

OÑATI INTERNATIONAL INSTITUTE FOR THE SOCIOLOGY OF LAW
INTERNATIONAL MASTER IN SOCIOLOGY OF LAW

RESEARCH PROJECT

**MAYA WOMEN AND DOMESTIC VIOLENCE IN QUICHÉ, GUATEMALA:
ACCESS AND OPERATION OF JUSTICE
BETWEEN CHARGES OF IMPUNITY AND PLEAS OF “MINIMUM CRIMINAL LAW”**

By Eleonora Maresca

Scientific Director: Professor Vincenzo Ferrari

Supervisor: Professor Stefano Anastasia

Examiner: Professor María Ángeles Barrère Unzueta



ACADEMIC YEAR 2016 - 2017

*Para todas las mujeres luz de mi tierra,
qué se acuerden de nuestro compromiso...
¡rompamos el silencio!*

I need to recognize the whole team of CEFA Guatemala – *promotoras* and *beneficiarias* included – because without that support, both material and emotional, I would have never written this thesis. *Maltiox chiwe*.

Equally, I am thankful to Professor Stefano Anastasia: firstly, to be an inspiration, then, for what I have learned and for the unevaluable encouragement he has given me during the last years. Likewise, I acknowledge that this thesis is also the result of many encounters with just as many professors, scholars and thinkers I have met during my path of investigation; thank you all for listening, debating and suggesting with patience. Among those thinkers, I am particularly obliged to the children I have worked with, they are brilliant. In the same way, I will remember with great fondness every dinner at the *residencia*, each Capraia session, Mexican round table, Rebibbia meeting, Amiata circle time and *refacción* in Quiché, where I have felt part of a unique community. I am also in debt with Professor Vincenzo Ferrari and the whole experience in Oñati for giving me the opportunity to appreciate meanings and means of sociology of law, as well as, to voice and share my thoughts.

Words (and space!!) are not enough for my family and friends, I just want to take this chance to tell them that their love and faith has been vital, from the adventures along the Guatemalan roads, to the books of the Oñati library and the tedious work on the desk of my room in Rome.

Last but not least, I acknowledge with gratitude the funding the Lazio regional government granted me that made my studying and researching in Oñati possible and valuable.

*Rome, 5th September 2017,
Día de la Mujer Indígena*

«Non si lotta solo nelle piazze, nelle strade, nelle officine, o con i discorsi, con gli scritti, con i versi: la lotta più dura è quella che si svolge nell'intimo delle coscienze, nelle suture più delicate dei sentimenti.»

Vie Nuove, Pier Paolo Pasolini

**MAYA WOMEN AND DOMESTIC VIOLENCE IN QUICHÉ, GUATEMALA:
ACCESS AND OPERATION OF JUSTICE
BETWEEN THE CHARGE OF IMPUNITY AND THE PLEA OF “MINIMUM CRIMINAL LAW”**

ABSTRACT: *Mayan women and domestic violence: does impunity is really the problem? To answer to the main question, it is important to dwell on the relationship between the criminal justice system and those women.*

In particular, over the early stages of the judicial path, the main issues concern the perception of domestic violence as an injurious experience and the expectations of the Quiché women related to the criminal justice system. These are two dimensions which may explain why very few Quiché women are interested to accomplish the criminal ruling in case of domestic violence perpetrated by their partner. Certainly, the connection to any NGO is the discriminant to acquire the necessary awareness and courage to denounce. However, it might not be enough.

According to the Guatemalan institutions, the quiché women are used to denounce their partner (for scaring him) and then, to “step back” (once they realize he might be incarcerated). Yet, religious faith and the economic dependence might not be the only explanations of this phenomenon. As Hesse intimates, the institutional racism arises from the daily performance of the administrative system, in the frame of values enforced as universals. For this reason, the Bourdieu’s concept of symbolic violence might be entangled with the everyday racism, described by Essed.

Consequently, some barriers to criminal justice are just invisible because they concern the habitus shaped by the overlapping of cultures, both for women and institutions, Indeed, the narratives of the individuals are intertwined with the collective one. From the Maya perspective, history is indispensable to understand the origin of the issue, as well as, emotions and relationships play a crucial role to find solutions. Looking at the accusatorial system by the point of view of the quiché women, it might help us to (re)discover a new inspiration to think about criminal justice and human rights.

«Il futuro del pianeta dipende dalla possibilità di dare a tutte le donne l’accesso all’istruzione e alla leadership. È alle donne, infatti, che spetta il compito più arduo, ma più costruttivo, di inventare e gestire la pace.»

Rita Levi Montalcini

INDEX

1. INTRODUCTION: THE QUICHÉ SOCIETY AND THE CLAIM OF IMPUNITY.	6
2. EARLY STAGES AND ACCESS TO JUSTICE: PERCEPTION OF VIOLENCE AND BARRIERS FOR WOMEN.	13
2.1. The sample.	
2.2. NGOs affiliation <i>vs</i> literacy.	
2.3. Violence in quantity and quality: where does it come from?	
2.4. Do they have access? The barriers of money and corruption.	
2.5. Expectations as invisible barriers: inexorability, scaring, blaming and the “unexpected punishment”.	
3. INSTITUTIONAL RACISM AND UNOFFICIAL VENGEANCE: PERFORMANCE AND AIMS OF THE CRIMINAL JUSTICE SYSTEM.	24
3.1. The sample.	
3.2. Conceptualization of racism: daily routine and universal values of the invisible symbolic violence.	
3.3. Performance and relationships: façade laws, cultural pertinence and emotional racism.	
3.4. By the Maya point of view: accusatorial system <i>vs</i> conversant setting, spirituality, communication and dialogue.	
3.5. Aims of justice: mimesis of retribution <i>vs</i> healing and emancipation.	
4. CONCLUSIONS.....	33
5. REFERENCES.	35

1. INTRODUCTION: THE QUICHÉ SOCIETY AND THE CLAIM OF IMPUNITY.

The first time I attended a quiché celebration in Guatemala, I noticed that Maya women were used to scatter pine needles over the ground, creating a carpet of green leaves. I thought it was for the



rain, but when we had another celebration during a shining sunny day, I began to wonder about the meaning: why use so many leaves that would just be trampled? Now, perhaps, I understand. The quiché women are accustomed to adorning the land, providing a new robe for the celebration.

Quiché people named the land with the word “*U w’ ch ulew*”, namely, the “*face of the land*”. For them the land is the “Mother land”: according to a sort of humanization, the land cannot be called

as “property” or “resource”. Indeed, you cannot own the land, “*you are just a part of it*”, you cannot even exploit it because “*you do not cut arms, hands, or eyes of your mother for selling*”. Without the permission of the community, you cannot even cut one single tree if you had not planted other ten trees before. Furthermore, “*the moon, sun, trees, rain, wind are sacred*”: they are not just “things” and you must respect them, instead they are life – part of the life of human beings and in turn, human beings are part of their life, as “*one unique living creature*”. Thus, the land itself is a woman who gives life, feeds, and “houses” the human being. Land is also the water and the medical plants that quenches thirst and heals wounds according to the ancient wisdom passed down from the elders. It is even the history and the culture of the entire community which can be read over the fabric and the artworks – like the pottery – drawn and painted by the hands of the quiché women.

In general, we may affirm that **the conception of land** for the quiché communities stands out for the communal and the kin-based dimension, as well as, the influence of Maya *comovisión*. Traditionally, the quiché use of land is not exclusivist, as opposed to the most acquainted pattern of property in the European society, characterized by individualism, as well as, materialism. Similarly, the dominant idea of the “entrepreneurial aim” is alien to these populations that rather rely on the concrete solidarity of native peasants. “*Land belongs to our children, it is not ours*”. Indigenous “property” goes beyond space and time: it implies space for all the people and none; it involves the “rights” of ancestral and future generations. Hence, there is not a landowner in the sense of a person with absolute, exclusive and permanent authority to dispose of a piece of land and its resources, reaping their benefits. According to the traditional *cosmovisión*, land is “*lived*”, not “*used*”. It is revered, not exploited. This implies also that it cannot be sold, alienated. That is why the *subsistence agriculture* of the Quiché women is so far from the global market economy. This explains also the fact that ancestral authorities look at money - and its accumulation - as the origin of ruin and divisions. Consistently, the concept of “development” is translated in the quiché language as “good life” and it is linked with the preservation of environment. In the same manner, the term “economy” does not exist, as well as, the concept of “right”. The word “*rmer korti’l*” refers to the family’s heritage or

patrimony, in the same way. And, “*q’atb’al tzij*” is the expression used to name both Maya judges and the idea of “justice”; literally it means “*cortar la palabra*” (“to cut the word”).

The Quiché is the largest ethnic group of the Maya peoples¹, and it is established on the western highlands of Guatemala, in the El Quiché department, where the prevalent vegetation is made of pine trees. Indeed, the word *K’iche’* means “many trees”². The department of El Quiché is one of the most destitute in the country, even if it is located between Guatemala City and the Mexican border, along the Pan-American Highway. Roads and public transportation are ramshackle and dangerous; the high level of pollution - in the air, the land and the main watercourses - is visible to the naked eye and corn is almost the sole cultivation over the fields. The difference is patent with the geographical areas of tourism or multinational companies - with the cultivations of bananas, oil palms, coffee and chocolate. Indeed, most of the population in Quiché is indigenous³ and they are the survivors’ families of the *Guatemalan Armed Conflict*, officially ended in 1996. Since it is a rural area, the majority of the Quiché people live in communities up on the mountains or along the fields of corn.

The basic unit of social and economic organization of the quiché communities is the **household** which is usually composed of a nuclear or stem family. Often, at least for the first years, the parents of the firstborn child (grandparents-in-law for the married women) are used to live with the family of their son. Generally, even it is built by the men, the house is managed by the women. In Quiché, the division of labour is clear, but flexible between the genders. Whereas the man work the land to provide food (or money, lately), the woman is responsible of the house caring and economy, including elders and offspring. Nonetheless, also the women traditionally help their partner in the fields and at the local markets, where they go to sell the products of land, or their handicraft - like fabrics, pottery and palm baskets. Until few years ago, women used not to study. In fact, while the young boys used to go to school, the young girls were committed with the housework and then, were given in marriage very early, because the family could not maintain them. Nowadays, the situation is slightly different, but still young girls leave around the 3rd and the 6th year of the primary school⁴. Among the reasons, probably, it lies the fact that sometimes quiché communities are far away located from the school.



Although each **community** differs according to its peculiarities, we may generally affirm that the political and jurisdictional organization is the result of overlapping cultures. In particular, religious syncretism arises from the rooting of various Christian confessions (mainly, catholic and evangelic), that have profoundly shaped, over

¹ In Guatemala, twenty-one Mayan languages are spoken.

² The translation in Nahuatl (*Cuauhtemallan*) is the origin of the word “Guatemala”, which mean “place of many trees”.

³ According to the PNUD (*Programa de las Naciones Unidas para el Desarrollo*), in the 2005, indigenous people were between the 75% and the 100% of the total population in the department of Quiché. Similarly, the interviewed institutions believe indigenous people are currently between the 75% and the 90% of the departmental population.

⁴ According to the CIDH report (“*Situación de Derechos Humanos en Guatemala*”, 2016) the 90% of the (adult) indigenous women in the rural areas of Guatemala are illiterate.

time, the social structure and the system of values of Maya people.

On the one hand, community assembly remains in many cases the most widespread means of decision-making and conflict-resolution. On the other hand, each community has nowadays its **COCODE** (*Cosejo Comunitario de Desarrollo*) created by the Guatemalan government in 2002.⁵ According to the national law, the COCODE brings together different authorities of the community and, among its functions, it promotes development and participation, mapping people's needs. It should manage also the (potential) state funds and the economic resources. Regularly, the mayors of the community are president of the COCODE. In general, according to the national law, all the indigenous mayors are also “*alcalde auxiliar*” of the main mayor, who is the “*alcalde municipal*” (usually, he is *ladino*). Every indigenous community has one or more auxiliary mayors chosen – not elected – by the community assembly.

