the legacy of *nimla rahilal* which leads to a blend of diverse and sometimes – at superficial outsiders evaluation - contradictory meanings and practices.<sup>3</sup> The 'understandings from within' show that at the grassroots level of

1. Roberta Culbertson and Pouligny Béatrice, 'Re-imagining peace after mass crime: A dialogical exchange between insider and outsider knowledge', in Béatrice Pouligny, Simon Chesterman and Albrecht Schnabel (eds.), *After Mass Crime. Rebuilding States and Communities*, Tokyo, United Nations University Press, 2007, 273.
2. Douglas Fry, *The human potential for peace: An anthropological challenge to assumptions about war and violence*, Oxford, Oxford University Press, 2006, 260.
3. Similarly Culbertson and Pouligny point out that in post-conflict reconstruction local groups 'return to tradition', yet recognise that at the same time innovation is part of every culture's reality. See *Ibid.*, 273-274. Along the same line Boaventura De Sousa Santos proposes the issue of 'legal hybrids' in contexts of legal pluralism. See Boaventura De Sousa Santos, 'The Heterogeneous State and Legal Plurality', *Law & Society Review*, Vol. 40, 2006, 46.

Q'eqchi' communities there is indeed a 'dialectic of tradition and innovation'<sup>4</sup> at play when dealing with the heavy burden of the past. In fact, in the context of this post-conflict situation Maya Q'eqchi' culture has an important inherent transformative power. At the same time, it must be acknowledged that local and national socio-political contexts and power relations play a considerable role in these transformations. This research suggests that Q'eqchi' survivors strategically adopt and adapt elements from endogenous and external sources for their own benefit which shows that culture is neither a bounded entity nor a fixed authenticity.<sup>5</sup> This hybridisation of transitional justice resources entails that Q'eqchi' survivors deal with the issues of memory, truth, reparation, justice, and reconciliation in a complex, multilayered and multidimensional manner in order to create a new *modus vivendi*.

To begin with, Q'eqchi' survivors have dealt with the issue of recovery of memory, remembrance and memorialisation in several ways. Notably, before the definitive sign of the Peace Agreements in 1996, many Q'eqchi' communities in the region of Nimlaha'kok and Salacium actively confronted the past atrocities by breaking the ruling silence and fear by setting up a translocal process which resulted in the creation of an important local and cultural site of memory. Significantly, this translocal memorialisation process was induced by spiritual messages through dreams in which the *Tzuultaq'a* or mountain spirits transmitted that the spirits (*xmuhel*) of the disappeared people were restless and should be brought together at a hill to find tranquillity and peace (*tuqtuukilal*). As result of these spiritual messages, Q'eqchi' survivors from 28 communities in the region collaborated on the collection of testimonies and the recovery of the names of those who died during the conflict. A huge white cross, as suggested in the dreams, was erected in 1995 after a year of translocal collaboration and was accompanied by two marble plaques bearing the names of, in total, 919 victims. The majority of collected names were from people who had died in the massacres or in the mountains, yet also names of relatives of PACs appeared on the plaques. In a similar context and for similar reasons another huge cross was constructed a few years later in the neighbouring region of Nimlasachel. These crosses are not only physical memorials, but they became also spiritual sites of memory, which made room for spiritual healing and public mourning. It is important to note that these crosses are the result of spontaneous, and locally and culturally driven processes of reconstruction of local historical memory about death, violence, social struggle and survival. Moreover, these processes go beyond the memory and truth dimensions because it has advanced local reconciliation and the development of a common understanding of the past. These local processes show that survivors don't wait on national-level and other outsiders' transitional justice interventions to deal with the legacy of the past atrocities.

4. Culbertson and Pouligny, *supra* note 1, 273

5. This is in the line with Siebers' work about the creolising capacity of Q'eqchi' in the context of modernity and economy (Cfr. Chapter 1). Based on his field research in 1991 and 1992 Siebers raises, however, doubts whether conflict-torn communities will be able to restore some level of autonomy and creolising capacity in the future. The present study suggests that over the years Q'eqchi' have been able to restore this, at least about transitional justice issues.

As previously said, two national truth-seeking initiatives were established in the late 1990s. Also in Alta Verapaz, Q'eqchi' survivors have collaborated with these mechanisms and thanks to the valuable work of the REMI-Alta Verapaz team, the work of REMHI has been disseminated to a certain extent among several communities. Despite these national-level efforts, at the grassroots level of conflict-torn Q'eqchi' communities, currently there exists still a great desire and need to recover and reconstruct historical memory of death, violence, social struggle and resistance and share experiences in affected communities. The first reason is that both the CEH and REMHI focused on providing a general picture about the origin, magnitude and impact of the conflict but did not include much description and analysis of local narratives and experiences in the different regions. This lacking in the final reports created disappointment among survivors who had given their testimony and implied that these initiatives did not totally answer the survivors' needs. Another underlying reason of survivors' strong engagement with truth recovery and historical memory lies in the fact that they are highly concerned about the doubts that live among youths regarding the certainty of the occurrence of the *nimla rabilal* and their suffering. Interestingly, to address these particular concerns, new ideas have been crafted about how to reinforce the oral traditional to respond to the new reality of transmission and dissemination of the historical memory about the armed conflict. An important first step must be located in the above mentioned spontaneous locally and culturally driven processes related to the construction of these crosses. It seems that they form an important catalysing push of an up to present day continuing process of unveiling the truth and transmitting the lived experiences of *nimla rabilal* to other generations. Beside these local processes Q'eqchi' survivors have built further upon the working method of the REMHI and CEH of writing down the truth and historical memory. This means that they graft onto these national-level initiatives and have made writing down their lived experiences and knowledge a new local priority. This desire to transform their oral knowledge into written knowledge explains the engagement of 20 leaders in a local research project about historical memory in those regions. This engagement shows that survivors graft onto interventions of external actors when these are addressing their own needs and concerns. Along the same line should the creation of CORESQ be situated, because they are actually a group of memory entrepreneurs who seek social recognition of their interpretation of the past atrocities. In order to achieve this goal, this group of people has created a formal structure with the idea of building further on the good experience with the research project about historical memory and to maintain and promote actively the written output of their historical memory. The elaboration of visual and popular educational material was one of their strategies in the continuing process of transforming and transmitting oral history into written knowledge.

