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„Problems of translating violence against women into
local justice. A comparative case-study of the
IACtHR’s judgments on femicides”

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INTRODUCTION

The gap between the creation of a new human right and its implementation is still very diffuse. Every year, innovative progressive legal concepts tackle specific human right's problems arising in the world, but little is known about how they are connected to feasible implementation in local contexts. Although global human rights' ideas circulate, regenerate and travel through peoples from context to context, one can lose sight on how they are defined locally, embedded in social practices to be effective for their purposes¹.

Based on the work of Sally Engle Merry², I propose *violence against women* as a site where I can analyze and problematize how human rights ideas become meaningful in local settings. Transnational women's movement have produced new conceptions to tackle the cases of killings of women in Mexico and Guatemala as 'femicides'³, making the most of the legitimacy of violence against women in human rights conventions, treaties and documents dedicated to protect women. In this process, violence against women also gains legitimacy by the widespread translation by transnational movements at regional, national and grassroots levels of local contexts⁴.

In this thesis, I am interested in the problems of the process of *translating*⁵ violence against women's into local contexts. What makes the human rights idea of violence against

¹ S. E. Merry (a), *Human Rights and Gender Violence, Translating International Law into local practice*, Chicago, The University of Chicago Press, 2006, p.2.

² This research is also based on articles of this author: S. E. Merry (b) Transnational Human Rights and Local Activism: Mapping the Middle, American Anthropologist Association; Mar 2006; Vol.108, Issue 1, ProQuest Social Sciences Premium Collection, pp. 38-51; S. E. Merry, Human Rights Law and the Demonization of Culture (And Anthropology Along the Way), American Anthropologists Association, May 2003, Vol. 26, No.1, PoLAR, pp: 55-76.

³ At the end of this introduction, I describe basic differences within feminicides, femicides and gender-related killings. I refer to the killings of women

⁴ S. E. Merry (a), 2006, p. 2

⁵ For Merry, translation entails the process of adapting human rights into local practices. Although this concept will be unfold in the first chapter, it is important to clarify here that 'cultural translation' is a concept borrowed from anthropology and is process that interests me to identify the inequalities of power between global norms and local practices. According to Merry, *cultural translation* is familiar to anthropologists, who

women so appealing is the power to transform issues that particularly affect women at 'private spheres' in local spaces into violations of women's rights.

However, violence against women depicts a contradictory process. The idea is based on the assumption that local cultures are obstacles to women's rights, while it aims to be embedded into local cultures to be successfully implemented. In my case study, I will tackle this problem and the implications it has on the understanding of local cultures based on the translations by the Inter American Court of Human Rights⁶ (hereinafter 'IACtHR' or the Inter American Court) of violence against women in two judgments on femicides in Mexico and Guatemala.

In this introduction, I will first describe the context of this translation and state the problem of this research. Then, I will define my objectives, the structure of this text, methodological approach and the relevance of the research for the human rights field. At the end, I will premise some basic concepts that aim to lead the reader through this text.

1. The context of the problem

As previously mentioned, the incorporation of femicides in two judgments of the IACtHR resembles how this translation means to be appropriated by States and local justice. In August 2015, the Inter American Court decided another judgment focused on the killings of women based on violence against women's norms. The Case *Veliz Franco et al. vs. Guatemala* deals with the disappearance and murder of a 15-year-old girl in 2001 and

'often mediate between groups such as indigenous peoples and state corporations'. They also 'pay increasing attention to inequalities in power involved in this process, they are more reflexive about their own practice'. In translation, there is awareness that 'languages themselves are unequal in power, as a result of global inequalities of wealth and power (...) translating from a "weaker" language into a "stronger" one, such as "Third World" into a "First World" language, means translating from a less powerful language to a more powerful one'. S. E. Merry (b) 2006, p. 42

⁶ IACtHR, *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits and Reparations. Judgment of May 19, 2014. Series C No. 277; IACtHR, *Case of Veliz Franco et al. v. Guatemala*. Preliminary Objections, Merits and Reparations. Judgment of May 19, 2014. Series C No. 277

reiterated much of the contents of the case *Gonzalez et al. vs. Mexico (Cotton Field case)*. The latter tackled the case of killings and disappearances of three women in Ciudad Juarez, Mexico and is considered the milestone of *violence against women* in the Inter American Court precedents. Both judgments represent an interpretation of the referred killings under a transnational violence against women scope, condemning Mexico and Guatemala for failures to comply with their duty of due diligence in regard to gender-related investigation processes of these crimes. In both judgments, the Court established the existence of a ‘culture of gendered-based discrimination’ that allowed the occurrence of femicides.

In this research, I recognize these judgments embody a success for the transnational women’s movement around the world that created the notion of femicide from violence against women’s norms, but I will focus on visualizing the contesting nature of translating human rights into context. As a result of the work of transnational women’s movement, the IACtHR issued these judgments, where the Court ordered states to address a gender-related perspective in local justice systems in Mexico and Guatemala. However, the translation of violence against women in these judgments is far from being a consensual, univocal and finished process that represents only the voices of transnational women’s movement from the context of these judgments.

Instead, I understand the IACtHR’s translation is an ongoing, multivocal and contested social construction within other actors’ voices from the context⁷ that are not recognized in the legal text. The problems of the translation of these judgments into local justice respond to specific power inequalities between the voices of these actors in the context.

In Mexico and Guatemala, International Financial Institutions (IFI’s) have echoed the struggles against femicides in the region, using the concept of culture as an obstacle of violence against women and introducing neoliberal justice reforms to address femicides and

⁷ M. W. Steinberg, The talk and Back of Collective Action: A Dialogic Analysis among Nineteenth-Century English Cotton Spinners, *American Journal of Sociology*, Vol.105, No. 3 (November 1999), p. 747.

other issues. Therefore, the context of the IACtHR's translation of these events transcends what is established in the legal text. In this research, I propose to analyze the context of the translation from the inequalities of different actors' voices in neoliberal globalization processes in Mexico and Guatemala.

2. Problem statement

Although the causes of femicides are narrowly defined in the IACtHR's judgments, in both cases a 'culture of gendered-based discrimination against women'⁸ was a determinant to condemn the states of Mexico and Guatemala for the violations of the right to life, right to human treatment, right to a fair trial and to judicial protection.

Based on Merry⁹, I propose to analyze the problems of translating violence against women in these judgments based on the understanding of local cultures as obstacles to modernity, progress, civilization and the full enjoyment of women's rights. Violations of women's rights occur only in cultural or private spaces. This assumption is embedded in the paradigm of violence against women and the work of women's rights organizations. In the words of Merry:

This is the paradox of making human rights ideas such as violence against women into the vernacular: in order to be accepted, (human rights ideas) have to be tailored to the local context and resonate with the local cultural framework. However, in order to be part of the human rights system, they must emphasize individualism, autonomy, choice, bodily integrity, and equality, ideas embedded in the legal documents that constitute human rights law. These core values endure even as the ideas are translated. Whether this is the most effective approach to diminishing violence against women or promoting global social justice is still an open question. It is certainly an important

⁸ J. Acosta, The Cotton Field case: gender perspective and feminist theories in the Inter-American Court of Human Rights Jurisprudence, 21 International Law, *Revista Colombiana de Derecho Internacional*, 2012, p. 22.

⁹ S. E. Merry, 2006b, p. 220

part of the expansion of a modernist view of the individual and society embedded in the global North¹⁰.

Therefore, the paradigm of violence against women also translates into local context principles, values and cultural ideas of a transnational modernity that transcends it. The problems of translating violence against women rely on putting these other values and principles in practice.

A purpose of the referred judgments is the appropriation of human rights ideas by local and national cultures and other local practices that violate women's rights. Based on the work of Merry, my research focuses on how culture as an obstacle of women's rights, as other values, principles and normative assumptions of violence against women as a project of transnational modernity, define the problems of translation of these judgments into local justice in Mexico and Guatemala.

3. Objectives and structure of the research

The general purpose of this research is to understand the underlying processes of human rights translation of Inter American Court's judgments into particular contexts, which also define to what extent they can be effective. Additionally, this research implies specific objectives of the following:

- Establishing an intercultural dialogue between human rights theories from Global South and Global North in regard to the problems that underlie human rights translation as a project of modernity.
- Creating a space to critically analyze the conflicting relationship between culture and women's rights behind violence against women.
- Identify particular problems and tensions generated by neoliberal globalization in the translation of violence against women into local contexts.

¹⁰ *ibid*, p. 221

- Understanding the processes, extents and limitations of *transnational legal activism*¹¹ to articulate and translate local demands of social movements into transnational political spaces such as the IACtHR.

Each of the objectives is addressed in each of the four chapters of this thesis. In the first chapter, I tackle how the tensions of universalism, legal monism and the principle of equality before the law make the human rights translation a process of contestation. In the second, I address the problems of translating violence against women into particular contexts based on the strategic uses of culture as obstacles to women's rights, civilization, progress and modernity. In the third chapter, I identify how these problems have been defined by economic globalization in the context of Mexico and Guatemala, by neoliberal reforms of justice and economic exclusion of the victims of femicides. In the last chapter, I analyze comparatively the referred IACtHR's to analyze the process of translation from transnational into the vernacular, highlighting how transnational legal activism plays an important role to reproduce, contest and create the problems of these translations into local justice in Mexico and Guatemala.

4. Methodological Approach

My methodological approach is grounded on the concept of *cultural translation*¹² of human rights into particular contexts. As previously said, I based my approach on Merry's who analyzes the process by which translators 'refashion global rights agendas for local contexts and reframe local grievances in terms of global human rights principles'¹³. I will focus in the translator's position of power to define certain cultures as local norms and global norms.

¹¹ See a definition of *transnational legal activism* in the previous concepts of this introduction.

¹² I will tackle in depth the concept of cultural translation of human rights norms into local contexts in Chapter I of this text.

¹³ S. Engle Merry, 2006 (b) p. 39

This concept entails an important limitation that should be recognized as matter of expectations from this research. The Inter American Court translates human rights ideas in the best way the Court believes will be efficient to transform the causes of violations of rights in a particular context. To do so, the Court may resist or not the oppressive meanings that come from that context, according to powerful actors' aims and views. Therefore, the mere human rights translation into context does not necessarily mean the emancipation of oppressed groups from the causes of the violations of their rights. Although this research tackles the relation between human rights translation and how social change is imagined¹⁴, it will not conclude whether these groups achieved a tool for their emancipation through these judgments.

Considering this limitation, the analysis of cultural translation combines qualitative research methods. First, it implies the understanding of translation as a contested field between the global and the local, therefore, I will consider an approach of a *multi-sited ethnography*¹⁵ identifying specific places and documents where the understanding of these events as femicides took place. Secondly, I will basically use comparative analysis of documents and theoretical dialogue of key concepts to identify the problems of translation within global and local spaces. Thirdly, I present a comparative case study of the problems of translation (chapter IV) based on theoretical background (chapters I and II) and the

¹⁴ Studies on intercultural translation of human rights into local contexts, locate the potential of human rights ideas to emancipate targeted groups in other levels such as the articulation of their demands into transnational political spaces and their collective consciousness, all of which remain on a cultural realm. See more: S. Engle Merry, 2006 b, p. 44 and B. de Sousa Santos, *Descolonizar el saber, reinventar el poder*, Montevideo, Uruguay, 2010 p.67

¹⁵ This research is greatly based by the approaches of S. E. Merry and B. de Sousa Santos, who used a methodological approach called 'multi-sited ethnography' that have a bearing on this research. According to the latter author, this approach combines qualitative methods that apply to locales and aims to examine the operation of global processes shaping events in those sites. For former, 'the challenge (of this approach) is to study placeless phenomena in a place, to find small interstices in global processes in which critical decisions are made, to track the information flows that constitute global discourses, and to mark the points at which competing discourses intersect in the myriad links between global and local conceptions and institutions'. B. de Sousa and C. Rodríguez (ed.) 2005, *Law and Globalization from below*, NY, London, Cambridge University Press, 2005, p. 3. Engle Merry, 2006 (b) p. 29.

context of translation in Mexico and Guatemala (chapter III). As I said, this study case is focused on the problems of translating violence against women into local justice based on the comparison of two documents, the referred IACtHR judgments on femicides and the book of '*Terrorizing women: femicide in the Americas*'¹⁶, which compiles experiences of the transnational activist movement that was behind the litigation of these cases.

5. Relevance of the research

The mention of the name of *Rosa Elvira Cely*, I can still vividly remember the case of violence applied to a woman in the National Park in Bogota, Colombia. On the early morning of May 24th of 2012, a dying naked woman remained on the grassland very close by where I and other college female students were attending morning classes. After, I read in the newspapers that the brutal circumstances of the killing of Rosa Elvira included not only sexual abuse but also impalement¹⁷. Rosa Elvira was a single mother who made a life selling candies in the streets of Bogota. My empathy for her case is part of the motivation for selecting femicides as a subject of my research.

This research is an opportunity to understand why the extreme cruelty of cases of femicides and the empathy they cause rarely comprehends a critical approach on the roles of the transnational women's movement in Latin America and of the Inter American Court's judgments. Most of the analysis on the Court's judgments¹⁸ tends to exalt its work based on a mere legal perspective on the sophisticated human rights standards, a legal formula that is not contrasted with the local context it aims to transform.

¹⁶ R. Fregoso and C. Bejarano (Ed), *Terrorizing Women: Femicide in the Americas*, Durham, NC, Duke University Press, 2010, xxiii. R. Fregoso and C. Bejarano (Ed), 2010.

¹⁷ See more: *Semana.com*, 2012. La muerte de Rosa Elvira Cely, un crimen abominable. Available at: <http://www.semana.com/nacion/articulo/la-muerte-rosa-elvira-cely-crimen-abominable/258867-3>. [Accessed 23 February 2015].

¹⁸ K. Tiroch, *Violence against Women by Private Actors: The Inter-American Court's Judgment in the Case of Gonzalez et al. ("Cotton Field") vs. Mexico*, Max Planck, UNYB, 14,2010, p.382. Available at: http://www.mpil.de/files/pdf3/mpunyb_09_tiroch_14.pdf [accessed 29 July 2015] J. Acosta, 2012, p. 22

In this sense, a research on the problems of translating issues of violence against women into local contexts in these judgments contributes to understanding the human rights field as a contested process in times of globalization, whose translation is also a result of profound inequalities in wealth, resources and power between actors¹⁹. Such a recognition offers contributions at a personal and academic levels.

