

## GENDER BASED VIOLENCE IN THE CONTEXT OF TRANSITIONAL JUSTICE: AN OVERVIEW ON CRIMINAL JUSTICE AND TRUTH SEEKING PROCESSES IN ARGENTINA AND GUATEMALA

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### 1. Introduction.

When looking at violence in contexts of transition from a situation of massive violations of human rights towards stability and democracy, we immediately notice how most of the countries have tried to address the crimes committed in order to look forwards. In armed conflicts civilians become a main target of victimization, especially women and children. Unfortunately gender based violence, especially perpetrated against women,<sup>1</sup> has represented a very big issue for many years, also in the eldest democracies. Sexual violence has always been one of the main features of conflict, somehow “naturalized” in situations of war and instability.

We talk about transitional justice referring to a specific discipline of international law which focuses on the application and implementation of designed mechanisms to set forth within countries emerging from political violence and socio-economic upheaval, in almost all cases marked by systematic and widespread violations of human rights. Transitional justice tries, therefore, to provide a concrete answer to the cry for justice and reparation in the aftermath of the conflict, while promoting mainly criminal justice and truth seeking operations. As is made clear by transitional justice doctrine, criminal accountability for past crimes and atrocities is the first and fundamental step in

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<sup>1</sup> When talking about gender based violence, we intend “*physical and psychological violence that occurs in the family and the community and is perpetrated or condoned by the state and is linked to the gender of the person*” (definition offered by Bouta, Tsjeard, Frerks, Georg and Bannon, Ian, *Gender, Conflict, and Development*, The International Bank for Reconstruction and Development, The World Bank, Washington DC, 2005). Hence it involves both men and women when persecuted on the base of gender. However, it is generally recognized that such violations are mainly directed against women, therefore when talking about gender based violence we refer to violence committed against women due to their sex.



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granting justice and satisfaction and is inevitable and indispensable for building an atmosphere of renewed trust and general reconciliation.

However, transitional justice seems to look only at what happened to the men, taking in very little consideration the crimes perpetrated against the women. The foundation of such a failure can be thought to sit within the judiciary and criminal systems and the deep rooted gender based discriminations. Sexual violence and crimes against sexual integrity have often been underestimated, not investigated and rarely, if there was any prosecution, these have led to an effective conviction. The judiciary personnel lacks of sensitivity towards the victims, which makes it even harder for women to report such crimes, and often, as the search for recognition and justice can only be achieved after the end of the conflict, the testimonies of the victims are the only evidence at hand, as the passage of time makes it impossible to show physical lesions or other forms of proof of the attack (such as semen samples and fingerprints). This issue adds to the labels and prejudices strongly tied to culture and beliefs: indeed, when set before sexual violence, a very popular conception of women as partially responsible (*"she must have done something – she must have refused to do something – she committed betrayal"*)<sup>2</sup> reveals the underlying reluctance towards those abused.

It was with the institution of the International Criminal Tribunals of Former Yugoslavia and Rwanda that rape was defined for the first time as a crime against humanity and a war crime. The statements of the two courts resolved some very pressing issues: most importantly, a final decision was made on the role of rape in international criminal law: it would no longer be part of the crime of torture, as it implies physical penetration (which is certainly not present in cases of torture) but it is an independent crime, worthy of its own definition and classification.

The aim of this paper is to focus on two very specific transitional contexts, Argentina and Guatemala, in order to underline the different approach the two countries adopted in the aftermath of the military regime, in facing and confronting past abuses, with special attention for criminal justice and truth seeking mechanisms applied. Indeed, if gender violence in Guatemala became a weapon of genocide, used indiscriminately and collectively, in Argentina it was not part of some improvised collective attack, rather it resulted from an extensive investigation in order to fulfill the aims of a proper plan put together by the military forces. Every act of violence was calculated as part of a strategy *"to annihilate and degrade the subjectivity of victims"*.<sup>3</sup> When dealing with these crimes under the perspective of criminal justice, the reaction was opposite for the two countries: Argentina was well known for having immediately started prosecutions against the former members of the military; Guatemala, on the contrary, adapted to the general behavior of Latin American countries in agreeing to total impunity for the perpetrators, until most recent times. However, in the field of gender based violence, Argentina clamorously failed in bringing to justice perpetrators of violence against

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<sup>2</sup> For more see Balardini Lorena, Oberlin Ana and Sobredo Laura, "Gender Violence and Sexual Abuse in Clandestine Detention Centers: A contribution to understanding the experience of Argentina", in *Making Justice: Further Discussions on the Prosecution of Crimes against Humanity in Argentina*.