To tell the truth, it is not easy to identify the authorities, even for quiché people. Neither, it is so clear which authority is ancestral or not. Usually, they are the *ajq'ij* (spiritual guide) and the *comadrona* (midwife), as well as, the *abuelos* (elders) of the community. As **ancestral authorities**,



two aspects appear important: the system of legitimation and the applied law. The ancestral authority is usually a *respectable* person who had served *ad honorem* the community, within the traditional system of charges. They should know the principles of Maya law and the *cosmovisión*. Of course, it is not always easy, because even the COCODE applies some of those principles and often, the ancestral authorities are part of it, with the exception of the elders that sometimes are in contrast with the COCODE.

Besides, there are also other authorities within the community (simply called as “*autoridades comunitarias*”) chosen within the community assembly for some specific functions, like conflict resolution. An example, is the *alcaldía indígena* or the *consejeros* and *líderes comunitarios*. Habitually, the first one is an ancestral institution and their members are also “*mediadores*” of conflicts, while the second ones are religious authorities of the communities. The *consejeros* are frequently part of catholic *directive boards*, and the *líderes* are representatives of the evangelic church, counsellors of the pastor. It is easier to see evangelic authorities participating within the COCODE; and at the same time, the ancestral authorities are often also catholic. An invisible dualism sometimes is perceivable: ancestral authorities-catholicism vs political/administrative authorities-evangelicalism.

Although, Maya *cosmovisión* is the traditional spirituality of the quiché communities, nowadays it seems in a deep crisis. **Religion** is more widespread and the evangelic church consider Maya tradition “*el atraso del país*” (backwardness of the Guatemalan state). While the evangelic church appears exclusivist regarding the *cosmovisión* (the faithful cannot follow the Mayan ceremonies), the catholic church is open in this regard and sometimes, it is not possible to distinguish the ancestral authorities from the catholic ones.

⁵ In Guatemala, the SISCODE (*Sistema Nacional de Consejos de Desarrollo*) is the system created to encourage the participation of Maya people (xinca and garifuna, as well) in the public governance. For this reason, councils are developed at the level of the community, the municipality, the department, the region, and at the national one.

While the ancestral authorities are indifferently man or women, the other institutions of the community hardly include **women** participation, without a legal obligation provided by the Guatemalan law⁶. Moreover, even some women are members of the COCODE they seem not to have any voice in it.

At any rate, all the authorities of the community deal with the resolution of conflicts. Regardless of the law applied, it seems that *storytelling* is the most widespread method, both privately - with the *ajq'ij* or any *alcalde* - and publicly - in the community assembly, the COCODE or the catholic directive board. Differently from the Guatemalan institutions, the mentioned are just *mediators* who have not power to adjudicate. According to the *cosmovisión*, the authorities give *advices* and this is the law and the justice of Maya people. Besides, *respect* and *harmony* are due to people, animal and land, and these are the basic rules of the social order. **In practice, however, it is hard to find a community where the *cosmovisión* operates in its authenticity.** In fact, for example, *chicotazos* (whips with twigs) and lynching (against external members of the community) are partially widespread. Furthermore, both social cohesion among people and reliance towards the authorities, appear precarious, despite of the small size of the communities. Indeed, many of the traditions and the values associated to the Maya *cosmovisión* seem little known or at least, little put into practice. Excluding for the language and the traditional dress of women, the so-called *traje*⁷, it is challenge even for the quiché people to tell how Maya people differ from *ladinos*. The ancestral spirituality results as an exclusive (and excluded) knowledge of few categories of people, such as *ajq'ij*, elders and scholars. Often, in the narratives, it sounds as if it has been reconstructing or bringing back to memory.

Accordingly, from the interviews it emerges that the conflict between *ladinos*⁸ and indigenous people is far from being over in Guatemala⁹. Sometimes indigenous people say that “*Guatemala son dos paises*”. Indeed, governance and administration are patently managed by the *ladino* ethnic group, from the municipal level to the national. This is meaningful, because over the interviews, both the quiché and the Guatemalan institutions, believe that indigenous people are the majority of the national population, between the 60% and the 70%. Although, according to the last report of the *Guatemalan National Institute of Statistics* (2011), the 51.5% is rural population, the 60% defines themselves as “*no indígena*”, and only the 40% as “*indígena*”¹⁰. At any rate, the quiché interviewed deem the bureaucratic and the political system responsible to operate discriminating indigenous people. In particular, what they feel is the imposition of a foreign culture, the exclusion from the public space and from the best opportunities, rather reserved to the *ladinos*. It has emerged also that quiché people believe the Maya *cosmovisión* - with the related institutions - is depressed and



⁶ For example, *comites de mujeres* were established within some communities.

⁷ The *traje* is made by the *güipil* and the *corte*; while the men wear traditional dresses only in few geographical areas.

⁸ The term refers commonly to non-indigenous Guatemalans and people who are a mix of Hispanic and indigenous origins.

⁹ See paragraph 3.2.

¹⁰ The interviewed institutions suppose that many feel ashamed to define themselves as indigenous during the census.

discredit by the Guatemalan state in order to eliminate the whole ethnicity. The reason is that Maya culture would represent the backwardness of the country, especially under the economic point of view, preventing Guatemala from exploiting its resources and develop new sources of wealth.

Quiché people talk about “*conquista*” and “*violencia*” as the two moments that changed Maya history. The first one is also named as “*invasión*”, it is far away and it is remembered as the time when Spaniards came to take away the resources of Guatemala, “leaving behind religion”. While the second one is the *Guatemalan Armed Conflict* which is closer in time and the wounds are still vivid. At the end of the war, the *Inter-American Court of Human Rights* condemned the Guatemalan state for genocide, perpetrated also by the means of rape against indigenous women, according to a premeditated and systematic plan aimed to exterminate Mayan population. Officially, thirty-six years of war (1960-1996) and 200,000 people dead (or disappeared) through the policy of “*tierra arrasada*” (“burnt land”). The *Comisión para el Esclarecimiento Histórico* named this massacre as a “silent holocaust”. This thesis is not the place to expatiate about that war and its historical antecedents¹¹, but it is important to acknowledge that everything was burned with cruelty: land, houses, and people. Still, none of quiché people can talk about it, and if they do it, their narratives are in low voice, yet full of fear and sorrow.

In 2006, the United Nations, in agreement with the national government, established the *Comisión Internacional contra la Impunidad en Guatemala*, as an independent body with the function to support the apparatus of criminal justice, especially against corruption. At the same time, from a penal point of view, Guatemala is pioneer – although it is one of the most dangerous and poor countries in Latin America – both in the **passage from the inquisitorial system to the accusatorial**, and the fulfilment of the **international obligations in the field of women’s rights**.

In this regard, from a first analysis, the system of NGOs it is widely rooted in Quiché, playing an important role. Many cooperatives are also active, especially among artisan women, as well as, few associations and social movements of indigenous women. Certainly, international NGOs are more widespread but also the local ones are growing with the funds of many different public and private institutions - lay and religious - from all the world. The bigger funders are the USAID (*Unites States Agency for International Development*) and the European Union; although, also, many countries of the European or the Asian area are independently committed to many projects, even at the institutional level. However, some of these funders set specific *criteria* over the projects to be granted. Indeed, from the interviews stands out the situation of some NGOs which need the intermediation of the international ones in order to apply for funds. In other cases, few local NGOs choose smaller funders (as the Basque country!) to preserve the cultural pertinence of their projects. At any rate, the system of the NGOs plays a crucial role, not only because sometimes they manage huge quantities of money, but also because they are closer to the



¹¹ In particular, from the *coup d'etat* maneuvered by the CIA (1954), after the “Guatemalan revolution”.

indigenous people – especially, the women - more than *ladinos* or the Guatemalan state. In particular,



for what concerns this thesis, NGOs often carry on **awareness programs about human rights**, sexual and reproductive health, and gender issues. Besides, often – but not always - they hire indigenous people to work this topics within the communities. However, from the interviews it emerges there is a weakness related to the *cultural awareness* of Maya identity, among the activists (indigenous, *ladinos* or foreign) who implemented these programs.

In this frame, the phenomenon of **violence against indigenous women** is alarming and it has become structural in the quiché society. Official data¹² are not precise about the geographical location, the kind and the ethnicity of gender violence; suggesting this phenomenon cannot really be measured with numbers. What is bewildering is the extension and normalization of domestic violence and incest within the indigenous communities, despite of the peaceful traits of Maya

culture.

Therefore, this research wants to explore the **issues related to the access and the operation of the criminal justice system related to the quiché women who suffered violence perpetrated by the partner**.

These women are vulnerable people in three ways: **they are women, they are indigenous, and they are peasants. So, the idea is to assess the criminal justice system with their eyes**. Indeed, their point of view, should be free of the cultural and social patterns that are the product of the European history: Enlightenment, secularization, technologic revolution, capitalism and globalization. The indigenous and the peasant view of cosmos, in addition with the feminine one, is certainly responsive to the *primary needs* of the human being; for this reason, I strongly believe we can learn something from them. At the same time, I chose the cases of domestic violence perpetrated by the partner because in these circumstances women act “alone”. They have already left the authority of the father, and the husband (or the partner) is the one who committed the act of violence. Otherwise, in the cases of violence perpetrated by other men, the woman is used reacting according the pressure of her father or partner, or they themselves react in her place.

The aim of this research is to evaluate whether it might be reasonable to support the criminal justice approach so-called “**minimum criminal law**” in contexts of impunity and corruption, pursuing the reduction of the official criminal justice system. The case of domestic violence is even more emblematic due to the vulnerability of these women and their need to be protected by the justice system.

For all the above-mentioned reasons, the **research questions** that animated this study are the following:

¹² In Quiché, even the criminal courts and the public prosecution do not record data with these specifications.

- 1) *Do the indigenous women of the Quiché Mayan communities have access to the Guatemalan criminal justice system in cases of domestic violence committed by their partners?*
- 2) *And, does the formal system serve those women who decided to initiate a trial?*

Lastly, we should take into account I am not indigenous, I do not speak the Quiché language and every community has its own specificities. Therefore, I cannot expect I have not committed any mistake analyzing the data and writing this thesis, influencing it with my personal standpoint. Furthermore, I wish to specify that this research should be the **preliminary study** of a more in-depth investigation, requiring more time and resources. In fact, more than one point should be deepened: the analysis of the theoretical framework and the collected data, especially under the profiles of intersectionality; the issue of the Maya *cosmovisión* and the impact on it of the other cultures, especially the Christian one; the role of the NGOs and the indigenous women, as well as, their relationship, in the process of the “vernacularization” of women rights.

2. EARLY STAGES AND ACCESS TO JUSTICE: PERCEPTION OF VIOLENCE AND BARRIERS FOR WOMEN

2.1. The sample. The first enquiry of this research concerns the access to the Guatemalan justice system for the quiché women who suffer of violence. In order to deal with this issue, I interviewed 10 quiché women: 4 women who suffered violence by their partner, the daughter of a woman who suffered violence by her partner, 4 women who suffered violence by their partner and denounced him, the sister of a woman who suffered violence by her partner and denounced him. All the women are between 20 and 50 years old, and they live in indigenous communities located in different municipalities of the Quiché region (Chiché, Chichicastenango, Santa Cruz, Zacualpa). In order to analyse the issue from a certain perspective, those municipalities are the closest to the institutions where the women can expose the complaint in case of violence.

Many topics regarding intimate relationships and sexuality are still a taboo in the quiché society. This means that women are not accustomed to share their feelings and experiences. Sometimes, they have their own way to talk about it. For this reason, to better interpret some data, it was essential to realize some preliminary and ulterior interviews with people I might consider *cultural mediators*: an evangelic pastor, a Maya spiritual guide (*ajq'ij*), a quiché woman who works in an international NGO and a quiché man who works in an international NGO. In this regard, I have to admit that I am not a quiché woman and my cultural background is very different. Thus, even though I have lived in Quiché for one year working with indigenous communities, the narrative I want to give voice to through this investigation is not mine. I will try to be the most descriptive as possible and true to the words of these women, holding back my judgments and resisting the temptation to grasp everything.

Furthermore, whenever the interviewer is white, the main risk over the talk is that those women fall in a paternalistic setting, trying to depict the worst condition of themselves to get alms back. However, thanks to the support of the NGO CEFA this risk was minimized. The staff contacted all the women I interviewed, according to the required features and the willingness of the same to share their story with me. At the same time, part of the interviewed were pick out in the poorest village – Lemoa – close to the main city of the region, Santa Cruz del Quiché. In two cases, the women asked to tell their story but not personally. I agreed to include those among the interviews because they were meaningful and they offered two more points of view: from the sister and the daughter, which represent respectively, the original family and the new one.