At a personal level, it helps me to understand how my empathy for the victims of femicides in the region is also driven by social, cultural and economic conditions that identify me as a Latin American woman in a global context. Therefore, a research as such contributes to the understanding of how my identity influences the work I do as a human rights translator, based on my knowledge, cultural views and privileged position in a global society. It also contributes to analyze the position of other human rights translators such as CEDAW, the Inter American human rights treaty bodies and IFI's, according to the values and principles of a transnational culture of modernity to which they belong.

At an academic level, this thesis contributes to the understanding of human rights translation as an interdisciplinary reflection, where the concept of culture is central to analyze the conflict between global human rights and local contexts. Although this thesis is based on theoretical concepts, it also contributes on a historic-factual reconstruction of the events in Ciudad Juarez, Mexico and Guatemala from important insights of anthropologists, Global South theorists and Gender Justice initiatives. This discussion transcends the analysis and permits to have a glimpse on their different views about the problems of human rights practice.

6. Previous concepts

In this part, I will define some concepts that are referred in several parts of the text that are important to mention in order to premise the use I will give to them in this investigation.

¹⁹ S. E. Merry, 2006 b, p. 39

6.1. Transnational Legal Activism and the judgments of the Inter American Court

First, it is important to clarify that the Inter American Court and the Inter American Commission of Human Rights (hereinafter 'IACHR' or the Inter-American Commission) are supervisory organs of the Inter-American System for the Protection and Promotion of Human Rights²⁰. The Inter American Court was created as an autonomous judicial organ in the region and has jurisdiction over the states that have ratified the American Convention and accepted its compulsory jurisdiction. The decisions of the Court can take form of advisory opinions, provisional measures or judgments, each of which have different procedures and legal effects for the states²¹. Judgments imply a long process to be issued²².

In this process is important to recognize the judgment as a legal text issued by the authority of IACtHR. However, as previously mentioned, the IACtHR judgments are also a result of the work of organized civil actors through *transnational legal activism* on human rights. In this text, I use the concept of transnational legal activism of C. MacDowell Santos, "it is a type of activism that focuses on legal action engaged with international courts or quasi-judicial institutions to strengthen the demands of social movements; to make domestic legal and political changes; to reframe or redefine rights; and/or to pressure States to enforce domestic and international human rights norms."²³

Therefore, in this text I refer to the judgments not only as a legal text but also as a transnational space of contestation within actors, who recreate human rights issues under

²⁰ K. Tiroch, 2010, p.382

²¹ See more: *ibidem*.

²² First, individuals have priority to lodge petitions with the IACHR, who decides whether a claim is submitted to the Court. If this is the case, the Commission will represent the victims' side and the individuals can become party during these proceedings. Normally, at the very end of the process, the Court judges whether the state has violated the human rights of the individuals and orders reparations that are internationally binding. The judgments of the Court are object of its supervision during hearings that are celebrated with the parties. *ibid*.

²³ C. MacDowell Santos, Transnational Legal Activism and the State: Reflections on cases against Brazil in the Inter-American Commission on Human Rights. *International Journal of Human Rights*, Num.7, Year 4, 2007, pp. 29-59

their own cultural understandings. The contested nature of judgments makes it possible to analyze and problematize them as study-objects of transnational legal culture.

6.2. Gender Justice and violence against women

Gender justice is a theoretical field of feminism, where issues of gender equality and vulnerability of women and other marginalized groups (such as LGBTI) are discussed. Gender Justice tackles different initiatives to address cultural difference as a cause or consequence of gender injustice²⁴. In this sense, postcolonial studies, socialist and liberal political philosophies among others have a part on a gender justice field. Different perspectives of gender justice on the notion of culture as obstacle of women's rights are analyzed in the second chapter of this text.

Violence against women is a result of modernist perspectives of human rights and liberal initiatives of gender justice. As previously mentioned, based on the notion of culture as an obstacle of women's human rights, violence against women emphasizes on autonomy, choice, equality, secularism and protection of the body²⁵. In the strictest sense, violence against women is a normative discourse that translates the suffering of women that occurs in private and cultural realms into human rights violations. This notion will be also discussed in the second chapter of this text.

6.3. Notions of culture used in violence against women's translations

There are three notions of culture identified by Merry²⁶ from a myriad of violence against women's interventions. Firstly, *culture as tradition* evokes an evolutionary vision of change from what is primitive to what is civilized. In the context of violence against

²⁴ My approach on gender justice is based on M. Agra Romero, *Multiculturalidad, Género y Justicia, Miradas multidisciplinares para un mundo en igualdad: Ponencias en igualdad: ponencias de la Reunión Científica sobre la Igualdad*, 2010, pp. 77-98. Available at: <http://dialnet.unirioja.es/servlet/articulo?codigo=3378674>

²⁵ My definition on violence against women is based on S. E. Merry, 2006a, pp. 23, 24, 138

²⁶ S. E. Merry, 2006a, pp. 12-16

women interventions, ‘tradition’ often means a primitive practice that is opposite to civilization and modern societies. It tends to be used for traditional societies of the Global South, who are considered in an early stage of modern societies as opposed to the Global North’s societies.

Secondly, there is *culture as national essence or identity* that is commonly used as opposite at the transnational idea of violence against women. This concept locates is rooted in German history, where culture is understood as folk distinctness-same laws, ethnicity, and religion of a nation within state boundaries²⁷. It tends to be used by governments and ethnic groups to resist gender questions in regard to cultural practices.

Thirdly, *culture as contentious* is considered as products of historic influences, which can be contested and connected to power relations. By cultural practices, human beings create community, locality and identity. Culture as contentious is able to ‘fabricate social realities and power relations and impose themselves on their lived environments; by means of which space and time are made and remade, and the boundaries of the global and the local are actualized²⁸. Translators of violence against women at a transnational level tend to use this notion of culture for human rights principles of violence against women, but do not use them for communities and societies of the Global South.

²⁷ ‘This concept of culture grows out of German romantic tradition of the nineteenth century. Confronted with the claims to universal civilization of England and France, Germans began to draw a distinction between the external trappings of civilization and the inward, spiritual culture. German romantics asserted the importance of the spiritual essence of their society. Each people or Volk, has its own history and culture that expresses its genius. This includes language, its laws, and its religion. (...) The German conception reflected a nationalist movement seeking to unite the Germans as culturally and ethnically similar people.(...) While kultur emphasizes national distinctiveness, civilization emphasizes what is common to all human beings: ‘it expresses the self-assurance of peoples whose national boundaries and national identity have centuries been so fully established that they have ceased to be subject of any particular discussion, peoples which have long expanded outside their borders and colonized beyond them’ (quotation by the author). Civilization encouraged a continual expansion of empire, while kultur fostered national definition and demarcation of difference from other groups’. Ibid. pp. 13-14

²⁸ ibid, pp. 14-15.

6.4. Femicide, feminicide and gender-based killings of women

The concepts of femicide, feminicide and gender-based killings of women are subject of further development in Chapter IV. All of them are commonly used to refer killings of women because of their gender. Although between these concepts have particular differences that are important to mention. First, the concept of *femicide* means the violent death of women on grounds of their gender, and aims to offer an alternative the gender-neutral concept of homicide²⁹. Born in social sciences, femicide aims to politically recognize the patriarchal oppression and multiple types of violence against women, which in its most extreme form culminates in women's violent death³⁰.

Secondly and as it was referred, *feminicide* amplifies the former concept in the sense that not only 'is the act of killing a woman solely on the ground of her belonging to the female sex' but also introduces a political component by denouncing 'the lack of response of the State and the failure to fulfill its international obligations to investigate and punish the perpetrators in cases of feminicide'³¹. Born in a Latin American context, feminicide is considered a state crime, since the lack of rule of law on these crimes reinforces their impunity and eases their perpetration in a systematic level. In this text, I will use *femicides* to refer to both feminicides and femicides, considering the first is a more complex form of the second that refers to the specificity of the murders in Ciudad Juarez.

Third, 'gender-related killings of women' often refers to femicides or feminicides interchangeably and is commonly found in legal documents such as conventions, treaties and international human rights judgments. Whether gender-related killings of women means one or the other definition depends on the content of the legal document and whether the state accountability is established.

²⁹ Domazetoska, M. Platzer, and G.Plaku (Ed). *Feminicide. A Global Issue that Demands Action*. Volume II. S. Academic Council on the United Nations System (ACUNS) Vienna Liaison Office. 2014, P., 45

³⁰ Ibidem

³¹ ibidem.

I. TRANSLATION OF HUMAN RIGHTS AS A CONTENTIOUS PROCESS

According to B. de Sousa, most of the world population are not subjects of human rights, but the objects of human rights discourses, thus, we should ask whether they are effective for the struggle of the excluded, exploited and discriminated, or rather the contrary.³² In times of globalization, human rights are a 'hegemonic language of the human dignity' and therefore, they are inevitable. For this author, the socially oppressed groups are forced to ask themselves if those rights, that are part of a hegemony that strengths and legitimizes their oppression, can be used to subvert that oppression³³.

As it will be analyzed in Chapter III of this research, two globally oppressed groups of women, indigenous and economically marginalized women in Mexico and Guatemala have translated their grievances into the human rights idea of violence against women as a way to transform their realities. Based on the idea of B. de Sousa, can globally oppressed groups translate human rights ideas into their own systems in the way is efficient to transform the causes of their oppression? Can they resist the oppressive meanings that come from hegemonic globalization where human rights ideas also come from?

Analyzing these translations as emancipatory efforts requires tackling the tensions on human rights ideas into context. In this chapter, I would like to elaborate on how tensions within human rights law provide a framework for understanding the translation of human rights ideas as a negotiation within global, regional and local normative orders. The discussion on these tensions envisions the political contestation behind human rights theories and how they greatly affect the role of translation.

³² B. De Sousa Santos, *Derechos Humanos, Democracia y Desarrollo*, Bogota, Centros de Estudios de Derecho, Justicia y Sociedad (Dejusticia) 2014, p. 23

³³ *ibídem*.

1. Tensions in the translation of human rights ideas into contexts

Human rights ideas no longer belong to the Western world. Globalization is making its domain more transnational and multipolar, through processes such as ‘the rise of the BRICS (Brazil, Russia, India, China and South Africa) the European crisis and the geopolitical decline between North and South’³⁴. Each time is harder to assert that States from the Global North or international organizations of human rights hold the monopoly over the translation of human rights. Different actors around the world, especially NGO’s and transnational social movements from the South have appropriated the discourse of human rights in their every day’s practice.

Therefore, human rights are translated on a field that is contested within the tensions within different actors, narratives and layers of normative orders; unequal power relations that define how and who is entitled to speak on behalf of human rights. Universalism, state-centrism and equality of individuals before the law, among other tensions of traces of modernity, are dominant in the creation and implementation of human rights ideas in a global context³⁵. Based on the work of S. E. Merry and B. de Santos, I will elaborate further in these dominant modern ideas in human rights with their counterparts: universalism vs. relativism; legal monism vs. legal pluralism; and principle of equality vs. the principle to respect for difference. From these tensions, I will reflect on how they lay across on my approach on translating a particular human rights idea, violence against women, in a transnational context of Mexico and Guatemala.

1.1. Universalism v. relativism

The questions of who is entitled to speak in the name of human rights norms and how they impact particular contexts where they are applied is part of the debate between universalists and relativists, which has preoccupied both anthropologists and human rights

³⁴ C. Rodriguez, ‘Presentation’, in: B. de Sousa Santos, 2014, p. 11

³⁵ B. de Sousa Santos, 2014, pp. 33-57

lawyers at the same time³⁶. On the one hand, universalism believes in some values and norms, such as human rights, are valid in every place and time³⁷, overlooking the cultural backgrounds where they come from, how the universal values were created or justified. On the other, relativism criticizes how these universally-claimed norms are applied to all human beings and not conceived only in terms of the societies where they come from³⁸, which tend to be Western countries with histories of colonization through norms and values over the cultures of small communities.

According to Merry³⁹, this debate comes up every time there are problems in human rights practice. Relativists in the 1990's considered that individuals only become committed to their values through belonging to a social group and therefore, they couldn't be judged by other universally claimed standards. In this sense, a trend of relativism was advocated for 'cultural tolerance without limits'⁴⁰ in disregard of human rights ideas. Based on Merry, the idea of culture as 'homogenous, integrated and consensual system'⁴¹, does not allow these relativists accept or criticize the concept of culture in regard of human rights.

Behind the use of an idea of culture as such, there also are specific assumptions of the society, rather as isolated traditional local communities, where human rights should be applied to, or Western homogenous conscious societies established within states, where human rights come from⁴². In both ways, the ideas of culture and human rights are used strategically to define projects of modernity, that is limited to understand how individuals, communities and social groups negotiate, contest or recreate human rights ideas at the margins of state action.

³⁶ S. Engle Merry, 2006 (b) p. 39

³⁷ B. de Sousa Santos, 2014, p. 38.

³⁸ S. Engle Merry, 2003, p. 56.

³⁹ *ibid.*, p. 55

⁴⁰ *ibid.*, p. 56

⁴¹ *ibidem*.

⁴² *ibid.*, p. 57

Authors such as Merry or B. de Sousa problematize the creation of human rights as a political contested process based on historical modern ideas. For B. de Sousa⁴³, the hegemony of human rights clings to western modernity, where other languages of the human dignity are considered inferior and the human rights discourse has been decontextualized and considered superior. Human rights discourse was conceived as an emancipatory language within the Enlightenment of the XVIII century, the French Revolution and the American Revolution, but it has also been strategically used as a political weapon in very different contexts and based on contradictory aims⁴⁴. As the author critically points out: ‘step by step, the dominant discourse of human rights has become the same as human dignity, framed within liberal policies, capitalist development and other metamorphosis’⁴⁵. Human rights discourses helped to build revolutions but also help to erect repressive colonial regimes or, as we will analyze in the third chapter, human rights have also supported neoliberal globalization forces.

