The Malleability of Transitional Justice

Community-Based Memorialisation and Emancipatory Redress in Guatemala

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Transitional justice as a field of theory and praxis occupies a paradoxical position today. A field born from the mobilisation of victims-survivors confronting the legacies of dictatorships and armed conflict has been deemed to be at an "impasse".[1] Criticised for its legalism, top-down orientation and rootedness in a liberal peace paradigm, transitional justice is nonetheless persistently mobilised, appropriated and reshaped by the very communities from which it first emerged. I argue that transitional justice is exemplary of what Philipp Dann and Florian Jeßberger have suggested calling "reflexive globalisation", that is a new phase of globalisation in which "unidirectional exports from the Global North give way to multidirectional renegotiations of legal concepts by actors originally positioned as recipients rather than authors."[2]

Transitional justice did not develop as a settled framework to be implemented but emerged partly from civil society demands in the Global South, before becoming standardised through international human rights law and a professionalised global field. Yet this process of standardisation has not foreclosed further transformation. From a critical perspective attentive to the shortcomings of transitional justice's institutional implementation, I examine how local actors continue to strategically appropriate and re-embed its language and tools, infusing them with epistemologies of harm and repair that exceed the parameters within which the field was codified. In this contribution, I trace this trajectory to contemporary efforts to stretch and reshape its normative boundaries. I then reflect on these dynamics through the Guatemalan case, drawing on my engagement with Maya Ixil survivor organisations as both a researcher and legal advisor, and examining their efforts to build community-based spaces of memory and redress. I conclude by considering both the emancipatory possibilities and the limits of the malleability of transitional justice.[3] Examining these dynamics through a reflexive lens, I suggest, reveals how victim-survivors can engage with an institutionalised field while simultaneously advancing forms of redress that operate beyond, and sometimes despite, the state.

From Civil Society Demands to Standardisation and Its Discontents

The origins of transitional justice lie in the demands of civil society actors who, in the face of state violence, reluctance, or impunity, constructed spaces to frame claims related to truth, justice and reparations according to their available means. Latin America was a formative site of these early developments. The *Abuelas y Madres de Plaza de Mayo* in Argentina, mobilising collectively under authoritarian repression, pioneered practices of legal mobilisation, protest and forensic investigation that would later be recognised as foundational contributions to international human rights standards.[4] Throughout the region, in countries such

[1] Vasuki Nesiah, *Transitional Justice Practice: Looking Back, Moving Forward: Scoping Study*, Impunity Watch Research Report, May 2016; Selbi Durdiyeva, *Transitional Justice and Decolonisation*, Virtual Encyclopaedia – Rewriting Peace and Conflict, 13.02.2024, https://rewritingpeaceandconflict.net/transitional-justice-and-decolonisation/, last accessed 09.10.2026; Caitlin Biddolph and Caitlin Mollica, *Reimagining Transitional Justice for a Less Violent, More Inclusive World*, The International Journal of Human Rights, 30 (2025), DOI: 10.1080/13642987.2025.2602144.

[2] Philipp Dann and Florian Jeßberger, *Reflexive Globalisation, Law and Placemaking*, Verfassungsblog, 05.02.2026, https://verfassungsblog.de/reflexive-globalisation-law-and-placemaking/, last accessed 09.10.2026, DOI: 10.59704/f8e7edc0c8a2351b.

[3] The concept of malleability has been used by transitional justice scholars to refer to the limitations in the transformation of socioeconomic structures of inequality in post-conflict societies, see: Padraig McAuliffe, *Transformative Transitional Justice and the Malleability of Post-Conflict States* (Edward Elgar Publishing, 2017), DOI: 10.4337/9781783470044. In this post, I understand malleability as the capacity of the transitional justice field to be easily changed or influenced into a new shape.

as Chile, Guatemala, and Perú, survivors and their organisations contributed to building the field's architecture well before its theorisation. The first stage of this development was characterised by practice preceding theory: civil society documented violations, raised awareness, initiated legal proceedings where possible, and demanded acknowledgement at a time when states remained unwilling or unable to act. Thus, the demands for justice of victims and their relatives carved out demands for truth and justice that shaped the field's aspirations.[5] Transitional justice, thus, did not begin as a unidirectional export from established democracies to post-conflict societies. It was a product of a multidirectional entanglement, one in which civil society in the Global South articulated demands that shaped later standard setting.

