

## The 'grey zone' of justice: NGOs and rule of law in postwar Guatemala

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Through the ethnographic exploration of the trial and murder conviction of military commissioners for their participation in the massacre of Rio Negro, the NGO-sponsored exhumation of clandestine cemeteries as well as other human rights NGO initiatives, this article discusses contemporary debates about truth versus justice, national security ideology and impunity, and the role of national and international NGOs. The author problematizes rule of law and the role (both real and potential) of NGOs in national and local peace-building initiatives. The Rio Negro court case is explored from the perspective of Maya massacre survivors, as well as the roles of the Guatemalan Forensic Anthropology Foundation, the Archbishop's Office on Human Rights and the Commission for Historical Clarification in this case. This article calls attention to the myriad ways in which rural Maya have created and seized new political spaces in Guatemala's nascent democracy and often done so in tandem with NGOs. Further, Maya human rights organizing is identified as a nexus of engagement between Maya citizens and the nation. This article points to the absolute necessity of Maya participation in constructing national and community political structures and practices for NGO projects to realize their creative intention to develop a new moral vision of equality and human rights in Guatemala.

### Introduction

We are often criminals in the eyes of the earth, not only for having committed crimes, but because we know that crimes have been committed. (*The Man in the Iron Mask*, cf. Michael Ondaatje, *Anil's Ghost*)

Cease to do evil, learn to do good; seek justice, correct oppression; defend the fatherless, plead for the widow. (Isaiah 1: 16–17)

On 13 October 1999, a local Guatemalan court convicted three civil patrollers of murder for their participation in the 1982 army-orchestrated Río Negro massacre. While at first glance the sentence of death by lethal injection might suggest that Guatemala's newly reconstructed legal system is finally functioning, the verdict raises more questions than it answers – among them, the chilling effect this conviction will have on the collection of evidence for future prosecutions of military officials as well as the propensity of the Guatemalan state to exterminate Maya peasants for political expediency. Additionally, it further complicates the already complex and sometimes perplexing international debates about human rights, truth commissions, amnesty, justice, prosecution, rule of law and democratization.

Whether understood as an end or a means to truth, justice and rule of law, truth commissions and the human rights NGOs that support them are now seen as a critical step for societies experiencing the transition from military rule. Through the ethnographic

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exploration of the NGO-sponsored exhumation of clandestine cemeteries and the trial, and murder conviction, of military commissioners for their participation in the massacre of Río Negro, I problematize rule of law and the role of NGOs in national and local peace-building initiatives. This trial of civil patrollers is of particular importance given the 1998 Inter-American Court decision on the *Blake v. Guatemala* disappearance case in which the Court emphasized the 'need to combat impunity' and explicitly referred to a citizen's right to legal remedy as not only a cornerstone of the Inter-American system, but also one of the basic tenets of rule of law and democracy (Shelton 1999: 36).

### **The Río Negro Massacre**

On 13 March 1982, as the army and civil patrol came closer to the Achí-Maya village of Río Negro, the men fled. They abandoned their village because, just a few months earlier, 70 men from Río Negro were massacred by the same army and civil patrol from Xococ. The women and children remained in the village because the army had only ever looked for men, not women and children. This time, however, the Civil Patrol gathered together these 70 women and 107 children and ordered them to hike up a nearby mountain. The women were ordered to dance with the soldiers 'like you dance with the guerrilla'. Forensic analysis of the remains showed that the women had been strangled, stabbed, slashed with machetes and shot in the head. It also revealed that many of the women had received severe beatings to the genital area as evidenced by numerous fractured pelvises, including that of Marta Julia Chen Osorio, who was nine months pregnant at the time of her death. All the women and even the little girls were buried naked from the waist down. Fourteen adolescent girls who were separated from the group early on were later gang raped, then stabbed and macheted to death. The majority of children died from having their heads smashed against rocks and tree trunks.<sup>1</sup>

Eighteen children survived because the patrollers who had killed their families took them into servitude in slave-like conditions in Xococ. The patrollers never imagined that 17 years later these same survivors would testify against them in a court of law. At the time of the massacre, Jesús Tec was 10 years old and carrying his two-year-old brother in his arms. One of the defendants in the court case grabbed the baby by the ankles and pulled him from Jesús. 'I begged him not to kill my brother', Jesús testified during the court proceeding, 'but he broke his head on a rock'. Jesús survived the massacre because the civil patroller who killed his baby brother took him home as a slave.