Therefore, the discussion between universalist and relativist approaches on human rights shows the need to focus on translation as a contested field. In this sense, we see important differences in how the interface of human rights and local settings is characterized.

As I said in the introduction, my work is based on S. E. Merry and how she critically envisions the process of human rights translation. She focuses on a bureaucratic level, where individuals that work in international organizations and belong to a transnational elite, translate global human rights norms into local settings. In this regard, human rights translators ‘work at various levels to negotiate between local, regional, national, and global

⁴³ B. de Sousa Santos, 2014, p. 23

⁴⁴ *ibid.*, p. 27. B. de Sousa use an example of the strategic use of human right idea to govern the other in the cases the right of development as economic exploitation to govern over the struggles of indigenous peoples to defend their ancestral territories from economic exploitation and environmental damages. *Ibid.*, 66-93

⁴⁵ *ibidem*.

systems of meaning'⁴⁶. Merry conveys that the strategic use of human rights discourse leaves translators in a rather ambivalent position, working as double agents between the circles of decision-making and the grass roots level:

‘Translators are both powerful and vulnerable. They work in a field of conflict and contradiction, able to manipulate others who have less knowledge than they do but still subject to exploitation by those who installed them. As knowledge brokers, translators channel the flow of information but they are often distrusted, because their ultimate loyalties are ambiguous and they may be double agents. They are powerful in that they have mastered both of the discourses of the interchange, but they are vulnerable to charges of disloyalty or double-dealing. (...) They usually have greater knowledge and commitment to one side than the other. Translation takes place within fields of unequal power’⁴⁷.

According to Merry, we can see the importance to define what is ‘the global’ and ‘the local’ in the work of translation of human rights ideas into local contexts. Although the global and the local embody basically the same dynamics of power between the universal and the relative, they also express new conditions of transnational power inequality. In words of Merry:

‘In the context of discussions of transnationalism, *local* tends to stand for a lack of mobility, wealth, education and cosmopolitanism, as well as recalcitrant particularity, where as global encompasses the ability to move across borders, to adopt universal moral frameworks, and to share in the affluence, education, and cosmopolitan awareness of elites from other parts of the world. Thus, social class, education, travel, and transnational consciousness blend with geography in defining these terms’.⁴⁸

In order to define human rights norms into particular context, the translator needs to take a position in regard to what she considers global and local, and therefore, reproduce exclusion of what is considered by local, which is normatively undervalued. Since Merry centers her attention on individuals that belong to this transnational elite-basically to the CEDAW- that translate between global and the local, the power inequalities within actors that translate within transnational, regional, national and local levels is difficult to assess.

⁴⁶ S. Engle Merry, 2006 (b) p. 39

⁴⁷ S. Engle Merry, 2006 (b)..p. 40

⁴⁸ ibidem

In this regard, it is important to expand Merry's individual approach of a human rights translation to a perspective where social movements can also be translators. For this approach will be based on B. de Sousa's work, which focuses on how the upper level of governments or international economic organizations use strategically the discourse of human rights in different contexts and how it has been contested by transnational social movements with their own translations⁴⁹.

The tension between universalism and relativism in human rights' practice shows the problems of which values we consider universal/global and which relative/local according to our position in society. But also it also envisions how the language of human rights is based on a project of modernity and this is the reason why is a powerful language. Based on the work of B. de Sousa, I will now develop two more tensions related to how human right discourse is based this project of modernity that also defines human rights translations in regard to the role of the state and of socially oppressed groups as targets of our translations.

1.2. Legal monism v. legal pluralism

We tend to conceive the State as the only agent in the translation of human rights norms into contexts based on an idea of *legal monism*. This is a modern paradigm that has dominated the political imagination of the Global North, which considers there must be only one centralized hierarchical legal order in each state, which citizens must know of to consider their consequences⁵⁰. Human rights' practice tends to be associated with legal monism, since unitary states hold the national sovereignty to ratify international human

⁴⁹ For instance, what is considered as local and global by the author is different from S. E. Merry's approach. On one hand, the 'local' is overlooked in the use of the human rights discourse, despite the local could represent a specific identity, history, cultural roots and a particular understanding of dignity. On the other hand, the global is also a product of historic transformation of Western-Eurocentric values through the processes of domination, colonization and globalization. Therefore, what translators consider global, such as human rights ideas, were once locales, but had the power to be globalized by transnational collective action. B. de Sousa Santos, 2014, p. 38

⁵⁰ D. Bonilla, 'Pluralismo Jurídico y Propiedad extralegal: Clase, cultura y derecho en Bogotá', *Revista de Derecho Privado, Facultad de Derecho*, Universidad de los Andes, Junio 2006. P. 201.

rights instruments and put them in practice through their state units. Hence, from a legal monist perspective the existence of non-state legal orders, governing the conduct of citizens in the same space and time than the state orders, threatens the sovereignty of human rights norms since a non-state legal order can contradict them and create conflicts on human rights' practice⁵¹.

On the other side, *legal pluralism*⁵² has criticized legal monism for being distant from the realities of the Global South, in which the state sovereignty is considered fragmented by colonial history, the absence rule of law and a social and culturally diverse composition of their societies⁵³. Legal pluralism implies the awareness that normative orders coexist and operate in parallel and within state orders⁵⁴. Human right's practice can only be possible through the space of permanent conflict, negotiation and cooperation where these overlapping legal orders coexist. Therefore, legal pluralist perspectives show how human rights can be created and challenged based on cultural values and practices located at the margins of state action and within the contestation of different state-orders. I will give some examples of this in the third chapter of this text.

I consider that the debate between legal monism v. legal pluralism is useful to understand how a legal monist perspective on which human rights translations tend to be

⁵¹ A position of international lawyers considers that the very existence other legal orders within the state violates the principles of non discrimination and equality before the law and 'at an operational level certain provisions of customary and religious law are regarded as violating human rights such as the right not to be discriminated against the grounds of gender or the right to fair trial'. H. Quane, 'Legal Pluralism and International Human Rights Law: Inherently incompatible, Mutually Reinforcing or Something in Between', *Oxford Journal of Legal Studies*, vol. 33, No. 4, 2013, p. 677.

⁵² R. Yrigoyen Fajardo, *Justicia y pluralismo legal*, *Capa*, vol. 3, no. 1, 1999, pp. 4-5. Available at: <http://www.red.unb.br/index.php/interethnica/article/view/10010> [accessed 29 July 2015]

⁵³ R. Sieder, 'Contested sovereignties: indigenous law, violence and state effects in postwar Guatemala', *Critique of Anthropology*, vol. 31(3), 2011, pp. 174-177.

⁵⁴ According to Quane, a recognition de jure is when state law or courts have recognized non-state systems as alternative dispute resolution means and de facto when the state is aware of the operation of these parallel systems but does not take action to whether legally recognize them or shut them down. H. Quane, 'Legal Pluralism and International Human Rights Law' Inherently incompatible, Mutually Reinforcing or Something in Between, *Oxford Journal of Legal Studies*, vol. 33, No. 4, 2013, p. 681

based, can be trouble-some to put in practice in legally plural contexts. I acknowledge that for monists and pluralists, the state is a human rights translator in these contexts, but what is different is the degree of recognition and participation of non-state orders in the context of human rights' translations.

1.3. Equality before the law v. Principle to respect for difference

I also consider that the theoretical tension between the principles of *equality before the law* and of *respect for difference* defines to a certain extent the visibility of oppressed groups in the translation of human rights norms. Firstly, the principle of *equality before the law* does not need a semantic explanation, since it traditionally assumes that individuals should be equal before the state on the grounds of law⁵⁵. However, its uses are also defined by the historic project of modernity that lies across the human rights discourse.

According to B. de Sousa⁵⁶, the Universal Declaration of Human Rights (UDHR) recognizes two subjects of rights: the individual and the State. This is explained by a historical and social condition, when the UDHR was created as a language of emancipation from state-absolutism, the effects of other structures of domination on cultural and socio-economic realms, such as patriarchy or colonization, were not recognized as human rights violations. The principle of *equality before the law* did not recognize collective subjects, such as peoples, nations or communities until the 60's and 90's, when they became part of the UN agenda and the human rights instruments⁵⁷. In this regard, the earliest human rights declarations and conventions are based on individualism, although in the moment of history that they were created 'the individuals of the vast regions of the world were not equal before the law, but subjected to collective domination, where individual rights did not offer any type of protection'⁵⁸.

⁵⁵ B. de Sousa Santos, 2014, p. 57

⁵⁶ *ibid.*, p. 23

⁵⁷ *ibid.*, p. 41.

⁵⁸ *ibid.*, p. 40 [translation is mine]

According to B. de Sousa, oppressed groups have been organized in social movements and struggled against social exclusion based on the principle *to respect for difference*⁵⁹. Part of this principle, these groups aim to subvert the classic understanding of equality before the law and politics within identical individuals in social, economic and cultural spheres⁶⁰. However, respect for difference is not a struggle for the assimilation or integration of culturally different groups into a dominant culture but a social, economic, cultural and political demand for a transformation of the dominant culture and institutions in respect to their difference⁶¹. As it will be analyzed in the second and third chapter, transnational women's movements aim to translate women's suffering, traditionally considered that are private sphere, into the human rights language. At the same time, we will see how indigenous women aim to translate women's rights into their worldview in a way they change cultural practices and values in their communities.

2. Human rights translation as a transnational contested process

In this chapter, I wanted to unfold some theoretical tensions that defined human right translation as contentious process. As I said, my approach is based on S. E. Merry and B. de Sousa Santos, who understand that the translation of human rights is subscribed to a continuous project of modernity in a context of globalization.

This last concept is more developed by the analysis of B. de Sousa. For this author what we call globalization is 'the history of the winners, told by the winners (...) a victory that is apparently so absolute that the loser disappears completely from scene'⁶². Therefore, I understand the human rights translation into local contexts is a means of globalization, in the sense it is 'a process by which a given local condition or local entity succeeds in

⁵⁹ ibidem

⁶⁰ B. de Sousa Santos and C. Rodriguez, 2005, p. 48.

⁶¹ ibidem

⁶² B. de Sousa, Hacia una concepción multicultural de los derechos humanos, *Análisis Político*, no. 31, may/ago 1997, P. 3.

extending its range of action around the globe and by doing so, develops the capacity to designate a rival entity as ‘local’⁶³.

According to this author, there are two modes of production of globalization that are important in the translation of human rights into context. Firstly, a *globalized localism*⁶⁴ is a process by which a local phenomenon is successfully globalized. For instance, the transformation of human rights as the language of human dignity in the world, despite it is centered on a project of modernization in Europe, which comprehends values such as legal monism, individualism and formal equality before the law. The second process, *localized globalism*⁶⁵ is the specific impact of transnational practices and imperatives on local conditions; which also are dysfunctional and restructured to respond to transnational imperatives. For example, advocating for the rights to property and development to achieve environmental and economic exploitation of natural resources in countries of the Global South. Considering that what is considered global is cultural, political and historically charged with specific meanings, I prefer to consider the space of human rights translation into particular context as ‘transnational’ instead of ‘global’.

Considering a context of globalization as above, the tension between universalism and relativism in human rights translation only offered me an up-down approach on how human rights are defined by the centers of decision making for the grass-root level. Therefore, I tackled the tensions between legal monism v. legal pluralism; and between the principles of equality before the law and for difference, with the purpose to understand a human rights translation as a more multivocal process, in which different actors participate in unequal conditions of power from local, regional, national and transnational levels.

⁶³ B. de Sousa, 1997, p. 3. [translation is mine]

⁶⁴ *ibidem*.

⁶⁵ *ibidem*.

In this regard, the tension between the principles of equality before the law and respect for difference is useful to problematize the position of oppressed groups as translators of human rights, which takes place in the negotiation of those different levels of legality. In this sense, a legal pluralist perspective on human rights translation can ‘capture the process whereby communities beyond the state take ownership of human rights norms and transform them to reflect their specific identities and aspirations’⁶⁶. Hence, the translation of human rights ideas into local legal plural realities should consider collective identities, where human rights norms are ‘pluralized and given meaning outside the apparatus of state law, woven into the fabric of community relationships, duties and obligations’⁶⁷. In this scenario, human rights can become a product of contestation, whereby human rights intersect and interact with these diverse and coexisting normative regimes and universally claimed values.

⁶⁶ R. Provost and C. Sheppard (Ed.) ‘introduction: Human Rights Through Legal Pluralism’, in *Dialogues on Human Rights and Legal Pluralism*, Springer Dordrecht Heidelberg, New York, 2013, p. 3

⁶⁷ *Ibidem*.

II. VIOLENCE AGAINST WOMEN AND CULTURES AS OBSTACLES

“Vienen del cielo’, son seres celestiales,
expresa la cosmogonía Wichí
sobre las mujeres de ese mundo.
Su origen celeste, los comportamientos
erráticos que se le atribuyen
(y) su anatomía abierta
confluyen en la concepción
‘potencialmente peligrosa’
de la feminidad wichi.”⁶⁸

After the 1990’s, transnational events shaped a particular ‘set of mind’ in human rights discourses, passing from valuing and respecting multiculturalism in human rights over to considering new ideological projects of transnational values should supersede multiculturalism⁶⁹. According to M. Romero⁷⁰, some of these events are the attacks of 9/11, the failure of peace processes in the Middle East region, the invasion of Iraq among others situations that influenced this ‘state of mind’ to consider cultural practices of the Global South- particularly in the middle East region- as Global North’s domestic concerns and possible threats.

The need to settle up one transnational legal order for everyone has become also a need to govern on cultures. In this context, Merry’s work has focused on how transnational women’s rights organizations have considered notions of culture as obstacles to progress, to

⁶⁸ “They come from the sky’/they are celestial beings//Wichí cosmogony expresses on women in that world/ their celestial origin/ their attributed erratic behavior / their open anatomy/converge at the conception of ‘potentially dangerous’ to wichi femininity/” [My own translation from Spanish] G.Barua and M. Dasso, ‘El Papel femenino en la hostilidad wichi’, Buenos Aires, Ciudad Argentina, 2010 p. 252. Cited in: K. Bidaseca, *Mujeres blancas buscando salvar a mujeres color café: desigualdad, colonialismo jurídico y feminismo postcolonial*, *Andamios*, vol. 8, no. 17, Mexico, sept./ dic., 2011, p. 62.

