

**MEMORY POLITICS IN GUATEMALA:  
LINKING THE BATTLE OVER TRUTH WITH THE PURSUIT OF JUSTICE**

Lavinia Schwedersky

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**Introduction**

There exist two main opposing views when it comes to the way in which countries that emerge from civil wars should address the legacy of their past in order to achieve a successful transition to democracy. On the one side stand those who are enthusiastically observing a “justice cascade” which is said to have been emerging since the 1980s as more and more states have started to prosecute the perpetrators of former regimes through domestic or international courts (Sikkink 2006, Roht-Arriaza 2009). On the other side are those who favour amnesties and truth commissions over trials. The latter are critiqued as costly, ineffective in their deterrence function, and even detrimental to peacebuilding in the worst-case scenario, where they put too much pressure on already weak and dysfunctional judicial systems (Snyder and Vinjamuri 2003). Guatemala, however, is a case which seems to fit neither of these arguments, and is thus illustrative of the limitations of such simplistic dichotomies.

Fifteen years after the official ending of Guatemala’s thirty-six year long civil war, the country is still far from a transition towards a consolidated democracy. Guatemala, it has been said, is suffering today from “collective Alzheimer” (Chirouze Montenegro 2010:1389), as historic memory has become a source of ferocious battles and atrocities committed during the

civil war are still being denied by the ruling elite. The case of Guatemala thus raises the question of what the role of transitional justice can be in a country where the battles of war have been replaced by a battle over the truth (Smith 2001:63)? This essay will explore how Guatemala fits into the still ongoing peace versus justice and truth versus justice debate. It will argue that justice in Guatemala is first and foremost being denied through a denial of the past, illustrating that truth and justice are not mutually exclusive but rather complementary and closely entangled (Seils 2002: 54, Lutz 2006). In addition, it will be shown that in a context of a contested past and a variety of lived experiences, large scale, national-level transitional justice processes are bound to fail. Differing perspectives and personal narratives need to be met with adequately tailored local responses.

### **Collective Punishment and the Quiet Genocide of the Mayan Population**

The period today known as Guatemala's "democratic spring" lasted only ten years and ended abruptly with the CIA-backed overthrow of democratically elected president Arbenz in 1954. The coup was followed by the formation of revolutionary groups in the rural areas who opposed the newly installed military regime and launched their first insurgency in 1960. Guatemala subsequently spiraled down into thirty-six years of state repression met with sporadic guerrilla uprisings by the Guatemalan National Revolutionary Unity (UNRG). Over the course of the war 200 000 people are said to have lost their lives, 626 massacres occurred, 40 000 people were disappeared and over a million were internally displaced. Ninety-three percent of the crimes were carried out by government forces and 87% of the victims were of Mayan descent, supporting the conclusion of Guatemala's Truth Commission report that acts of genocide had been committed (Seils 2002: 34).

Scholars have identified four distinct stages of state led terror in the course of Guatemala's four decade long civil war, the first of which directly followed the coup in 1954 and then quickly developed into a second wave of what has been called "spectacle terror" (Afflito and Jesilow 2007: 24). It included the use of torture, mutilations and disappearances in order for the military to consolidate political, economic, and social power and to deter any possible guerilla insurgency (ibid.). The third wave of terror began in the 1970s and was increasingly directed towards wiping out the rural guerrilla movement and ultimately led to the fourth and deadliest stage of the terror, the genocide of the Mayan population from 1981 to 1983 (ibid 25).

Parallel to the public acts of violence, there was an attempt to break solidarity within communities by instigating intra-communal violence and forcing people to kill friends or family members. Those who survived the massacres were to find their lives entirely militarised with all adult men being forced to join local militias called "Civil Defense Patrols" (PAC) aimed at ridding communities of guerilla influence (ibid 11). PACs not only became an efficient tool through which the military could control local life, but they also effectively destroyed social relations and undermined existing structures of authority (ibid). As discussed below, the deep-seated mistrust that resulted from these forms of intimate violence among community members is unlikely to be overcome solely by national-level responses but rather requires an individualised and localised truth-telling process.

### **No Peace No War: the Nature of Guatemala's Transition**

It is difficult to speak of a transition to peace in Guatemala given that violence is still omnipresent and that in five years of "peacetime", there have been 20 943 registered murders in the country. If that figure were to rise at the same rate in coming years "more people will die in

the first 25 years of peace than died in the 36-year internal armed conflict and genocide” (Sanford 2008: 108).