<sup>3</sup> *Ib.* as note 2.



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women, while Guatemala managed to distinguish itself by prosecuting violence committed against the women of the *Sepur Zarco* community, opening - in May 2016 - the very first national trial for sexual violence and sexual slavery as internationally recognized crimes. Also, the truth commissions established in the countries - primary organs in delivering a narration of the events - operated in very different senses: Argentina's CONADEP Commission<sup>4</sup> was the first truth commission ever created and a model for all other countries in transition to democracy, prior to the Truth and Reconciliation Commission for South Africa; however, its report did not properly address human rights violations against women, but classified all acts of violence as a mere form of torture; in Guatemala, on the contrary, the CEH and REHMI Commissions granted a major recognition to crimes of sexual violence and sexual abuse perpetrated during the 30 years of internal armed conflict.

In any case, actions taken in providing accountability and truth for abused women lack of sufficient effectiveness: trials against the perpetrators are slow and take time. In Guatemala, as above said, women asking for reparation and accountability needed to wait until May 2016; Argentina, on the other hand, immediately started performing trials and issued many conviction sentences, however achieving little results in relation to gender based violence.

## 2. An historical perspective on Argentina and Guatemala.

### 2.1. Argentina and the dirty war (1976-1982).

In March 1976, the armed forces in Argentina, organized in a three-men *junta*, took power through a *coup d'état*. The *coup* was initially welcomed with favor by the society, as the precedent period had been dominated by confusion and widespread violence and economic instability. The vicious intentions of the military, however, were soon uncovered: a severe campaign against political opposition (the guerrilla of ERP, *Montoneros* and other groups) was initiated, with the aim of eliminating any so called *subversive thought*.<sup>5</sup> This period soon came to be known as Argentina's "*dirty war*", due to the brutality and persisting violence led in a context of imposed secrecy. The situation got out of control in little time: brutal repression, involving great human rights violations and the widespread use of torture, soon became everyday practices perpetrated by the *juntas*, under the stem of an anti-Communist notion of a Western Christian civilization.

As was widely reported, "*while refusing to acknowledge most arrests and detentions, the armed forces were suspected of causing to disappear and killing an estimated 10-30.000*

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<sup>4</sup> *Comisión Nacional sobre la Desaparición de Personas*, also known as National Commission on the Disappearance of Persons.

<sup>5</sup> The term "*subversive thought*" was used for the first time by General Jorge Videla, the army's representative in the initial *junta*. With this expression he meant dissent of any kind.



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people”.<sup>6</sup> Everything happened in complete secrecy: due to the censorship imposed by the regime and the manipulation of all media and press, the repression and abuses committed by the *juntas* were swept under the carpet and kept under coercive silence. However, opposition grew stronger. A significant example of such phenomena, the world famous “*Asociación de Madres de Plaza de Mayo*” (“Mothers of the Plaza de Mayo”), was the first organization to pacifically respond to the uncontrolled repression carried out by the military. Made exclusively of women of all ages, it became an organized and cohesive entity much stronger and dynamic than anyone could expect, and brought to the attention of everyone, both nationally and internationally, the atrocities that were being perpetrated in Argentina at the time.

The *juntas* lost their power after the disgrace of the military defeat of the Falkland Islands, in 1982.