⁶⁹ M. Agra Romero, ‘Multiculturalidad, Género y Justicia, Miradas multidisciplinares para un mundo en igualdad: Ponencias en igualdad: ponencias de la Reunión Científica sobre la Igualdad’, in M. J. Clavo and M.A. Goicoechea (coord.) *Miradas multidisciplinares para un mundo en igualdad: Ponencias de la I Reunión científica sobre Igualdad y Género*, 2010, pp. 77-98. Available at: <http://dialnet.unirioja.es/servlet/articulo?codigo=3378674> [accessed 29 July 2015]

⁷⁰ Ibid. p. 78

civilization and the full enjoyment of the rights of women. These notions of culture are part of a strategy that puts ‘violence against women’ in practice, a particular approach of gender justice that in the form of a human rights idea ‘emphasizes in autonomy, choice, equality, secularism and protection of the body’⁷¹. Violence against women envisions the state as responsible for creating the conditions on which the right to be free from violence can be individually exercised.

Based in the work of S. E. Merry, this chapter entails a discussion on the uses of culture as obstacles of women’s rights behind the paradigm of violence against women. First, I will shortly describe how violence against women became a human rights idea. Secondly, I would like to analyze the uses of culture as opposite to a transnational order with different gender justice positions on the field of women’s rights, which are worth to giving the space to identify the differences and main contradictions of violence against women. At the end, I will tackle how violence against women is part of ‘transnational culture of modernity’ promoted by women’s rights organizations, and as such, the use of cultures as obstacles of human rights puts in practice other values and principles of that this transnational culture represents.

1. Making violence against women a transnational human rights idea

The first step to make violence against women a transnational issue was to translate it into human rights law. For a long time, transnational women’s movements criticized the gendered nature of international law prioritized issues that affect men while those that disproportionally affect women were neglected⁷². For them, one of the most important problems of human rights law is its reproduction of the traditional cleavage between the public and the private spheres⁷³, where women’s issues are invisible for human rights law.

⁷¹ S. E. Merry, 2006b, p. 220.

⁷² R. Sifris, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture*, Routledge, 2013, p.11

⁷³ ‘The theory is based on the assumption that men traditionally dominate the public sphere of a state, which is seen as an area of power and authority. Women, on the other hand, are often relegated to the private realm

Since the early 1990s, the women's movement has been able to translate women's issues into human rights law has been through the concept of *violence against women*⁷⁴, which is now part of growing body of treaties and international documents. In violence against women rests a gender justice claim⁷⁵, the asymmetry of power between male and female. However, what makes this initiative more appealing among other gender justice approaches is the legal translation, what was considered everyday women's suffering at private/cultural realms can be considered a public issue, a violation of women's human rights.

Violence against women is also focused only in one dimension of women's vulnerability: bodily injury, pain and death⁷⁶. Therefore, it is common to find translations of violence against women as forms of rape, sexual assault and murder between partners, and also more diverse fields such as violence against displaced women, women trafficking, obstetric violence and femicides⁷⁷. In all of these translations, there is a common understanding that violence against women occurs in cultural spheres. I will dedicate the next section to study at length to the strategic uses of culture in this paradigm.

(family and home). As a result women more often suffer abuse at the hands of a private person than a public official. States of course, do commit human rights violations against women. Nonetheless, the great majority of women endure violations of human rights in private settings. Traditionally international law does not regulate the private realm. The classic conception of human rights reflected the state-based nature of international law. The main focus was to restrict a state power in order to protect the individual from abuses of his or her rights by the state. This focus confined the application of human rights to the public sphere and overlooked harms that most commonly affected women. Hence, it was argued that the public-private divide systematically privileges the realities of men and disadvantages or marginalizes women'. K. Tiroch, *Violence against Women by Private Actors: The Inter-American Court's Judgment in the Case of Gonzalez et al. ("Cotton Field") vs. Mexico*, *Max Planck, UNYB*, 14,2010, p.375. Available at: http://www.mpil.de/files/pdf3/mpunyb_09_tiroch_14.pdf [accessed 29 July 2015]

⁷⁴ S. Engle Merry, 2006 a, p. 2.

⁷⁵ CEJIL y Ministerio Público Fiscal de México, *La debida diligencia en la actuación del Ministerio Público Fiscal en casos de Violencia de Género*, Buenos Aires, Eudeba, 2013, p. 21.

⁷⁶ *ibidem*

⁷⁷ R., Sifris, *Reproductive Freedom, Torture and International Human Rights: Challenging the Masculinisation of Torture*, Routledge, Dec 13, 2013, p.11.

2. Strategic uses of culture behind Violence Against Women

According to Merry, there are three notions of culture behind the idea of violence against women that are used strategically to promote cultural transformation, culture as tradition, as national essence and as resource for social change. I will analyze them and assess their possible implications into context based on other gender approaches, such as postcolonial and socialist feminism.

2.1. Local cultures as uncivilized traditions or national essences

Firstly, CEDAW has used a notion of culture as *a static tradition*⁷⁸ as opposite to modernity and enjoyment of women's rights:

‘The documents generated at global conferences, from Commission meetings, as well as those from the CEDAW hearings and the general recommendations the CEDAW committee writes typically talk about culture as a barrier to progress. Culture is often equated to customs, traditions, and ancient practices. Documents concerning women are particularly likely to describe culture in these terms. When nationalist and religious fundamentalist leaders resist women's rights in the name of culture, the foster this critical stance toward culture by those who promote women's equality. At the same time, the critique of culture builds on imperial understandings of culture as belonging to the domain of primitive or backward, in contrast to the civilization of the colonizer. Residues of this understanding of culture emerge in contemporary human rights law’.⁷⁹

Culture equated to customs, traditions and ancient practices has a main use to classify the other's context as uncivilized, primitive and backward. It is a strategic use of culture by some feminists that aim to annul cultural difference that caused the offence against women. As it was analyzed in the first chapter, a relativist mainstream originated in the 90's tolerated any cultural difference, including all types of women's oppression, over universal human rights norms⁸⁰. Based on uncivilized and primitive cultural values, feminists aim to

⁷⁸ See more: S. Engle Merry, 2003, p. 58.

⁷⁹ Ibid. P. 60.

⁸⁰ S. Engle Merry, 2006a, pp.8-9.

universalize the principle that no cultural difference can be alleged in defense of women's oppression.

M. A. Romero identifies this mainstream as 'normative feminism', since they also tend to lobby for the inclusion of this principle into legal arguments before tribunals, government policies and national legislation⁸¹. It is a feminist perspective from up-to-down in the sense that shares the perception that poor countries of the Global South are likely to preserve these uncivilized patriarchal practices within the family and religion that violate women's rights everyday⁸².

Other criticism to normative feminism have been addressed by postcolonial feminists such as K. Bidaseca⁸³, who calls it 'white feminism', because it disregards cultural differences and hides an imperialist narrative, where white women save 'brown' women from their patriarchal culture⁸⁴. For this author, normative feminism is really a new legal colonialism, where struggles against patriarchy as an abstract idea turn down other social oppressions that women live as colonized and racial subjects. Postcolonial feminism tends to advocate for collective rights and social, economic and cultural rights, bearing in mind that cultural difference does not necessarily deny women's rights but rather the enjoyment of those rights is deemed into cultural differences⁸⁵.

Secondly, culture as *national essence* is another notion of culture as an obstacle of women's rights, which tends to be used by Global South's states to justify their non-compliance to violence against women's rights⁸⁶. According to Merry's work, at the CEDAW hearings, 'governments sometimes blame their failure to achieve gender equality

⁸¹ M. Agra Romero, 2010, p. 79

⁸² S. E. Merry, 2006 a, p. 14.

⁸³ K. Bidaseca, 2011, p. 63.

⁸⁴ *ibidem*

⁸⁵ A. Gheaus, Gender Justice, In: Journal of Ethics & Social Philosophy, Vol.6, no. 1, January, 2012. P.2

⁸⁶ *ibidem*.

on intractable patriarchal culture, presenting this as an apparently fixed and homogeneous cultural space that seems beyond intervention and change⁸⁷. Culture as national essence is based on *legal monist assumption*, the state and the nation are united by a patriarchal culture when the majority of the population shares patriarchal values and puts them in their daily practice.

According to this understanding, violence against women is perpetuated within private realms as much as in public spaces where national cultures take place⁸⁸. For instance, local authorities tend to advocate that sexual life is not an issue of women's individual decision but rather an issue that has to cope with the community's values and practices. In this case, normative feminists would be likely to disapprove any defense on cultural difference that justifies the lack of State's interference on behalf of women's individual decisions⁸⁹. For them, cultures are the root-cause of discrimination against women, because they essentially preserve men's control over women. Therefore, any state that does not interfere at the cultural spheres on behalf of women leaves unpunished violence against women.

Violence against women can be useful to defend women as individuals; however, their ban on cultural difference can be counterproductive. Their assumption of culture as essence can make patriarchal practices essential to culture and difficult to change in practice. They can also homogenize important cultural differences within women that live in diverse social and cultural contexts. The prevalence they give to unequal relations between men and women as static identities is also troublesome in the terms of other gender justice initiatives.

Socialist feminism has struggled for the legal recognition of social, cultural and economic differences within the group of women, such as the differential access to

⁸⁷ S. E. Merry, 2006 a, p. 91

⁸⁸ *ibidem*.

⁸⁹ M. Agra Romero, 2010, p. 81

education and other social services according to social class⁹⁰. Socialist feminism criticizes approaches such as violence against women, which privilege the rights that dignify physical integrity and individuality over social, cultural and economic rights with no deliberation on the context women live in on a daily basis. With no consideration on how the identities of women and men are framed by the social and cultural context, they think, ‘the possibilities for the community agency and solidarity against destructive economic forces are limited’⁹¹.

2.2. Transnational cultures as contentious and unbounded concepts

For Merry, conceptions of culture as *national essence* or *traditional practices* are at the core of the campaign of violence against women, but they are used to. For this author, ‘when a group’s failure to abide by human rights principles is blamed on traditional (or national) culture, this ignores the complex and dynamic nature of culture’. In this sense, Merry suggests the use a third conception of *culture as contentious*⁹², that understands a more fluid and changing set of values and practices, a conception of culture as unbounded, contested, and connected to translations of power, as the product of historic influences rather than evolutionary change.⁹³

Merry observes how violence against women advocates in CEDAW’s monitory processes tend to underline modern projects in the Global South as ideal to defend women’s rights from cultural practices, because they see women from the South as the only cultural subjects⁹⁴. However, a modern perspective of violence against women that denies culture as a contentious process on local settings, overlooks two questions from a gender justice’ perspective: ‘why women can support certain aspects of their culture, even when these cultures systematically impose disproportionate burdens on them, and how women can

⁹⁰ *ibid.*, p. 80

⁹¹ D. Weissmann, *Global Economics and Their Progenies, Theorizing Femicide in context*, in: M. Lagarde y de los Rios, 2010, p.231

⁹² A more elaborated concept of culture as contentious process is defined in the previous concepts in the introduction of this research.

⁹³ S. E. Merry, 2006 a, p. pp. 14-15.

⁹⁴ M. Agra Romero, 2010, p. 58.

renegotiate its historically disadvantaged position by infusing new meanings in the *nomos* of their group⁹⁵. An understanding as such assumes that women remain loyal to their cultures like victims of extreme socialization⁹⁶.

In the next chapter, we will develop some examples of how women themselves can create, promote and contest the discourse of violence against women within their communities. Women and feminists that implement gender justice ideas into local settings aim that state and non-state orders could be mutually reinforcing to guarantee their rights. They have used cultural spaces to promote violence against women and contested these notions of culture as barriers of human rights. For them, an understanding of culture as ‘historically produced in particular locations under the influence of local, national and global forces and events’⁹⁷ is useful to put in practice human rights norms.

However, these contentious cultural processes within gender justice and at the margins of state action have been overlooked by violence against women at the core of the CEDAW. Violence against Women is part of a ‘transnational culture of modernity’ project that tends to refrain advocates from seeing the complexity of the local and the agency that women have to create, recreate and contest human rights ideas. I will analyze this aspect of violence against women in the next section.

3. Violence against women as part of a ‘transnational culture of modernity’

As we analyzed so far, there are troublesome implications of violence against women’s strategic use of notions of culture as obstacles of modernity, civilization and progress. This is explained by a transnational culture of modernity that created violence against women as human rights idea. As such, violence against women has to be presented as a mere legal

⁹⁵ Ibid., p. 87 [my own translation]

⁹⁶ M. A. Romero, 2010, p. 86

⁹⁷ Ibidem.

formulation without any cultural distinctiveness. Although a transnational community, who share their own norms, values and cultural practices created, interpret and translate violence against women through their consensus on documents, institutions and practices⁹⁸.

As previously analyzed, CEDAW is one of the transnational spaces where the creation of human rights of violence against women brings together a transnational modern society settled between New York and Geneva. This *transnational culture of modernity* is ‘an English-speaking, largely secular, universalistic, law-governed culture, organized around the formal equality of nations and their economic and political inequality’⁹⁹. Other international organizations of the Global North belong to this culture, since they share common principles, values and practices, where local cultures as obstacle of women’s rights is central to belong to a transnational culture:

‘The international campaign to deal with violence against women was created by this culture of transnational modern society. Although it is influenced by the West, this culture is shaped by cosmopolitan elites around the world who participate in international institutions such as the UN and international NGO’s. The principles of this international campaign are, first, the universal standards cannot be compromised by claims to cultural or religious difference and, second, that gender equality is the optimum approach to protecting women from violence’. The transnational leaders who are forging this new normative system support the first point even though they value cultural diversity. Although there is far from global consensus on the second point, with many societies advocating gender inequality and complementarity as their ideal, transnational human rights performers generally agree that gender equality is the best route of women. Underlying these basic principles are cultural assumptions about the value of the autonomous self, the capacity to make choices among alternative paths, the protection of physical autonomy and the possession of rights’¹⁰⁰.

Therefore, among the principles of a transnational culture of modernity is the prevalence of values of societies of the Global North, such as autonomy, individual choice and possession of rights. According to Merry, CEDAW as cornerstone of violence against women, presses the governments to conform to the terms of convention that embody other

⁹⁸ S. E. Merry, 2006a, p. 37.