Much of the country’s current struggles can be traced back to the nature of its transition process. Like in many of the Central American post-conflict transitions, the signing of the Peace Accords between the Guatemalan army and the URNG guerillas in December 1996 did not result in the opening of an entirely new chapter in the country’s history. Several of the figures responsible for crimes committed during the war immediately re-entered the political stage and have since, together with members of the business elite, used their positions to block the implementation of the Peace Accords’ provisions (Kauffman 2005: 17). Guatemala has seen four democratically elected presidents since the signing of the peace agreement and none of them have shown a particular interest in complying with its reform provisions (Molina Mejía 2009: 220)

The Peace Accords have thus provided for no more than an uneasy peace and the planned transitional justice mechanisms have been implemented half heartedly at best. Although the Peace Accords contained provisions to provide both restorative and retributive justice, the local context has meant that much of these initiatives have remained an empty promise (Kauffman 2005: 14). The agreement to enact amnesty provisions through Congress within the Law of National Reconciliation is one of the indicators of a lack of resolve to deal with past wrongs (ibid.). While severe crimes such as torture, disappearance and genocide were exempt from the amnesty provisions, the law has nevertheless enabled many perpetrators to escape prosecution. Instead of reforming the judicial system, which had up until then merely served as a tool for repression by the military, since the end of the conflict the courts have been infiltrated by personnel linked to powerful military and political forces (Molina Mejía 2009:230). Overall,

Guatemala has witnessed a transformation of security and intelligence networks into organized crime networks that benefit from complete impunity (Roht-Arriaza 2008: 1). The rising number of lynchings in the countryside, resulting from a deep mistrust of the judicial system, illustrates the seriousness of the threat of a return to violence in the country (Smith 2001: 62). It is this “degree of variation and complexity”, argue Arriaza and Roht-Arriaza, “that makes international and national level responses inadequate” (2008: 148).

Another important obstacle towards a genuine process of democratic change is the fact that Guatemala’s society remains as socially divided as ever with social inequalities having been even further entrenched during the civil war. These complex dynamics of the Guatemalan transition need to be taken into account when examining the politics of memory and the country’s search for justice. Craig and Kauffmann (2005:11) have thus argued that the key challenge to achieving reconciliation and restoration in Guatemala is the need to build entirely new social relationships among the population rather than restoring past relationships.

### **Memory Politics and the Search for Justice**

This paper argues that the term “collective memory”, frequently used to describe a society’s interpretation of its conflictive past, is misleading as memory is, in reality, inherently individual and “no group possesses a common mind capable of direct memory” (Khazanov and Payne 2008:424). At the same time, memory processes need to be understood as an “ongoing reflection and critical appropriation of the past” in order to avoid a static “enshrining” of past suffering (Baharona de Brito et al. 2001: 38).

One important step towards providing a possible narrative of the conflict in Guatemala and recording past abuses was the establishment of the UN-supported Commission for Historical

Clarification (Comisión para el Esclarecimiento Histórico CEH) in 1996. The process, however, also revealed how highly politicised issues around truth and memory were to become in the country. It can be argued that the CEH created an important political space for truth-seeking which importantly included the Mayan population, who had been previously excluded from official historical narratives. At the same time it has also been argued that compared to other truth commissions, such as the one in South Africa, the CEH was particularly weak (Kauffman 2006:18). Given that the CEH was established after the Law of National Reconciliation, which had offered amnesties, there was no incentive for perpetrators to appear before the commission and the commission lacked the power to enforce their appearance. No public hearings were held and the commission had neither search-and-seizure power, nor could it subpoena witnesses (ibid 21). None of the commission's findings could be used as evidence in future court cases. Overall this resulted in a lack of involvement by members of society, limited knowledge of the commission's work and thus a restricted impact on national reconciliation. In addition, the CEH's work was greatly hindered by the fact that the perpetrators of the worst crimes had remained in power and were actively trying to interfere with the investigations (ibid 21). The Catholic Church therefore established its own Recovery of Historical Memory Project (REMHI), which was able to work under fewer political restrictions and whose findings were extensively drawn on by the CEH.

The two truth commissions have managed to provide a detailed account and analysis of the country's conflictive past and have documented a number of the worst atrocities committed during the civil war. In this way they are important in documenting the country's history. However, similarly to concepts of justice or reconciliation, truth cannot be as clearly defined as is often assumed. As Chapman and Ball have pointed out, the truth is not something which exists

and simply needs to be uncovered (2001:4). In reality there exist different perspectives, experiences and contested truths. In a similar way Arriaza and Roht-Arriaza (2008: 148) have argued that in cases of massive abuses, a truth commission report will provide no more than a general truth and “not a personal ‘truth’ to many”. Given its short timeframe and limited outreach, a truth commission report will never be able to accommodate all existing views and experiences and will provide little more than a selective truth, in many cases likely to then create further tensions (Arriaza and Roht-Arriaza 2008: 149).