Another element of the hybrid entirety of transitional justice resources is that Q'eqchi' survivors have reshaped several historical culturally rooted and well established rituals to new forms of meaning to address the new social and spiritual post-conflict realities. For instance, during the inauguration of the huge white cross in Saha'kok the well established and historically rooted ritual *watesinq* or feeding

ritual has been mobilised. A *wátesinq* was performed in its usual context of the first use of material things such as a cross in which inhabits a spirit (*xtioxil*). Yet in this new post-conflict context, this ritual has been reshaped to a novel form of meaning as it created a moment by which the spirits (*xmuhels*) of the disappeared who wander around could enter the realm of the *inframundo* or world of the ancestors. The same ritual has been performed in a related post-conflict context about the recovery of historical memory. A *wátesinq* was carried out of the text publications and visual education material which contains the results of the above mentioned research on the historical memory of 20 internally displaced communities. In the eyes of Q'eqchi' survivors these books have an important spiritual value because they contain the testimonies about the *nimal rahilal* and lists of names of people who died during the conflict. These publications about their historical memory therefore inhabit a spirit for which a *wátesinq* must be performed in order to strengthen the spirit's subsistent power. Moreover, this feeding ritual accompanies in both events also the important transformation of the oral memory of their lived experiences into a written, factual and perishable form. The two marble plaques bear the names of victims and in the books appear testimonies and lists with names of victims.

Another example of a reshaped and transformed ritual into a new form of meaning was observed when survivors performed a communal *máyejak* or the sacrifice-offering ceremony as part of the presentation activities related to publications of research about historical memory in 20 communities. Here, new powerful symbolic elements of historical memory have been introduced as during the ceremony all the names were pronounced in a loud voice during the prayers. This new practice was driven by a spiritual message from the *Tzuultaq'a* that an elderly man had received in a dream a few days before the community activity. Although the internal armed conflict undermined profoundly Maya culture, these observations demonstrate that it has an inherent transformative power to adapt to these new contexts of social and spiritual recovery after mass atrocities. Actually, it has been described by other researchers that even during the years in the mountains, internally displaced Q'eqchi' received guidance of the *Tzuultaq'a* through the forests and out of the hands of the army and the PACs.<sup>6</sup>

Furthermore, the ethnographic accounts unveil the presence of aspirations among Maya Q'eqchi' survivors to receive compensation and reparation from the Guatemalan State for the *nimla rahilal*. Several 'outsiders from within' stated that these demands for compensation were not present among survivors during the 1980s and the early 1990s. According to them these demands surfaced when the Portillo government promised the payment to PACs and a heated national debate started about financial compensation for the PACs and reparations for the victims. This shows a shift in local priorities and needs, and may be interpreted as an indication of the existence of a certain level of identification of Q'eqchi' survivors with the transitional justice

6. Richard A. Wilson, *Maya Resurgence in Guatemala. Q'eqchi' Experiences*. Norman, University of Oklahoma Press, 1995, 227-228 and Alfonso Huet, *Nos Salvó La Sagrada Selva. Memoria de Veinte Comunidades Q'eqchi'es que sobrevivieron al Genocidio*, Guatemala, Imprenta Maya Na'oj, 2008, 153-157.



goal of reparation. This could be explained, in my opinion, by the fact that notions of compensation and reparation are embedded in the Maya normative system and its practices. However, it should be recognised that the extreme poverty conditions of many survivors are also an important driving force to demand compensation and reparation. Many Q'eqchi' victims and ex-PAC have applied to two state initiatives of the National Reparation Programme and the compensation programme for the ex-PACs in order to receive financial compensation. However, as hereinafter will be pointed out, the encounter between the Q'eqchi' aspirations on the one hand, with these national-level initiatives on the other has been accompanied with frictions and clashed at different levels.

A final element of the hybrid mobilisation of transitional justice resources that surfaced during the research is related to the issue of justice and accountability. Ethnographic accounts make it clear that among Q'eqchi' survivors a call for justice and an active demand to punish and send to jail those responsible for their *nimla rabilal* is not present. At first sight this seems to be in contradiction with their aspiration to receive compensation from the Guatemalan State. If victims want to be redressed by the State, then it seems logical that they also desire that the state takes responsibility in relation to the perpetrators. In fact, among many transitional justice practitioners and academics lives the fundamental feeling and conviction that all victims of gross human rights violations want justice to be done and all ask for reparation for the suffered harm. A comprehensible explanation for this absence and even unwillingness could be for instance fear for the local perpetrators, unfamiliarity with the judicial system and lack of judicial assistance from human rights groups. The substantial explanation is, however, that Q'eqchi' survivors know that those men who have exceeded their position during the war and elevated themselves to the position of a supreme being by deciding between life and death, will pay for their faults in this life. A superficial examination of this view may conclude that these Maya Q'eqchi' survivors have a fatalistic opinion by leaving the issue of justice in the hands of God or relying on divine justice and thus conforming to the state's refusal to administer justice. As noted, for the Q'eqchi' the idea of a personal, transcendent God is not inherent to their cosmivision. Yet, Q'eqchi' do not ignore the Christian God and a certain level of syncretism is present. A deeper analysis of this absence of justice demands, however, shows that Q'eqchi' know that unresolved conflicts related to certain transgressions against other humans and things with sacred values will be resolved by spiritual interventions which transcend their human capacity (*q'oqonk*). This is for them a scientific law; it will happen. Thus, this - at first glance - 'fatalistic' view is actually a conscious attitude of not acting in relation to these transgressors based on their ethical and moral code, and thus the philosophical bases of their normative system. Also in the context of the *nimla rabilal*, the chiefs of PAC, PACs and commissioners who abused their power during the conflict and are responsible for killings and disappearances in the region are, according to Maya Q'eqchi' survivors, paying for their transgressive attitude and acts in this life. The internal logic of the cosmos is taking care of these perpetrators: they are put in a powerless situation totally opposite to their power position during the conflict and also in a shameful situation

in front of their victims, their family and the community. In fact, these men have lost all authority toward the community. Inducing shame is crucial in Maya conflict resolution and the intervention of this spiritual force makes these perpetrators bend their head (*kubsiik aawib*) in humility to their victims. At the same time, this invisible spiritual force unveils the wrongdoing and the truth about their behaviour during the conflict before the community. The fact that these people are paying by suffering from incurable illnesses or have died in circumstances that symbolically are related to their wrongdoing has a reparative effect because survivors receive recognition for their suffering and pain. This *q'oqonk* also creates a space through which these perpetrators reintegrate into their family and community. It paves the way for what Q'eqchi' perceive as reconciliation: bearing the fault (*kuyuk maak*) and behaving in a good manner to each other (*k'amok ib sa usilal*). It is crucial, however, that this cosmological reality may not be perceived as filling the justice gap created by the absence of the state and interventions of external actors, such as human rights groups in these regions, but has to be acknowledged as attitudes and practices entrenched in well-established local cultural ways of conflict resolution and transformation of harmful situations into a new balance, harmony or *tugtuukilal*. It remains unclear, however, that if the State actually would deal with justice issues at the local level of these conflict-torn communities through the official law system to what extent this answer would meet or conflict with the local indigenous normative logics.