⁹⁹ *ibidem*

¹⁰⁰ *ibid.* p.101[emphasis added]

ideas of modernity that we analyzed in the first chapter, such universalism, legal monism, equality before the law- on which the ban on culture is based.

Merry also considers that despite CEDAW as a human rights organization is legally incapable to punish people or governments for no-compliance to its terms; its documents and international legitimacy articulate a desirable behavior and aspirations that expresses their particular understanding of gender and culture¹⁰¹. As it was discussed in the previous section, this understanding is focused on the need to change gender stereotypes and to eliminate some aspects of local cultures in order to guarantee women's rights¹⁰².

As we also analyzed, the *others'* culture, especially in regard to societies of the Global South, is considered traditional, uncivilized and unable to reform, a set of ideas that determine behavior, such that people have no alternative but to conform to cultural expectations¹⁰³. This assumption creates a significant problem for the translation of violence against women into different settings, beyond the discourse to free women from violence, there are other interests of transnational culture of modernity that also want to be incorporated into particular contexts. In the next chapter I will critically analyzed the main translations of violence against women in the contexts of Mexico and Guatemala, where the Inter American Court of Human Rights also echoed the principles, values and practices of violence against women as a human rights idea, but also as a project of a transnational culture of modernity.

¹⁰¹ Ibid. p. 8

¹⁰² *ibid.*, p.90

¹⁰³ S. E. Merry, 2006a, P. 11

III. NEOLIBERAL JUSTICE REFORMS AND WOMEN'S ACCESS TO JUSTICE IN MEXICO AND GUATEMALA

As previously analyzed, violence against women provides a 'site for understanding how categories of meaning emerge and are applied to social practices around the world'¹⁰⁴. Regional and national movements have incorporated the idea into domestic legislation and judicial decisions to criticize everyday practices of violence against women. Therefore, the translation of the idea into the particular settings of the judgments on femicides-Ciudad Juarez, Mexico and Guatemala- requires me also mapping down the voices that are incorporated in translation of violence against women into these contexts.

Important transnational actors behind the struggle against femicides in Mexico and Central America have privileged the translation of violence against women as *women's access to justice* in the region¹⁰⁵. In this chapter, I understand this translation as part of a context of neoliberal reforms on justice and the incorporation of specific values of these reforms into women's access to justice.

1. Neoliberal justice reforms as a globalized process in Mexico and Guatemala

Before tackling neoliberal justice reforms in Mexico and Guatemala it is important to understand them as a result of globalization. As many other states, Guatemala and Mexico have been subject of transformation through globalization, which created a hierarchical

¹⁰⁴ S. Engle Merry, 2006 a, p. 1.

¹⁰⁵ This assessment is based on different human rights documents that tackle violence against women in Mexico and Guatemala, such as: Banco Inter Americano de Desarrollo (BID) 'Violencia contra las mujeres y el Sistema de Justicia Penal', Nota Técnica Sectorial para la incorporación del Enfoque de igualdad de género, Nota 6., 2004; Inter American Commission of Human Rights, Acceso a la Justicia para mujeres de violencia sexual en Mesoamerica, Ref: OEA/Ser.L/V/II, Doc. 63, 9 dic, 2011, original: Español, available at: <http://www.cidh.oas.org/pdf%20files/MESOAMERICA%202011%20ESP%20FINAL.pdf>, IACtHR, Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211; IACtHR, Case of Rosendo-Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, IACtHR, Case of González et al. ("Cotton Field") v. Mexico; IACtHR, Case of Veliz Franco et al. v. Guatemala

order characterized by the divide between countries of the Global North and subaltern countries of the Global South¹⁰⁶. In this order, transnational actors force national states to redefine its role accordingly a new system of global governance, where public action is not longer exclusive for the state. On one side, IFI's are able to control and dictate state reforms to guarantee the liberalization of markets and safety of goods and economic agents¹⁰⁷. On the other, transnational social movements try to reverse this economic and social order, demanding the state to guarantee social and economic equality and counteract the devastating effects of globalization on oppressed groups

As a process of state reform, neoliberal justice reforms in Mexico and Guatemala have been promoted by hegemonic and counterhegemonic positions on globalization. I will first establish what values and principles define these neoliberal justice reforms applied by IFIs in Latin America. Secondly, I will analyze how these principles underlie a hegemonic notion of women's access to justice advocated by IFI's and CEDAW to tackle issues of violence against women in Mexico and Guatemala. At the end, I will present how grass roots women's movement have contested this notion from counter hegemonic notion of women's access to justice centered in violence against women but also in broader gender justice perspectives and local demands.

2. Implementation of neoliberal justice reforms in Guatemala and Mexico

Rodriguez and Uprimny¹⁰⁸ describe that since the 70's until now days and based on the theories of modernization rooted in universities from the United States, neoliberal reforms of justice systems have taken place in Latin America aiming to strength the rule of law and the stability of the region. For these authors, these reforms imply a return to the liberal

¹⁰⁶ A. J. Aguilo, *La dignidad de la Basura, Globalización Hegemónica frente a Globalización contrahegemónica en la filosofía política de Boaventura de Sousa Santos*, Memoria de investigación doctoral presentada en Programa de Doctorado Crisis de la modernidad: transformación de la filosofía y la sociedad, del Departamento de Filosofía, Universidad de les Illes Balears, Palma de Mallorca, 2008, p. 2

¹⁰⁷ *ibidem*

¹⁰⁸ C., Rodríguez and R. Uprimny, 'el neoliberalismo y la reforma judicial en Colombia y en América Latina', pp. 415- 450, in: D. Restrepo (ed) *La falacia neoliberal: crítica y alternativas*, Universidad Nacional de Colombia, Bogota, 2003

state. On the one hand, they guarantee individual freedoms but not social rights, whose protection by the state is considered inefficient and costly¹⁰⁹. On the other hand, these reforms imply that the administration of justice is central for achieving economic development, as long as they lower transaction costs, define property rights and assure the compliance of contracts¹¹⁰.

Based on these neoliberal principles, these authors define three suppositions that are common in the reforms of justice systems promoted by multilateral agencies like the World Bank (WB) the Inter American Development Bank (IADB) and US Agency for International Development (USAID) in Latin America¹¹¹. First of all, it is considered that social constitutionalism must be dismantled in the region since justice systems are unable to promise social changes but only be restricted to the scope of individual rights. Secondly, justice systems must emphasize their role as facilitators of the market, where efforts should provide legal certainty to property and contracts as much as the protection of lives and physical integrity of the economic agents in their territory. Thirdly, the administration of justice should be open to market efficiency, which involves maximizing individual freedoms and the efficiency of alternative forms of direct negotiation between the parties.

For Rodriguez and Uprimny¹¹², in contexts of widespread insecurity such as Colombia, neoliberal reforms of justice systems have also been accompanied with repressive measures in the punitive systems according to the US international agenda. These measures aim to severely punish and limit the procedural guarantees of detainees charged of drug trafficking and terrorism. As a way to counteract these perspectives on justice systems, other legal reforms promoted by transnational social movements have sought to strengthen the courts to control the abuses of this authoritarian states and guarantee the access to justice to women and other oppressed groups at the same time.

¹⁰⁹ Ibid, p. 416

¹¹⁰ ibídem.

¹¹¹ Ibid. p. 420, 421

¹¹² ibid, p. 426.

Although these authors explain that these neoliberal reforms tend to emphasize some elements more than others in every context, which makes the agenda of IFI's in the region quite diverse, we can observe similarities within the neoliberal reforms of the justice systems of Colombia, Mexico and Guatemala. In 2011, the WB¹¹³ pointed out the high economic costs of crime and violence on the economic growth of Guatemala and other countries of Central America, are caused primarily by three factors: drugs trafficking, violence among young people –especially the *maras* and organized crime- and widespread availability of weapons. In this sense, the WB focused on preventive measures and attention to drugs trafficking issues, but also in the efficiency and coordination within the justice systems of Central America¹¹⁴. Interestingly, this report also recognized the need to protect human rights and procedural guarantees, but also was keen to promote the need of systems of coordination and exchange of information within national justice systems as well as the supervision of organizations of civil society on justice systems¹¹⁵.

Likewise, since 2008 until now days, USAID has also funded the creation and implementation of the accusatory criminal justice system in Mexico, emphasizing on expeditious and effective criminal procedures¹¹⁶. These reforms were based on the US judicial system but also in the transplant that was done in Colombia when the violence for drugs trafficking was on a peak in the 1990's. In the same way, the World Bank loaned US \$330 million for a project to support the access to justice, which includes a differential approach on women, youths and indigenous groups, capacity building programs for the

¹¹³ WB, 'Un desafío para el desarrollo' Documento del Banco Mundial, 2011. Available at: http://siteresources.worldbank.org/INTLAC/Resources/FINAL_VOLUME_I_SPANISH_CrimeAndViolence.pdf [accessed 29 July 2015]

¹¹⁴ *ibid.* i, ii

¹¹⁵ *ibid.* p. 30.

¹¹⁶ USAID, Mexico, Boletín Mayo, 2013, Available at: <http://fundacionidea.org.mx/assets/files/USAID%20Mexico%20-%20Boletín%20Mayo%202013.pdf> [accessed 29 July 2015]

judiciary on a 'culture of organization' and improving judicial services and their transparency.¹¹⁷

As a result, Colombia, Guatemala and Mexico share a transnational institutional ground where multilateral credit agencies have promoted women's and indigenous peoples' access to justice. I found IFI's financial support on vulnerable groups' access to justice programs a quite surprising finding, since as a Latin American I bear in mind decades of dictatorial regimes in Central America and aggressive economic exploitation of indigenous territories, founded, created or justified by US itself or through these agencies. However, their investment is explained by how the historic interests of the US and these agencies on economic expansion and border control of crime from the South can be only feasible by the reform of justice systems in Mexico and Guatemala, among other Central American countries¹¹⁸. The differential approach programs of access to justice in regard to women and indigenous peoples is embedded in this transnational justice reform.

One may think then we are in a moment of history where economic agents have learned from our violent past and prefer sophisticated legal and economic interventions to implement their projects than the archaic use of armed force in the region. After all, it is not needed at this moment of history, since countries like Mexico and Guatemala are not longer

¹¹⁷ WB, 'Mexico: World Bank Approves \$330 Million For Mexico's State Judicial Services and Basic Education', Press Release: 2004/461/LAC, july 2004. Available at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20221201~pagePK:64257043~piPK:437376~theSitePK:4607,00.html> [accessed 29 July 2015]

¹¹⁸ Manzo analyzes two historic changes in Central America that were definitive for the economic support of the US and these multilateral agencies on access to justice. First, the end of communist governments in the region, the market's opening and the state enterprises privatization in the 80's changed the image of the region as favorable for free operation of markets, which is a central vision of the current economic order. Secondly, the interest of international actors in the justice systems institutionally materialized in the Consensus of Washington in 1990, which requires a transformation of the state apparatus. Legal reforms, especially on justice systems, require liberation, deregulation and privatization in order to implement the economic order. It also requires a notion of democracy based on individual freedom, formal equality and individual property. These ideas can be perceived in the neoliberal reforms of justice systems described above. A. G. Manzo, *Reforma Judicial en América Latina, Globalización y desigualdad social: 'Acceso a la justicia'*, Manuscrit, 2008, p. 7-8 Available at: <http://sociologiajuridica.org/2011/04/13/reforma-judicial-en-america-latina-globalizacion-y-desigualdad-social-acceso-a-la-justicia/> [accessed 29 July 2015]

debating between socialism and capitalism. Neoliberal globalization is implemented with their own budget or the loans that these states acquire from these agencies. However, it is important to keep in mind that processes of neoliberal state formation coexist with violence and criminality, caused by the fragmentation of its sovereignty¹¹⁹.

Thus, IFI's find easy to implement their state reforms advocating the language of human rights. Neoliberalism that sees 'capitalism as the universal and permanent fate of humanity'¹²⁰ has found ways to legally expand their ideal of justice systems for market liberalization. However, it cannot do it by itself in a moment when neoliberalism means poverty, oppression and injustice to people. It has to do it advocating for political realm that is shared by feminist and indigenous movements for the vindication of their rights: equal access to justice.

3. Violence against women as a hegemonic notion of women's access to justice

Based on the principles of neoliberal justice reforms, a notion of women's access to justice that shares common grounds to an investor's right to access to justice has been born in Latin America. According to F. Francioni¹²¹ human rights victims and transnational investors have a common concern under International Law, the denial of justice by local justice systems and the need to advocate for a transnational concept of access to justice. In the context of investments, access to justice is defined as 'the individual right to obtain protection from law and the availability of legal remedies before a court or other equivalent mechanism of judicial or quasi-judicial protection'¹²². However, this author argues, this right has been historically denied for alien investors, who have 'encountered deficiency and marginalization by local authorities and, more importantly, they had to deal with the

¹¹⁹ Referred by R. Sieder, 2011, p. 171.

¹²⁰ A. Falero Cirigliano, 'Patron de poder neoliberal y una alternativa social', *Politica y Cultura*, no. 24, Otoño 2005, p 97

¹²¹ F. Francioni, 'Access to justice, Denial of Justice and International Investment Law', *European Journal of International Law*, Vol. 20, no.3, 2009, p. 732

¹²² *ibid*, p. 730

difficulty of reconciling their need for personal and economic security'¹²³. Advocating the right to access to justice transnationally, foreign investors request for a minimum degree of protection of the life, security and property of aliens in foreign land. Francioni argues, the internationalization of the investor's right access to justice blurs the traditional boundary between alien's rights and human rights¹²⁴.

In the case of femicides in Mexico and Guatemala, violence against women's *transnational legal activism*¹²⁵ has unintentionally promoted this blur by advocating before quasi jurisdictional human rights bodies-CEDAW, jurisdictional bodies- Inter American Court, and before international financial institutions- such as the WB and IADB. The hegemonic notion of women's access to justice is, therefore, a result of these international bodies' historic influence on understanding of these events from their own transnational scope, interests and principles on regulating justice reforms. I will first describe which transnational common spaces produced this hegemonic notion of women's access to justice and then, explain which common principles, values and practices such a notion may entail in the context of femicides in Mexico and Guatemala.