A second stage in the development of transitional justice marked its consolidation into a standardised field. Informed by the early experiences in Latin America, as well as in Africa and Eastern Europe, transitional justice was codified into a pillar-based system, institutionalised through the framework of international human rights law and the work of multilateral organisations. The field adopted the form of a toolkit encompassing distinctive "pillars": truth; (international) criminal prosecutions; reparations; guarantees of non-recurrence; and, more recently, memorialisation.[6] This standardisation, driven by the United Nations and a transnational community of transitional justice entrepreneurs, professionalised the field into a global framework governed by international experts to be implemented across diverse contexts of conflict and authoritarianism.[7]

With standardisation came its critique. In particular, the pillar-based system was criticised for privileging civil and political rights, while marginalising economic, social, and cultural rights. According to its critics, a fixed linear notion of "transition" obscured the *continuum* of structural violence rooted in colonial legacies and their effects on contemporary forms of dispossession and structural harm.[8] More recently, scholarship has also questioned the anthropocentrism of the field, arguing that its neglect of more-than-human forms of harm forecloses understandings of injury and repair that are central to many affected communities, for example Indigenous epistemologies, and other ecological and relational worldviews.[9]

These critiques have not, however, extinguished the appeal of transitional justice.[10] The field's malleability, such as its capacity to contain multiple paradigms of justice simultaneously across institutional and grassroots spaces, has allowed victim-survivors to continue mobilising its language and tools as strategic agents who vernacularise and re-embed the field with their demands.[11] Notable contemporary examples are worth mentioning. The language of transitional justice is now invoked in established democracies to address colonial harms, for example Belgium's parliamentary commission on colonial crimes committed in Congo, Burundi and Rwanda,[12] and a truth commission to address racism and the legacies of slavery in the United States.[13] Truth commissions have likewise been deployed in postcolonial and settler-colonial contexts, for example to address the abuses committed in residential schools against Indigenous populations in Canada and in care institutions in Australia.[14]

Moreover, in contexts of armed conflict, transitional justice is being reshaped. The Special Jurisdiction for Peace (*Jurisdicción Especial para la Paz)* established in Colombia following the 2016 peace agreement has incorporated Indigenous epistemologies and legal pluralism into a formal accountability mechanism: appointing Indigenous judges and issuing decisions recognising territories as victims and rights-holders of the armed conflict, as well as recognising a "biocultural" relationship between the human and non-human.[15] These judicial developments showcase

[4] Valeria Vegh Weis, *The Relevance of Victims' Organizations in the Transitional Justice Process: The Case of the Grandmothers of Plaza de Mayo in Argentina*, Intercultural Human Rights Law Review, 12 (2017), p. 1-70.

[5] Ezequiel A Gonzalez-Ocantos, *The Politics of Transitional Justice in Latin America: Power, Norms, and Capacity Building* (Cambridge University Press, 2020), DOI: 10.1017/9781108869973.

[6] United Nations Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General*, S/2004/616, 23.08.2004.

how transitional justice is being used to expand the ontological and epistemic scope regarding who counts as a rights-holder, what counts as harm and how it can possibly be repaired.

Guatemala: Memorialisation, Survivance and Community-Based Redress

The Guatemalan case offers an illustrative expression of this dynamic. Guatemala endured a 36-year internal armed conflict (1960-1996) that reached its peak of violence in the early 1980s, when Indigenous Maya communities were systematically targeted. The *Comisión para el Esclarecimiento Histórico* (Commission for Historical Clarification) concluded that the conflict resulted in approximately 200,000 deaths, 45,000 enforced disappearances and 1.5 million internally displaced persons, and that the army had committed acts of genocide against Maya ethnic groups.[16]

Guatemala became a "poster child" in the early stages of transitional justice: the peace agreements of the 1990s included provisions on truth, criminal accountability, reparations and historical memory, negotiated at precisely the moment the field was taking shape internationally.[17] Survivors and their organisations were driving these demands. Yet the results proved mixed. The National Reparations Programme (2003-2023) proved structurally flawed and suffered a gradual deterioration until its dismantling. Scholars and survivors also documented a persistent mismatch between communities' understandings of reparation and the institutional frameworks designed to develop them.[18] Criminal proceedings, while advancing in landmark genocide and sexual violence cases, have been hampered in the last decade due to a crisis in the judicial system combined with the criminalisation of human rights defenders.