## 2.2. Guatemala and the internal armed conflict (1962-1996).

The territory of Central America which we now know as Guatemala, the so called “*land of trees*”, has been one of the very first conquests of the Spanish colonizers. By the time the country gained independence, in 1821, it was already built upon a very rigid division of the society into a hierarchical scale: at the very top the Spaniards born in Europe, below them the *criollos*, born from Spanish parents in the territory of Guatemala, the *ladinos*, also known as *mestizos*, half-casts, and at the very bottom the indigenous population.<sup>7</sup>

Guatemala’s recent history was strongly touched by the intervention of the US in internal politics. The C.I.A attempted an invasion of Guatemala through Honduras, placing as leaders two Guatemalan exiled military officers. Then, with a small group of Guatemalans, formed especially by former convicts and small criminals, overturned the democratic government, and started a procedure of expropriation of those lands. From the 1950s to the 1990s the US government directly supported the Guatemalan Army, through trainings, weapons and financial aid, making it the best in Central America.<sup>8</sup> As a result of the enforcement of the army the military took power, with the result of moving a proper civil war against opposition and, in particular, the Mayan populations. In little time the regime turned violently against the indigenous, creating a regime of terror, leading to the disappearance of hundreds of thousands.

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<sup>6</sup> Kritz, Neil J. (ed.), *Transitional Justice – How Emerging Democracies Reckon With Former Regimes*, Volume II- Country Studies, Washington DC, United States Institute of Peace Press, 1995, pp. 323.

<sup>7</sup> From the website: Lonely Planet, *History of Guatemala*, <http://www.lonelyplanet.com/guatemala/history>; and Cyaya Birding, *Brief History of Guatemala*, <https://www.cayaya-birding.com/history.htm>; and BBC News, *Timeline: Guatemala*, <http://news.bbc.co.uk/>; and History World, *History of Guatemala*, <http://www.historyworld.net>.

<sup>8</sup> *Ib.* as above. Above other aims indeed, the C.I.A’s involvement had a strategic scope in Guatemala: it was focused on the military training of 5.000 militants, opponents to the Fidel Castro dictatorship in Cuba, with the aim of ultimately organizing the unsuccessful Bay of Pigs invasion against Castro’s *regime*.

In 1982 General Efraín Ríos Montt replaced Lucas García as head of state. His reign was the bloodiest period in Guatemala's history. During that time, the Guatemalan government led a campaign to wipe out large portions of the country's Mayan people: an estimated 70,000 were killed or disappeared.<sup>9</sup> General Ríos Montt opened a so called *scorched earth operation*, with the aim of burning to the ground Mayan villages and cancelling their existence from Guatemala.<sup>10</sup> This was considered one of the most serious genocides in Modern Central America,<sup>11</sup> by many recognized as a "*de facto apartheid*". The war lasted 36 years and ended in 1996 with the signing of the final peace treaty, which took the name of *Agreement on the Identities and Rights of Indigenous People*. However justice never arrived as impunity for dictators was adopted as a general rule. Those who tried to uncover the ones responsible for the crimes perpetrated often became primary targets of violence themselves.<sup>12</sup> Because of the brutality, violence and disappearances, the country was transformed into a state of exclusion.

### **3. Argentina and Guatemala: Criminal Prosecutions and Truth Commissions dealing with sexual violence.**

#### *3.1. Gender and criminal prosecutions in Argentina.*

When analyzing the transitional justice process in Argentina, the cry for justice is a main feature. In relation to gender justice a complete blindness seems to have dominated for years: in the *Informe Nunca Más* of the *Comisión Nacional sobre Desaparición Forzada de Personas*, sexual violence was not explicitly included in the description of torture used in the clandestine centers; in 1986 the trial against the former members of the *juntas* did not recognize any responsibility for crimes against sexual integrity, as rape and every other form of abuse; also, when in 1997 a criminal investigation to prosecute the military under international law was opened in Spain, before the National Court of Madrid, no conviction or condemnation was effectively made.

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<sup>9</sup> From the Center for Justice and Accountability, *Guatemala Silent Holocaust*, website: <http://cja.org/where-we-work/guatemala> and the CEH, *Memoria del Silencio*.

<sup>10</sup> The Guatemalans referred to this scorched earth strategy as *la escoba*, which literally means the broom, because of the way it swept off the villages and entire populations living within them. From the Lonely Planet, *History of Guatemala* website. See above note 7.