3.1. A transnational common space: transnational legal activism, CEDAW and IFI's

The first step of this transnational legal activism was the CEDAW. In 2005, over 300 civil society organizations which make up the campaign 'Stop the Impunity! Not one More Death!' took the case of Ciudad Juarez at this instance, considering 'these killings of

¹²³ *ibidem*.

¹²⁴ According to the analysis of F. Francioni, this situation has changed for investors with the signature of bilateral investment treaties, regional trade agreements and investment arbitration, which provide a 'right of access to justice for the investor that has shifted from inter-state claims to private to state arbitration, where private actors have direct access to international remedial proceedings without the traditional need for the interposition of their national state in diplomatic protection'. *Ibid.* p. 731

¹²⁵ See definition of *transnational legal activism* in the section of 'previous concepts' of the introduction of this text.

women in the border areas are a two-nation problem affecting the entire region'¹²⁶. Despite many causes are explained by the organizations, the CEDAW echoed the allegation of one of the organizations, Casa Amiga, above how cases of domestic violence, incest and rape were handled in an old fashioned way by judges and prosecutors in Mexico, but it did not mention the liability of US on these crimes.

For the CEDAW, it soon became clear 'what horror lurked in many homes'¹²⁷. The organization concludes in the case of Mexico that despite the efforts to adopt justice systems accordingly to women's rights standards, 'there are social situations, stereotypes, attitudes, values and age-old cultural traditions and customs that have been preserved throughout our history and restrict women's development potential, but which cannot be changed in an instant'¹²⁸. Interestingly, the same recommendations of this report are suggested also in CEDAW's report on Guatemala, advising also to prosecuting and punishing perpetrators of systematic women's killings¹²⁹.

The reference to 'women's development potential' in the CEDAW's report cannot be taken for granted. For Merry, under violence against women paradigm 'the image of woman being protected by human rights is compatible with the individualistic, family-centered assumptions of neoliberalism and the expansions of the market economy'¹³⁰. VAW

¹²⁶ CEDAW, Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, REF/ C./2005/ Op. 8/Mexico, Conclusions, para. 237.

¹²⁷ *ibid.* para. 234.

¹²⁸ *Ibid.* para. 93.

¹²⁹ 'The Committee urges the State party to take without delay all measures necessary to put an end to the murders and disappearances of women and the impunity of perpetrators. In that regard, it suggests to the State party to take into account the recommendations made by the Committee in relation to its inquiry undertaken under article 8 of the Optional Protocol regarding abduction, rape and murder of women in the Ciudad Juarez area of Chihuahua, Mexico (...). It requests the State party (...) to investigate occurrences and prosecute and punish perpetrators and to provide protection, relief and remedies, including appropriate compensation to victims and their families' CEDAW, Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala, Ref: CEDAW/C/GUA/Co/6, 2006, para. 24.

¹³⁰ S. E. Merry, 2006 b, p. 230

is ‘focused on women’s oppression by culture rather than class or capitalism’¹³¹, which is partially explained on an international development agenda on women that preceded violence against women campaign at the transnational level. In this scenario, local cultures become obstacles of progress, civilization and growth; the value of women relies on its value as economic asset, and men as violence against women perpetrators, are often related to criminals that must be persecuted by states.

Due to the relation between development and violence against women, a second step for transnational litigation on femicide is to make these cases an issue for IFI’s, which can put a significant pressure on the governments. First, some authors¹³² have suggest to take advantage of the ‘enormous power that international financial institutions have to achieve innovative transnational remedies for the victims of femicides. Considering that IFI’s tend to be restricted to the fields economy and efficiency, violence against women’s advocates can endorsed women’s access to justice as an issue of transparency, rule of law and the need to reform justice systems to meet with their interests. Secondly, violence against women has been included as part of IFI’s women’s access to justice programs, that assume the existence of ‘a cultural pattern of discrimination’ against women in Latin America and tend to recommend the implementation of specific neoliberal reforms on justice systems, which among all criminalize VAW issues. These common transnational spaces and interests shared by IFI’s, violence against women advocates and CEDAW made possible to talk about a hegemonic culture on women’s access to justice as preferred translation of violence against women.

3.2. A hegemonic culture on women’s access to justice

Based on the comparison of documents of IFI’s about violence against women in Mexico and Guatemala, I will now analyze how a hegemonic culture on women’ access to

¹³¹ *ibid.*, p. 231

¹³² W. P. Simmons & R. Coplan, ‘Innovative Transnational Remedies for the Women of Ciudad Juarez’, R. L. Fregoso and C. Bejarano, 2010, pp 216-218.

justice aims to fulfill women's claims on physical violence and the investor's needs to access justice through justice systems according to the market needs. In order to build on this transnational hegemonic culture, some principles must be reconciled. I suggest the following:

3.2.1. Formal women's access to justice through efficient justice systems and the struggle against organized crime

A working paper of the WB¹³³ is considered that laws on violence against women in middle and low-income countries are not really the problem, but rather their enforcement through justice systems, which is inaccessible, incompetent or even corrupt. The lack of women's access to justice is also explained by absence of women's legal knowledge 'who remain unaware of law or face social and economic barriers that make impossible for them to exercise their right'¹³⁴. In the IADB's approach on women's access to justice, which is more comprehensive of the problem but still based on formal justice, women's access to justice address depends on the adoption of laws on violence against women, such as the criminalization of femicide, and the harmonization of these laws within states units¹³⁵.

For violence against women advocates, women's access to justice entails effective investigations to bring responsible to formal justice systems, introducing a gender perspective on the judiciary and police authorities, which systematically silence or not care enough on violence against women issues¹³⁶. Considering the failure on justice administration in these areas, advocates may see in IFI's perspective on justice at least an

¹³³ WB, S. Bott, A. Morrison and M. Ellsberg, 'Preventing and Responding to Gender-Based Violence in Middle and Low Income Countries: A Multi-sectoral Literature Review and Analysis', WB, Washington D.C., June, 2005 p. 4. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/8210/wps3618.pdf?sequence=1> [accessed 29 July 2015]

¹³⁴ Ibidem.

¹³⁵ BID, Violencia contra las mujeres y el Sistema de Justicia Penal, Nota Técnica Sectorial para la incorporación del Enfoque de igualdad de género, BID and GAP, 2014, p. 3. Available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=38668018> [accessed 29 July 2015]

¹³⁶ WB, S. Bott, A. Morrison and M. Ellsberg, 2005, p. 4.

opportunity to access formal justice, like the possibility to lodge a complaint against authorities. Although both violence against women advocates and IFI's share the interest to counteract weak public institutions and strengthen the rule of law on these rights, the causes of violence against women tends to focus on cultural abstract patterns and the neoliberal interests to strengthen justice systems to formally access justice. A notion as such tends to overlook the social and economic causes of violence against women cases in context and anticipates formal justice as a solution of modern state problems of justice¹³⁷.

For the WB¹³⁸, women's access to justice is also related to the lack of will of these countries to criminalize physical and sexual violence against women, therefore it recommends investment on criminal laws and reform formal and informal justice systems accordingly. In working papers about women's access to justice in Latin America, the WB keeps silent on specific causes of violence against women, but it does assume that exists as a structural pattern in Latin America based on the CEDAW. Its recommendations in this regard specify justice systems reforms orientated by neoliberal principles and practices¹³⁹. In the case of the IADB, there is also an interest to strengthen the criminal justice systems, based on efficiency, reliability and accessibility, but also on the elimination of gender and

¹³⁷ Some conditions of the contexts of Mexico and Guatemala make them ideal scenarios for neoliberal state interventions on crime and security. First, Ciudad Juárez is a border city between the United States and Mexico. It has been a gateway for well-established drug trafficking route that comes from Colombia and Central America to the United States. It has also worked as entrance for immigration flows from Central America to North America and a place where garment-manufacturing industry can find cheap labor and lack of implementation of labor laws. These geographical and social conditions have turned Ciudad Juárez into a breeding ground for violence and crime, where femicides and other homicides can easily take place. Secondly, the civil war atrocities of Guatemala went unpunished until nowadays, and the state also represents a failure in regard to organized crime and control migration flows to the North. Guatemala has also encouraged direct foreign investments and became home to many foreign-owned corporations; where women are also recruited as maquila workers and subjected to oppressive conditions. J. Monarrez, *Violencia extrema y existencia precaria en Ciudad Juárez*, Frontera norte vol. 24, No. 48 Mexico, jul/dic. 2012. Available at: http://www.scielo.org.mx/scielo.php?pid=S0187-73722012000200008&script=sci_arttext [accessed 29 July 2015] and D. Weissmann, in: M. Lagarde y de los Rios, 2010, p. 237

¹³⁸ Ibidem.

¹³⁹ WB, A. Morrison and M. Ellsberg, PATT; S. Both, Consultant, Addressing Gender-Based Violence in Latin American and Caribbean Region: A Critical Review of interventions. World Bank Policy Research Paper 3438, World Bank and PATT, 2004. Available at: http://siteresources.worldbank.org/INTLACREGTOPPOVANA/Resources/Morrison_Ellsbergh_Bott.pdf [accessed 29 July 2015]

race discrimination patterns within the justice systems. Interestingly, the IADB also recommends the coordination formal justice systems with ‘informal systems’ such as peace courts and making use of ‘peaceful skills of indigenous communities’¹⁴⁰. The pattern on criminalization of violence against women issues may raise some contradictions between violence against women advocates on cases of femicides and the interests of IFI’s, considering the difficult conditions of illegality and violence of the contexts of Ciudad Juarez, Mexico and Guatemala¹⁴¹.

However, violence against women in Mexico and Guatemala do not necessarily occur on the hands of organized crime. Femicides and other violence against women issues can also be the responsibility of totalitarian governments, whose forced arm is not advisable to be strengthened by laws, institutions or budget as it follows from the IFI’s recommendation on VAW in the region¹⁴². One may wonder in the alarming violent situation of Mexico and Guatemala, to what extent criminalizing violence against women’s issues can be used as an instrument against civil society? Can criminalization of VAW issues reproduce the gender, race and social class inequality by which femicides occur? For instance, in 2008 the authoritative military response known as ‘Operativo Conjunto Chihuahua’ against drug cartels in Ciudad Juarez entailed 2030 homicides in 2010. In this regard, VAW advocates who live in the city have strongly criticized the militarization of the city as counter active, while media celebrated these deaths as achievements of the policy against drugs¹⁴³. It is

¹⁴⁰ IADB, 2014, p. 3.

¹⁴¹ For example, in the case of Mexico, J. Monarrez Fragoso considers that ‘the implementation of (justice reforms) has been driven by market needs, primarily concerned with defining and enforcing private rights, resolving investment and expropriation of disputes, and creating legal mechanisms to facilitate market reforms’. The justice systems, therefore, may respond primarily to interests of markets and economic agents (efficiency, resolution of contracts, personal safety) than social justice concerns related to VAW issues. Then, one may wonder if this pattern of criminalization serves more like a platform where neoliberal institutional and technical interventions on corruption and organized crime can take place, instead of women’s claims on justice in cases of femicides. J. Monarrez, 2012. and D. Weissmann, in: M. Lagarde y de los Rios, 2010, p.237

¹⁴² L. Segato, ‘Territory Sovereignty, and Crimes of the Second State, the Writing on the body of murdered women’, R. L. Fregoso and C. Bejarano, 2010, pp 71-81

¹⁴³ J. Monarrez Fragoso, 2012.

alleged that during the period of this militarization of Juarez -2009 to 2011- the cases of disappeared women in Ciudad Juarez has tripled, more than 86 cases in three years¹⁴⁴.

3.2.2. Women's rights to life, physical integrity and individual security

As was said previously, notions of culture as obstacles to progress, development and civilization, are part of a strategy that puts violence against women in practice as a particular project of justice that emphasizes in autonomy, choice, and protection of the body. This requires to envision the state as responsible for creating the conditions on which the right to be free from violence can be individually exercised.

This a common concern of what I call here a hegemonic culture of women's access to justice. Violence against women is concerned that bodily injuries do not stay at the private sphere of cultures, but rather at the public sphere of violations of human rights¹⁴⁵. Neoliberal reforms on justice systems aim to protect the physical integrity and other individual freedoms, since they are also concerned to guarantee the safety of economic agents, their goods and possessions. Therefore, both perspectives emphasize in classic freedoms and rights, but overlook the compliance of the State and other private actors on social, economic and cultural rights –such as the rights of all women to have a good job, with equal pay and safe working conditions; the right to an adequate pension; the right to healthcare, and water and sanitation of marginal urban areas of Mexico and Guatemala¹⁴⁶.

One should ask whether a different project of denunciation of the events of Ciudad Juarez and Guatemala, one should be able to question, for instance, how private sectors and neoliberal states hold a bigger responsibility in the dehumanization of female workers,

¹⁴⁴ S. Rodriguez, 'Llanos de la barbarie: Feminicidios en la Guerra por Juarez', Sin embargo-Mexico, July 5th, 2015, available at: <http://www.sinembargo.mx/05-07-2015/1401364> [accessed 29 July 2015]

¹⁴⁵ According to WOLA: 'in Mexico and Guatemala, violence against women is widespread, cutting across boundaries of class, age, and ethnicity' and 'the starkest expression of violence against women in Mexico and Guatemala is the continued and increasing killings of women and girls'. Ibid. p. 2.

¹⁴⁶ United Nations Women, Progress of the world's women 2015-2016, transforming economies, realizing rights, available at: <http://progress.unwomen.org/en/2015/> [accessed 29 July 2015]

migrants and students that led to their disappearances and deaths. In this regard, Weissmann¹⁴⁷ criticizes the extreme attention that violence against women's advocates put on the justice systems of Mexico and Guatemala. For her, they have directed their denunciation against highest levels of federal governments and local officers for failure to investigate the murders in a timely fashion, for negligence or incompetence in regard to women's rights. However, these efforts are focused on imagined states that have never existed in Ciudad Juarez and Guatemala, 'concentrated political and juridical entities with resources and authority''¹⁴⁸. At the same time, violence against women's advocates disregard determinants of failures of the state, such as new neoliberal global reforms on the state¹⁴⁹.