Two more notes, these women are not all married, but there is not substantial difference related to this investigation; so, I will use the terms partner and husband, as well as, women and wives, without any distinction. Of course, all the women's names used in this research are fictitious.

2.2. NGOs affiliation vs literacy. The first data which stands in the eyes is the impact of the NGOs system. In fact, among the ten interviews I have realized the variable of belonging or just connection to any NGO is determinant for the quiché women who decided to denounce their partner. The NGOs system is deeply rooted in the Quiché region, creating an intensive planning of workshops about many subjects, including *women rights*. For this reason, according to the narrative of the quiché women, NGOs bring *awareness* about the opportunities and the rights of women or *courage* to speak and then, denounce. It does not concern only the information they spread about the justice system; what they carry is rather "*pensamiento y ánimo*":

“Empecé a buscar la solución de mi vida. A veces dan capacitaciones. Empecé a aprender algo por mi vida”. “Como yo me fue a participar en capacitaciones, escuché que nosotras las mujeres tenemos la oportunidad. Sabía de tener derechos”, “antes no teníamos pensamientos y ánimo para hablar. Antes no le aceptan sus palabras de uno al Quiché [the Guatemalan court], cuando vino ella [NGO activist] nos explicó que tenemos derechos, es como si nos despertamos la mente. Nos vienen unas palabras.”

Accordingly, the relationship with a NGO is also the recurrent variable in case of voluntary separation of the partners (that differs from the abandonment of the woman, which happens against her will). Only in one case, one of the women who decided to leave her husband was not connected to any NGO, but she grew up on the pacific coast of Guatemala, where her parents have worked in the coffee plantations and the socio-cultural context is more westernized¹³. In this regard, the variable of **literacy** seems not very noteworthy. Indeed, among the women who denounced 3 are illiterate, while among the women who did not denounce 2 are illiterate (but Candelaria grew up on the coast, so she presents cultural and linguistic differences, even though she did not go to school). Among the other 5 women, 4 of them did study only at the primary school and just one completed the cycle of study (Abigail, but she was thought at home by her daughter). Rosalina is the only one who is graduated at the university level and with Obdulia are the only who wanted to achieve the ruling of the criminal court for the incarceration of the partner; since Obdulia is illiterate, even in this case the level of education seems is not making any difference.

2.3. Violence in quantity and quality: where does it come from? Domestic violence against woman is a widespread phenomenon in the Quiché region. It is so extensive on the territory that it has become common. It so rooted in the history that it has become normal. There are many kinds of violence perpetrated by the partner against the women: physical, sexual, psychological, economic and symbolic violence.

The first category of violence is realized through beating or sexual abuse, and sometimes can affect the offspring. In other cases, the quiché women are forced – directly or indirectly – to have children or abort, waiting for the son. It is not easy to frame **physical violence**. For sure the women I interviewed have been suffering, but we should notice that the acts of violence are ordinary and they occur in the silence of the woman. For example, **sexual relations** among partner are usually *decided unilaterally* by the husband and women do not oppose. The same happens with procreation.

According to the Guatemalan law¹⁴, violence is the behaviour aimed to threat, hurt or kill, to cause damage, suffering or illness, to infringe sexual freedom (“*vulnerar la libertad sexual*”) or deny the right to use methods of family planning. On the one hand, it should be observed that quiché women often live the acts of violence perpetrated by their partner without opposing any contrary will

¹³ Candelaria is one of the few woman I have met who can speak Spanish even if she has never attended any school. Among 10 interviews, the translator has been used 3 times. Usually, the indigenous women who live in communities in the Quiché region speak the Quiché language and Spanish is learned at school. Nowadays, it is more likely that also women have the opportunity to study like men, however, female illiteracy is still more widespread than the male one.

¹⁴ See Art. 1 “*Violencia intrafamiliar*” of the “*Ley para prevenir, sancionar y erradicar la violencia intrafamiliar*”, decreto número 97-1996; and Art. 3, lect. i), j), l), n) “*Definiciones*” of the “*Ley contra el femicidio y otras formas de violencia contra la mujer*”, decreto número 22-2008.

(or right), so that it might be not obvious it is an aggression. On the other hand, however, the pain is tangible in the consequences of violence, even if it is not always voiced¹⁵.

Otherwise, **psychological violence** may turn out in countless behaviours. In one first category, we can identify all the maltreatments, humiliations and threats – even with weapons. For the interviewed women, some of those actions are “small things” or “*malos entendidos*” (misunderstandings), such as when – for instance – the husband gets angry because lunch is not ready or his wife contend the use of the kitchen with her mother-in-law. Usually, the couple lives with the husband’s family and frequently, parents-in-law come in conflict with the wife. Consequently, some psychological violence is performed also by the family-in-law; for instance, the parents-in-law are used to reproach their daughter-in-law to not understand their son or to be a shame for him within the community. This habitually occurs when she works instead of taking care of house. The incidence of family-in-law is so preponderant in the couple that is emblematic what one of the women told during the interview: “*marriage is for two people, not four*”.

Other times, the husband suddenly disappear for one day or more without warning or giving any news. In many cases, the partner carries on a relationship with more women and at times, this happens even in the same house of the couple or publicly within the community. It occurs regularly that the wife is compared with new women - “*ella es más buena*” – until she feels guilty for “not being perfect” and leading her partner to alcohol abuse.

“Se le terminó el cariño y el amor hacia mi mama, quería salirse, pero no podía. El alcohol es como un refugio. Por cobardía, no enfrentan el problema y toman.”

In the same cases, the husband often drives his wife out of home for one night or few hours, even with their children. In other circumstances, it is the wife who try to hide herself and her children outside the house, especially when the husband is under the influence of alcohol or other drugs. At the same time, the quiché women I interviewed are victims of their partners’ jealousy, exacerbated even more when the women had other children from another man. Some of these women are locked at home with the prohibition to go out, to meet their family or friends, and even, going to the church or working outside the home walls. Some of them need the husband’s permission or a special justification for going out. Others sneak out to go working, when the partner is not at home.

Psychological violence is also connected to procreation or the offspring. The female baby may be given to someone else or stolen for threatening; the midwife I interviewed told that families are used to cry when the daughter is born and to smile grateful for the sons. Incest is more than widespread and it may be voluntary. What often occurs is that the daughter of a previous women come to live with her father and his new wife, and then, an amorous relationship arises between the father and his daughter which continues in parallel generating rivalry or ends with the expulsion of the original wife from the house.

a. The “room problem”, the perpetuation of taboos and the sense of bond. One important remark is that quiché families are used to live in the wood, in simple houses they built with only one big room for sleeping. The room is intended for the whole family, from the children (stepchildren

¹⁵ From the interviews, some common consequences have emerged: physical (such as, headache, hernia, gastric ulcer, cerebral collapse, tachycardia, oblivion, circulation and nerve problems, arthritis, pregnancy and some hospital stays), psychological (for example, depression, hungriness, desire of suicide), economical, and related to the children (their emotion and education).

also) to the grandparents (parents-in-law included). This implies, firstly, that there is a certain level of *promiscuity* in the majority of the quiché families, if not in all of them. Secondly, that the couple cannot live freely their *sexual relationship*. I found this observation extremely interesting, especially because none mentioned it among all the interviews I realized, neither the institutions. The midwife who told me about the “room problem”, is also a spiritual Maya guide who interprets and applies the *cosmovisión*. As every *ajq'ij*, she attends people who need spiritual support or help to solve their conflict. For this reason, she has met many men who went by her desperately asking for service, because their wives do not want to have any physical contact with them, refusing to explain the reason. What she does usually is *talking* with both partners and then, suggesting to the men building a new room for him and his women.

The related problem is that sexuality is still a taboo both for men and women. While I am not sure about how men live sexuality, indubitably, there is a general problem of awareness. The fact these women often live isolated in their house does not improve the situation. Many times, indeed, quiché women do not have the opportunity to share their doubts and experiences with other women, so they do not have any means to become conscious of their situation. In this regard, it is symbolic the story of the woman who discovered to have been sexual abused by her father only after getting married and growing up her daughter. By the way, the matter is not just about sexuality and the lack of awareness involves other spheres of the couple relationship. The fact that they have not intimacy - or that they hardly have good communication to each other without the mediation of the *ajq'ij*-reverberates over the bond - if not the sense of marriage - which appears functional only for procreation.

b. The “stolen marriage”: expectations and awareness. Approximately, the interviewed women declared they got married or went to live with their partner when they had an age between 15 and 19 years. Sometimes, the guy goes to the house of his future wife for the various “*pedidas*” to her parents (from four to seven requests that set up all the terms of the future marriage). In the same way, it may happen the woman is already pregnant, so her family ask the guy’s family for him “to recognize his responsibilities”. Other times, the young girl decides to go living with a guy; otherwise, the future partner “steals” the girl, without any permission. In these cases, usually the family of the young girl does not want her to get married, because they “do not know him”. Nevertheless, most of the times, the couple gets married or begin their life together, without any previous engagement. Thus, for girls it is almost always the first experience with the other gender and even the guys are in the middle of their growth. In addition, the young age does not ensure they both are physically and emotionally ready. Especially under the profile of sexual health.

“ [...] *si la niña pregunta sobre su sexualidad: [le contestan] esto no está bien, esto es pecado, es morboso. Entonces, ella se calla, se queda con las dudas... Como vamos a aclarar esto, si ella cuando pregunta se le calla. Entonces, ella experimenta y sale embarazada en una edad muy joven.* ”

In this regard, while once early marriages were frequently arranged for economic reasons (the young girl’s family could not feed or provide for her), today the situation is different. It seems the young partners are in hurry to get married. One of the most emotional parts of the women’s stories, it was related to the expectations they have concerning their marriage:

“Cuando me casé, pensaba que iba a hacer otra vida, de calidad. Un sueño. Pero no fue así.”. “Cuando me fue con él, pensaba que iba a encontrar una familia feliz, que él me compraba mi güipil, mi corte, [traditional dress] que iba a mantenerme. Pero no fue así. Además, él es muy enojado y cuando yo fallo algo, me pega.”

What emerges is that those women thought their marriage would have brought to them a better life, economically and emotionally. Under the first aspect, a lot of them expected not to work and their husband buying food and dresses for them. From an emotional point of view, these women assumed the to be finally loved. We should not underestimate the fact that quiché families cry when girls are born and then, they are treated differently from their brothers by their families, working since the early age. Therefore, the attention by a new guy has a special value for the quiché girls. Nevertheless, despite of the initial caring, with time, many of the partners acquire a “double personality”, starting to be “irresponsible” and violent.

According to the law¹⁶, psychological or emotional violence produces damage or suffering (even for children), intimidation, decrease of self-esteem and control. Again, the pain of these women is certainly touchable, however, we need to consider that the unawareness of marriage and the previous condition of a low self-esteem of women play a role to create all the conditions in which these men change their attitude. Besides, we do not have to forget that the ignorance about their situation causes suffering also to these men, pushing them often to seek relief in alcohol and drug addiction. Indeed, even though women are often under the control of men, ending isolated at home, we may recognize both partners have frustrated expectations and obligations into the bond.

c. The “gasto” issue: two-way violence? In few words, it seems marriage is too unaware of the many responsibilities of which it charges. I do not know if these women express their expectations through some pressure towards their partners within the conjugal life, however, the economic issue appears like the third crucial matter. **Economic violence** is usually the third kind of violence considered by the legislative point of view. On the one hand, many partners refuse to share their income with their women, so they cannot buy food and dresses – even for the offspring – if they do not start to work by their own. Sometimes, men use their earning to drink with their friends.

Indeed, this is one of the most common situations that makes the women upset. Even, it may occur that men cannot work because of the alcohol abuse and women provide for the whole family working mainly into the corn fields, cooking or cleaning. In the worst cases, the husband may sell the land where they live or leave some debts unpaid, if he is planning to emigrate to the USA. On the other hand, yet, many of the interviewed women take for granted the fact that someone should provide them, whether it be her husband or her children. To use other words, from the perspective of the Guatemalan institution I interviewed, the quiché women of the communities are *economically dependent* on their partners.