<sup>11</sup> The Guatemalan Historical Clarification Commission (CEH) clarified in its report on violence in Guatemala during the civil war (*Guatemala: Memoria del Silencio*), that almost 200.000 people were killed, more than 400 villages destroyed, and between 500.000 and 1.5 million people internally displaced; from The Center for Justice and Accountability, *Guatemala Silent Holocaust*, *ibidem* as note 9; and Puddington, Arch and Piano, Aili (et al.) (eds), *Freedom in the World 2008 – The Annual Survey of Political Rights & Civil Liberties*, New York and Washington DC Freedom House, Rowman & Littlefield publishers, Inc., 2008; CEH, *Memoria del Silencio*, Vol. IV, 21.

<sup>12</sup> A very infamous case was the homicide of Bishop Juan Gerardi, head of the Archdiocese of Guatemala, a man of central relevance in the gaining of information and evidence of the past abuses, whose work aimed at the collection of testimonies for the so called REHMI project.

When the trial was held, nine of the *junta* leaders were convicted. Although being a very significant step in Latin American transitional contexts and the only example in Latin America of large scale prosecutions against a former dictatorship performed on a national level, sexual violence was taken into no consideration. One of the main pieces of evidence of such underestimation sits within the scarce presence of testimonies about sexual violence during the trial. The focus was mainly placed on proving the existence of a master plan of repression behind all the criminal activities brought forward by the members of the army but, even when references to sexual abuse were actually made, they were either not taken into consideration, or simply re-conducted under the broader category of torture. The position of the court during the trial against the *juntas*, indeed, considered sexual violence as a crime subsumed under torture, within which fell any degrading treatment towards detainees; hence, it would never be investigated as an independent crime.

When new laws of amnesty and official pardons were then issued by the government in a moment of reborn tensions and political instability, criminal prosecutions were entirely closed, until 2003, when the election of President Kirchner brought to the re-institution of trials for human rights violations perpetrated during the *dirty war*, and the laws of amnesty were held unconstitutional by the Supreme Court and pardons were declared null and void. However survivors continued to file complaints and search for the truth: truth commissions called *Juicios por la Verdad (Truth Trials)* were built, and regardless of the lack of power in convicting the perpetrators, became a valid alternative to criminal prosecutions, introducing a very first form of condemnation of sexual violence, where finally sexually abused women were perceived as victims and no longer “impure” subjects, cause of embarrassment to their families and destined to marginalization. Nonetheless, the first complaint filed at the opening of the new prosecution trials was about sexual violence perpetrated by military officers in the secret detention centers.

Although thirty years have passed, and it is often not possible to establish the precise moment and place, testimonies about sexual violence are now primary tools for gathering evidence and have gained a great importance in the criminal prosecution, together with a most important renewed credibility. However, the first conviction for crimes against sexual integrity came only very recently with the case against Air Force Commander Molina, for crimes occurred in the clandestine center of Mar de Plata. He was convicted to life imprisonment for sexual violence against political detainees, and this decision - as underlined by many scholars of women’s human rights law – “marks a position, and precedent [...]. It parts from the premise that rape in clandestine detention centers is a crime against humanity (for which there is, therefore, no statute of limitations) and it overcomes the evidentiary difficulties in these cases by granting relevance and credibility to victim accounts. In addition, it approaches questions regarding why these crimes had not been

reported before and highlights that this delay is logical and reasonable given the difficulty expressed by victims in narrating what happened [..].<sup>13</sup>

### 3.2. The Commission's collection of testimonies and women experiences.

As the Commission on the Disappeared Persons could easily discover in the aftermath of conflict, sexual violence perpetrated during Argentina's *dirty war* was exercised as a part of a broader plan to annihilate the subjectivity of the victims, in order to create fear towards the regime. The clandestine detention centers made it also even harder to endure such abuses, as sexual violence was experienced on a daily basis, in places where people held no rights nor dignity, and were no longer entitled to their lives.