### **When Global Meets Local: Lack of Inclusive Culturally Sensitive Design and Ignorance Local Harsh Reality of Victim-Perpetrator**

One of the interests of this research was to shed light on what happens when the global, in the form of transitional justice, efforts of the state or outside actors meet the local in the form of communities and survivors, and vice versa. As demonstrated above, national-level transitional justice processes cannot be counter-posed against local processes; in fact to a certain extent interpenetration of the global at the local level is taking place. Furthermore, among Maya Q'eqchi' survivors exists a substantial identification with the transitional justice issues of reparation and compensation. However, perceptions of Maya Q'eqchi' survivors, both victim and ex-PACs, regarding the national-level programmes of the PNR and PAC compensation programmes reveal that both initiatives are not attuned, in content or practice, to indigenous notions about compensation and reparation. As a result, these national transitional justice efforts fail to meet the expectations of the Q'eqchi' survivors.

To begin with, the analysis of Q'eqchi' perceptions regarding the PNR shows bureaucratic as well as cultural clashes which make the PNR tend to cause further suffering and frustration rather than satisfaction among its intended beneficiaries. The bureaucratic clashes originate in the rigorous legal and bureaucratic requirements that aren't geared to the reality of many survivors who generally lack the official documents necessary to apply and have to incur debt to complete the application. The cultural clashes between this national-level mechanism and local cultural realities of survivors

are situated at several levels.

First, the PNR has been designed and implemented in Spanish without considering the fact that the majority of its future beneficiaries are indigenous people who generally don't have an advanced level of Spanish. The PNR's design has not been redefined in appropriate local terms such that officials of the PNR have been faced with language tangles with Spanish-Q'eqchi' when implementing it at the local level of conflict-torn communities. Yet, these language tangles have not been addressed in a well thought-out manner by which the translation of its objectives and measures is confusing for and remains even alien to Q'eqchi' survivors. These tangles also reveal the difficulties involved with intercultural translation from one frame of reference to another. For instance, there exists no corresponding word or phrase for the key concept *resarcimiento*; nonetheless the PNR has translated this concept as *xiitinkil li rahilal*. *Xiitinkil* derives from the verb *xiitink* which in daily Q'eqchi' language generally is used in the context of mending damaged fabric. Related to the PNR, the expression means 'mending the suffering and pain' and rather less literally, it could be translated as 'repairing/mending the current fragmented social tissue'. However, from a Q'eqchi' point of view it is impossible to 'repair' damaged fabric, as one can only mend the tear. Therefore, *xiitinkil li rahilal* as *resarcimiento* is alien to the lived experiences because the conflict was not a small part that should be mended; it was a huge suffering and pain.

Second, the cultural translation of the concept of 'individual financial compensation' for gross human rights violations is also problematic. This measure is up to the present day the most implemented reparation measure and is paid to survivors of torture and sexual assault and relatives of victims of illegal executions, massacres and forced disappearances. In its discourses the PNR uses the Q'eqchi' notion *k'ajkamunk chi tuminal* to refer to this reparation measure. In daily language the verb *k'ajkamunk* is, however, used in a positive context of expressing recognition and gratitude by one person toward another for a task performed, help given or service rendered. Therefore, talking about *k'ajkamunk* to refer to reparation for the *nimla rahilal* is a distortion of the word as it symbolises reciprocity and mutual aid, which the financial compensation of the PNR does not entail. Related to the armed conflict, from the army's point of view this notion of *k'ajkamunk* could refer to financial compensation for the ex-PACs as means of gratitude and recognition for the performed, so-called, voluntary tasks in helping the state in their combat against communism and with defending private property. However, from an ex-PAC point of view, *k'ajkamunk* is difficult to uphold in this context because these men were forced to patrol and commit atrocities against their own people. In fact, the Q'eqchi' term the closed linked to compensation for the PACs, *toj* or payment. Interestingly, I also observed that many survivors when talking in Q'eqchi' about the PNR and the individual financial compensation have mostly appropriated the Spanish word *resarcimiento* and don't use the term *k'ajkamunk chi tuminal* to refer to the PNR or the specific measure of financial compensation.

Besides these problems related to cultural translation, the present research shows that the measure of individual financial compensation of which implementation has been prioritised by the PNR, is not attuned to Q'eqchi' perceptions of reparation.

Q'eqchi' survivors indeed demand financial compensation, however, not for their dead loved relatives for whom the PNR currently gives, but for their destroyed possessions. Ethnographic accounts reveal that this reparation measure creates a strong feeling of guilt towards the deceased relatives in whose name the beneficiary receives the money. Notably, the word Q'eqchi' survivors use when making such statements is *reeqaj*. In Q'eqchi' language this term *reeqaj* implies notions of positive and negative compensation as well as substitution. Related to material damages, *reeqaj* refers to compensation that equally values this damage. Through dialogue and discussion the affected person and the one responsible for the damage reach agreement on the form and timing of this compensation. In fact, many Q'eqchi' survivors demand restitution of their destroyed possessions such as houses, livestock, maize fields, beans, millstones, clothes and agricultural tools. Following the Q'eqchi' understanding of compensation and reparation, Q'eqchi' expect that the PNR replace these material things with 'something else' with the same inherent value. The form of this 'something else' and the timing of this compensation should be discussed directly between the representatives of the PNR with its future beneficiaries. It is also important to note that the term *reeqaj* in this particular context of the *nimla rahilal* has a deeper meaning than just referring to material compensation or restitution. The destroyed possessions equally have spiritual meaning: a house symbolises warmth, love, a place where guidance is given to youths, and values and norms are transmitted, a place to rest, and a place where the altar stands where the family maintains its relations with its ancestors and deceased relatives. Therefore, in order to meet Q'eqchi's demands for *reeqaj*, the Guatemalan State must not only replace or compensate these material possessions but also enable the survivors to build up their lives in a new atmosphere of *tuqtuukilal*. Besides *reeqaj* of their destroyed possessions, many Q'eqchi' survivors also request to be granted title to land given that the majority lack secure title to their land. This request for land title reflects their demand for social justice which is another crucial condition to reach this *tuqtuukilal* or new *modus vivendi*. However, the restitution and legalisation of land title is not enclosed in the design of the PNR, even though land issues were one of the major root causes of this armed conflict. Regarding the creation of the PNR, it is clear that the step of direct dialogue and discussion with the survivors was omitted during its design and implementation process as the PNR actually generates more frustration and criticism among survivors than the alleviation of their suffering. It is however striking that during the long and complicated creation process of the PNR, human rights groups and victim organisations had been actively involved.<sup>7</sup> Yet, this involvement has not led to the incorporation of the real needs and aspirations of the survivors into the national reparation agenda. This discrepancy raises the question about the size and also the reasons for the gap between the agenda and strategies of these, mainly capital-based, organisations and the survivors at the grassroots level of the communities. For instance, this need for financial compensation for destroyed possessions of survivors has not been advocated as the main priority by

7. Actually, during the creation process between 1999 and 2003 there were more than 50 sessions of dialogue between civil society organisations and the Portillo government.

the protagonists of human rights groups during the negotiations with the government. Moreover, the PNR has, under the impulse of the demands of human rights groups, prioritised individual financial compensation, yet the ethnographic accounts reveal a double mismatch with the needs and concerns of the survivors. Moreover, Q'eqchi' regularly use when referring to the PNR the verb *tenq* which means aid. This means that many Q'eqchi' survivors perceive the reparation measures of the PNR mostly as aid from the state, rather than as the reparation due to them. In addition, this financial compensation is seen as a form of aid for their children and especially for their grandchildren in recovering lost opportunities, rather than serving as a personal alleviation. This again indicates a need for social justice.