According to the Guatemalan law¹⁷ economic violence concern every material good which belong to the women by law, marriage or informal bond, capacity or inheritance. In this perspective, we should frame the obligations of the quiché partner (food, house and clothing) as something which belong to the woman. For this reason, every omission by the man would be violence. The plausibility of this lies in the reciprocal exchange of the bond. Indeed, women should procreate and taking care

¹⁶ See Art. 3, lect. m) “Definiciones” of the “Ley contra el femicidio” cit.

¹⁷ See Art. 3, lect. k) “Definiciones” of the “Ley contra el femicidio” cit.

of offspring and home. Clearly, studying, working and going out¹⁸ are not part of the matrimonial contract and they might configure breach of it, as well as, the omission of “*gasto*”. It is possible that, from a quiché perspective, it would be awkward to expect only one of the two partners respecting the rules.

d. The belief of every “*alma de casa*”: “*hay que aguantar*” (“**you have to endure**”). Certainly, the quiché women have grown up thinking about themselves as “*almas de casa*” (literary “home souls”). At first glance, as already mentioned¹⁹, gender roles in the quiché family are visibly defined, although, women also may have some remunerative activities. For sure, differently from men, women learn seldom to drive and even more rarely, they have non-official relationships before, during or after marriage. **Religion** plays a role as well, regardless the professed confession. According to the women’s narratives, the interpretation of the bible forbids the separation of the wives from their husbands as it would be a sin. For this reason, the advice given by the catholic priest is usually to carry her own cross and to bear. Slightly different, the pastor suggested to one of the interviewed women to pray in order to have more patience. In another case, the pastor told that partner’s violence is a test coming from God; whereas, in a situation of incest, the pastor recommended not to give importance to her husband, leaving him and continuing his life. While, the board of the catholic church sometimes tried to conciliate the couple - asking for a change of behaviour in exchange of forgiveness - the interviewed pastor expressed himself favourably about the denounce in case of violence.

On the one hand, *religious faith* is very important to reassure and bolster these women. On the other hand, however, leveraging of their lack of awareness and self-esteem, they attribute to the power of God all the achievements and responsibilities of the past, as well as, the hopes of the future,²⁰. It should be observed, the interviewed women are more familiar with religion rather than the Maya *cosmovisión*. Accordingly, the interviewed *ajq’ij* explained that many people secretly consult them because of the social discredit they have in the common feel of the quiché society.

“Las autoridades indígenas no se avocan, son escasas las parejas que vienen. Porque, por ejemplo, si acude con guía espiritual, ya son chequeados “porque acuden con un bruco”, vienen muchos problemas allí atrás, entonces, por eso mejor si van, pero eso no se dice, no se cuenta, se lo guardan.”

In fact, only one of the interviewed women told she had asked for support to an *ajq’ij* who helped her finding her professional path in order to *heal* herself.

Thus, at least seemingly, not many information emerged from the interviews regarding the traditional knowledge of Maya *cosmovisión*. Related to the role of woman, we may only mention that ancestral authorities are used to tell that environment is glad when a girl is born, because she will not bear machete, while it is angry for the boy, because trees will be cut.

¹⁸ This is not part of the marriage contract for both partners, since women do not approve men go out with friends.

¹⁹ See paragraph 1.

²⁰ The following are some common sentences repeated in the narratives of quiché women: “*es plan de Dios que tuve mis 4 hijos*”; “*voy a dejar las cosas a la mano de Dios, que algún día...*”; “*Dios me dio la solución*”; “*no hay una persona que da solución para las parejas, el único es Dios*”; “*me entrego en las manos de Dios*”.

e. The vicious circle: the history of symbolic violence and the collective silence. After months spent reasoning, I am not sure it is possible to understand where this violence comes from, whether it is the product of culture (what kind of culture?), why these men have expressed their power against their women in this way, and why the women do not react differently. However, one data put in common all those cases: the fact that violence is constantly learned and repeated as an internalized way of behaving. Men and women are accustomed to violence.

Bourdieu defines the *symbolic violence* as invisible and soft²¹ because it is exercised with the complicity of the victims' *cognitive structures*. In other words, by the means of the *linguistic* and the *corporal* structures people learn certain *categories* of perception and assessment, as well as, the cardinal principles of actions from the symbolic injunctions of social institutions. Thus, both *objectivity* and *subjectivity* conceal mechanisms of domination, regardless the consciousness of the victim, as an inexorable circumstance. In this frame, domination takes the *logic-practical form* of the *habitus* which is acquired through the learning process and it is moulded along the history. Essential player of this scheme is the *system of education* which realizes a tacit and invisible mutilation of consciences through the imposition of universal categories.

In the quiché society, especially for women, informal education might be prevalent, so that family, church and community constitute impactful learning experiences in accordance with the moral code already mentioned.

At the **micro level**, the interviewed women have told about the history of violence within their families, beyond the generations and regardless the change over the level of education. Indeed, the most recurrent sentence has been: "*también, su papa era así e yo aguantaba*".

In the same way, at the **macro level**, most of these women is orphan of one or both parents. In many cases, those parents were killed in horrible ways during the *Guatemalan Armed Conflict*. Other times, the quiché men were part of the *guerrilla* or the *Patrullas de Autodefensa Civil*, killing each other. Sometimes, the women were witnesses of those killings; otherwise, they simply were deprived of their parents in the total unawareness.

Individual and collective history might show another sort of violence, alongside the physical, the sexual, the psychological and the economic one: the **symbolic violence** within the family, the community and the Guatemalan state. The first clue is the lack of *communication*. Indeed, the most surprising aspect is that domestic violence is part of the *routine life* of the quiché women, though, they keep bearing it without any possibility to express themselves, in the collective silence of their families and communities. Both appear as spaces where women cannot voice and share their experiences yet.

On the other side, the family and community would perpetuate and exacerbate violence within the couple, through the authority of the grandparents-in-law and the values of faith. The reciprocal obligations of the quiché marriage, indeed, seem charging the relationship, as a binding law. Paradoxically, all the people behind the contract of the *pedidas* – the so-called "*asamblea para el casamiento*"²² – who should be mediators in case of conflict within the couple, ignite the conflict itself. **This is because the partners learn the *habitus* but the law does not response to their expectations.**

²¹ Bourdieu, P. (2001). *Masculine domination*. Stanford University Press; Bourdieu, P. (1990). *The logic of practice*. Stanford University Press; Bourdieu, P. (1979). Symbolic power. *Critique of anthropology*, 4(13-14), 77-85.

²² Regularly, parents, grandparents, witnesses, and relatives.

Likewise, the authorities do not know women rights and do not deal with the issue of domestic violence which has assumed a social dimension. In the same way, all the issue related – such as alcohol and drug abuse, early marriages and conjugal life, sexual and reproductive health – are not object of public discussion and questioned.

“¿Hay muchas veces que los hombres toman o son violentos? Porque ellos no dicen lo que le está afectando. Sino que ellos se llevan este dolor en su corazón y terminan en la cantina tomando, y luego llegan a la casa a pegarle a ella. Porque así, de esta manera se está desquitando con ella. Pero no le dice el porqué. Este es el problema. Entonces, aquí buscamos dónde está ese problema. Porque tomas, porque te desesperas, porque le golpeas tu mujer. Entonces, bien y se desata, empieza a hablar, a decir, después citamos a la mujer y ella viene también. [...] Más la violencia viene de esto dolor que ellos no aguantan.”

Even the **Guatemalan institutions** do not provide any effective path for giving to these women the chance to *heal* or to *break the circle of violence*. Of course, in order to fulfill the international standards, Guatemalan legislation has expanded the notion of violence in order to apply the penal protection to more cases, as well as, the related rights. However, does it is appropriate? What does it mean and imply? Does it is enough?

2.4. Do they have access? The barriers of money and corruption. Among the interviewed women, just two of them were really interested to access the Guatemalan justice system, since the other women did not follow up the process after the first denounce.

The first case is represented by Rosalina. She is graduated at the university level and she comes from a wealthy family; hence, she owns a piece of land and a house. She also has worked in two international NGOs and she had the opportunity to travel outside the country. In few words, she is perfectly economically independent. She went four times before the court in her municipality and then, one time in Santa Cruz del Quiché in order to obtain the house she was sharing with her husband and the allowances for their children. As the other women, she has never achieved the final ruling from the court. Once she got home with the restraining order of the judge, her husband refused to leave the house and threatened her with a gun. When she tried to speak with the judge, he summoned her husband but he did not appear before the court. Then, the judge suggested her to waive and leave him. For this reason, Rosalina went to the police station of her municipality, but they did not help her because they were close to her husband. To sum, the order of the judge was not executable for corruption.

The second example is the incest case. Obdulia went first to the indigenous judge in Chichicastenango (where the lawyer is not requested) and then, to the *Defensoría de la Mujer Indígena* (the DeMI, the defender body of the indigenous women) in Santa Cruz del Quiché. Similarly, they summon her husband but he did not appear. Unlike Rosalina, Obdulia is illiterate and she is not economically autonomous; thus, although she would have wanted to go on with the process, she did not have enough money for often travelling to the court (the so-called “*pasaje*”).

Looking at the background of all the surveyed, Rosalina and Obdulia stand out for two main reasons: they had a **political commitment** within their community and a “**foreign experience**”, namely, they have lived outside the rural context. Obdulia has participated within the women’s committee of her community and Rosalina has given her service in the *Consejo Comunitario de*

Desarrollo (COCODE, the body which brings together all the authorities of the community). The first one has travelled in Central America and Obdulia has grown up in Guatemala City after she became orphan of both parents. In this regard, we may say that due to their *participation to the political and the urban life*, both of them better “fit” with the justice system compared to the other women. Both might be more leaning to move in a certain structure with its methods and objectives. Hence, which is the difference with the other women who denounce their husbands? Did they want something different? Did they do something in a distinctive way? This might be interesting to comprehend whether other barriers are preventing the quiché women asking for help to the Guatemalan institutions in case of domestic violence.

2.5. Expectations as invisible barriers: inexorability, scaring, blaming and the “unexpected punishment”. In the first place, what distinguishes Rosalina and Obdulia from the women who denounce their partner is the phenomenon of the “step back”. In fact, as it emerges from the interviews conducted with the Guatemalan institutions, the majority of the women who denounce try to retract their accusation once they understand their partners risk to be incarcerated. According to the social worker of the *Fiscalía de la Mujer* (the criminal prosecutor, special section for women) it is a massive phenomenon, became even more serious since the criminal proceeding became mandatory²³ in case of violence against women.

On the one hand, the Guatemalan institution acknowledge that the women of the communities have a problem of **economic dependence** on their partners; for this reason the women “step back”, once they realize their partner would be imprisoned or even, they rather prefer not to denounce. Undoubtedly, Veronica, Luisa and Tomasa are not independent and this has worsened their situation, but they chose not to work despite the demand of their relatives. Elvia has lived like them for many years, but then she has learned to work, due to her encounter with an *ajq'ij*. Still, it should be noticed that among the ten women some of them have their own job²⁴, few have their own land or house and even, they maintain their husband in some cases²⁵, and others, separated from their partner without any ruling²⁶. In this perspective, Margarita and Abigail are an interesting case, because even their economic status is higher than others, they did not separate from their partner.

Among the women who did not separate from the partner, there are four women. Although her daughter told during the interview that religion was just an excuse, Margarita has sustained for years that breaking the marriage would have been a **sin**. Veronica – the oldest interviewed (50 years old) – who denounced, told her **children** opposed to send their father to prison. She does not work and her children provide her. Luisa was abandoned by her partner who went to the USA and her children provide her. Tomasa - who is the youngest (23 years old) and poorest interviewed has been living with her grandfather-in-law (abandoned by her partner) and she is **scared** to lose a place to live. She has four children, she does not work and she looks for food in the waste dump. Tomasa is also scared of her partner who is very violent. Although she told that she asked for help in her municipality, according to her words, it seems she is resigned about her situation, living violence as something **ineluctable**. Indeed, the “attitude of inexorability” is something which could be felt in the narratives

²³ Art. 5 of the “*Ley contra el femicidio*” *cit.*

²⁴ Rosalina, Obdulia, Maribel, Candelaria, Elvia, Abigail and Margarita.