### **National security ideology and impunity**

Rather than an outwardly focused defense of national territory, the national security state is based on national security ideology. The nation, state and armed forces come to be classified as synonymous entities, meaning that a challenge to any one of them represents a threat to them all. From this perspective, the armed forces and their agents embody the primary articulation of state dominance. Thus, all challenges to the military, including (and perhaps especially) attempts to seek redress for human rights violations, are perceived as direct assaults on the nation and the state. Past, present and future analyses of national goals and state actions, as well as the popular movements and NGOs seeking to shape these goals, are viewed by this triumvirate as subversion because national security ideology is grounded in the recourse of coercion and has no room for the participation or consent of civil society.

Instead, the goals of the nation are determined by the state and imposed on the citizenry (Crahan 1982: 101).

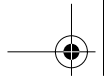
Within this national security ideology, the Guatemalan army established numerous military bases and airstrips in the predominantly Maya Highlands in the late 1970s and early 1980s. From these bases, the army planned and conducted raids and massacres of Maya villages. Those who survived the massacres were driven into the mountains or forcibly relocated to strategic hamlets where they were required to participate in the army-controlled civil patrols – participation which frequently involved the destruction of other villages as well as the murder of neighbors and other Maya. At the same time, Guatemala received an increasing number of international condemnations for human rights violations that reflected the Guatemalan army's shift from a strategy of selective terror in the cities to the mass terror of the scorched earth campaign in the countryside.<sup>2</sup> The army's objective in the campaign, according to one high-ranking military officer, was to 'invert the guerrilla structure' (that is, to so terrorize the Maya communities that those who had or might have participated in popular opposition or armed insurrection would instead do the bidding of the military in army-controlled civil patrols).<sup>3</sup>

Less than one month after General Efraín Ríos Montt declared himself president of Guatemala (after a falling out with other members of the ruling junta with whom he came to power in a March 1982 *coup d'état*), he further institutionalized the national security state by declaring a state of siege on 1 July 1982 (Fried 1983: 331–332). If kidnapping, torture, assassinations and disappearances have a chilling effect on the court system, the state of siege declared by Ríos Montt provided an affirmation of impunity for the perpetrators of gross human rights violations, a guarantee of continued terror for the rest of society, a state-fomented paralysis of the court system and a green light to the genocide begun under the dictatorship of General Romeo Lucas García.

In transitions from military rule, national security ideology is most often expressed as favoring amnesty for the military and their agents who systematically violated human rights under military rule. Whether in Brazil, Chile, Argentina, El Salvador, South Africa, Guatemala, Uruguay or elsewhere, the arguments favoring amnesty consistently point to amnesty as a necessity for social stability (Wechsler 1990: 188).

In 1994, high-ranking officials repeatedly said that 'reconciliation [read here social peace or common good] requires sacrifice'. Moreover, though the army had 'made mistakes' and committed 'abuses', the overriding need of society was 'equitable justice' (read here, prosecution of the guerrilla). This topic of conversation inevitably concluded with the official saying, 'We won the war'. One army official added, 'Look, whoever is most organized wins the political space and we have the most organization'. Given 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' (CEH 1999a: 19), it is not surprising that military organization, or structures of repression, reinforced impunity which in turn reinforced the military state while weakening, if not destroying, other governmental and non-governmental institutions. This weakening of non-military institutions, or their militarization, had the effect of limiting their functioning and efficacy, which further contributed to the loss of public confidence in the legitimacy of state institutions (especially legal institutions), 'since for years people lived with the certainty that it is the Army that retains effective power in Guatemala' (CEH 1999a: 24).

Indeed, the granting of various amnesties has not meant an end to impunity in Guatemala.<sup>4</sup> Amnesties granted in Guatemala in the 1980s served to further institutionalize and legitimize impunity. First, amnesty provisions reaffirm the historical silences imposed through repression by previous regimes because amnesty is, in effect, an official



negation of government/military responsibility, as well as a negation of the very violations perpetrated. Second, amnesty creates an 'official story' that denies individual victims of violence, as well as their families and society in general, a forum for truth. Without truth, there is no chance of justice and accountability. Third, even after historical silence has been broken, prosecution is necessary to end impunity. Impunity is a law of exception that permits and foments actions of the state against the citizenry (Federación Latinoamericana 1987: 22). It is anti-democratic in that it inverts the relationship of a state that represents and responds to the needs of the people to a people who are submitted to the whims of the state. Impunity is an exemption from punishment, which 'negates the values of truth and justice and leads to the occurrence of further [human rights] violations' (Amnesty International 1992: 11).

Thus, impunity thrives in the absence of rule of law. To build rule of law is to deconstruct impunity, and one such way to do so and to seek legal remedies for the victims of impunity. Indeed, prominent among the 'Recommendations of the Commission for Historical Clarification (CEH)' is that the Guatemalan state must 'fulfill, and demand fulfillment of, the National Reconciliation Law' and especially Article 8 which calls for the prosecution of perpetrators of 'crimes of genocide, torture, and forced disappearance'. Significantly, the CEH urged that application of the Reconciliation Law should consider 'the various degrees of authority and responsibility for the human rights violations and acts of violence, paying particular attention to those who instigated and promoted these crimes' (CEH 1999a: 58).