These 'understanding from within' show furthermore that for many internally displaced Q'eqchi' the transitional justice goal of reparation goes beyond the individual level. The ethnographic accounts show the existence of a widespread aspiration for collective reparation measures. This demand is rooted in the survival experiences during the years of hiding in the mountains which was marked by strong unity and cohesion among the internally displaced Q'eqchi'. Therefore, the fact that because of bureaucratic reasons or as a result of the categorisation of the victims by the PNR some Q'eqchi' receive the financial compensation while others do not, creates frustration and incomprehension among the beneficiaries. In the mountains of Alta Verapaz a high number of Q'eqchi' died from hunger, malnutrition and *susto* (spirit loss) which is a reality that has been ignored in the design of the PNR. Indeed, the governmental agreement which created the PNR excludes relatives of victims who died during the internal displacement from being a beneficiary. These bureaucratic distinctions clash with the lived experiences of internally displaced Q'eqchi' and in communities of relocated internally displaced Q'eqchi', a regularly heard opinion now is that 'we all suffered', so the PNR should not make these kinds of distinctions.

Moreover, ethnographic accounts have demonstrated that the existence of two compensation programmes, one for the victims and one for the ex-PACs, creates also frustration, incomprehensiveness and further polarisation at the grassroots level of survivor communities. Yet, due to the social-political and heavy polarised national climate, neither the Guatemalan state nor civil society have embraced the idea of collective reparation measures or the idea of supporting measures to overcome the stigmatisation of victims and perpetrators – ex-PACs - at the grassroots level of survivor communities. In fact, the complexity, diversity and heterogeneity of PACs as perpetrators have been neglected resulting in the exclusion of this group from the Peace Agreements, an official DDR programme and the actual PNR. This exclusion has led to a boomerang effect through which ex-PACs all over the country started to demand financial compensation from the state by the late 1990s. Instead of tackling the growing polarisation between victims and ex-PACs in the affected communities, the several succeeding post-conflict governments have paid out financial compensation for ex-PACs as an electoral strategy for political purpose. Many ex-PACs, also in the regions of research, have applied for this compensation programme. Ethnographic accounts reveal however that the main motivation for their applications lies in their poor life conditions. Furthermore, due to political reasons, the PNR's design excludes

all ex-PACs who appear on the beneficiary list of the PAC compensation programme, even if they did only receive a part or even nothing of this programme. This exclusion has led to further frustration certainly among internally displaced Q'eqchi' who after leaving the mountains have been obliged to patrol and have applied for the PAC programme. Important, however, is that the creation of the PNR happened after the government of Portillo started to compensate the ex-PAC which implies that those people are again modelled in a role that they cannot choose.

### **Recommendations: Revaluing Dignity (*loq'al*) and Building up Tranquillity – Harmony (*tuqtuukilal*) and Unity (*junajil*)**

The present research has shown that there exists a huge gap between the social recovery processes unfolding at the local level of survivors and transitional communities, and the priorities stipulated by Guatemala's post-conflict governments and civil society. Drawing upon the field research I suggest some directions for the current transitional justice approaches in order to advance an inclusive and culturally sensitive transitional justice process.

Building upon the cultural significance that Maya Q'eqchi' assign to the internal armed conflict, transitional justice efforts should support the revaluation of the dignity (*loq'al*) of humans, and natural and spiritual things that have been violated and desecrated (*muxuk*) during the *nimla rahilal*. At the same time, these approaches should also facilitate processes that intend to reconstruct social unity (*junajil*) in the conflict-torn communities and address the demands for social justice.

To begin with, the spiritual harms that the conflict has provoked should be recognised by external actors. As demonstrated by the significance related to *reeqaj* of the destroyed houses, the issue of reparation of the *nimla rahilal* also entails more important spiritual dimensions which all have been ignored by the PNR. For instance, during the conflict, soldiers and PACs systematically burned down and cut away the *milpas* (maize fields). This devastation not only meant a crucial loss of the elementary food supply but also implied a major transgression of important spiritual norms. In Mayan cosmovision maize or *ixim* is sacred food; in fact, according to the sacred book *Popol Vuh*, Mayans are men of maize. There exist many *ixim*-related ritual practices and secrets (*secretos*) as it has a major sacred value. Moreover maize is inhabited, similar to other material things, by a spirit (*xtioxil*). Q'eqchi' survivors related regularly that during the conflict the *ixim* was weeping which indicates that its destruction signified a violation and desecration (*muxuk*) of its dignity (*loq'aj ixim*). Another example is the fact that many internally displaced Q'eqchi' are to date suffering from *susto* or spirit loss (*xiwak*). During the period of hiding in the mountains many Q'eqchi' lost their spirit (*xmuhel*) which manifests in traumatic dreams and a lack of energy. These syndromes are common among indigenous groups in Meso America and it is embedded in their cosmovision that all humans and also many material objects are inhabited by a spirit. To address these spiritual harms of the conflict, there exist indigenous healing resources and processes which are all too often ignored by

external NGOs working with mental health issues. However, these syndromes and the related traditional health resources should be acknowledged and even supported and facilitated by outside actors if this is the aspiration of the survivors.

Furthermore, national-level reparation efforts should acknowledge that the identity of victimhood is not only located at the individual but also the collective level which entails that reparation measures should move beyond the individual focus. As previously stated, the armed conflict also left collective traumas at the level of families and communities, and between neighbouring communities. The answer to how these collective traumas can be transformed into a basis upon which *tuqtuukilal* or a new *modus vivendi* and unity (*junajil*) can be advanced lies, in my opinion, in the power of new social and spiritual meanings created by new collective experiences. Then, the ants of the nest that has been destroyed will have the possibility to work together again to build a new nest. This kind of experiences could be fostered by a mixture of spontaneous, and locally and culturally driven processes and by outside interventions which are attuned to the needs and desires of the survivors. This study has shown that in the regions under research over the last two decades several locally and culturally driven processes surfaced dealing with the legacy of the *nimla rahilal*. These experiences have, in fact, created 'spaces of healing and agency' as they offered the possibility to share the lived experiences and suffering, and advance mutual understanding of the impact and the legacy of the *nimla rahilal*. These spaces can, indeed, be created through the mobilisation of local cultural resources, such as the crosses and commemorative activities, as through the intervention of outside resources, such as the discussed research project and elaboration of visual educational material. In these spaces are not only the memory products such as a huge cross, plaques with names or publications that have the potential for healing, yet the process as such heals and empowers survivors. Here, it is crucial to acknowledge that the passage of time also embodies a process and nurtures healing and reconciliation among survivors with different experiences with the conflict.