The partial nature of the truth provided by both truth commissions has been reflected in their reports’ limited impact on social change and reconciliation in Guatemala. The work of the two commissions remained unknown for a long time to parts of Guatemalan society as a result of insufficient publicity and outreach. The government and military have continuously denied many of the commission’s findings, calling the reports the “unbalanced work of leftist intellectuals and guerrilla sympathizers” and largely ignoring their far-reaching recommendations (Smith 2001: 61). The murder of Bishop Gerardi, who had launched the REHMI project, shortly after the publication of the report seems to be illustrative of what has been termed a “battle over the truth”, which has been unfolding in Guatemala (Isaacs 2010:266). It “exposed the enormous political risk of confronting the past” (ibid. 260) and showed that truth-seeking processes would be met with fierce resistance and confronted with various competing versions of the *truth*. The lack of recognition, on the national level, of the pain endured and the losses suffered by individuals and communities during the war, has been said to make a “culture of peace” almost impossible to achieve (Chirouze Montenegro 2010: 1396). Nevertheless, the work of the truth commissions has been complemented by substantial efforts of victims’ groups and civil society organisations regarding the documentation of past abuses and the uncovering of crimes.

In the face of the reluctance of the government to implement any of the reports' recommendations, local communities have initiated numerous exhumations of mass graves and have built local monuments commemorating the dead (Sieder 2001: 194). Given the immense importance of traditional burials as a precondition to achieving closure for the Mayan population, they have been said to represent a form of restorative justice for victims (ibid.) **However**, the fact that despite all these struggles the history of the civil war is, as of yet, not included in the curriculum of Guatemala's schools, shows that a contested past might remain a feature of Guatemala's present and near future. Or, as Smith puts it, Guatemala is only a nation of diverse rememberers (and forgetters)" (Smith 2001:69).

The fact that Guatemala's past is contested and the debate over it highly polarised does not mean, however, that no progress is being made. The highly active involvement of civil society in debates about the past has helped provide dignity to victims, whilst the truth-seeking process "helped transform Guatemalan victims into survivors and resisters" (Isaacs 2010:268). This strong social movement has already made it more difficult for the ruling elite to ignore their claims, in particular as they have managed to attract international attention. While there clearly exists a danger of the resurfacing of tensions and violence, Isaacs has argued that a "politicized transitional justice process that yields unsettling, polarizing impacts may prove essential and inevitable if historically unjust, unequal and exclusionary societies like Guatemala's, are to build peaceful and durable democracies" (2010: 254).

The severe constraints to both truth-telling and justice-seeking processes that marked Guatemala's transition illustrate that rather than standing in opposition to one another, truth and justice processes need to be regarded as complementary and intertwined. At the same time the

aforementioned need to build new social relationships among the population making locally tailored responses, in addition to broader national processes, indispensable.

Without an officially accepted account of the past, it is not surprising that prosecutions remain the most weakly implemented part of the transitional justice mechanisms. During, as well as after the conflict several cases of human rights violations were opened in a number of international venues, some of them reaching the Inter-American Court of Human Rights. However, Molina Mejía has argued that even though there were a few cases where verdicts were reached these cannot be said to be providing legal accountability, as this aspect was left to the Guatemalan judicial system, which has so far failed to follow through with this task (2009:224).

Following the Chilean example, the Menchú Foundation decided in 1999 to try to achieve justice through another venue, bringing more than a dozen cases before the Spanish courts under the international convention against genocide adopted by the UN in 1948. The foundation grounded their claim on Article 23.4 of the Organic Law of the Judicial Branch (“LOPJ”), which allows for prosecution of certain crimes including genocide, terrorism, and other crimes recognised in international treaties ratified by Spain. In July 2006 arrest warrants were issued for Guatemala’s ex-President, Oscar Mejía Víctores, ex-Defense Minister Aníbal Guevara, ex-Police Chief Germán Chupina, and ex-head of the Secret Police Pedro Arredondo. The defendants spent over a year in detention, before Guatemala’s Constitutional Court (“GCC”) decided on December 12, 2007 that universal jurisdiction was violating Guatemala’s sovereignty and that Spain’s arrest warrants were not valid (Roht-Arriaza 2009: 10). Roht-Arriaza has argued that even if the cases do not proceed, they might push the local courts to begin prosecutions in order to prevent international investigations (2009:15). While this appears slightly too optimistic, it is equally questionable whether the completion of a few cases in the Spanish court would be

enough to achieve justice for the Guatemalan people without being a mere drop in the ocean of seeking accountability in Guatemala.