### NGOs and transitional justice

In 1992, the Guatemalan Forensic Anthropology Team (now the Guatemalan Forensic Anthropology Foundation – FAFG) was founded through the efforts of Dr Clyde Snow and a group of courageous Guatemalan archeologists. The American Association for the Advancement of Science provided logistical and fundraising support until the FAFG was able to become independent in 1996. During their first exhumation in 1992, Judge Roberto Lemus was forced into exile as a result of death threats he and his family received as he pursued an exhumation of a massacre victim in the department of El Quiché.

In June of 1994, while working with the FAFG on the exhumation in Plan de Sanchez (which was the third exhumation in the nation), we heard over the radio that the Guatemalan government and URNG had signed an accord establishing a 'truth commission', to be called the Commission for Historical Clarification (CEH). Our shared celebratory feeling soon dissipated as the radio broadcast that this commission would name institutional responsibility, but would not name individual perpetrators of human rights violations. Earlier that week, the FAFG, local peasants and the regional human rights ombudsman had received an ominous and anonymous threat: '*Deja los muertos en paz [sic] Hijos de puta*' (Leave the dead in peace, sons of a whore). 'How will we ever end impunity?' asked one of the forensic anthropologists.

In my 24 months of fieldwork in Guatemala between 1994 and 1999, and a final site visit in 2002, I had the opportunity to witness the process of truth gathering from the perspective of peasants in the villages in which I work as well as from the view of local prosecutors, government officials, United Nations functionaries, various national and international human rights NGOs, CEH investigators and commissioners, and my own perspective as a human rights advocate, anthropologist and research consultant to the FAFG report on massacres to the CEH. Human rights NGOs (like the FAFG), in collaboration with massacre survivors and local peace-building initiatives, had much to do with the success of

the CEH, which produced one of the most comprehensive truth commission reports giving local, regional, national and international context to extensively documented violations of human rights in rural and urban areas.

The CEH's timing and legal methodology allowed for a comprehensive analysis precisely because their work followed five years of exhumations and the Archbishop's nationwide *Nunca Mas* report (also known as the REHMI – Reconstruction of Historical Memory project) which preceded the CEH. When the REHMI project began its far-reaching investigation in 1995 utilizing the infrastructure of the Catholic Church in municipalities throughout the country, many survivors and witnesses still feared coming forward and many local REHMI investigators had to be extremely cautious about their own security as well as that of their witnesses. Unlike the CEH, REHMI investigators were not able to hold large public gatherings on a daily basis for months at a time while conducting their research. Nor did they have the benefit of the frequent visits by local prosecutors, United Nations Mission in Guatemala (MINUGUA) field staff, the Human Rights Ombudsman, national and international press and human rights observers. No doubt the CEH's access to survivors and witnesses was greatly increased by the presence and support of all these individuals and organizations. Indeed, their presence, and CEH access to local survivors and witnesses, was largely the result of previous work conducted in the area and support given to community members by REHMI and also by MINUGUA. The willingness of witnesses and survivors to come forward was also increased by the signing of the peace accords, the demobilization of civil patrols, and the reinsertion of the guerrillas into civil society – each of which took place prior to the CEH investigation.

### Truth commissions

While Brazil, Uruguay and Paraguay produced '*Nunca Más*' (Never Again) Reports about human rights abuses under military regimes, these reports were sponsored and produced by Church and human rights NGOs – and thus seen as alternative or oppositional interpretations. Additionally, their mandates and recommendations were neither official nor legally binding. Presidential sponsorship of the Argentine and Chilean commissions, United Nations sponsorship of the Salvadoran Commission and heavy involvement of the United Nations and the international community in staffing and funding Guatemala's 'independent' commission lend an official stamp to the 'truths' produced.