In light of the ethnographic accounts, a meaningful national-level intervention could be the implementation of collective reparation measures by the Guatemalan State at the local level of these transitional communities. The phrase 'we are all sons of the government', expressed by an ex-PAC whose relatives had been killed by the army and also by the guerrillas, is compelling and could be interpreted as a profound aspiration among survivors to overcome and move beyond the victim-ex-PAC dichotomy. Indeed, reparation measures should go beyond the outside-world-created victim-perpetrator dichotomy. In my opinion, these collective reparation measures have the potential to create spaces of healing and agency fostering *tuqtuukilal* and reconciliation when these measures transcend the victim-ex-PAC dichotomy and deal with the legacy left by the blurred line between victims and perpetrators. In the same sense, the CEH has, in its final report, also advocated collective reparatory measures and proposed to frame them within territory-based projects. Here, community and regional intervention projects of outside actors could engage with this harsh reality and explore together with the survivors in the communities how to move beyond this artificial victim-perpetrator dichotomy. To Q'eqchi' a crucial step in this process has

already been facilitated by the internal logic of the cosmos that has a retributive and restorative effect on the local perpetrator, his family, his victims and the community. The intervention of this invisible spiritual force makes possible that people are bearing the *nimla rabilal* and are behaving toward each other in a good manner when dealing with the perverse reality of intimate crime. In fact, when outside actors attempt to tackle the issue of justice and accountability at the local level of communities affected by intimate crime, they should be aware of the impact and the tensions that their interventions may create at individual as well as community levels. Therefore, their intervention should be based upon an in-depth analysis of the cultural and local complexities and should take into account individual opinions but the result of community consultations. Issues such as the role of ex-PACs in local social recovery processes, the ways indigenous women deal with the legacy of sexual crime and the impact of outsiders and national level initiatives in different conflict-torn communities at the collective and individual levels need to be further investigated.

Finally, it is important to note that Q'eqchi' are not only looking backward but also forward. In the focus groups and individual interviews, many Q'eqchi' expressed their concerns and fears about the new problems that they are facing: the increasing levels of social violence, the influence of drug trafficking, the impact of mega projects such as the construction of hydroelectric dams and petroleum projects. To Q'eqchi' *tuqtuukilal* is not only orientated to the past, but also the present and the future; thus people link transitional justice goals to sustainable development and security. In fact, to build up this *tuqtuukilal* a functioning State which recognises the pluricultural and multiethnic reality of Guatemalan society is imperative.

## On Transitional Justice and Cultural Contexts

Transitional justice is an emerging global paradigm that dominates more and more the international and national agenda of many post-conflict societies and in which international actors frame their interventions. Its concepts and goals are increasingly legally embedded and this emerging field tends moreover toward a new transnational normative system. At the same time, there is a general shift in transitional justice interventions towards a concern with 'local priorities' and with a 'from below' approach. Indeed, there is growing recognition among scholars and practitioners that the current developed transitional justice mechanisms are mainly externally-driven, state-centric, and top-down disregarding the complex local cultural contexts of conflict-torn communities and regions as well as the needs and priorities of the survivors. However, there is little consensus on how these local priorities and needs should be identified and in which way they should be related with externally or nationally promoted transitional justice efforts. Drawing on the insights of the Guatemalan case study, I raise some points and formulate several reflections regarding the conceptual and practical challenges involved in policy making by the state and external actors of a transitional justice from below approach.

To begin with, it is crucial that policy makers advance the synergy between on the one hand national-level transitional justice mechanisms and on the other local



cultural practices and attitudes mobilised by survivors to deal with the legacy of the past atrocities. If transitional justice mechanisms are to be rendered meaningful for the survivors, these interventions must be designed in such a way that they are attuned to the local cultural reality of survivors and at the same time are strengthening and empowering survivors and survivors' communities. Therefore, the process of vernacularisation of transitional justice should receive more attention from policy makers at the moment of drafting transitional justice agendas. Here, it must be acknowledged that 'global-local-state interactions are very complex and diverse even within a geographically limited area'<sup>8</sup>. To fill the existing knowledge gap in relation to this localisation of transitional justice in a particular post-conflict society, the present research has shown that the involvement of anthropological scholarships is crucial because adopting an ethnographic perspective 'opens up for discussion aspects that remain unaddressed by formal legal discourse'.<sup>9</sup> In contrast to the current dominant quantitative research approach in the transitional justice field, this methodological approach enables one to grasp the complex, multilayered and multidimensional processes that are unfolding in the conflict-torn communities. Crucial here is the long-term presence of the researcher and also the involvement of other mainly local knowledge brokers, such as local peasant intellectuals. Through this research approach light can be shed on 'what people do', because it is clear that survivors do not wait on externally driven initiatives to tackle the harsh legacy of the mass atrocities. These kinds of insights cannot be delivered by population-based surveys that are conducted in short-term visits to conflict-torn communities. A quantitative research approach is, however, important for policy makers because these external actors are increasingly concerned about 'what people want'. Yet, it is crucial to acknowledge that victims of the armed conflict are not helpless, passive people who don't know how to deal with the legacy of the atrocities and therefore should be treated as ill patients who need a doctor and medicine to be cured. In my opinion, the departure point for international and national policy makers for developing outside interventions with a 'transitional justice from below' approach must therefore be the exploration and mapping of what is happening at the local level of transitional communities or 'what people do'. This understanding from within should form the basis for further outside interventions whereby survivors must be consulted about what they additionally want to happen or 'what people want'. Policy makers should therefore develop and base their interventions on appropriate research methodologies combining depth and breadth and drawing strength from the complementarity of ethnographic field research with quantitative methods.

Consequently, outside actors should let go of their rubber-stamped agendas when approaching transitional conflict-torn communities and be receptive to multiple ways of understanding the driven transitional justice goals, even if they challenge

8. Shannon Speed and Xochitl Leyva Solano, 'Human Rights and the Maya Region', in Pedro Pitarch, Shannon Speed and Xochitl Leyva Solano (eds.), *Human Rights in the Maya Region. Global Politics, Cultural Contentions, and Moral Engagements*, Durham, Duke University Press, 2008, 19.
9. Anne Griffiths, 'Using Ethnography as a Tool in Legal Research', in Reza Banakar and Max Travers (eds.), *Theory and Method in Socio-Legal Research*, Oxford, Hart Publishing, 2005, 130.

and diverge from mainstream perceptions in international law and the transitional justice field. An inherent result of this 'survivors' driven approach' will be that policy makers will have to abandon the common national and general approach but will need to design interventions that are tailored to specific needs and priorities that may be diverse even within small geographical areas. This shift in policy approach will moreover advance and sharpen the conceptualisation of the current buzz words as local ownership, participation and consultation of the survivors in the transitional justice field. In this context, crucial questions here are also, whether survivors actually can speak, in the sense if there is room for agency, and who speaks in the name of the survivors? These are important political questions that should be considered by policy makers. The involvement of independent experts can advance a better understanding of these political issues.