Against a backdrop of disillusionment and participation fatigue with formal mechanisms, and thirty years after the signing of the peace agreements, a new dynamic is emerging. In the Maya Ixil region, one of the most severely affected areas by genocidal violence, victims-survivors are mobilising once again the language and tools of transitional justice to create spaces of memory in their own terms. These initiatives consist of community-based archives and museums spearheaded by victims and communities looking to preserve the work they have done over decades of legal mobilisation. These spaces are also used to shed light on other forms of harm that have remained overlooked by other transitional justice mechanisms such as trials and truth commissions, for example the harm to land and nature, and the effects of genocide on communities, such as starvation, illness and dispossession. Memory spaces are also being shaped to reflect Ixil historiographies in which the genocide in the 1980s is but an episode of broader temporalities of harm stemming from Spanish colonisation, and which are connected to contemporary issues of migration, land dispossession and extractivism.[19]

What distinguishes these practices from the mere incorporation of transitional justice language in the form of symbolic reparations is their political autonomy. Julia Eckert argues in a previous RefLex symposium that genuine anti-colonial legal transformation emerges not from adopting or renaming existing frameworks but from social movements that challenge law's fundamental structures by injecting diverse normative sources through "unsystematic normative relationality".[20]

The Ixil survivors' practices exhibit precisely this character. In my own accompaniment of their efforts as both a researcher and legal advisor, I reflect on how Ixil survivors do not merely express their demands within the pillar logic of standardised transitional justice mechanisms but instead generate a form of normative entanglement: linking epistemologies of harm rooted in land and relationality, ancestral knowledges of food, medicine, oral traditions and human

[7] Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, Journal of Human Rights Practice, 2 (2010), p. 208-228, DOI: 10.1093/jhuman/huq005.

[8] Rosemary Nagy, *Transitional Justice as Global Project: Critical Reflections*, Third World Quarterly, 29 (2008), p. 275-289, DOI: 10.1080/01436590701806848.

[9] Janine Natalya Clark, *Harm, Relationality and More-than-Human Worlds: Developing the Field of Transitional Justice in New Posthumanist Directions*, International Journal of Transitional Justice, 17 (2023), p. 15-31, DOI: 10.1093/ijtj/ijac025.

rights claims into community spaces that cannot be reduced to a single framework. Survivors, in their interaction with different stakeholders, actively choose how to mobilise resources and with whom to enter into partnerships, at times rejecting state support out of historical mistrust and the risk of co-optation, even as they continue mobilising before the state to demand reparations, thus still conceiving of it as a principal duty-bearer.[21] This exercise of agency in creating memory spaces operates as what Indigenous scholar Gerald Robert Vizenor has termed *survivance*: the active presence and resistance of Indigenous peoples against colonial erasure, through the continuation of their stories.[22]

These community spaces go beyond traditional commemoration of difficult heritage to become spaces for the affirmation of identity, preservation of ancestral knowledge systems and intergenerational dialogue to preserve stories and sustain the struggle for social justice. By mobilising to depict harm and survival rooted in communities' own worldviews and foregrounding long histories of dispossession and genocide, these spaces contest hegemonic accounts of the past and open new forms of justice imagination.[23] They are emancipatory not because they lie outside the standardised framework of transitional justice entirely, but because they occupy its margins strategically, advancing demands that exceed and re-orient the field's original normative aspirations while retaining community authority over the mobilisation to preserve historical memory.

Malleability and Its Limits

These developments reveal a multidirectional dynamic that the RefLex Centre's idea of reflexive globalisation as a framework could help illuminate. Transitional justice tools are adopted and vernacularised in local contexts, embedded with epistemologies and understandings of harm and repair that exceed ontological and temporal parameters of the standardised model, and returned to the broader field transformed or at least informed from below. In cases such as Colombia, this dynamic has entered institutional spaces, with Indigenous judges functioning as intercultural translators between Western legal systems and Indigenous epistemologies, that are starting to recognise relational understandings of accountability. In Guatemala, it operates at the community level, where victims-survivors mobilise transitional justice language in the form of symbolic reparations to reject the state or negotiate with it, while strengthening their own spaces of collective action as part of a broader movement for social justice that interlinks colonial harm with contemporary forms of repression.