In the *Nunca Más* report, testimonies and typical features of violence were uncovered and made it clear that the use of rape and the threat of someone else's life in order to "soften up" one's will to confess, were ordinary practices to obtain information.

"If I didn't tell them where Dr G. lived, they were going to torture my daughter, then ten years old, saying that she was "just right for the machine".<sup>14</sup>

Some women were reduced to such extreme conditions by the violence they endured during captivity, and were so desperate, that they lost all faith and strength to live.

"Then they stripped and raped her. She asked to go to the toilet. They took her naked along an open gallery full of soldiers. She remembers that they all laughed [..]

She couldn't stand anymore because she had a ruptured stomach and her ears hurt so much that she was continually fainting. When they took her back to the foot of the metal bed where they had applied the electric prod to her, they would make her touch the wires, passing an electric current through when she did so, which brought on more convulsions. Current was passed through her whole body by the same wires which bound her hands and feet. As she had those convulsions and her body writhed about, they would get more annoyed.. Later they told her they'd brought her little boy, they made her listen to a recording, but she had become very obstinate, in a state of oblivion, and she didn't care anymore."<sup>15</sup>

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<sup>13</sup> From Lorena Balardini, Ana Oberlin and Laura Sobredo, "*Gender Violence and Sexual Abuse in Clandestine Detention Centers: A contribution to understanding the experience of Argentina*". See note 2.

<sup>14</sup> File No. 4152 of the *Nunca Más* report, English version (CONADEP, *Nunca Más -The Report of the Argentine National Commission on the Disappeared*, section "Secret Detention Centers", *Torture*).

<sup>15</sup> File No. 2356 of the *Nunca Más* report, English version (CONADEP, *Nunca Más-The Report of the Argentine National Commission on the Disappeared*).

“They beat me up again, questioning me about my activities and the names of people I didn’t know. When I arrived they left me dumped in a yard and after a while they took me to the ‘machine’, a name given to the electric prod, where they continued to torture me, [...] a torturer began to hit and beat me with chains and then with a whip, swearing and shouting at me. Then they dumped me back in the yard again. I could feel my whole body stinging and hurting, made worse by the salt water they threw over me.”<sup>16</sup>

“She heard from the radio that she was in Zárate police station. Without asking her anything, they applied the electric prod, stripped her and applied the prod again in the anus, vagina, mouth and armpits. They threw water over her and tied her to a leather armchair. The sheet had been tied over her head. Somebody came up to her and started to twist her nipples, causing her intense pain since they had also applied the electric prod to them.”<sup>17</sup>

Another relevant matter reported by the Commission on Disappeared Persons related to the conditions of pregnant women in the detention centers, the very poor medical attention they received, and how some would need to wait hours for the doctors to arrive, who would sadistically embarrass them and make others laugh by shouting and mistreating them when giving birth; one woman told about the moment of her labor and transportation to the hospital: her kid was born in the car on the way there. It was also not seldom that women would be left completely on their own when giving birth and, after birth, while still enduring post-partum pains, they would have to clean up their own liquids and placenta. In hospitals they would be also subjected to experimental operations and premature caesareans, and many babies were made to be born with anonymous identities and immediately taken from their mothers.<sup>18</sup> Indeed, after giving birth, women would usually be left just a few days to hold their children before the latter would be wrenched from their arms and their identities cancelled.<sup>19</sup>

Lacking any papers the parents and grandparents could not recognize their children. Those who survived are still in desperate search for them, as was the case of the *Madres and Abuelas de Plaza de Mayo* (“the Grandmothers of Plaza de Mayo”).<sup>20</sup>

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<sup>16</sup> File No. 4152 CONADEP, *Nunca Más -The Report of the Argentine National Commission on the Disappeared*, section “Secret Detention Centers”, *Torture*, see *supra* note 14.

<sup>17</sup> File No. 5604 CONADEP, *Nunca Más -The Report of the Argentine National Commission on the Disappeared*, section on “Torture”, see *supra* note 14.

<sup>18</sup> This described practice consisted in the world infamous kidnapping of babies, which were made to disappear and given into illegal adoption to the families of the regime.