In light of the findings of this research, this growing concern about local ownership with regard to transitional justice processes brings us to question the relation between transitional justice and cultural diversity. Besides this research, also other in-depth research in other parts of the world has shown the existence of cultural differences with regard to the conceptualisation of the driving goals of transitional justice, truth recovery, reparation and reconciliation. The reality that these concepts are embedded in different philosophical, epistemological and ontological frames of reference and diverse from Western-based notions must be acknowledged and accepted. Indeed, spiritual dimensions such as the role of ancestors, spirits and invisible spiritual forces must be taken seriously. Discomfort among Western trained scholars and practitioners may not lead to the ignorance of these invisible and thus unmanageable practices. From a Western point of view, these spiritual phenomena are perceived as 'possible worlds'; however from the survivors' perspective these are 'real worlds'.<sup>10</sup> In some discussions about the role of culture and traditions the undertone surfaces that these survivors should be 'enlightened' and thus 'be liberated from the chains of religion'. This kind of remark puts the finger on a more existential, complex and long ongoing debate about secularism and the role of religion in 'modern' societies that thus also surfaces in transitional justice debates. To address these substantial debates, in my view, there should be a stronger call to practitioners and scholars to reflect upon their own frame of reference and the way this influences their position toward transitional justice practices and attitudes embedded in different worldviews. Currently, a critical reflective attitude is lacking among transitional justice practitioners and actors who scrutinise the locus of enunciation that they are talking and acting from.

In fact, these philosophical and ontological foundations or 'real worlds' constitute 'thick' accounts of transitional justice, whereas the 'thin' accounts relate to the international norms and discourse. Current discussions about the role of culture and traditions in transitional justice should move beyond the qualification of the 'purity' and 'authenticity' of these practices and must recognise the fluid, hybrid and

10. These concepts are used by the Colombian anthropologist Esther Sanchez Botero in her legal anthropological expert opinions on issues related to indigenous people in her work for the Colombian Constitutional Court and Inter-American Court of Human Rights.

dynamic character of culture, worldviews and cultural practices and attitudes. Indeed, as this study has revealed, survivors may mobilise a hybrid entirety of transitional justice recourses which are rooted in their worldview as well as grafted onto externally driven interventions. At the same time, it should be acknowledged that local needs and priorities are dynamic and may shift over time. Furthermore, at the level of policy making, a sharp line must be drawn between on the one hand political claims to culture relativism and power games by traditional authorities and the reality of multiple transitional justice meanings rooted in normative plurality at the grass root level of conflict-torn communities on the other.

A major challenge for policy makers is related to the ways that they will address these 'real worlds' and justice approaches which are embedded in broader cosmologies and distinct ontological frames of reference in their projects and interventions. These actors should be cautious when converting those local cultural practices into another tool of the transitional justice toolbox. Oversimplifying and disconnecting cultural legal practices from their broader cosmologies and ontological frame of reference in which they are embedded risks them misrepresenting what local people actually are saying. Currently, local traditional justice practices are often related to the concept of restorative justice which seeks to address the needs of the victims and perpetrator and focus on restoring broken social relationships and thus are perceived as opposite to retributive justice. Indeed, many traditional local conflict resolution mechanisms in non-Western societies have mainly a restorative rather than a punitive character. However, as this research has demonstrated, this is not always the case. In Maya indigenous normative system seeking a new balance and harmony and the use of conciliatory practices are central, but it also entails retributive aspects.<sup>11</sup> Therefore, policy makers should be careful in modelling and codifying these practices within the restorative justice paradigm and convert them into alternative dispute resolution mechanisms. Then, again exists the risk of reifying these local traditional practices and transforming them into manageable mechanisms thus losing the inherent cultural dynamic strength and their cosmological embedment.<sup>12</sup> Another crucial point is that the understandings from within discussed in this study show that from a survivor's perspective the several transitional justice issues are clearly intertwined. This insight raises concerns about the current approach to design transitional justice mechanisms that address separately the several goals such justice, truth, reparation or non-repetition. There is, indeed, a trend to recognise the need for a holistic approach to these goals, yet the mechanisms remain singling out one particular goal. Given the interconnectivity of transitional justice goals, the question must be raised whether this means that also the transitional justice mechanisms should address this intertwining.

11. A similar point has been made by Kimberly Theidon in her study on Peru. Kimberly Theidon, 'Justice in Transition: The Micropolitics of Reconciliation in Postwar Peru', *Journal of Conflict Resolution* Vol. 50, 2006, 433-457.

12. It is important to note that the restorative justice paradigm which is currently promoted as an alternative to criminal prosecutions in European and American legal systems originates from indigenous views on justice among the Maori in New Zealand and other indigenous groups in Canada.

Importantly, lessons can already be drawn from current transitional justice experiences with 'traditional' justice such as for instance Northern Uganda. Here, Allen warns about the effects of taking rituals outside their original contexts and transforming them into a form of semi-official 'traditional justice' by aid agencies and donors and argues that the merits of reifying local rituals has been oversold and the dangers under-appreciated.<sup>13</sup> In this context, insights from legal anthropological literature about recognition, incorporation and decentralisation of non-state legal orders and about claims of cultural diversity in Latin America, Africa and Asia could be helpful in exploring the ways of accommodating cultural claims to transitional justice interventions.