The Guatemalan Peace Accord for the establishment of the CEH was being negotiated shortly after the release of the Salvadoran Truth Commission's report. The Salvadoran Commission expanded the mandate of previous truth commissions in Latin America with a new vision of truth, which included naming the perpetrators of human rights violations in its final report. Among those named were prominent guerrilla leader Joaquín Villalobos and a member of the Salvadoran Supreme Court (UN Commission 1993). In the truth commission accord during the negotiations in Guatemala, the Guatemalan army and the URNG agreed that institutional responsibility would be assigned for human rights violations, but individual perpetrators would not be named. Though the CEH was technically an independent commission, the majority of investigative staff moved from United Nations Guatemalan Mission (MINUGUA) offices to the CEH. Indeed, many of the MINUGUA staff had previously worked on the UN Mission in El Salvador (ONUSAL) and also for the Salvadoran Truth Commission. Still, unlike the Salvadoran commission, the CEH included a significant number of Guatemalan nationals on its staff, many of whom formerly worked with human rights NGOs. While it has been suggested that truth



commissions are more successful when staffed by internationals (Jowdy 1997), the experience of the CEH and the FAFG suggests that a combination of internationals and nationals works extremely well. In the Guatemalan case, the presence of internationals was important to the security of the nationals and also to demonstrate the international visibility of the work of the FAFG and the CEH. Still, when internationals arrive to conduct sensitive human rights research, it is critical to local involvement that nationals are included in the project because everyone knows that, when the going gets tough, internationals have passports to get going. The presence of fellow citizens encourages potential participants (and especially local officials) to come forward. As one local leader explained, 'If they haven't killed him for doing his work, they probably won't kill me for talking to him. That's how we decided to participate.'

In spite of their differing approaches, each of these commissions benefited from being official and they shared a belief in the moral obligation to reveal truths to heal painful pasts. Each commission envisaged its mission as an integral contribution to reconciliation following extreme state violence. Labor rights, agrarian reform, access to justice, citizen security, respect for human rights and meaningful participation of civil society were among the expected outcomes. Indeed, these rights were included in the recommendations of the Argentine, Chilean and Salvadoran commissions and were highlighted in the Guatemalan CEH's report as well.

In 1995, as the first president of the new South Africa, Nelson Mandela, appointed the Truth and Reconciliation Commission (TRC) to investigate the crimes of apartheid and empowered the commission to grant amnesty to individual perpetrators in exchange for information. The TRC began its investigation in 1995 and published its report in 1998 (South Africa Truth and Reconciliation Commission 1998). During the tenure of Guatemala's CEH investigation, educated Guatemalans interested in the CEH talked about the TRC as much as they did about the CEH, both lamenting and resigning themselves to what many perceived as a 'weaker' truth commission in Guatemala. That TRC hearings were televised and the commissioners granted subpoena powers seemed almost a fantasy. In Guatemala, many thought the more expansive powers of the TRC would mean more justice for black South Africans. Many doubted that the CEH would be able to collect evidence, and even after evidence was collected many doubted the political will of the CEH to assign legal categories to the violations committed by the Guatemalan state. Hearteningly, the CEH carried out a thorough and comprehensive investigation, followed by painstaking legal analysis, which concluded that 'acts of genocide' had been committed by the Guatemalan army.

In South Africa, amnesty was traded for truth. The risk in this trade is that institutional structures of violence become secondary while individual perpetrators, their crimes and their victims become the focus of the atrocities of the previous regime (this is all the more true when hearings of perpetrator 'confessions' are televised). While the international security ideology of authoritarian regimes casts social peace (or common good) and justice as counterplots, the current academic and policy debates about transitional justice emanating from the South African experience cast truth and justice as counterplots.

The CEH did not have the sweeping powers of the TRC (to grant amnesty, hold televised public hearings and name names). Nonetheless, the CEH investigative process and report (like the Archbishop's *Nunca Más* Report which preceded it) made a significant contribution to truth and justice. In addition to the vast participation and opening of political space for truth-telling it achieved in rural Maya communities, it is particularly significant that the CEH determined that the state had carried out genocidal acts and recommended administrative procedures against those responsible. Defining the massacres



as genocidal acts wed truth with justice by emphasizing both the primary role of state institutional structures of violence and the state's international legal obligation to prosecute responsible parties.

### **The Río Negro prosecution<sup>5</sup>**

The Río Negro case was initiated in 1993 when massacre survivors, including Jesús Tec, denounced the massacre to authorities in Salamá, the departmental capital of Baja Verapaz. The survivors asked for an investigation of the civil patrollers from Xococ, the platoon of 40 soldiers from the Rabinal army base and the intellectual authors of the violence. In 1993, the FAFG was named as the court investigator and carried out an exhumation of the clandestine cemetery containing the remains of the 177 Río Negro massacre victims. Of the more than 120 FAFG exhumations of massacres carried out to date, the Río Negro case is the first to reach trial. The 13 October 1999 verdict was the second time the three military commissioners from Xococ were found guilty in this case; the first conviction was nullified on procedural grounds earlier that same year.