These aspects will be better analyzed in the next chapter, but it is important to consider in this section that the interests of IFI's to guarantee women's access to justice in Mexico and Guatemala, shape a narrow understanding of violence against women in justice systems¹⁵⁰. Women's access to justice has been understood from a neoliberal model of the state, where local cultures are obstacles of women's rights as much as of broader modernization justice reforms. Women are perceived as essential victims of those cultural practices and their value is reduced to their participation in economic growth. Their access to justice is restricted to the physical injuries and the current failed structure of nation states

¹⁴⁷ D. Weissmann, in: M. Lagarde y de los Rios, 2010, p.234.

¹⁴⁸ *ibidem*.

¹⁴⁹ *Ibidem*.

¹⁵⁰ Some conditions of the contexts of Mexico and Guatemala make them ideal scenarios for neoliberal state interventions on crime and security. First, Ciudad Juarez is a border city between the United States and Mexico. It has been a gateway for well-established drug trafficking route that comes from Colombia and Central America to the United States. It has also worked as entrance for immigration flows from Central America to North America and a place where garment-manufacturing industry can find cheap labor and lack of implementation of labor laws. These geographical and social conditions have turned Ciudad Juarez into a breeding ground for violence and crime, where femicides and other homicides can easily take place. Secondly, the civil war atrocities of Guatemala went unpunished until nowadays, and the state also represents a failure in regard to organized crime and control migration flows to the North. Guatemala has also encouraged direct foreign investments and became home to many foreign-owned corporations; where women are also recruited as maquila workers and subjected to oppressive conditions. D. Weissmann, in: M. Lagarde y de los Rios, 2010, p.234.

to guarantee rights. These conditions underlie the hegemonic culture of women's access to justice as a political and economic project in the region.

However, a hegemonic culture of women's access to justice as a global process is also part of creating transnational subjectivities, where poverty and inequality have reached unimaginable levels and senses of insecurity and unpunished corruption towards urban violence is lived on a daily basis. All these fears have been central to frame VAW as a transnational cultural project, but also, they have produced transnational subaltern women's access to justice that demand the transformation of justice systems as guarantors of their right to justice in a broader sense. I will tackle these experiences of a counter hegemonic culture on women's equal access to justice in the next section.

3.3. A contesting notion on women's equal access to justice

As it was said in the first chapter, two globally oppressed groups, indigenous women and economically marginalized low-income female workers-who have been the main victims of femicides- have translated their grievances into the human rights idea of violence against women as a way to transform their realities in a transnational regional context. Therefore, they have also proposed alternative discourses over women's access to justice according to their experiences of suffering but also of contestation.

For B. de Sousa, a *counterhegemonic globalization* is a set of struggles and transnational strategies connected by the common goal of fighting oppressive neoliberal globalization and its effects on oppressed groups¹⁵¹. Based on the identification of problems of hegemonic globalization, 'the victims of this transnational community of suffering'¹⁵², are not passive and try to resist globalization and subvert hegemonic institutions and ideologies, creating alternative discourses on transnational citizenship and

¹⁵¹ Cited in: A. J. Aguilo, 2008, p. 2

¹⁵² B. de Sousa and C. Rodríguez (ed.), 2005, p. 14

human dignity¹⁵³. For this author, this is a bottom- up perspective of cosmopolitanism, that observes how transnational oppressed groups offers cross-border support and solidarity to each other to counter act the effects of hegemonic globalization.

For B. de Sousa, this attempt of transnational subaltern groups to articulate their alternative discourses transnationally, sometimes through the discourse of human rights, can be assessed with the concept of *subaltern cosmopolitan legality*¹⁵⁴. First, there must be a combination of legal, illegal and non-legal strategies through which transnational and local movements advance their causes, for instance, rallies, strikes, consumer boycotts and ‘other forms of illegal action that simultaneously pursue institutional avenues such as litigation and lobbying’¹⁵⁵. Secondly, transnational movements need to expand the legal cannon beyond individual rights and focuses on the importance of political mobilization for the success of rights-centered strategies. According to Sousa, this does not mean to abandon individual rights struggles, on which unilateral militarism at the global scale and repressive neoliberalism are based, but rather seeking to articulate ‘new notions of rights that go beyond the liberal ideal of individual autonomy, and incorporate solidarity of entitlements grounded on alternative forms of legal knowledge’¹⁵⁶. Thirdly, transnational movements have to operate across scales, which could mean resorting political to legal tools at every scale, mobilizing state and non-state orders and exploiting opportunities offered in a plural legal landscape¹⁵⁷.

As it follows from an overview of these criteria is difficult for transnational movements to achieve all the requirements of *subaltern cosmopolitan legality*, which also shows how challenging it is to overcome the limitations that globalization imposes to counter-hegemonic discourses. However, considering these criteria, I will compare the

¹⁵³ *ibidem*.

¹⁵⁴ *Ibidem*.

¹⁵⁵ *Ibid.* p. 15.

¹⁵⁶ *Ibid.*, p. 16

¹⁵⁷ *ibid.*, pp. 16-17.

efforts of two oppressed groups that conform the transnational feminist movement on women's access to justice in Latin America: the social justice campaign 'ni una mas' that was born in Ciudad Juarez, after the disappearances of female workers and migrant women, and the indigenous women movement in rural areas of Mexico and Guatemala¹⁵⁸. In this analysis, I will focus on the same aspects of the previous analysis: common transnational spaces of creation of meanings, a critical position on justice systems and an understanding of violence against women beyond individual rights.

3.3.1. Contesting common space: transnational women's movement in Latin America

I will first explain why I would like to present the struggle of indigenous women for access to justice in Guatemala and Mexico as a parallel for the 'ni una mas campaign' in Juarez. This has to do with the nature of dynamics of the transnational feminist movement in Latin America, which can be internally heterogeneous and diversified but strives for human dignity based on the reciprocity, affinity and complementary of its units¹⁵⁹. Instances such as the regional 'encuentros' since the 1990's have built a Latin American feminist community based on international solidarity principle and on transnational organization and litigation, which seeks 'to reconstruct or reaffirm subalternity of politically marginalized identities and to establish personal and strategic bonds of solidarity with others, who share locally stigmatized values or identities'¹⁶⁰. Transnational organization of the feminist movement also aims to expand formal rights or affect public

¹⁵⁸ The reason why I exclude women's collective action in relation to disappearances Guatemala for this analysis is I could not find enough documentation as a transnational women's movement.

¹⁵⁹ 'The 1990s saw a dramatic proliferation or multiplication of the spaces and places in which women who call themselves feminists act, and wherein, consequently, feminist discourses circulate. After over two decades of struggling to have their claims heard by male-dominant sectors of civil and political society and the State, women who proclaim themselves feminists can today be found in a wide range of public arenas—from lesbian feminist collectives to research-focused NGOs, from trade unions to Black and indigenous movements, from university women's studies programs to mainstream political parties, the State apparatus, and the international aid and development establishments'. S. Alvarez, *Advocating Feminism: The Latin American Feminist NGO' Boom*. March 2, 1998, available at: https://www.mtholyoke.edu/acad/spanish/advocating_feminism. [accessed 29 July 2015]

¹⁶⁰ Ibidem.

policy and enhance their local political leverage via transnational coalitions to put pressure on states'¹⁶¹.

Consequently, to analyze women's movements as isolated units can limit our perspective to assess their potential as part of a transnational counter hegemonic movement of women's access to justice. The indigenous women's movement in Mexico and Guatemala is one of the most interesting and well documented experiences¹⁶² within the feminist movement of Latin America and shares with the 'ni una mas campaign' common spaces and time where their efforts take place. The differences in-between are important to assess the impact of their efforts in order to build on a counter-hegemonic culture of women's access to justice.

3.3.2. A legally plural approach on women's access to justice

As it was established in the previous section, hegemonic women's access to justice has implemented reforms on official justice system with the purpose to ease free-market operations. IFI's have also promoted reforms on indigenous justice, which they considered 'informal justice systems' and a primary locus of disputes resolutions for a big part of population¹⁶³. However, the legal recognition of indigenous difference has been limited and it does not entail a real social transformation of the causes of their oppression. Rather the contrary, it has also been considered¹⁶⁴ that neoliberal reforms that recognize legal

¹⁶¹ Ibidem.

¹⁶² R. Sieder, Contested sovereignties: indigenous law, violence and state effects in postwar Guatemala, *Critique of Anthropology* 31(3), 2011, p. 163; R. Sieder, The judiciary and indigenous rights in Guatemala, *International Journal and Constitutional Law*, vol. 5, 2007 p. 212, M. T. Sierra, Derecho Indígena y acceso a la justicia en México: Perspectivas desde la interlegalidad. *Revista Instituto Interamericano de Derechos Humanos*, vol.41, 2005, pp. 287-289; M.T. Sierra 'Indigenous women, Justice and Rights: Challenges for an intercultural justice', *Iconos, revista de Ciencias Sociales*. Num.31, Quito, Mayo 2008, pp. 15-26; A. Hernandez Castillo, 'National Law and Indigenous Customary Law: The struggle for justice of indigenous women in Chiapas, Mexico' Manuscript, Visiting Resource Professor Papers, LLILAS, the University of Texas at Austin, no date; A. Hernandez Castillo, 'Zapatismo and the emergence of indigenous feminism', *Report on Race and Identity*, Vol. XXXV, No 6 May/June 2002, pp.39-58

¹⁶³ T. Chopra & D. Isser, 'Access to Justice and Legal Pluralism in fragile States: The Case of Women's Rights', *Hague Journal on the Rule of Law*, 4, 2012, p. 338

¹⁶⁴ M.T. Sierra, 2005, p. 288

pluralism and cultural diversity, as such, seek to regulate indigenous autonomy and subordinate it to the interests of economic development¹⁶⁵.

The first value that the transnational campaigns of 'Ni una mas' and indigenous women's movement have in common is to be based on the strategic use of diverse levels and forms to advocate for women's equal access to justice. In the case of 'Ni una mas' campaign, they have struggled against the impunity of official systems and claim justice for them and further victims of femicides, but have also understood that the problem of impunity in Ciudad Juarez is not the absence of laws. Violence at the northern frontier is related to mafias and corruption that control official justice systems in this context, which domain over the territory¹⁶⁶. Despite the enactment of laws against femicides in Mexico, the problem transcends the national territory. Ciudad Juarez is 'a critical site of Mexican integration with the US economy and foreign capital', that 'has long functioned as a denationalized space where border residents exercise citizenship under the pressures of tourism, foreign investment, illicit activity and legal commerce and the U.S police presence'¹⁶⁷. In this sense, the movement, which covers the families of the victims, has created important linkages to international spheres; mainly NGO's to support their mobilization in Ciudad Juarez and Chihuahua¹⁶⁸.

¹⁶⁵ An example of this argument is a legislative change in Mexico that acknowledges indigenous justice just as an alternative mechanism for dispute resolution, which is explicitly subordinated to the state courts. According to T.Chopra and D. Isser, this subordination responds to a transnational perception of informal justice systems: 'international actors regard the alternative paradigms of justice offered by local communities as desirable only to the extent that they offer accessible and restorative remedies in ways that do not contravene international standards of rule of law and human rights'¹⁶⁵. In the same way, it is widely assumed by these actors 'that customary systems are based on patriarchal norms that reaffirm subordinate role for women'. Based on this assumption, there are two common international reactions. First, strengthening the capacity of the formal system, removing the authority of informal justice and promoting women's access to formal justice. Secondly, seeking to engage with informal systems with the aim of transforming them to comply with international standards, retaining the positive features of accessibility, familiarity and effectiveness. T.Chopra and D. Isser, 2012, p. 338.

¹⁶⁶ R. L. Segatto, 'Territory, Sovereignty and Crimes of the Second State', p. 83, in: R. L. Fregoso and C. Bejarano, 2010, pp 216-218.

¹⁶⁷ A. Schmidt, Ciudadana X, Gender violence and the denationalization of women's rights in Ciudad Juarez, Mexico'. p. 278 in: R. L. Fregoso & C. Bejarano, 2010, pp 275-289.

¹⁶⁸ Ibidem.

I found no record of *ni una mas* campaign making use of non-state justice systems, such as the indigenous justice and authorities to advocate for equal access to justice on violence against women issues. However, I consider valuable the experience of indigenous women's movement in regard to their way to counteract structural violence in Mexico and Guatemala from a legal plural perspective¹⁶⁹.

Anthropologists that work with indigenous peoples in Latin America tackle this tension. They recognize indigenous justice systems not as a set of customary practices but rather true local justice¹⁷⁰. Indigenous justice has been able to articulate human rights into ordinary institutions and cultural practices¹⁷¹. In relation to communitarian and indigenous justice systems, M. T. Sierra¹⁷² has documented experiences of indigenous and communitarian justice in large parts of Mexico, where indigenous women make use of the discourse of human rights to strength collective projects and indigenous jurisdiction, which also internally question the use of customs, traditions and practices' to address women's rights. Although she acknowledges gender inequality is embedded in practices of communitarian justice, that naturalize certain forms of violence against women, she also acknowledges that indigenous women have been able to 'appropriate the discourse of

¹⁶⁹ R. Sieder, 2011, p.167

¹⁷⁰ R. Yrigoyen Fajardo, 1999, pp. 4-5.

¹⁷¹ Many examples in this regard can be found in the work of these referred anthropologists. Agreeing with Sieder, Maya-K'iche authorities in Guatemala are strengthening their own forms of law primarily as 'a response to insecurity, violence and structural exclusion, that impedes indigenous peoples' access to justice'¹⁷¹. Indigenous subjectivities are linked to a common past history, but are also lived and recreated by the needs of the present. They have looked for opportunities in the discourse of international human rights to keep resistance against oppressive states¹⁷¹. Likewise in Guerrero, Mexico¹⁷¹, civil indigenous organizations such as *la Coordinadora Regional de Autoridades Comunitarias* -CRAC¹⁷¹ has provided communitarian police and a parallel jurisdiction from the state, considering agrarian conflicts and drug trafficking cause extreme violence everyday and people perceive official justice systems as corrupt and oppressive¹⁷¹. However, it is important also to recognize that in this case, indigenous women have found difficulties to be heard and include issues such as feminicides, domestic violence, and rape, among other topics related to women's access to justice. After indigenous women requested, women became part of the CRAC's structure, however, there was a perception that women's issues were secondary considering the high demand of the organization in issues of security. R. Sieder, 2011, p.144 and M.T. Sierra, 2008, p. 21

¹⁷² M.T. Sierra, 2006(b) p. 16

human rights and gender to define their cultural and legal frames'. In this section it is important underline that legal pluralist perspectives on human rights recognize that the creation of human rights can be done at the margins of the State's action¹⁷³.