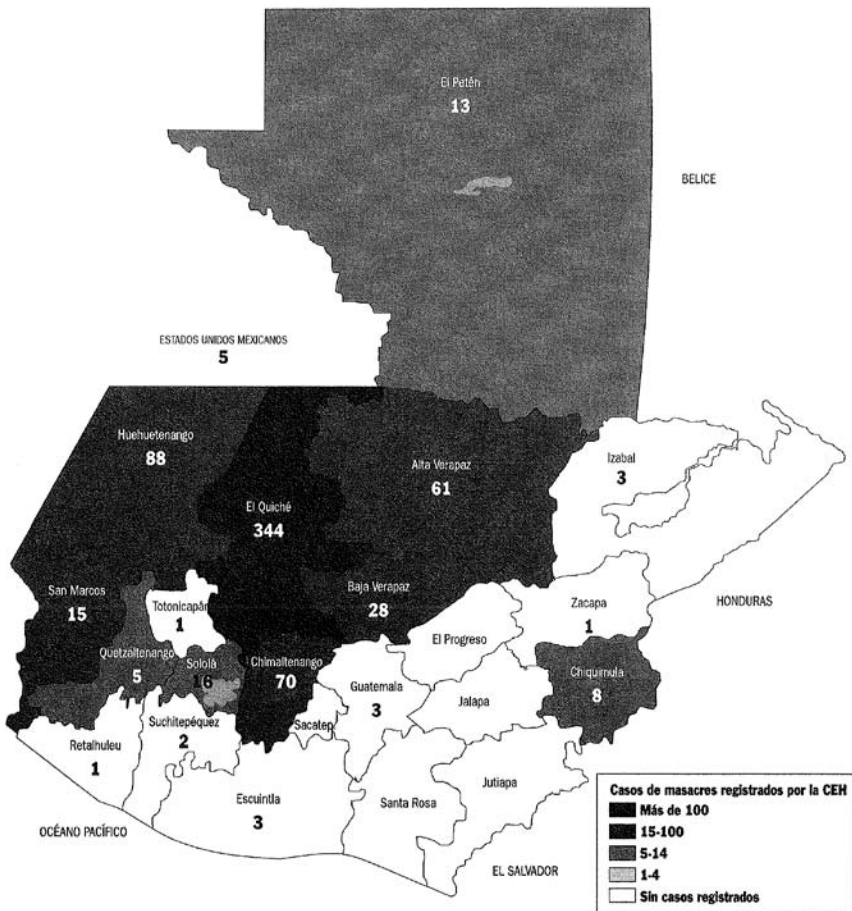
A final reflection is that it should be recognised that the road which a conflict-torn society takes to foster social recovery after gross human rights violations is clearly not a ride on a highway, but is more like a long journey on a non-asphalted, rough and muddy road to an isolated rural community during the rainy season. Survivors of an armed conflict face a similar journey and it is more likely that they will sit in an overloaded microbus rather than a comfortable and air conditioned 4x4 jeep. During that journey the microbus and its passengers may have to face many stumbling blocks such as a flat battery, a punctured tyre and getting stuck in the mud before getting home again. Experiences show that passengers and driver are patient and work together to solve the problems in a creative way. Also survivors start to pick up the pieces of their lives although they face many difficulties and challenges such as distrust, disunity and fear. They mobilise local cultural practices and attitudes and don't wait until external help arrives with a toolbox to deal with the broken or blocked microbus. External aid may be welcomed by the passengers, yet it must be clear that once this help has arrived the survivors should remain seated and decide how to reach their new homes.

13. Tim Allen, 'Ritual (Ab)use? Problems with Traditional Justice in Northern Uganda', in Nicholas Waddell and Phil Clark (eds.), *Courting Conflict? Justice, Peace and the ICC in Africa*, London, Royal African Society, 2008, 47-54.



# Annex: Map 1

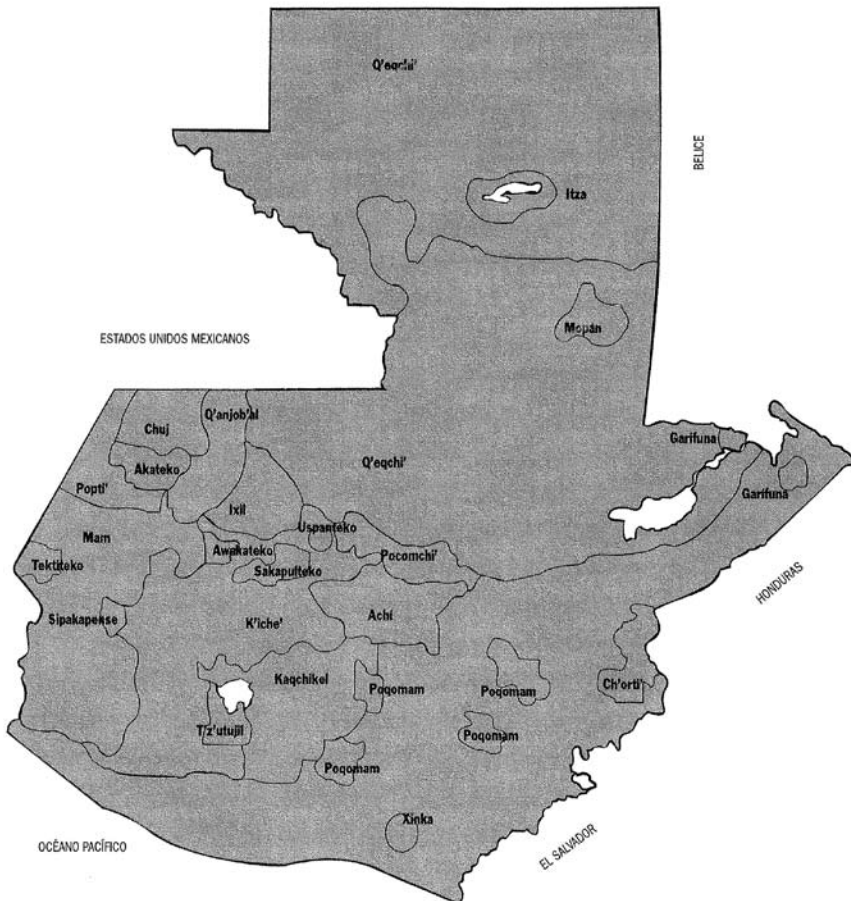
Number of Massacres by Department



Source: Comisión para el Esclarecimiento Histórico (CEH)

## Annex: Map 2

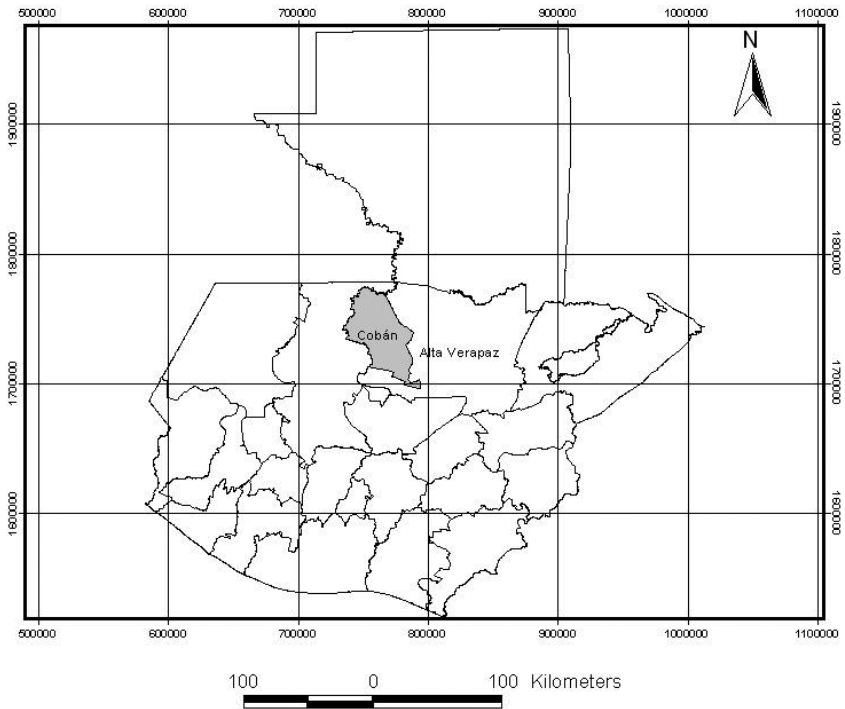
### Linguistic Indigenous Communities in Guatemala