During the court proceedings, prosecutors called military officers to the witness stand. One witness was General Benedicto Lucas García, who served as army chief of staff during the reign of his brother General Romeo Lucas García (1978–82), who ushered in the epoch known as La Violencia. Credited with designing the 'scorched earth' campaign and trained by the US Army School of the Americas in combat intelligence and high military command, Benedicto testified that the civil patrols were his idea and that he had personally reviewed the patrols in Salamá in 1981. (This would be the same year that the US State Department document classified as secret stated that General Romeo Lucas García believed that 'the policy of repression' was 'working' [US Department of State 1981].) Entering the courtroom as the grand populist, Benedicto waved and shook hands with everyone including the prosecutors, the defense, the judges and the defendants. When asked about the Río Negro massacre, he pled ignorance. When asked if he had ordered it, he gasped as if in shock and said, 'That, that . . . would be . . . a crime against humanity'.<sup>6</sup>

Another witness was General Otto Erick Ponce, previously a commander of the Rabinal army base and vice-minister of defense in 1994 – the same year that, as we entered our fourth month of the exhumation in Plan de Sánchez, the army gathered 2000 local Achí peasants from 19 villages in a meeting at the Rabinal army base and declared: 'The anthropologists, journalists, and internationals are all guerrilla. You know what happens when you collaborate with the subversives. The violence of the past will return. Leave the dead in peace.' General Ponce refused to provide the court with names of ranking officers at the base and indeed denied that the civil patrols had ever existed.

Witnesses for the defense argued that the defendants 'were not military commissioners', had 'never been in the civil patrol', that 'there had never been a civil patrol in Xococ' and that the defendants 'did not even know what a civil patrol was'. Further, they argued that on the day of the massacre the defendants 'had been planting trees in a reforestation project'. As for the Río Negro children, they had 'gone voluntarily to Xococ to live'. Among the extensive evidence against the defendants were official documents bearing signatures of the military commissioners with their titles and photographs of the same with other Xococ patrollers carrying army-issue weapons.

During the trial, relatives of the Río Negro victims held marches demanding justice and placed banners in front of the tribunal. These relatives filled the courtroom throughout the trial. Achí from other Rabinal communities also attended the trial – especially those hoping



to have their massacre cases heard in court. Civil patrollers from Xococ demonstrated for the release of the military commissioners.

The criminal court proceeding in Salamá was marked by death threats to survivors and witnesses, a military officer defiantly raising his right hand in a salute reminiscent of Nazi Germany as he was sworn in, the relocation of defendants to prevent the possibility of a mob's 'liberating' them from jail, and the clearing of the courtroom on several occasions because of threats of violence.

The ambient violence that marked this trial is not unique to legal attempts to prosecute perpetrators of human rights violations in Guatemala. On 7 October, as the trial in Salamá proceeded, Calvin Galindo, the prosecutor investigating the murder of Bishop Juan Gerardi, resigned and fled to the United States following numerous death threats.<sup>7</sup> Indeed, between March and October 1999, a second judge assigned to the Gerardi case and two key witnesses also fled the country after receiving death threats.

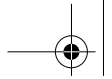
In 1994, when I first interviewed massacre survivors in Rabinal and asked them what they wanted from the exhumation, I was told collectively by 24 widowers that they wanted 'revenge'. In 1998, after much community reflection on collective trauma, healing and truth, the same Achí told me they wanted the intellectual authors to be punished, but not their neighbors who participated in the massacres. They did not want their neighbors to go to jail because 'jailing my neighbor will only create more widows and orphans. More widows and orphans will not help anyone.'

As the court proceedings dragged on in 1999 with the defendants sitting in silence, intellectual authors mocking the legal process and other local perpetrators threatening survivors and witnesses, Río Negro survivors did not express the generosity of forgiveness. All demanded the dismantling of impunity in which the local perpetrators had lived and many requested application of the death penalty. Still, at the close of the trial, when survivor and human rights activist Jesús Tec once again spoke before the court, he said, 'I am not asking for the death penalty. I am asking for justice. I am not prepared to decide. You decide.' As one international observer explained, 'He didn't want the death penalty, but he couldn't oppose it. The community would hate him if he had.'<sup>8</sup> Taking into account the violence of the accused, the magnitude of the crime and the opinion of the survivors, the prosecutor, who is personally opposed to the death penalty, requested this maximum sentence. Despite the volatile and tense atmosphere in Salamá and elsewhere, the three judges in the Río Negro trial distinguished the court proceeding by demonstrating objectivity and equanimity in their efforts to discover the truth about the massacre. This alone has given many Guatemalans the hope that justice, which has generally been a privilege of the powerful, may now be within the reach of the poor and the indigenous.

### The 'grey zone'

Still, the image of justice emerging from this verdict is skewed, regardless of one's moral position on the death penalty. The massacre was committed by civil patrollers from the neighboring village of Xococ under army order. The Civil Patrols themselves constituted an integral part of the army's counterinsurgency campaign. Patrollers were often forced to torture, assassinate and massacre innocent people under army order. Those civil patrollers who refused to comply were always tortured and often killed. It is within this context that civil patrollers from Xococ committed the Río Negro massacre, one of the 626 known massacres committed by the Guatemalan army in the early 1980s.