<sup>19</sup> From *Nunca Más report*, CONADEP, *Nunca Más-The Report of the Argentine National Commission on the Disappeared*.

<sup>20</sup> Señora de Carlotto, founder of the group of *Abuelas*, learnt from a prisoner her daughter was still pregnant when taken into detention. She reported as follows: “On this long road, we Grandmothers got together and organized a group to look for the disappeared children, at first thinking that there were just a few of us, and then realizing to our horror that there were hundreds of us. And depositions are still coming in”.



### 3.3. Gender and the work of the truth commissions in Guatemala.

During the thirty six years of civil war, Guatemala experienced serious violations of human rights that led to the identification of the conflict as genocide against the Mayan populations living in Guatemala. Within these atrocities, sexual violence was used as one of the main weapons of war against the indigenous communities, and a practice which soon became generalized and systematic. Gender based violence, which consisted in sexual abuse and other forms of torture against Mayan women, was never a mere occasional event, nor a sporadic case of sexual depravation; it was, instead, a planned measure ordered by the military high ranking officers to be used as a counter insurgency strategy directed to demonstrate the power and the dominance above the so called insurgency, soon made to coincide with indigenous populations.<sup>21</sup>

The two *Informes* promulgated after the conflict, *Guatemala: Memoria del Silencio* by the *Comisión para el Esclarecimiento Histórico*, and the *Guatemala Nunca Más* of the Interdiocesan Project for the Recovery of the Historical Memory, included extensive explanatory documents about this phenomenon and established that “*the women were victims of all the types of violations of human rights, but they also suffered specific acts of gender based violence*” as violence against women was both sexual and not.<sup>22</sup> It was also understood that within Mayan communities, the customs and traditions linked to sexuality imposed strict rules of honor and integrity. Women were obliged to preserve their virginity until marriage, therefore sexual violence broke the conjugal and social bond, representing a burden of shame on both the woman and the entire community; it was a cause of stigmatization and isolation by others, and demolished family unity. As the commissions revealed, women were subjected to all kind of abuse, from rape to torture, from forced disappearance to sexual slavery.<sup>23</sup> The soldiers, state agents, and members of the military and PACs (*Patrullas de Autodefensa Civil*), usually carried out sexual abuse in groups of five or more men, and only in eight of all the testimonies

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<sup>21</sup> In the beginning of the conflict the military dictatorship affirmed the will to prosecute those involved in the *guerrilla* movements. With the alleged aim of fighting insurgency, the regime, led by years of hatred and racisms, focused primarily on the indigenous populations living in the countryside. As they became main target, villages and communities started to be subjected to frequent raids by the military, atrocities and violence against the populations there living. The situation got worse when the so called *Patrullas de Autodefensa civil* were instituted, formed by indigenous people under threat of their lives with the order of surveilling and referring to the military all names of those involved in insurgent movements.

<sup>22</sup> The CEH recognized that sexual violence was directed firstly against women, and only in 1% of the cases it was related to men. It found that sexual violence was a practice used almost one every six cases of attack towards an indigenous village and it affected almost 16 of the 22 departments in which the territory is divided, but, although being so widespread, the cases reported were only 285, collocating the violence against women in a low percentage respect to all other forms of violence (2,38%). This did not mean that all other departments of the country and in all other cases of violence committed against the populations, sexual violence was not perpetrated, rather it just indicates a low rate of confessions of this abuse, most probably due to the burden of shame carried by the women after being subjected to such violations.

<sup>23</sup> The major number of cases of sexual violence were perpetrated in the years between 1980 and 1983, during which was applied the scorched earth policy by the regime.

reported by the CEH it resulted that the crime was perpetrated by one man individually. This further explains that violence occurred as a proper technique of creating fear and destruction of identity.

The discussed use of sexual crimes as a weapon of war is strongly connected to the belief that in war the body of the women is perceived as belonging to the enemy, and as all other properties it needs to be destructed and expropriated to win the conflict.