²⁵ Rosalina, Elvia, Abigail and Margarita (both of them maintain their husband when they cannot work for alcohol or drug abuse).

²⁶ Rosalina, Obdulia, Maribel, Candelaria, and Elvia.

of all the interviewed women and probably, with the “unawareness of marriage” above-mentioned, they are just two sides of the same coin.

“A veces las niñas son creadas de esta forma: ella tiene que soportarlo todo, tiene que aguantar, no tiene derecho, ni voz, ni voto, en tomar algunas decisiones ella solo recibe órdenes. Entonces, la mujer se queda callada.”

Slightly different is the situation of Maribel and Candelaria that did not denounce but both separated from the partner. The first one went to live with the pastor, working for him; the second one went to live with another man. Indeed, the difference with the women who decided to denounce is that Maribel and Candelaria got a job, so that they became relatively independent. However, the economic independence was not enough to lead these women denounce their partners. From their words and behaviour during the interview, it seems they have never taken into account the possibility to denounce, as **they were not even interested** in it.

At the same time, Elvia and Abigail had denounced their partner but then they opted for the “step back”. Both of them denounced more for the pressure of their siblings, rather than on the basis of a personal conviction or confidence. Elvia and Abigail, exactly like Maribel and Candelaria showed they were not interested in the path of denounce, but differently from them they appeared still involved in the relationship with their partner. Indeed, while Elvia separated, Abigail is still leaving with him. The economic independence is not determinant, since Elvia has learned to work and Abigail – beside she works - is one of the few who owns a house and a piece of land. Neither the level of education is significant, since Maribel and Abigail did study, but Candelaria and Elvia did not.

Compared to the other women, Rosalina and Obdulia were the only ones who wanted their partner incarcerated. Probably, they were also the most serious case of violence, since Rosalina was threatened with a gun and Obdulia witness a case of incest. Similarly, also Tomasa needed **protection**, but she has been abandoned by her partner and she does not expect anything more for her life.

Probably, this is also the case of Margarita who affirm that separation would be a sin, but equally she does not want to change her life.

Differently, what Veronica, Elvia and Abigail say after about the withdrawn denounce, it is they just wanted to **scare or threat** their partner, to stop the violence and lead him to change his behaviour. According to the interview with the social worker, the denounce is usually “the drop that overflowed the pot”, like a rage explosion in which they **blame** their partner, but then, repent.

Similarly, Maribel and Candelaria also expected a **change**, but they did not resort to the Guatemalan justice system and they separated. In the same way, Luisa – as Abigail and Veronica – expected a change, but in terms of reconciliation and - differently to Elvia, Maribel, and Candelaria – they did not change their economic status²⁷.

Using the expressions of Hirschman²⁸, we may say that Rosalina and Obdulia try to “voice” their claim due to their participation to the political system, while the other women “exited” the system, assuming that they really “entered” it once. Among these, the invisible barriers are certainly their expectations: it might be the “**inexorability**” of their situation for Tomasa and Margarita, or the

²⁷ The case of Luisa is peculiar because when she decided with her partner to go back together, he accidentally died.

²⁸ Hirschman, A. O. (1982). *Lealtà, defezione, protesta: rimedi alla crisi delle imprese, dei partiti e dello stato*. Harvard University.

alternatives solutions to the Guatemalan justice system for the other women. *Separation* in the case of Maribel, Candelaria and Elvia; *reconciliation with new conditions* for Abigail, Veronica²⁹ and Luisa.

²⁹ Veronica told she went back living with her partner, but he has changed his behavior due to the pressure of their children that did want him incarcerated.

3. INSTITUTIONAL RACISM AND UNOFFICIAL VENGEANCE: PERFORMANCE AND AIMS OF THE CRIMINAL JUSTICE SYSTEM.

3.1. The sample. The second question which has motivated this research concerns the Guatemalan institutions of the criminal justice system, in order to understand whether or not they play a role within the issue of the access. For this reason, the second part of this investigation enquires into their operation vis-à-vis the quiché women who has suffered violence and denounced their partner.

In this regard, one aspect should be specified. I have not had many information about the Guatemalan institutions from the quiché women, or at least, not one accurate or clear report about their experience into the court. In every interview, the telling has been always very short and without any detail. Comparing with the other experiences with the indigenous institutions, the narratives were more articulated, with the description of their beliefs and emotional status as well. I presume that one of the reasons is that they do not have a whole understanding of what happened around them during the process of denounce and the hearings (especially when the women do not speak Spanish). One clue of this, it may be also that they used to call all the institutions “*derechos humanos*”, without any distinction: between the ones for denouncing (at the community and municipality level), the body which should help the indigenous women in that process (DeMI, *Defensoría de la Mujer Indígena*), some NGOs that function as intermediaries and the criminal court itself.

Therefore, besides the representatives of the Guatemalan institutions³⁰, I decide to interview some activists who work in (local³¹ and international³²) NGOs and in one social movement of indigenous women³³, one researcher³⁴ and an indigenous women lawyer. The idea is to assess the performance of the Guatemalan institutions using what they told me and how do they told it.

In addition, I interviewed three representatives of the indigenous authorities. Two of them are ancestral, called as elders: an *ajq'ij* (who is also midwife) and one mediator of the *alcaldía indígena* in Chichicastenango (who is also *ajq'ij*). The other one of the indigenous authorities is an *auxiliary mayor*, who is also president of the COCODE. The choice is to call into question the functioning of Guatemalan institutions through the comparison with the Maya system of values and justice. In particular, it seems interesting to focus on the way Maya authorities are used to serve women in case of violence and how do they solve conflicts, as well as, the description of their beliefs and the *cosmovisión*. In parallel, it might be functional reflecting about how do they look at the Guatemalan law, rights and institutions.

³⁰ One social worker (*ladina*) of the public prosecution, women special section (Fiscalía de la Mujer); the president prosecutor (ladino), women special section (Fiscalía de la Mujer); one judge of the criminal court (ladino), special section Femicide and other forms of violence, (Tribunal Penal de Delitos de Femicidio y Otras Formas de Violencia); two psychologists of the criminal court (ladinas), special section Femicide and other forms of violence, (Tribunal y Juzgado Penal de Delitos de Femicidio y Otras Formas de Violencia).

³¹ The coordinator (*ladina*) for the Quiché region of a national association that support children in the justice system, as *amicus curiae*, as part of the *Program for the reduction and prevention of violence against women* in Guatemala; two cultural mediators (one quiché man and one quiché woman) that are dealing with the awareness programs with cultural relevance about women rights in the indigenous communities.

³² One cultural mediator (one quiché man) who is working within the awareness program with girls and women in the indigenous communities; one activist (European women), responsible of the awareness program about sexual and reproductive health, held in the quiché communities for girls and women.

³³ The indigenous women social movement “Movimiento de Mujeres Indígenas Tz'ununija”.

³⁴ Who worked for the *Instituto de Estudios Comparados de Ciencias Penales de Guatemala (ICCPG)*.

One more note: the identity of indigenous people in Guatemala has been becoming more and more dynamic and hybrid, so that it is not always possible to understand which belief or behavior belong to the Maya original culture, the colonial model or the Cristian evangelization. Neither, it is easy to acknowledge whether or not certain beliefs and behaviors are the result of the *Guatemala Armed Conflict*, globalization or human rights. At the same time, as the quiché women might live with inexorability their physical and emotional expectations, so it is with their cultural belonging, for which often they are not even pride. However, culture is something rooted in the personal and social history, as well as, in the environment; thus, it might be not a random outcome that for various quiché women the expectations have worked as invisible barriers.

3.2. Conceptualization of racism: daily routine and universal values of the invisible symbolic violence. According to Barnor Hesse³⁵, conceptualization of racism in social science has been silently inherited by the dominant traditions of Europe, according to which racism would be an exceptional event, as a drift of the liberal democracy, one of its pathologies. Conversely, Hesse – reviewing the literature in the field – believes that racism is *constitutive* of the liberal democracy and it has been widely manifested, for example, during European colonialism or the lynching phenomenon against African Americans in the USA. In particular, Hesse explores the theory of *institutional racism* according to which, although the rule of law is democratically legitimated, it complies with *two unwritten statues* in terms of *performances*. The *democratic* and the *juridical statues* that are naturalized and exclude part of the citizens from *participation* and *guarantees* of the due process.

In this perspective, racism is would not be anymore an extremist ideology, rather it would concern relations, agreements and everyday practices that are part of the political routine. For this reason, institutional racism would be a *technique of social governance* through the regulation of a certain form of existing³⁶; in this way, new protected forms of liberty would place themselves outside the state power of sanction, constituting the (neo)liberal system. The racism's conceptual *double bind* is the following: on the one hand, the *universalization* of the concept of racism as opposed to the idealization of the European model; on the other hand, the preclusion of other racialized experiences and the conventionalization of the North American and Western European colonial hegemony of international relations. Two irreconcilable aspirations: on one side, revealing the racism's imprint in nationalism, and on the other side, concealing its anchorage in liberalism (or Western Imperialism). The political silence on the intellectual hegemonic representation would repressed alternative conceptualizations. Ironically, even the strategies of mobilization and intellectual engagement have taken the political form of conceptual mimesis; and, the “non-white/non-European” ends to imitate, mimic, and reproduce “its own alterity by absorbing and inflecting the Western critique of race”.³⁷ Therefore, institutional racism would be the result of a culturally and politically incomplete process of decolonization.

Congruently, from the interviews it transpires that the conflict between *ladinos* and the indigenous people in Guatemala is still ongoing and it fits very well the categories of the institutional

³⁵ Hesse, B. (2011). Self-fulfilling prophecy: The postracial horizon. *South Atlantic Quarterly*, 110(1), 155-178; Hesse, B. (2004). Im/plausible deniability: racism's conceptual double bind. *Social identities*, 10(1), 9-29.

³⁶ “The administration of conditions and situations in which the bodies are socially enacted as racial differences, [...] despite the democratic principles, within and beyond their national domiciles”. According to Hesse the “vernacularization of races”, as administrative categories, has made race as an anthropological classification as well.

³⁷ Otzoy, I. (2008). Indigenous Law and Gender Dialogues. *Human Rights in the Maya Region*, 171-86.

racism³⁸. In addition, regarding to the situation of the indigenous women, two aspects have emerged during the interviews process. Firstly, the activists of the social movement have been following the international developments within the field of human rights; although, they are currently demanding the *cultural pertinence* of the policies concerning women rights at the international level, proposing a document with their amendments to the *CEDAW*. The second aspect regards their struggle with the indigenous women against - what they call - the *lack of knowledge – politic and technic* – necessary to claim their rights and to participate within the political and the administrative system. According to the activists, the causes of this lack are rooted in the history of oppression towards the indigenous people and in the failure of the Guatemalan educational system; these are the pillars of the racial discrimination “performed” by the Guatemalan state which has taken the form of violence against indigenous women. Violence against indigenous women would be materialized through the *attitudes* of the authorities, especially during the process of denouncing. In fact, the *model to care* of women victims of violence (“*modelo de atención*”) - used by the criminal justice institutions - would be biased under the aspects of sex, religion and race.

3.3. Performance and relationships: façade laws, cultural pertinence and emotional racism.

As Hesse intimates, racism is daily performed by the institutions within the frame of liberal-democratic values universally recognized. In the fields of women rights, the conventions signed in the system of the *United Nations Organization* and the *Inter-American Commission on Human Rights* certainly represent some standards - internationally recognized - to which the Guatemalan law has complied with.

Specifically, the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* and the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women* (known as the *Convention of Belém do Pará*) are the edge in which Guatemala has developed the national law to protect women against violence³⁹. The matter of this legislation concerns exactly the cultural relevance of those laws and their performance by the Guatemalan institutions. On the one hand, the fact that those laws embody some values recognized at the international level does not imply they are the same values of the indigenous women. On the other hand, although those laws are against violence and discrimination, this does not prevent the *ladino* people who works within the institution to be “emotionally racist”⁴⁰ and socialize with the indigenous women in a discriminatory way. This is the reason those are defined as “façade public policies” by the indigenous activists.

a. The last legislative intervention⁴¹ modified the Guatemalan civil code in order to forbid marriage to minors, without any exception under the age of 18 years old. Unfortunately, the result is the phenomenon I described as the “stolen marriage”. In other words, banning the early weddings has boosted the practice of informal bonds without legal guarantees – at least among the *quiché* women.