Arguing against those who might believe in a fundamental essence of brutality in human beings, Holocaust survivor Primo Levi wrote that 'the only conclusion to be drawn is that in the face of driving necessity and physical disabilities, many social habits and instincts are reduced to silence' (Levi 1996: 87).

Writing about the Jewish prominents who violated their own within the German *Lager*, Levi wrote:

. . . if one offers a position of privilege to a few individuals in a state of slavery, exacting in exchange the betrayal of a natural solidarity with their comrades, there will certainly be someone who will accept . . . the more power he is given, the more he will be consequently hateful and hated . . . he will be cruel and tyrannical, because he will understand that if he is not sufficiently so, someone else, judged more suitable, will take over his post. Moreover, his capacity for hatred, unfulfilled in the direction of the oppressors, will double back, beyond all reason, on the oppressed; and he will only be satisfied when he has unloaded on to his underlings the injury received from above. (Levi 1996: 91)

Indeed, the victims of the Xococ civil patrol were not limited to Río Negro, just as Xococ was not the only civil patrol to commit crimes against humanity. In a 1983 armed confrontation between the guerrilla and the Xococ patrollers, 26 insurgents were killed. Ten of the dead insurgents were from Xococ. The same day as the guerrilla attack, the families of the 10 dead Xococ insurgents and several other Xococ widows were taken from their homes and tortured. The widows of the dead men were held in a house converted into a jail and gang raped by military commissioners and patrollers for several weeks until local clergy were able to convince the army commander to stop this violence against the widows.

In its comprehensive investigation, the CEH concluded that the national security state had fomented a state of terror in which it was possible for a government to burn 626 villages off the map, internally displace 1,500,000 people, send another 150,000 into refuge and leave more than 200,000 dead or disappeared (CEH 199a: 26). It also found that 18% of human rights violations were committed by civil patrols. Further, it noted that 85% of those violations committed by patrollers were carried out under army order (CEH 1999b: 226–227). It is not insignificant that the CEH found that one out of every 10 human rights violations was carried out by a military commissioner and that while these commissioners often led patrollers in acts of violence, 87% of the violations committed by commissioners were in collusion with the army (CEH 1999b: 181).

In 1995, there were 2643 civil patrols organized and led by the army. In August 1996 when the demobilization of civil patrols was begun, there were some 270,906 mostly Maya peasants registered in civil patrols (CEH 1999b: 234). This is significantly less than the one million men who were organized into civil patrols in 1981 – one year before the Río Negro massacre. Taking into account the population at the time and adjusting for gender and excluding children and elderly, this means that in 1981, one out of every two adult men in Guatemala were militarized into the army-led civil patrols (CEH 1999b: 226–227).

Like recent genocides in other parts of the world, the systematic incorporation of civilians in murderous army operations complicates prosecution of perpetrators in many ways because it shifts a seemingly black-and-white act of wrong into what Primo Levi called the 'grey zone'. One lesson of the recent conviction and sentencing of the patrollers in Guatemala is that if civilians evade certain death under military regimes by acquiescing to



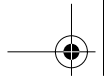
army orders to commit acts of violence, the democratic state that follows will kill them, albeit through a civilian court, for following the orders of the previous regime.

This is not to suggest that civilians who participated in crimes against humanity should not be tried for their crimes. Indeed, the 23 February 2001, United Nations war crimes tribunal ruling against three former Bosnian Serb soldiers noted that while the soldiers were not the intellectual authors or leaders behind the war crimes, those 'leaders would be rendered powerless if ordinary people refuse to carry out criminal activities in the course of war'. The judge added: 'lawless opportunists should expect no mercy, no matter how low their position in the chain of command may be' (Simons 2001: 7). The importance and validity of the UN tribunal's ruling notwithstanding, the point here is that to focus on the least powerful perpetrators in the Guatemalan military regime ultimately protects the intellectual authors and introduces the need for justice to reflect the nuanced cultural and political specificity of the crimes being tried. This is the type of prosecution that worries former Chilean Truth Commissioner Jose Zalaquett. Will the least powerful perpetrators be scapegoats for the rest? He is concerned for the culprits themselves: how their culpability is determined, what happens to those who obeyed orders under duress and who makes these decisions. Further, Zalaquett is 'bothered by any imperialism by those fortunate enough to be righteous about the rest' because 'the law can only demand from the common citizen to be a law abider, not to be a hero'.<sup>9</sup> In this case, it goes far beyond scapegoating. The murder conviction of the Achí-Maya military commissioners for participating in the massacre of Achí-Maya women and children is a Machiavellian judgment which ultimately protects the army and the intellectual authors of what the CEH described in legal terms as genocidal acts of the army. What civil patroller will now come forward as a material witness to identify army perpetrators of any of the other 625 known massacres in light of the Río Negro precedent?