In the REMHI Project report and the *Guatemala: Memoria del Silencio*, sexual violence during the conflict was recognized also as a way to punish. The public character of the violations and massive feature of violence showed the will to punish those who were involved or sympathized for the guerrilla.<sup>24</sup> Women were the means through which to affirm power, superiority of men above women, and dominance of *ladinos* above the indigenous people.<sup>25</sup> During the massacres, soldiers would priory create a division between men and women before executing the whole population: women were subjected to all forms of violations, obliged to subject themselves to the will of the army, often forced to cook, clean and have sexual intercourse.<sup>26</sup> In some occasions rape was also conceived as a compensation for the soldiers, as if the female body was a prize for winning the conflict. This perception of women also influenced the idea that they could exchange their bodies for their lives, voluntarily adhering to being violated and becoming sexual slaves of the military.<sup>27</sup>

As was stated by some of the most important women human rights organizations in Guatemala, *Union Nacional de Mujeres Guatemaltecas* and *ecap, equipo de studios comunitarios y acción psicosocial*, in the report “*Rompiendo el Silencio: Justicia para las mujeres víctimas de violencia sexual durante el conflicto armado en Guatemala*”, the consequences of sexual abuse were multiple and very serious among the Mayan women. Rape and abuse hit both physical and psychological health: from mutilations and transmission of sexual disease, to causing infertility, provoking abortion, feticide and unwanted pregnancies, to all forms of mental issues, particularly strong in younger girls. Indeed, the CEH noticed that in about 35% of the cases sexual violence was committed against girls under 18 years of age, often lacking mature reproductive organs to survive a sexual relationship. Quite common was the practice of feticide, which consisted in killing the fetus from within the body of the mother by cutting the belly and extracting the baby from the stomach. Frequent were the cases of involuntary abortion and unwanted pregnancies, causing further distress and stigmatization upon the abused. After rape the women were located in the lowest strata of their community, no longer survivors of the

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<sup>24</sup> From Consorcio Actoras de Cambio: La Lucha de las Mujeres por la Justicia, Instituto de Estudios Comparados en Ciencias Penales de Guatemala, *Rompiendo el silencio: Justicia para las mujeres víctimas de violencia sexual durante el conflicto armado en Guatemala*, ECAP, UNAMG, F&B Editores, Guatemala, 2006.

<sup>25</sup> From Rosser, Emily, “Depoliticised Speech and Sexed Visibility: Women, Gender and Sexual Violence in the 1999 Guatemalan *Comisión para el Esclarecimiento Histórico* Report”, *The International Journal for Transitional Justice*, 1, 2007, 392-410.

<sup>26</sup> *Ibidem* as above note 24.

<sup>27</sup> *Ibidem* as above.



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genocidal brutalities of the scorched earth policy, but rather bearers of a broken harmony within community structures and order. In one testimony a woman claimed:

“In my community I was blamed because they said rape was my fault, they always said to me ‘there goes the soldiers’ woman’, and each time I heard this, it hurt me”.<sup>28</sup>

For all such reasons sexual violence was covered by a veil of silence by both the Mayan communities and the State, until most recent changes have occurred in approaching these issues and finding a way to finally render justice and lift those hearts from such an unbearable weight.<sup>29</sup>

### 3.4. Gender and criminal prosecutions in Guatemala.

Of fundamental importance in order to look at sexual violence during the Internal Armed Conflict of Guatemala, one case in particular must be studied: the *Sepur Zarco* community process, which eventually brought to the very first conviction for sexual crimes committed during a period of massive abuse by a national judge.

*Sepur Zarco* was a community situated on the border between Alta Verapaz and Izabal, in which, during the Internal Armed Conflict, approximately 6 military detachments were placed with the aim of exterminating, torturing and destructing the people of the community. All detachments were built by the locals under threat of weapons. In that time the army captured all the men of the community. Their wives were taken as widows by the military, and subjected to domestic and sexual slavery. These abuses were committed for 6 months consequently; the women took turns every three days to cook, wash the soldier’s uniforms, while repeatedly being violated, individually and collectively. In this context sexual violence was used as a weapon for sustaining the patriarchal domination of the system and it was legitimized by the military.<sup>30</sup>

After the institution of the Tribunal of Conscience for Sexual Violence against Women during the Internal Armed Conflict, in 2010, fifteen Q’eqchi’ women decided to start walking the path to obtain formal justice. As already mentioned *supra*, the *Sepur Zarco* case formed the first presented before a national court in order to prosecute sexual violence, sexual and domestic slavery as crimes deemed under humanitarian law as acts against humanity. In June 2015 judge Miguel Angel Galvez, accepted the evidence and a public and oral proceeding was opened on the 1st February 2016.