However, as Julia Eckert cautions, not every appeal to decolonial alternatives constitutes genuine transformation. Without sustained attention to (economic, epistemic, legal and cultural) structures of power that sustain colonial hierarchies, attempts to transform the field of transitional justice risk becoming a legitimising vocabulary that accommodates rather than disrupts.[24] Standardised through the framework of international law, transitional justice is not fully capable of embracing the disruptive demands of decolonisation as a project. What it can do – and what the Guatemalan case illustrates – is support and make visible the struggles that communities themselves are conducting: bringing broader temporalities and legacies of violence into a shared frame, as well as mobilising for the recognition of knowledge systems that have been historically marginalised. Whether the openings observed in the Maya Ixil region in the flourishing of

[10] Tine Destrooper, *The Intuitive Appeal of Learning from the Past to Alter the Present*, Jewish Historical Studies, 52 (2020), p. 18-36, DOI: 10.14324/111.444.jhs.2021v52.003.

[11] Peggy Levitt and Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, Global Networks, 9 (2009), p. 441-461, DOI: 10.1111/j.1471-0374.2009.00263.x; Anita Ferrara, *Reconceptualising Transitional Justice as a Pluralistic Theory of Justice*, Social & Legal Studies, 35 (2026), DOI: 10.1177/09646639261422354.

[12] Tine Destrooper, *Belgium's "Truth Commission" on Its Overseas Colonial Legacy: An Expressivist Analysis of Transitional Justice in Consolidated Democracies*, Journal of Human Rights, 22 (2023), p. 158-73, DOI: 10.1080/14754835.2022.2042220. See also Johannes Socher, *African Truth Commissions Addressing Colonial Legacies: The Experiences of Mauritius, Tunisia and Burundi and Some Lessons for Future Initiatives with Similar Mandates*, in: Pilisano Harris Masake and Florian Jeßberger (eds.), *International Criminal Law and the Legacy of Colonialism* (Humboldt-Universität zu Berlin, 2024), p. 105-124.

[13] Brianne McGonigle Leyh, *Transitional Justice in the United States of America: Justice for All?*(Routledge, 2025), DOI: 10.4324/9781032660172.

community-based spaces of memory and intergenerational dialogue can be consolidated into more durable forms of redress remains a question for continued research and reflection alongside communities shaping the field.

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[14] Augustine S. J. Park, *Settler Colonialism, Decolonization and Radicalizing Transitional Justice*, International Journal of Transitional Justice, 14 (2020), p. 260-279, DOI: 10.1093/ijtj/ijaa006.

[15] Rachel Killean and Elizabeth Newton, *Transitional Justice and Other-than-Human Harm: Lessons from Colombia*, The International Journal of Human Rights, 30 (2026), p. 145-169, DOI: 10.1080/13642987.2025.2502561.

[16] Comisión para el Esclarecimiento Histórico de las Violaciones a los Derechos Humanos y los Hechos de Violencia Que Han Causado Sufrimientos a la Población Guatemalteca, *Informe Guatemala: Memoria Del Silencio*, DP/OPS(02)/G918, 1999.

[17] Naomi Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, in: Cheryl Lawther, Luke Moffett and Dov Jacobs (eds.), *Research Handbook on Transitional Justice* (Edward Elgar Publishing, 2017), p. 445-465, DOI: 10.4337/9781781955314.00032.

[18] Alison Crosby, M. Brynton Lykes and Brisna Caxaj, *Carrying a Heavy Load: Mayan Women's Understandings of Reparation in the Aftermath of Genocide*, Journal of Genocide Research, 18 (2016), p. 265-283, DOI: 10.1080/14623528.2016.1186952.

[19] Giovanni Batz, *The Fourth Invasion: Decolonizing Histories, Extractivism, and Maya Resistance in Guatemala* (University of California Press, 2024).

[20] Julia Eckert, *Reflexive Law as Anti-Colonial Practice*, Verfassungsblog, 13.02.2026, https://verfassungsblog.de/reflexive-law-as-anti-colonial-practice/, last accessed 09.10.2026, DOI: 10.59704/717c48861c3cacb7.

[21] Gretel Mejía Bonifazi, *Envisioning a Memory Museum for Historical Memory for the Victims of the Ixil Genocide in Guatemala: Reflections from an Ongoing Collaborative Project*, in: *Commemoration for the Future: Contesting and Sustaining Museum Narratives* (De Gruyter/Brill, forthcoming).

[22] Gerald Robert Vizenor, *Survivance: Narratives of Native Presence* (University of Nebraska Press, 2008).

[23] Brigitte Herremans and Tine Destrooper, *Stirring the Justice Imagination: Countering the Invisibilization and Erasure of Syrian Victims' Justice Narratives*, International Journal of Transitional Justice, 15 (2021), p. 576-595, DOI: 10.1093/ijtj/ijab025.