### **Justice after genocide?**

For many human rights advocates, including some involved in the court proceedings, the trial of the civil patrollers was morally and ethically unsettling. FAFG founder Fernando Moscoso, who led the Río Negro exhumation, was the forensic witness for the prosecution. Moscoso, a devout Catholic who personally opposes the death penalty under all circumstances, gave compelling testimony when explaining the evidence gathered in the exhumation of massacre victims. The experience left him with deep moral conflicts over the role of his testimony in the trial. 'I worked in the exhumations all these years because I believe in the value of human life, I didn't work to increase the number of dead', he explained. 'These men are guilty. They took advantage of the violence in their community for their own personal gain. They should probably be punished, but this exhumation, like other exhumations we did, provides evidence against the army. It is the architects of genocide and those who gave the orders who should have been on trial.'<sup>10</sup>

In my experience, survivors have always expressed at least three key reasons for wanting an exhumation: (1) for the truth to be known; (2) to have proper burials and accompanying rituals for their deceased loved ones; and (3) for justice (and sometimes revenge). When I have asked what justice means, I have been told: 'We want the people who did this punished' and 'The army should be punished'. Though neither army officials nor soldiers who participated in the massacre were included in the Río Negro charges, it was hoped by many massacre survivors in Rabinal that, in the course of the trial, evidence against the army would somehow bring charges against those who gave orders and the intellectual authors.



If not for the Río Negro trial, at least for some trial in the future, this seems also to have been in the minds of the prosecutors who subpoenaed army officials to testify.

The desire for local justice appeared to increase as the trial proceeded. Having explored these issues of truth, memory, justice and healing in Rabinal communities (including Río Negro and Xococ) since 1994, I believe this publicly expressed desire for local justice is located in collective and individual memory of experiences during La Violencia, which reflected the vulnerability of communities to the violence of both the army and the civil patrols. At the local level, during and after La Violencia, inter- and intra-community problems and injustices were as often traced to the impunity of military commissioners as they were to army orders. While massacres and other gross violations of human rights in Maya communities were systematically carried out by the army and civil patrollers under order of the army high command, many of the daily injustices suffered by massacre survivors were enacted by civil patrollers and especially by military commissioners who acted with impunity at the local level based on the real or perceived support of the army officials who appointed them. Military commissioners used their ill-gotten power to steal the lands of neighbors, rob livestock, extort money, rape women and commit other crimes.

So, while international and national investigators of human rights violations may correctly categorize military commissioners or civil patrol chiefs as low on the national structure of accountability or the vertical pole of impunity, they were often as feared in their own communities as the army officials. Moreover, the case of the Xococ patrollers raping women from their community until the local commander ordered them to stop is not unique.<sup>11</sup> After the massacres, as time wore on in rural communities and military presence dwindled, military commissioners continued to threaten and harm members of their own communities to maintain and increase their own local power and wealth. Considering that the civil patrol in Xococ was still armed long after most patrols had organized themselves to disarm and dissociate themselves from the army, other Rabinal communities continued to fear the armed residents of Xococ and especially the military commissioners. This is why local human rights leaders in Rabinal, who are themselves massacre survivors, mobilized their communities to march in favor of prosecuting the three Xococ civil patrol commissioners on trial. While the trial of the patrollers was not bringing high-ranking officers to justice, it was bringing justice to Rabinal by removing the most powerful local members of the local apparatus of repression. And, though the prosecution of the patrollers might have a chilling effect at the national level on other patrollers coming forward to name army officials who gave them orders, from a local perspective this prosecution may also serve to decrease local impunity in other communities where military commissioners fearing prosecution may now think twice before threatening or abusing their neighbors. From a local perspective, this probably fits into Aryeh Neier's category of circumstances in which only prosecution can be an 'appropriate acknowledgement of the past'.<sup>12</sup> If army officials fear they may be tried for genocide, military commissioners now know they can be tried and convicted for murder and that the army will do nothing to stop the convictions. Indeed, after sitting silently through the court proceedings, the day after their sentencing, the military commissioners spoke for the first time: 'We were only following orders' (*Prensa Libre* 1999: 1).

### **Conclusion: justice and democracy after genocide**

In the 1980s, the Guatemalan state massacred Maya communities in the name of anti-communism. While the prosecution of low-ranking military commissioners addresses local



structures of impunity, the Guatemalan state must begin to prosecute the intellectual authors who continue to live with impunity in Guatemala if it is serious about constructing rule of law. In so doing, the Guatemalan state would take a large step toward constructing a viable democracy by demonstrating that the rule of law extends to the powerful as well as to the poor.