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<sup>28</sup> From a testimony given to the Tribunal of Conscience for Women Survivors of Sexual Violence held in Guatemala City in March 2010. From Crosby, Alison and Lykes, Brinton M., “Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala”, *The International Journal of Transitional Justice*, 5, 2011.

<sup>29</sup> *Ibidem* as above note 28.

<sup>30</sup> Translation of the original paper about the *Sepur Zarco* case released by the organization for human rights defence: La Alianza Rompiendo el Silencio y la Impunidad. From Alianza Rompiendo el Silencio, *Caso Sepur Zarco, la lucha de las mujeres por la justicia*, 2011, note 24.



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Furthermore, the 2<sup>nd</sup> March 2016 the Guatemalan court issued a reparations decision which can be considered one of the most substantial examples of acknowledgement of crimes against women's dignity and sexual integrity. The program of reparation provided monetary compensation to each of the victims, and a general commitment to search for the disappeared husbands, also granting a right to health, education and access to land in *Sepur Zarco*, previously denied by the military forces. To ensure that such crimes will not happen again, the decision also ordered to include the *Sepur Zarco* case in school books and the construction of a monument in honor of the victims, symbolizing women's justice and prevention of human rights violations.

Women survivors of the *Sepur Zarco* community needed to wait 30 years to finally obtain some form of justice for the crimes suffered. And although time passed their demand grew stronger instead of fading into compliance. These women, also thanks to the support of human rights organizations,<sup>31</sup> never gave up, and this could not go unnoticed in a field like that of women human rights law, where breaking the silence remains a great issue. The *Sepur Zarco* case should serve as an example for all women that have experienced sexual violence and have not yet found the strength to tell or the heart to continue in their search for justice.

#### 4. Conclusions.

In analyzing two critical contexts of intervention of transitional justice mechanisms, it is evident the general under-estimation of crimes of a major entity, both for the widespread feature they had, and for the tragic consequences they caused to the victims. Within a dimension finalized at the acknowledgment and affirmation of the respect for the most fundamental human rights, such as that of international human rights and humanitarian law, under which falls Transitional Justice, it is of primary importance to grant equal attention also towards those violations that have characterized the existence of female gender since the most ancient times. The two cases here pointed out, are an ulterior evidence of the lack of recognition of women's sexual integrity. However, as proposed by this article, where there has been an acknowledgement of the violations carried out, there could be a key to progress and development of this delicate issue, especially because in the legal perspective of granting an attended criminal response to these actions resides a longed for answer to the need for justice, which the victims cannot and should not be expected to renounce to.

The case of Guatemala especially, while opposing to the initial blind acceptance of the violence perpetrated against women detainees in Argentina, should stand out as

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<sup>31</sup> Alianza Rompiendo el Silencio, the Public Prosecutor's Office, which was committed to ending impunity, and human rights representatives, *Avocats sans frontières Canada* (ASFC) are one of three organizations that have appeared before the judge as civil actors, with the aim of representing the victims before the court, together with Union Nacional de Mujeres Guatemaltecas (UNAMG), and Mujeres Transformando el Mundo (MTM).



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one positive result of transitional justice mechanisms in dealing with gender violations of human rights, and ought to become a model for the years to come.

Transitional justice should involve more directly women actors and women's needs, not only in the establishment of truth seeking processes, but, especially, in the broader field of criminal justice, by enhancing the participation of women judges and court personnel, to better comprehend and stand by the victims of these violations. And also, women sitting on the other side should be able to understand the real perspective of the victims, no longer being bearers themselves of the enrooted conception of women as partially responsible.