³⁸ See the Introduction.

³⁹ “*Ley para prevenir, sancionar y erradicar la violencia intrafamiliar*”, decreto número 97-1996; “*Ley contra el femicidio y otras formas de violencia contra la mujer*”, decreto número 22-2008; reformas al código civil, decretos número 8-2015 y 13-2017. Indeed, the international conventions are mentioned at the beginning of each of these conventions.

⁴⁰ Bourdieu, P. (2001). *Masculine domination*. Stanford University Press; Bourdieu, P. (1990). *The logic of practice*. Stanford University Press; Bourdieu, P. (1979). Symbolic power. *Critique of anthropology*, 4(13-14), 77-85.

⁴¹ Decretos número 8-2015 y 13-2017.

b. Likewise, the *Law against femicide and other forms of violence against women*, seems to lack of the proper knowledge about the situation of the quiché women, despite of some recognized advances. In fact, according to the interviews with the Guatemalan institutions and the indigenous lawyer, *the criminal liability has undergone a remarkable expansion*: the offences cover many kind of relationship in which violence might arise, the penalties are now higher, the security measures have been doubled⁴², and the process of complaint has been simplified. Taking for granted that the criminal action might really give to the quiché women the protection they need, the boosting of these means does not deal with three circumstances: firstly, the fact that the quiché women might not be interested in this path; secondly, the lack of the required knowledge to participate within the system and make use of its guarantees; thirdly, the barriers that prevent the women who are interested to follow that path, like the economics ones.

c. In this perspective, also the *compensation*⁴³ provided by the law seems deprived of any effectiveness.

d. One of the outcomes of the Guatemalan law reform in the field of criminal justice is the *dissuasive message*. This is unanimous recognized in all the interviews realized. In fact, all the institutions record a power of general dissuasion whereby men now are more scared to beat their wives because of the risk of going to prison and losing their things. Besides, one woman has told her husband changed partially his behaviour once the complaint was filed with the Guatemalan authorities. In that case, the children played a role: they persuaded the mother to withdraw the denounce in exchange of a more respectful attitude of the father toward her. Nonetheless, we should recognize that violence might be *internal* which means it can damage the psychological sphere or even interior parts of the body, whereby the woman is too reserved to denounce it.

e. The most important upshot of the reform concerns probably the *M.A.I.*⁴⁴ which is a comprehensive model to care of women victims of violence. According to this system the victim is attended by the psychologist and social worker if she does not feel comfortable with the assistant prosecutor. In addition, a nanny is available in case of necessity and the interpret is provided if the victim speaks only any Mayan language.

f. The interviewed social worker added that the law reform has the merit to improve the cooperation of the prosecutor with other institutions⁴⁵ that might be functional – like the hospital. However, it should be observed that the whole psychological attention given to the victim is just a tool to obtain the evidences⁴⁶ and it is not a *therapy* to heal the women.

*“No es que se le dé una **terapia**, pero si se le empodera para que al momento de prestar su declaración ella no tenga **miedo**.”*

At the same time, the implementation of a wide-ranging service for the women victims of violence would depend on the financial resources; and the fact the quiché women live in remote communities

⁴² Art. 7, “*Ley para prevenir*” *cit.*

⁴³ Art. 11, “*Ley contra el femicidio*” *cit.*

⁴⁴ *Modelo de Atención Integral* within the public prosecution and the S.A.I (*Sistema de Atención Integral*) within the criminal court. See art. 13, “*Ley contra el femicidio*” *cit.*

⁴⁵ Art. 16 and 17, “*Ley contra el femicidio*” *cit.*

⁴⁶ Evidences can be recorded with a camera to avoid the victim has to tell her experience one than more times.

makes it more complex, requiring cooperation among the authorities of communities and municipalities.

g. Without any doubt, the establishment of special branches within the justice system is a serious advance. Two special divisions with gender focus were created within the public prosecution (*Fiscalía de la mujer*) and the criminal court (*Tribunal y Juzgado Penal de Delitos de Femicidio y Otras Formas de Violencia*). This means that all the operators (judges included) have received a special training in order to avoid the so-called risk of *revictimization*. Assuming this reform has impacted effectively the awareness of the judges and the other workers in terms of genders issues, what about the **cultural aspect**? What is extremely surprising is that in the Quiché department – where indigenous represents the majority of population⁴⁷ - the staff of the criminal justice system is almost entirely belonging to the *ladino* ethnic group and it is not even trained to attend indigenous women.

As Hesse suggests, racism is developed in the performance of the institutions, which involves the daily behaviours and attitudes in the use of a certain perspective of thinking, speaking, listening, and acting. This outlook might be considered “universal”, but probably is only one version of the possible ones. For this reason, it turns out as an imposition of a monist way of thinking, speaking, listening, and acting. In this regard, *everyday racism*⁴⁸ can be coded or realized in overt forms, not even consciously intended. It may be expressed through images and words, visually and discursively, even with circumstanced silence. “*Everyday racism is not a singular act in itself, but the accumulation of small inequities*”⁴⁹. Thinking to Bourdieu, these are the cognitive structures of language and body that represent the subjective and customary form of domination.

The first clue of this trend is represented by the general *ignorance* of the staff working within the justice system about the traditional features that distinguishes the quiché culture from their training. This has led to the *internalization of prejudice* which emerges when the staff expresses a judgement using cultural yardsticks belonging to a different background. For example, the words “development” (*desarrollo*) or “production” are not part of the quiché language and they represent two concepts diametrically opposed to the values of the Maya *cosmovisión*.

According to the Maya traditional knowledge, cutting threes is forbidden, unless after a ceremony and the plantation of ten more threes. Also, the animals are considered human beings and are not exploited. For this reason, land and animals are not sources of production, so that women might not be motivated to participate in productive projects.

The second sign is represented by the fact that the legislator, as well as, the judges and the side operators have *misinterpreted, generalized or problematizing*⁵⁰ some of the traits or phenomena related to the indigenous women and their communities. For example, the economic dependence of the women on their partners. On the one hand, they never question the *cause* of certain behaviours; on the other hand, they *judge* as they would hold a complete knowledge, considering their standpoint as the only right one. Even the indigenous lawyer told during the interview that there is a lack of information about the law reform within the communities, this is the reason it would not have worked. Apparently, the issue concerns the indigenous women who cannot use properly the law because they do not understand it or are not well informed. *What if the law was not elaborated in relation to their*

⁴⁷ Certainly, more than the 75%.

⁴⁸ Essed, P. (1991). *Understanding everyday racism: An interdisciplinary theory* (Vol. 2); Essed, P. (1990). *Everyday racism: Reports from women of two cultures*. Hunter House Publishers; Sage.

⁴⁹ Essed, P. (1990). *cit.*

⁵⁰ Essed, P. (1991). *cit.*

way of being and their needs? Maybe, the law is not acquainted with them. The law might have a problem of understanding, if not of symbolic violence. Perhaps, there is “a lack of information” about those women within the law itself, or within the procedures that thought the law up. In this regard, two “unwritten statutes”⁵¹ would exclude the quiché women from the guarantee of due process and the participation in the political system which promulgates laws.

As Essed describes, *marginalization* and “symbolic (or physical) repression of (potential) resistance through humiliation or violence” are two strands of everyday racism. Moreover, it has such an “informal ring” that it may sound harmless; however, the daily psychological suffering can have chronic adverse effects on mental and physical health⁵². Following the reasoning of the first paragraph – according the hints of Bourdieu – **another law might be imposed to these women which restrains their authenticity, resulting as symbolic violence. It is not visible but it hurts.**

3.4. By the Maya point of view: accusatorial system vs conversant setting, spirituality, communication and dialogue. What is sure is that the quiché women are not acquainted with the setting in which the criminal proceeding takes place according to the rules of the accusatorial system. This might be the reason of their fear or disorientation in telling their experience of violence to the Guatemalan institutions.

First of all, according to the Maya tradition, both the aggressor and the victim are “son and daughter” of the judge: they are not “accused” and “victim”. The judges are usually members of the community where the couple has grown up; they are ancestral authorities because they have demonstrated to be honest people who have gained respect through the system of the community service. Women also can be ancestral authorities. Therefore, the legitimation and reliability of the elders comes from the experience, they do not have any title or professional training, but they have already served the community without any compensation.

Mayan judges have a paternal instinct: they are conversant with the history of the families, and they can only mediate - do not adjudicate - between disputing parties. Usually, they ask to the man and the woman to sit and tell their story, they will listen to the *narrative* of each one for as long as necessary. Within the Maya justice system, there is no intermediation of any lawyer; indeed, this feature has also an economic aftermath: it is a free system. Thus, at the beginning of any conflict resolution, the parts know their economic status will not be affected by the expenses of the proceeding.

“Pero ojalá que trabaje, que escuche cada persona cuál es su problema. El “derechos humanos” [the Guatemalan institutions] ajala que practican, porque muchas veces llegan casos pero no escuchan ambas personas, que no se sienten, cual es el problema, quiero que se sienten los dos.”

At the same time, the *language* spoken is of course their native one and the law applied is the Maya *cosmovisión*, with its spirituality and ceremonies. The Mayan law solves conflict “through the word”; indeed, the judge is “who cut the word” in order to give advices. Hence, Maya law is not written and it has its foundation in the rulings of the advices. Differently, the language of the criminal

⁵¹ Hesse, B. (2011) (2004). *cit.*

⁵² Essed, P. (1990). *cit.*

court ensues a technical vocabulary, and many words of Spanish – even of the colloquial jargon - cannot be translated in the Quiché language.

But it is not only a matter of *communication*. *Relationships* play a key role within the route of justice: because the solution of the conflict is sought through *dialogue* and the *assembly* of the community participate through a collective process.

3.5. Aims of justice: mimesis of retribution vs healing and emancipation. I believe the most significant point concerns the aims of justice because this concern values, discerning mimesis from authenticity. According to Hesse, the social and intellectual activists reply the same fallacies of the liberal-democratic system, imitating it even in the strategies of social mobilization or intellectual commitment. This means that they end to use the same “universal” tools - such as language and law - and every alternative authentic expression is inhibited.

“Generalmente el legislador copia de otras leyes de otros países y no se analiza el problema social. Encierra y engloba un montón de situaciones, que nunca se analizaron”.⁵³

*“En el 2011 empezamos a revisar el contenido de la CEDAW y nos damos cuenta que es un instrumento internacional referente para los derechos de las mujeres, pero en cuanto a mujeres indígenas tiene vacíos. Desde nuestra realidad, no es que no nos sirva, si nos sirve, el tema es que ciertas particularidades que no nos ayudan, digamos, que no nos ayuda la convención. Que cada vez que los estados son evaluados tienen que considerar la particularidad de las mujeres indígenas, no abordar mujeres en general.”*⁵⁴

In Guatemala, the criminal system changed from the inquisitorial to the accusatorial model in the 1994. The reform was the result of a long process which has been propelled by the USA⁵⁵ deeming that the oral trial would have been more accessible and speedier than the inquisitorial. Moreover, the guarantees of the adversarial model appeared more, such as the reduction of pretrial detention, the presumption of innocence, and the right to defense, with a particular focus on the role of lawyer and evidences. One of the motivations have led the change of procedure, concerned the indigenous people in order to enhance their participation and protection within the Guatemalan justice system. However, although the orality of the accusatorial system might be certainly acquainted to the traditional practices of Maya justice, the aims might be different.

a. The origins of the problem. Usually, in the Maya culture the person is separated from the problem. The judges talk with whom was not respectable or breached the harmony, asking about the reasons of his action. Thus, understanding the case is one of the objectives of the Mayan process of conflict resolution. Consequently, compared to the formal system, the harm is not one-dimensional.

⁵³ The indigenous lawyer.

⁵⁴ The activist of the indigenous women social movement “Movimiento de Mujeres Indígenas Tz’ununija”.