At the national level, the FAFG continues to carry out exhumations throughout Guatemala. Human rights NGOs continue to demand accountability and push forward with legal cases against perpetrators of past human rights violations. At the local level, community leaders continue to organize their families, friends and neighbors in the pursuit of justice. Rabinal activists and community leaders have appropriated national and international human rights discourses and resources to enhance their own community agenda for justice, rather than have that agenda shaped by external actors.

Community mobilization around truth, memory and prosecution has opened political and social space that, in turn, has initiated the process of resolution and reconciliation of the armed conflict within Rabinal. This political opening and unfolding of public space generates a meaningful peace process from the individual, to the community, to the nation. In Rabinal, these local mobilizations were strengthened and new political space reinforced by the exhumation of clandestine cemeteries, the official truth-telling processes of the REHMI and the CEH, the prosecution of the civil patrollers, and ongoing, if sometimes contradictory, involvement of national and international human rights NGOs.

Revealing and reflecting on the true responsibilities and motivations of La Violencia has allowed for public recognition of local structures of violence and lateral impunity, which has opened the way to community reconciliation and healing. Each of these discrete actions is a very building block for the establishment of rule of law, without which there can be no democracy. Strengthening civil society and establishment of rule of law are key among the indicators to be measured when evaluating the success of Guatemala's peace process and democratic transition. Recognition of the collective trauma of state genocide, community healing and local participation in legal efforts to institutionalize truth and bring perpetrators to justice are vital elements of Guatemala's transition from military rule. In addition, local communities, in tandem with NGOs, are integral and mutually constituted components of this process which strengthens the linkages between rural Maya citizens and the Guatemalan nation-state.

An Achí woman who survived an attack by the Xococ civil patrol in her village of Santo Domingo told me, 'I complain to god and pray that one day the guilty will pay for what they did'. An Achí man from another village who accompanied me later commented, 'She isn't demanding that they ask forgiveness. *Perdón* [forgiveness] is not in our *lingüística*. This idea of forgiveness comes from the NGOs.' He went on, 'The guilty can say, "We did these bad things under someone else's order, forgive me". But this *perdón* has no meaning for me because there is no *perdón* in Achí.'<sup>13</sup>

Where we might use 'forgive' in English or '*perdón*' or '*disculpe*' in Spanish, the Achí say '*Cuyu la lumac*', which in Spanish is translated as '*Aguantame un poco*' – in English roughly 'tolerate me a little'. Perhaps if the intellectual authors of massacres and other crimes against humanity as well as those who perpetuated local impunity are brought to justice, the survivors will again find the generosity and strength to tolerate the remaining guilty among them. There is no doubt that national and international NGOs have a role to play in this process.

## Notes

1. For forensic details on the massacre, see FAFG (1997).
2. The UN Human Rights Committee (Geneva Subcommittee for the Prevention of Discrimination and Minority Protection) issued its first statement condemning government practices on 14 March 1979. This was followed by subsequent statements in March 1980, March 1981, March 1982, March 1984 and August 1984. The Subcommittee also issued Resolutions 1982/7 (September 1982) and 1983/12 (September 1983) condemning human rights violations in Guatemala. The UN General Assembly also condemned Guatemala's human rights violations in Resolutions 37/184 (December 1982) and 1983/12 (September 1983).
3. Interview with Author. Guatemalan army official requested anonymity. San Jose, Costa Rica, 7 July 1994.
4. Amnesties were granted in 1982, 1986 and 1988. For more on these amnesties, see Jowdy (1997).
5. This section draws on an opinion editorial I co-authored with Fernando Moscoso (1999).
6. I thank Fernando Moscoso, Kathleen Dill and an anonymous international observer for sharing information about the court proceedings.
7. Bishop Gerardi was killed after the Archbishop's Office released the REHMI project's *Nunca Más* Report, which Gerardi had supervised.
8. Personal Communication, 17 November 2000. International Observer spoke on condition of anonymity.
9. Comments of Jose Zalaquett in Borraine *et al.* (1997: 105).
10. Author's interview with Fernando Moscoso. Portola Valley, California, 14 November 1999.
11. In villages in the Ixil Area, I was frequently told of civil patrol and military commissioner abuses continuing long after the army had changed its strategic policies about treatment of civilians. Specifically, I was told of civilians going to the army base commanders to seek protection from military commissioners who were extorting and abusing their neighbors.
12. Aryeh Neier in Borraine *et al.* (1997: 7).
13. Interview with Author, 23 July 1997.

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