### **Peace without justice?**

The way countries should deal with the aftermath of mass atrocities is still a hotly debated topic. The emphasis put on the prosecution of perpetrators as a first step towards the construction of a peaceful and just society has been severely criticised for not taking local contexts into account. For example Snyder and Vinjamuri have argued that the effects of national or international prosecution might in fact be detrimental to a country's peacebuilding process (2003: 5). Drawing from the experience of past cases they suggest that while forcing prosecutions in the absence of the necessary political and institutional preconditions risks further weakening the justice system while amnesties, if used appropriately, "have been highly effective in curbing abuses" (2003: 6). Truth commissions, they argue, are usually most effective when tied to amnesties but can also be beneficial when they are combined with other measures to promote political reform (ibid). The idea put forward is therefore to base the decision on how to approach postwar democratic consolidation on a pragmatic consideration of possible consequences rather than a strict following of pre-established rules.

These claims have been highly contested by Sikkink and Walling who reject the simplistic division between idealists, following the rules of appropriateness and pragmatists, who take political realities into account (Sikkink and Walling 2006:3). Through a cross-country comparison of countries that have used various, one or none of the transitional justice mechanisms in the aftermath of mass atrocities, they come to the conclusion that "there is no reason to believe that human rights trials in general have a negative effect on human rights practices" (Sikkink 2006:6). The rise in the number of countries that have started to prosecute

perpetrators of past regimes and the increasing use of one or several of the transitional justice mechanisms is regarded as proof of the existence of a “justice cascade” (ibid.).

Using Latin American countries for their cross-country comparison, Sikkink and Walling argue that the human rights situation improved for a large majority of the countries where trials have been conducted (ibid 31). However, the authors unexpectedly identify an improvement of the human rights situation in Guatemala following the trials, calling the validity of these figures into question. Based on the data from Latin American cases, Sikkink and Walling conclude that there is no evidence that amnesties were “highly effective” by themselves in curbing abuses, especially since most amnesties were later followed by human rights trials (ibid 27). Contrary to Snyder and Vinjamuri, they argue that the construction of the rule of law cannot be seen as a process that is separate from, or that must be achieved prior to, human rights trials. Rather, they argue, “it has been the case that building rule of law has gone hand-in-hand with human rights trials in many countries in the region” (ibid 38). This argument, however, only seems valid in countries where there existed at least a limited willingness to address the crimes of the past, as well as a judicial system that can handle that task.

The case of Guatemala shows that without concerted efforts at various levels, a few trials will not bring the desired outcomes. However, the case also shows that neither amnesties nor truth commissions are necessarily conducive to peace and reconciliation. The impact of such transitional justice mechanisms depends on local context, method of implementation and whether they are the result of political bargaining. In the case of Guatemala there is no trade-off between peace and justice or truth and justice, but instead a denial of justice through the denial of the past, showing that truth and justice-seeking in Guatemala are interdependent rather than mutually exclusive processes.

## **The role of justice in reconciling Guatemala's Society**

If we look at the emergence of Guatemala from its conflicted past and evaluate the struggles the country faces today, it appears to underscore the importance of legal accountability as a precondition to a real transition towards peace in Guatemala. As a result of the elite controlled nature of Guatemala's transition, there has been no apparent political bargaining in the formulation of the transition process. Amnesty provisions were enacted and the truth commission was equipped with so little power that it could not contribute meaningfully to transition, or even to moral accountability. The results of a survey conducted in 2006 revealed that only 14% of respondents described Guatemala's society as reconciled and 44% of respondents believed another war is possible (Isaacs 2010:270).

Most scholars thus agree that the most important step towards recognition and thus reconciliation would be to hold at least the most senior perpetrators accountable for their crimes. The point of debate is which forum is best suited for providing what has been a long sought after justice. While Roht-Arriaza has found that prosecutions, initiated in the national courts of third states, "have had a significant impact in combating impunity", (Roht-Arriaza 2009: 2) it is not clear how this would tackle the dysfunctional national judicial system other than by pushing the country towards conducting trials at home as a preemptive measure. In the case of Guatemala however, it is unlikely that such measures would lead to genuine processes of transformation instead of the more likely superficial, cosmetic changes.