Source: Comisión para el Esclarecimiento Histórico (CEH)

## Annex: Map 3

### Municipality of Cobán, Alta Verapaz, Guatemala

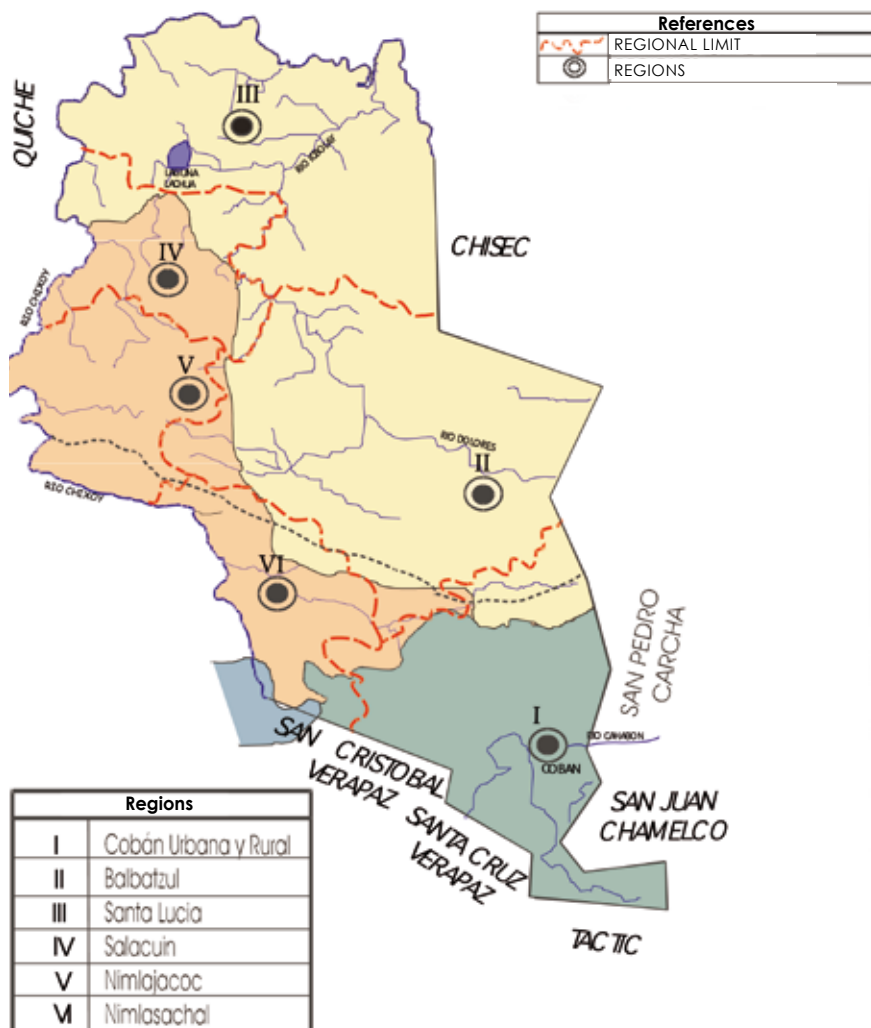


Source: Huet Alfonso, *Nos Salvó La Sagrada Selva. Memoria de Veinte Comunidades Q'eqchi'es que sobrevivieron al Genocidio*, Guatemala, Imprenta Maya Na'oj, 2008. (made by Chahim Huet Macz)



## Annex: Map 4

**Micro Regions of the Municipality of Cobán**

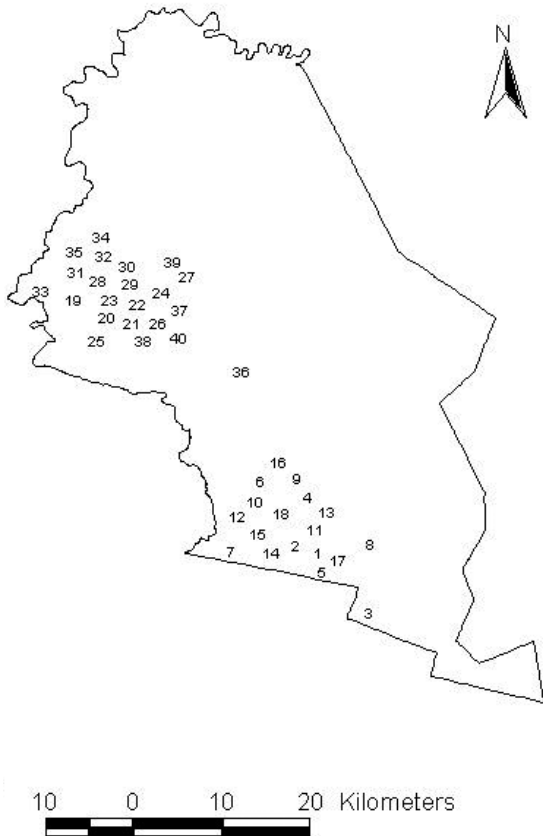


Source: MUNICIPALIDAD DE COBAN, Desarrollo y Fortalecimiento Municipal-Departamento de Catastro Municipal

## Annex: Map 5

### Destroyed Rural Communities (1981-1983) Municipality Cobán

- 1 Sacatalji
- 2 Cruxraxmax
- 3 Chionon
- 4 Chiquej
- 5 Chitu
- 6 Jolomuch
- 7 Quixalito
- 8 Raxquicú
- 9 Sacaquib
- 10 Sacaché
- 11 Sacumun
- 12 Saguachil
- 13 Salquil
- 14 San Isidro
- 15 Samuc
- 16 Satal Chiremox
- 17 Tzimajil
- 18 Xalabé
- 19 Baldio Pasacuc
- 20 Copalá
- 21 Chinajacoc Montecristi
- 22 Chinajacoc
- 23 Chinamococh
- 24 Cuxpemech
- 25 La Laguna
- 26 Las Conchas
- 27 La Sultana
- 28 Las Mercedes Pasacuc
- 29 Sajacoc
- 30 Peña Blanca
- 31 Rocjá Puribal
- 32 San José Saihá
- 33 San José Río Negro
- 34 San Lorenzo Ixmachan
- 35 San Pedro Ixloc
- 36 Samutz Sapalau
- 37 Sapemech
- 38 Satolohox
- 39 Semuy
- 40 Sesajab



Source: Huet Alfonso, *Nos Salvó La Sagrada Selva. Memoria de Veinte Comunidades Q'eqchi'es que sobrevivieron al Genocidio*, Guatemala, Imprenta Maya Na'oj, 2008. (made by Chahim Huet Macz)





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## Lieselotte Viaene

Ghent University, Belgium, Law Faculty

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