⁵⁵ Both in economical and pedagogical terms training the branch of national security (police, military and criminal justice), see Hendrix. Steven E., (1998) Innovation in Criminal Procedure in Latin America: Guatemala’s Conversion to the Adversarial System”[Innovación en el Procedimiento Criminal en Latinoamérica: Conversión de Guatemala al Sistema Acusatorio]. Sw. *JL & TRADE AM.*, 5.

b. Recover or replace the consequences of the harm. In the traditional Maya justice, retribution is not the main aim. Neither, the prison is considered as a penalty.

The ancestral authorities believe that prison is a performance of violence and hate, turning the inmates in worst human beings and separating them by their families. The harshest punishment is the expulsion from the community, but it is decided by the assembly only in the most serious cases.

From the perspective of the *quiché* women, indeed, the adversarial model is structured in **two opposed parts, one against the other**. The final ruling is directed to reward one part, and penalize the other. As one of them would have all the good reasons, and the other all the faults. As one would be a saint, and the other a sinner. As only one part of the couple would be harmed and suffer. Differently, in the Maya system, the judges (and the assembly) should find a *solution* to recover the consequences of the “multidimensional” harm. Not only, for whom we call the “victim”, but also for the “aggressor” and the community itself. Indeed, everybody needs to be healed by the community assembly, through their words and the tasks they will assigned to them, as a collective process.

c. Change of behaviour. On the one hand, the tasks assigned by the community assembly activate a path of individual therapy both for the responsible and whom suffered the harm; on the other hand, the function is to lead the responsible feeling ashamed toward the other members of the community. The shame - to have broken the harmony and lose the respect - should act internally following an emotional process. The interesting point here is that relationships and feelings play an important role, not only in the definition of the conflict’s origins and the harm, but also in the phase of healing. In parallel, instead, money assume a function only when the harm needs an economical restoration.

As opposed to the system of retributive justice, the main goal of the Maya system is to lead the responsible changing his behaviour. It does not matter if it takes time or efforts (in some cases they do not eat or sleep until the conflict is solved).

d. Collective reflection within the community. Every resolution of any conflict is an opportunity for the members of the community to reflect, learn and decide about it. This means that some social phenomena are publicly discussed by everybody and maybe, redefined by them through a collective process of investigation and deliberation. In few words, we may say that the community assembly might be also a *social therapy*.

Research and discussion about the origins of the issue and the solution are powerful tools to face social phenomena that are internalized. Unfortunately, domestic violence is not often object of the public assembly - besides, it might be legally forbidden⁵⁶ - and so, it is not recognized as an issue of public concern.

In the light of these consideration, since, the adversarial system has not fulfilled its function I wonder if it might not be more suitable *mediation*. It would not be the first time, mediation is implemented in case of violence against women – even sexual abuse⁵⁷. In addition, it might meet the expectations of the women, fitting more appropriately with the traditional system of Maya justice. In fact, compared to the Maya view, the adversarial model appears to rely on an individualistic, materialistic and monist philosophy, as well as, dehumanizing and violent, both for the applied

⁵⁶ Art. 9, “*Ley contra el femicidio*” cit.

⁵⁷ Ross, R. (1996). *Returning to the Teachings Exploring Aboriginal Justice*.

methods and the pursued aims. In this regard, the main guarantees that should have been advanced by the passage to the accusatorial system – such as the reduction of pre-trial detention, the presumption of innocence, the right to defence – are not very meaningful by the Maya outlook. Even the *orality* of the judgment is prevented, not only for the language used, but also because the storytelling and the assembly dialogue of Maya justice operate through the mechanism of feelings and relationships, according to specific cultural rules.

4. CONCLUSIONS.

*Writing this paper, the first thing I have learned is that the **micro and the macro history** are strictly related, developing their course under the same causes and circumstances. It is fascinating to see the reproduction of similar language and dynamics within the couple, the family, the community, the state and finally, the states. At the same time, analysing the **origins** of a certain social phenomenon means to suspend the judgment. Not only because the object of analysis becomes the society, instead of the morality; but also, because it is necessary to assume that our beliefs are not universal truths, in order to understand the behaviour of other people.*

*The second revelation, is that **feelings make history, as well as, relationships make culture**, at the micro and the micro level. Indeed, invisible barriers and symbolic violence run and developed themselves through emotions and socialization, namely, passions and bonds. These is something extremely relevant for the modern society, whereby materialism and individualism dictate the law. In fact, law appears more and more unfamiliar and foreign, not only for the indigenous women, I would argue. In the case of the quiché wives, the (national) criminal law and the (international) law of human rights lack of familiarity and pertinence, because it does not comply with their expectations. This is exacerbated by the fact indigenous culture is founded on the primary needs of the human being, while the law is the product of foreign or international entities that might be responsive to other values. However, the expectations of the quiché women may be shared by other women into the world, suggesting a different habitus and a renovate law might be needed somewhere else as well.*

*On the one hand, **expectations of the quiché** women are significant because they work as invisible barriers. However, we should distinguish between the women who expected to change their situation and the ones who did not. In the first case, their expectations are shaped by the informal education of the family, the church and the community which for them represent a binding and inexorable law. In the second case, instead, they have undertaken autonomous solutions to change their life, placed between separation and reconciliation with their partner. Considering this premise, it seems to me, that the formal system fails to protect the women who expected (or needed) to be protected (physically, psychologically and economically), and does not serve the expectations of the other women. In few words, the justice system is not responsive, because the women expected to conciliate with the partner, to heal and change their situation, or to free themselves from him. They do not expect him to be incarcerated or punished.*

*Consequently, **the answer to the research questions** might be that, not only quiché women do not have access to the Guatemalan criminal justice system due to material barriers and corruption; but also, that they are not even interested because the accusatorial system is not responsive to their expectations and indeed, it might be racist.*

*On the other hand, the **function of criminal justice and human rights** appears crucial; because if both fail to protect vulnerable people and to prevent violence against them, we should question their procedures and purposes, if not the way in which both are enacted. Indeed, the law of human rights may be perceived as an imposition of alien values, concealing biased canons against the quiché women. In the same way, the Guatemalan law of criminal justice, as well as, the institutions, operate for mimesis, performing discrimination (and violence) through emotions and interactions. The point is that this law might have internally rooted the discriminatory habitus even in the authorities of the community, in contradiction with the traditional cosmovisión. In this case, though, the indigenous authorities did not internalize human rights yet; so that, the “universal” values are religious and economic, blending (if not prevailing) with cosmovisión. The same women (and their partners) are subjected to an external law (the matrimonial contract of the “pedidas”) reproducing a discriminatory (and violent) habitus against what differs from canons. Such as, the woman who wants to study or work, the couple who wants to have sexual relationships without procreate, the men who want to use his earnings for going out with friends. In fact, it seems that for the new generations, the*

values of individual rights are spreading, clashing with the habitus of the indigenous authorities and the law of “pedidas”. But it is not enough for the quiché women to claim their rights and resorting to the formal system. Not yet, at least.

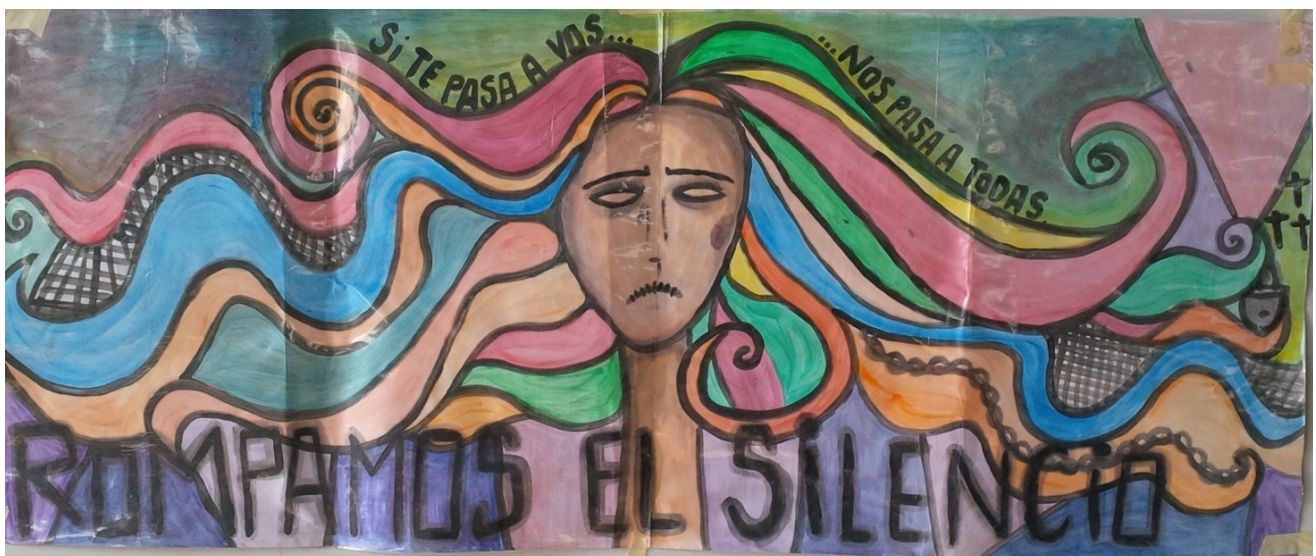
What if they are right?

Those rights and the justice system, indeed, might be the ulterior alien law which is imposed to them. Nevertheless, we should not forget the fact that those values are “universal” but they might not be authentic to the habitus of the quiché women, conflicting with their own emotions and needs. Besides, the alien law is not the product nor of the storytelling of the elders, neither of the community assembly. And it mismatches their expectations. On the one hand, it is true that culture is dynamic and hybrid, and also, that quiché women might have been losing part of their traditions. **On the other hand, however, some of their choices and behaviours might lead to believe they are still performing an ancestral habitus connected with the primary needs of the human being, at least in part.**

In this perspective, the law of human rights – instead of individual emancipation and social change – might end to inhibit Maya values and alternative habitus, pushing the women to flout their own authenticity. And, at the same time, the law of criminal justice – instead of protection and deterrence – might end to sow the seeds of retribution, in the form of punishment for the wrong actions. “Wrong” compared to the law, rather than the ancestral harmony. **In other words, the result of this combination might be the enforcement of a specific culture so punitive, as corrective towards those behaviours considered different from the ones “universally” recognized.** This might be core of the institutional racism in Quiché. In this perspective, even the issues of corruption and impunity might be seen in a new light.

About that, Hesse describes the polarization of two different entities: white (namely, European people) and non-white (non-European people) as corporal, cultural and geographical embodiments. Regardless the specified personification, the problem might be the polarization itself. Perhaps, the identification of two different supposed cultures impacts both the function of criminal justice and the law of human rights, dividing the logic world in the dualism of truth-false, right-wrong. This polarization would reverberate within the couple, the family, the community, the state and finally, the states.

In this perspective, mediation, with its techniques and values, might be a tool to create a more **plural setting**. It takes time, efforts and responsibilities. It is an experiential learning. Of course, to participate one should assume his beliefs are not universal truths and learn to explore diversity. The aftermaths might be surprising.