Molina Mejía has argued that the international community has to play a key role in any attempt to bring justice to Guatemala and suggests the creation of an International Tribunal on

Genocide in Guatemala, involving no Guatemalan judges, investigators or prosecutors, as the only viable route towards accountability (2009 :231). It is clear that the local judiciary is in no condition to provide any sort of fair trials at this moment and a look at the experience of Cambodia's Hybrid Tribunal exemplifies the dangers of holding trials in a country where the political will for fair prosecutions is limited and corruption and power plays stand above the trials (Lambourne 2008). However, the combined lack of interest in the matter both by the ruling elite and the international community make the chances of the establishment of an International Tribunal appear rather slim.

More importantly however, looking at previous International Tribunals and the myriad of problems they face it is not clear how realistic it is to view such a mechanism as a panacea to Guatemala's struggles. It has been shown for cases like Rwanda and the former Yugoslavia that it takes the concerted effort of different actors, on different levels and the use of various methods, rather than the work of a single body to provide for a meaningful justice and reconciliation process (Clark 2008). While there can be no doubt about the importance of ending impunity in Guatemala, under the current conditions this needs to be perceived as a long term goal, which must be preceded by a more inclusive political dialogue over the past. Rather than being an alternative to justice, truth-seeking and the official acknowledgement of past abuses are in this case a precondition to, and an essential part of, various forms of justice.

While often regarded as the most important form of justice, James Booth has pointed to the limits of legal accountability in providing a genuine sense of justice. Criminal trials, he argues, inevitably focus on individual accountability and the concept of guilt, while according to his idea of "memory-justice", what is needed is "a self-understanding by members of a political community that they are co-responsible even if not legally accountable" (Booth 2001: 786). It is

the idea of “Memory as shame”, that he perceives as an essential part of a memory-justice process, which seems to fit squarely with the Guatemalan case. Khazanov and Payne have argued in a similar way that more important than punishment is the dismantling of the old repressive system. Open and inclusive historical reckoning, public debate and commemoration of victims, they argue, are equally valid (and at times more appropriate) ways of dealing with the past (2008:428).

Rather than turning to national level or even international interventions to provide legal accountability, the focus therefore needs to remain on local level processes and their ability to influence national level positions as well as provide a form of “rehabilitative justice for victims” (Park 2010: 27). It is the involvement in grass-roots memory politics in this inherently fragmented society which has led to the “search for new collective identities in the postwar dispensation” (Sieder 2001 (2): 186). The community-led exhumations and the building of local monuments “have prompted the formation of new transregional communities of survivors, across regions and ethno-linguistic barriers” (ibid). It is thus, at least from a short and medium term perspective, most likely that only a concerted effort of civil society organizations together with pressure from the international community will result in more inclusive and participatory politics as well as a transformative process needed for a genuine transition towards democracy (Isaacs 2010 : 274). Only if the Guatemalan state starts to show a willingness to at least acknowledge the accounts of past abuses and offer further information as well as some form of remedy, can we speak of a possibility of reconciliation at some point in the future (ibid 271). In a case like Guatemala, where the present and the future are held hostage by a contested past, it becomes clear that processes of truth-seeking and justice-seeking go hand-in-hand with one another.

## **Conclusion**

Much critique has been voiced against viewing the different mechanisms from the transitional justice “toolbox” as mutually exclusive, a view which is often combined with the tendency to overlook the myriad of other possible ways of reckoning with the past. Nevertheless, debates continue to center around the possible trade-offs between truth and justice or peace and justice. The case of Guatemala shows once again that context matters and that a simple weighing of trials against truth commissions or amnesties is a futile exercise in a setting which does not allow for a genuine implementation of either mechanism.

“National reconciliation can never be achieved if present politics are based on past divisions” say Khazanov and Payne (2008:426), emphasising the importance of continuous memory and truth seeking processes with the ultimate aim of overcoming such divisions. In Guatemala memory processes have resulted in the formation of new identities, which overcome previous ethnic and political divisions. The active remembrance of victims and their commemoration through burials and memorials has restored their dignity and resulted in the gradual inclusion of those formerly excluded from Guatemala’s politics. The next step needs to be the official acknowledgement and recognition of past abuses, providing a form of restorative and rehabilitative justice. In the context of a highly contested past, mounting tensions and violence, an imperturbable memory and truth seeking process is the only viable option towards achieving some form of justice through recognition.

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Lavinia Schwedersky recently obtained her MSc in *Violence, Conflict and Development* from the School of Oriental and African Studies (SOAS), London. Lavinia.schwedersky@gmail.com