5. REFERENCES

- Amry, R. P. (1999). Indigenous Peoples, Customary Law and the Peace-Process in Guatemala. *R. Kuppe & R. Potz, Law & Anthropology. International Yearbook for Legal Anthropology*, 10, 52-79;
- Anastasia S. (2008). *L'appello ai diritti. Diritti e ordinamenti, nella modernità e dopo*. Torino;
- Angles, R. P. (1995). Los derechos humanos de los indígenas en Bolivia y el control jurisdiccional. *Capítulo Criminológico*, 23(2);
- Arriaza, L. J., & Roht-Arriaza, N. (2010). Weaving a Braid of Histories. *Localizing Transitional Justice: Interventions and Priorities After Mass Violence*, 205;
- Arriaza, L., & Roht-Arriaza, N. (2008). Social repair at the local level: The case of Guatemala. *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, 143-166;
- Baratta, A. (1991). Criminología crítica y crítica del derecho penal. *Editorial Siglo XXI México*;
- Baratta, A. (1995). ¿Tiene futuro la criminología crítica? Reflexiones sobre el modelo integrado de las ciencias penales y la interdisciplinariedad externa. *Capítulo Criminológico*, 23(2);
- Baratta, A. I diritti umani fra violenza strutturale e violenza punitiva. *Diritti dell'uomo e sistema penale*, 1, 327;
- Berard, T. J. (2008). The neglected social psychology of institutional racism. *Sociology Compass*, 2(2), 734-764;
- Bhabha, H. K. (2001). *I luoghi della cultura*. Meltemi Editore;
- Bourdieu, P. (2001). *Masculine domination*. Stanford University Press;
- Bourdieu, P. (1990). *The logic of practice*. Stanford University Press;
- Bourdieu, P. (1979). Symbolic power. *Critique of anthropology*, 4(13-14), 77-85;
- Buzawa, E. S., & Buzawa, C. G. (1990). Domestic violence: The criminal justice response;
- Carrillo, A. L. (1991). Indias y ladinas. Los ásperos caminos de las mujeres en Guatemala. *Nueva Sociedad*, 111, 127;
- Charlesworth, H. (1995). *Feminists Critiques of International Law and Their Critics*, Third World Legal Studies, vol. 13 (1);
- Cifuentes González, J. J., (2003-2004). La reforma judicial en Guatemala: enfoques, poder y oposición, Dissertation Master Programme in Sociology of Law, Oñati;
- Crenshaw, K. (1991). Mapping the margins: Intersectionality, identity politics, and violence against women of color. *Stanford law review*, 1241-1299;
- Crespi, F. (1985). *Le vie della sociologia: problemi, teorie, metodi*. Il mulino;
- Cuneen, C. (2008). Criminology, Criminal Justice and Indigenous People: A Dysfunctional Relationship. *Current Issues Crim. Just.*, 20, 323;
- Demian, M. (2007). Land doesn't come from your mother, she didn't make it with her hands. *Feminist perspectives on land law*, 155;
- Di Lucia, P., Mancini, L. (2015). La giustizia vendicativa. *JURA*, 4;
- Donoso, Silvia, (2009). Guatemala, del genocidio al feminicidio: El largo recorrido de la violencia y la impunidad, Workshop on "Las ciencias sociales y el derecho ante la violencia social: Memoria, identidad y quiebras de lo cotidiano", Oñati, 4-5 Junio 2009;

Eckert, J. (2006). From subjects to citizens: legalism from below and the homogenisation of the legal sphere. *The Journal of Legal Pluralism and Unofficial Law*, 38(53-54), 45-75;

Ekern, S. (2005). Visions of the Right Order: Contrasts between Mayan Communitarian Law in Guatemala and International Human Rights Law. *Human Rights in Development Yearbook*, 2003, 265;

Essed, P. (1990). *Everyday racism: Reports from women of two cultures*. Hunter House Publishers;

Essed, P. (1991). *Understanding everyday racism: An interdisciplinary theory* (Vol. 2). Sage;

Facchi, A. (2001). *I diritti nell'Europa multiculturale: pluralismo normativo e immigrazione*. Laterza;

Felstiner, W. L., Abel, R. L., & Sarat, A. (1980). The Emergence and Transformation of Disputes: Naming, Blaming, Claiming... *Law and society review*, 631-654;

Ferrari, V. (1995). Giustizia e diritti umani: osservazioni sociologico-giuridiche (Vol. 25). FrancoAngeli;

García, C. A. (1995). Feminismo y criminología. *Capítulo Criminológico*, 23(2);

Ghidinelli, A. (1991). La mitad de Guatemala discriminada. *Nueva Sociedad*, (111), 119-127;

Gutiérrez, É. (2016). Guatemala fuera de control: la Cicig y la lucha contra la impunidad. *Nueva Sociedad*, (263), 81-95;

Haltom, W., & McCann, M. J. (2004). *Distorting the Law*;

Hendrix, Steven E., (1998) Innovation in Criminal Procedure in Latin America: Guatemala's Conversion to the Adversarial System"[Innovación en el Procedimiento Criminal en Latinoamérica: Conversión de Guatemala al Sistema Acusatorio]. *Sw. JL & TRADE AM.*, 5;

Hesse, B. (2004). Im/plausible deniability: racism's conceptual double bind. *Social identities*, 10(1), 9-29;

Hesse, B. (2011). Self-fulfilling prophecy: The postracial horizon. *South Atlantic Quarterly*, 110(1), 155-178;

Hirschman, A. O. (1982). *Lealtà, defezione, protesta: rimedi alla crisi delle imprese, dei partiti e dello stato*. Harvard University;

Hoyle, C. (1998). *Negotiating domestic violence: Police, criminal justice, and victims*. Oxford University Press on Demand;

Kotiswaran, P. (2013). Do feminists need an economic sociology of law?. *Journal of Law and Society*, 40(1), 115-136;

Kuppe, R. (2009). Religious freedom law and the protection of sacred sites. *Permutations of order: Religion and law as contested sovereignties*, 288;

Li, T. M. (2009). The Law of the Project: Government and 'Good Governance' at the World Bank in Indonesia. *Rules of Law and Laws of Ruling: On the Governance of Law*;

Madsen, M. R. (2000). Towards peace and democracy in Guatemala: an analysis of changing societal patterns with an emphasis on the position of El Pueblo Maya;

Mann, M. (2005). *The dark side of democracy: explaining ethnic cleansing*. Cambridge University Press;

Marchetti, E., & Marchetti, E. (2007). Indigenous sentencing courts: Towards a theoretical and jurisprudential model. *Sydney L. Rev.*, 29, 415;

- María, A. A. (1995). Rationalizing Patriarchy: Gender, Domestic Violence, and Law in Mexico. *Special Issue: Sanctioned Identities*, 29-47;
- Mather, L., & Yngvesson, B. (1980). Language, audience, and the transformation of disputes. *Law and Society Review*, 775-821;
- McKee, J. B. (1993). *Sociology and the race problem: The failure of a perspective*. University of Illinois Press;
- Merry, S. E. (2006). *Legal Transplants and Cultural Translation: Making Human Rights in the Vernacular*, in *Human Rights and Gender Violence: Translating International Law into Local Justice*, Chicago: Chicago University Press;
- Moore, S. F. (1973). Law and social change: the semi-autonomous social field as an appropriate subject of study. *Law & Society Review*, 7(4), 719-746;
- Murayama, M. (2012). *Reconsidering the Japanese Way of Dispute Resolution: What Is It and Why?*, in Harry N. Scheiber and Tom Ginsburg, *Japanese Legal System: An Era of Transition*, 67;
- Musalo, K., & Bookey, B. (2013). Crimes without punishment: An update on violence against women and impunity in Guatemala;
- Niezen, R. (2009). *Rediscovered Self: Indigenous Identity and Cultural Justice*(Vol. 57). McGill-Queen's Press-MQUP;
- Olivar, R. C. (1995). El papel de la criminología crítica en la protección de los derechos humanos de los pueblos indígenas. *Capítulo Criminológico*, 23(2);
- Onyango L., Omollo A., Ayo E., (2011). *Gender perspectives of property rights in rural Kenya*, Essays in African land law, Pretoria University Press, 2011;
- Orellana, G. G., & Azkue, I. M. Multiculturalidad, pueblos indígenas y participación local en Guatemala. *La cooperación y el desarrollo humano local*, 131;
- Otzoy, I. (2008). Indigenous Law and Gender Dialogues. *Human Rights in the Maya Region*, 171-86;
- Patel, T. G., Tyrer, D. (2011). *Race, crime and resistance*. Sage;
- Peeler, J. A. (1998). *Social Justice and the New Indigenous Politics: An Analysis of Guatemala and the Central Andes*. Latin American Studies Association;
- Pérez-Armiñan, M. (2001). Resistiendo la impunidad en Guatemala: La dimensión psicosocial en un proceso político-judicial. *Nueva Sociedad*, 175, 43-58;
- Pigliaru, A. (1959). *La vendetta barbaricina come ordinamento giuridico*. A. Giuffrè;
- Pitch, T. (2004). *I diritti fondamentali: differenze culturali, disuguaglianze sociali, differenza sessuale*. G. Giappichelli;
- Plant, R. (1999). Los derechos indígenas y el multiculturalismo latinoamericano: lecciones del proceso de paz en Guatemala. *El reto a la diversidad, Zamora: El Colegio de Michoacán*, 57-97;
- Ramirez, W. (1999). Derechos Humanos en Guatemala: evidencias de impunidad o impunidad en evidencia. *Nueva Sociedad*, 161, 145-158;
- Ramstedt, M. (2016). Anthropological Perspectives on the Normative and Institutional Recognition of Religion by the Law of the State. In *Religious Rules, State Law, and Normative Pluralism-A Comparative Overview* (pp. 45-59). Springer International Publishing;
- Rasch, E. D. (2016). 'There is no law that justifies the existence of the board of elders'. Community service and legal pluralism in Santa María, Guatemala. *The Journal of Legal Pluralism and Unofficial Law*, 48(1), 41-57;

- Roberts, Simon. (1979) 2013. *Disputes*, in *Order and Dispute: An Introduction to Legal Anthropology*, by Simon Roberts, New Orleans: Quid Pro Books;
- Rosen, L. (2006). *Law as Cosmology*, in *Law as Culture: An Invitation*, by Lawrence Rosen, Princeton and Oxford: Princeton University Press;
- Ross, R. (1996). *Returning to the Teachings Exploring Aboriginal Justice*;
- Santos, B. D. S. (2009). *Sociología jurídica crítica: para un nuevo sentido común en el derecho*;
- Sarfaty, G. (2012). *Values in Translation: Human Rights and the Culture of the World Bank*. Stanford University Press;
- Shachar, A. (2001). *Multicultural jurisdictions: Cultural differences and women's rights*. Cambridge University Press;
- Shapiro, M. (2013). *Courts: a comparative and political analysis*. University of Chicago Press;
- Shapland, J. (2003). Restorative justice and criminal justice: Just responses to crime. *Restorative justice and criminal justice: Competing or reconcilable paradigms*, 195-218;
- Sieder, R. (2010). Legal Cultures in the (Un) Rule of Law: Indigenous Rights and Juridification in Guatemala. *Cultures of Legality: Judicialization and Political Activism in Latin America*, 161;
- Sieder, R. (2011). Building Mayan Authority and Autonomy: The “Recovery” of Indigenous Law in Post-Peace Guatemala. In *Studies in Law, Politics, and Society* (pp. 43-75). Emerald Group Publishing Limited;
- Silbey, S. (2001). “Let them eat the cake”: globalization, postmodern colonialism, and the possibilities of justice, in *The Legal Geographies Reader*, edited by Nicholas Blomley, David Delaney and Richard T. Ford, Oxford and Malden: Blackwell;
- Stone, D. (2002). *Breeding superman: Nietzsche, race and eugenics in Edwardian and interwar Britain* (Vol. 6). Liverpool University Press;
- van Binsbergen, W. M. (2003). Introduction: The dynamics of power and the rule of law in Africa and beyond: Theoretical perspectives on chiefs, the state, agency, customary law, and violence;
- von Hirsch, A., Roberts, J. V., Bottoms, A. E., Roach, K., & Schiff, M. (Eds.). (2003). *Restorative justice and criminal justice: Competing or reconcilable paradigms*. Bloomsbury Publishing;
- Weilenmann, M. (2009). Project law—a power instrument of development agencies. *The power of law in a transnational world: anthropological enquiries*, 156;
- Whitecross, R. W. (2009). Keeping The Stream Of Justice Clear And Pure. *The Power of Law in a Transnational World: Anthropological Enquiries*, 199;
- Wiber, M. (1993). *Politics, property and law in the Philippine uplands*. Wilfrid Laurier Univ. Press;
- Wolkmer, A.C. (2003). *Legal Pluralism: The New Emancipatory Framework in Latin America*. *Law and Society in Latin*, 26, 155-168;
- Zaffaroni, E. R. (2000). El discurso feminista y el poder punitivo. *Las trampas del poder punitivo. El género en el Derecho Penal*. Buenos Aires: Editorial Biblos;
- Zaffaroni, E. R. (2009). Consideraciones acerca del reconocimiento del pluralismo cultural en la ley penal. *Derechos ancestrales. Justicia en contextos plurinacionales, Justicia y derechos humanos, neoconstitucionalismo y sociedad*, Quito: Ministerio de Justicia y Derechos Humanos;
- Zukin S. (2006). *David Harley on Cities*, Castree, N. and Gregory, D. 2006. *David Harvey: a Critical Reader*. Oxford: Blackwell.