In this sense, not only indigenous and communitarian justice systems are spaces where human rights can be created, reformulated and contested based on cultural values and practices; but official justice systems face the same challenges under their own values and practices and the relations of power that govern them. Official justice systems are legally plural systems internal and externally. In regard to Latin American states with major indigenous population, such as Mexico and Guatemala, authors like Y. Fajardo¹⁷⁴ have analyzed how the authoritarian processes of colonization have historically framed the legal orders within these official justice systems. First, there is a colonial model of segregation that distinct indigenous people from Spanish descendants, each one of which has their own norms and institutions. Secondly, there is a European model of nation-state that consists in the republican idea of 'one nation, one culture, one language, one religion, under one law and justice', where the indigenous difference is understood in the context of formal equality and assimilation of their cultural practices. Thirdly, a state model state in globalization of law conceives official justice within the discourses of cultural diversity and equality before the law in human rights. All three models coexist in the official justice systems of Guatemala and Mexico and define state action in regard to human rights norms in overlapping and competing normative systems.

The above analysis shows how indigenous and official justice systems are still limited to guarantee women's access to justice. Transnational women's movements, in special indigenous', tend to perceive justice systems as complementary efforts, rather than isolated structures. These movements point out that any justice reform has to be accompanied by political mobilization and other forms to struggle against impunity.

¹⁷³ S. Engle Merry, 2006 (b) pp. 14-15.

¹⁷⁴ R. Yrigoyen Fajardo, 1999. Pp. 4-5.

3.3.3. *Local culture as a space of political contestation and human rights consciousness*

As it was said in the previous section, a transnational culture on modernity understands the causes of violence against women on cultural practices, usually old-fashion stereotypes and practices against women, which tend to be static and essential in locales. Likewise, violence against women has emphasized gender justice on the rights that protect physical integrity, excluding other rights of women that could have been violated with the acts of violence.

In this regard, '*ni una mas campaign*' and indigenous women's movement have recognized culture as contentious to identify violence against women causes as much as stating cultural places of resistance of violence against women. For '*ni una mas*' campaign, women have made use of non-legal means, such as massive protests using symbolic ways to resonance in culture and change gender inequality themselves. Their pink hats and black dresses are now a symbol of the struggle against femicides in Latin America. They have also made use of art installations that make memory of the victims, which can also be considered as a form to access to a specific dimension of justice¹⁷⁵.

Indigenous women put in practice similar experiences of accessing justice in their own communitarian forms. K'iche indigenous women in Guatemala have translated gender equality principles into their Mayan practices¹⁷⁶. R. Sieder and M. Macleod¹⁷⁷. understand

¹⁷⁵ See: Annex 1. Photos of 'The redressing injustice installation' by Irene Simmons. Las Cruces, Mexico, 2006

¹⁷⁶ 'As an indigenous feminist I intend to recover the philosophical principles of my culture and to make them fit into the reality of the twenty-first century. That is to say, to criticize what I do not like about my culture while proudly accepting that I belong to my culture. Indigenous feminism is to me part of a principle-women develop and make revolution to construct ourselves as independent persons who become a community that can give to others without forgetting about themselves. The philosophical principles that I would recover from my culture are equality, complementarity between men and women, and between men and men and women and women. That part of Mayan culture currently doesn't exist, and to state the contrary is to turn a blind eye to the oppression that indigenous women suffer. The complementary is now only part of history; today there is only inequality, but complementarity and equality can be constructed' Alma Lopez, Quiché woman, councilmember of the City of Quetzaltenango, Guatemala. Interviewed by Ixtic Duarte for Estudios Latinoamericanos de la Facultad de Ciencias Políticas de la UNAM, referred by A. Hernandez, 2002, p. 40.

these translations responds to indigenous women's attempts to rebuild the fabrics of community after they were destroyed by armed conflict and alternatives for the lack of access to state justice and the high levels of insecurity and violence suffered by all citizens in Guatemala, but in particular by indigenous women in conditions of poverty. The community work on self-stem aims to heal emotional wounds created by structural violence, which also are important to conceive notions of justice.

Cultural spaces can also work as alternative political platforms where other claims related to resistance against oppressive regimes can take place from a gender perspective¹⁷⁸. The work of A. Hernandez Castillo shows how indigenous women's movement represented by the EZLN has tried to conciliate two grounds within the Zapatista movement¹⁷⁹: the rights of indigenous women to hold local posts of authority, inherit land and have control over their own bodies; and at the same time, the right of indigenous peoples to form governments in accordance to their own normative systems as other indigenous claims, such as the resistance against neoliberal state reforms¹⁸⁰.

The EZLN is a good example of how indigenous women's movements have expanded the legal cannon of human rights beyond individual rights and focus on the importance of political mobilization for the success of their rights centered approach, in the terms of B. de Sousa. Their key strategy is a double questioning from the indigenous difference: while they criticize 'the dangers of affording primacy to idealized notions of indigenous culture and indigenous customary law'¹⁸¹ they question the unequal relations that exist in both indigenous and official justice systems. In this sense, they have promoted their own

¹⁷⁷ R. Sieder and M. Macleod, 2009, p. 63

¹⁷⁸ The political discourse of indigenous movements, such as Zapatistas, also incorporates of indigenous resistance against 'the negative effects of neoliberal policies on the lives of thousands of indigenous peasants' and based on 'a struggle to the five-hundred-year-old resistance (...) against colonial and post-colonial racism and economic oppression'. R.A. Hernandez, no date, no page.

¹⁷⁹ Ibidem.

¹⁸⁰ ibidem

¹⁸¹ ibidem

translation of human rights into their own contexts, re-inventing their traditions from indigenous women's rights perspective and re-inventing the right to live free from violence from an indigenous difference, which they try to relate more to women's political empowerment than victimization¹⁸². They propose changes on private spaces but also local, regional, state and national gatherings.¹⁸³

4. Transnational legal activism and contesting notions of women's access to justice

Based in a context of neoliberal reforms to justice, we drew forth a hegemonic culture of women's access to justice as a preferred interpretation in cases of feminicides in Mexico and Guatemala. I called it 'hegemonic' in these sense is referred in most of the policy papers, international judgments, human rights reports and legal documents on femicides; and also shared by important international organizations such as IFI's and CEDAW share its principles and values.

The efforts of transnational legal activism on femicides at international, national and local levels have created a political space that makes sense of the systematic violence that occurs in similar circumstances in Guatemala and Mexico. Transnational legal activism aims to give a "civilized treatment" to the barbarity of the crimes and therefore, translates these events in issues of violence against women and also neoliberal justice reforms, which allows them to interfere in circles of state's decision making. However, the articulation of femicides to the margins of power brings costs to consider in practice of their collective action. Women's access to justice is based on a narrow understanding of women's justice from a neoliberal model of the state, where local cultures are obstacles of women's rights as much as of broader modernization of justice reforms. Women are perceived as essential

¹⁸² See Annex 2. Photos of political empowerment of indigenous women in Zapatista Movement

¹⁸³ A. Hernandez, 2002, p. 42. However, their achievement should not be taken for granted. Zapatista indigenous women have struggled since 1970's to be recognized as important agents of their movement, they integrated into their repertoire a variety of historic discourse fields such as the 'dignity of women' of a Catholic Church's discourse based on liberation theology, which was gradually changed by gender equality and women's rights from the transnational feminist movement in Latin America

victims of those cultural practices and their value is reduced to their participation in economic growth. Their access to justice is restricted to the physical injuries' claims and through the current failed structure of nation states. These conditions underlie the hegemonic culture of women's access to justice as a project of violence against women in the region.

Concurrently, this chapter introduces how transnational women's movements in Mexico and Guatemala have contested this perspective on violence against women. Indigenous women and civil organizations under the '*Ni una mas*' campaign have diverse perspectives in this matter but also contact zones in a contesting notion of equal access to justice. First, culture is central for the creation of conceptions on subaltern women and human dignity. They also denounce the causes of women's oppression exceed cultural spaces, which are greatly defined by neoliberal globalization and legacies of colonial conceptions of their cultures that restrict their change. Secondly, their concept to women's justice implies a critical reflection on indigenous and official justice systems as legally plural settings, where attempts of modern reforms have failed at the expenses of women's equal access to justice. They also advocate for the respect of women's rights to life and physical integrity behind the paradigm of violence against women, but do not reduce them to the effects of physical harm on the body, but also collective and social and economic rights.

In the next chapter, I will explain how *transnational legal activism* makes use of their agency reproducing, resisting and taking distance from hegemonic and counter hegemonic notions of women's access justice. Their translation of the context is key to foresee how the Inter American Court's judgments create a political space to articulate victims' demands on justice. If they succeed, the judgments can support different transnational feminist movements that seek women's access to justice, such as indigenous women's, to achieve the social emancipation from different forms of women's oppression. If they don't,

the Inter American Court's judgments will work better as hegemonic platforms of meaning, where women's struggles are used as platforms to put neoliberal modernization reforms in practice. As it will developed in the next chapter, this process partially depends on the ability of the translation of the Court in order to articulate women's demands.

IV. A COMPARATIVE STUDY OF THE IACTHR'S JUDGMENTS ON FEMICIDES: PROBLEMS OF TRANSLATING VIOLENCE AGAINST WOMEN INTO LOCAL JUSTICE

'White men are saving brown women from brown men'

G. Spivak

In the introduction, the tool I will use through this text was translation. At this point I could say that translation through this text has made sense of many things, but especially of myself, it has confined me an identity. I can imagine that you, the reader, might assume where I come from and that I know how is to be an oppressed woman in Latin America. If so, I am sorry to tell you: you were wrong, there is no such a *thing*. I have never been in Juarez, Mexico neither in Guatemala. I have never lived the conditions of poverty and exclusion that indigenous women have to live. I have never experienced the grief of finding a loved one dead in a desolate field. It just happens I read their stories, I empathize with them and I created a prose on their names' title.

This is the seduction of translating, in the words of Spivak, 'it is a simple miming of the responsibility to the trace of the other in the self'¹⁸⁴. The truth is when I write about other women that live in Latin America, I make sense of freeing myself from what I think is gender injustice: from my experience of living as a middle-class 'mestiza' in Colombia, a 'latina' in the U.S, or a brown girl, maybe Indian or Turkish, in Vienna. It is just in the way of living this again and through writing down a hope for my own emancipation, that I do translate the *other*, based on the translation that anthropologists, development professionals and violence against women's advocates have done on behalf of their names. The true is

¹⁸⁴ G. Spivak, *Outside in the teaching machine*, Routledge, New York, p. 179.

that women that live in Latin America will never speak through me or through them. I am not in any way emancipating them.

Clearly my position of power in society is not the same as a member of CEDAW or a gender consultant in the WB, but it is a privileged one in translation. I do not master English, but you are reading this text in English. I am not rich, but I can afford a student living in one of the most expensive cities in Europe. I am not a European nor an American, but I was educated with European and US cannons and scholars in Colombia. My writing is also the result of forms of domination and colonization of those whose names we all use but do not allow speaking. While you are reading me, you are not reading them. So, let's be honest, through this text you and I created an intimate bond, we may feel part of the same transnational community of knowledge, canons, social class and language that can speak about the other and has privileges of speaking.

1. Problems of translating violence against women into local justice

I introduced this chapter with a personal reflection above how the process of translation of others' grievances into the human rights language gives a position of power to the translator. In this section, I will reflect on the pilot ideas of the previous chapters that frame the problems of translation of the IACtHR's judgments on cases of femicides into local justice in Mexico and Guatemala, which can be understood only in this ambivalent power position provided by translation.

As it was said in the first and second chapters, problems of translation of violence against women into local contexts consist in the asymmetries of power in which continuous creation of social meaning takes place and how a modern project lies across the translation of human rights and the demands of subaltern groups¹⁸⁵. On the surface, the problems of human rights translations are the same problems of discourse; there are powerful

¹⁸⁵ S.E. Merry, 2006b, p. 39

constraints behind the use of any language but still a possibility to subvert them within these constraints. Translation of human rights are always an inconclusive project, according to Merry: ‘translators are not always successful, new ideas and practices may be ignored, rejected, or folded into preexisting institutions to create a more hybrid discourse and organization. Or they may be subverted: seized and transformed into something quite different from the transnational concept, out of the reach of the global legal system but nevertheless called the same’¹⁸⁶.

Translations of translation show how important the context is to define the specific meanings of a human rights language-such as violence against women- has into social realities. As it was said in the introduction, the creation of the meaning is a continuous process of contestation and change, because translations are also an act of power, ‘a conduit for hegemony’¹⁸⁷. As previously analyzed, I tried to track down the hegemonic meanings behind the translation of violence against women into particular contexts.

Based on the analysis of S. E. Merry in the second chapter, I presented violence against women as a part of a transnational culture of modernity settled between Geneva and New York, that emphasizes in autonomy, individual choice, equality, secularism and protection of the body, which are values and principles of a transnational individual society of the Global North. As a consequence, ‘violence against women’ aims to protect one dimension of women’s vulnerability- bodily injury, pain and death- that occurs at the core of cultural practices primarily in the Global South. Based on these principles, the paradigm sanctions local cultures as obstacles to progress, to civilization and to the full enjoyment of the rights of women.

In the third chapter, I identified that Mexico and Guatemala constitute a transnational context where violence against women ideas have been predominately translated as

¹⁸⁶ S. E. Merry, 2006 b, p. 40.

¹⁸⁷ M. W. Steinberg, 1999, p. 747.

women's access to justice in human rights reports, international judgments and policy papers in the region. Although, it is an idea based on violence against women, it has also served as vehicle of specific interests in reforming the states of Mexico and Guatemala according to the needs of economic globalization. Based on the work of F. Francioni¹⁸⁸; and Uprimny and Rodríguez¹⁸⁹, I explain that behind *women's access to justice* programs, IFI's settled in Washington D.C. lead reforms on justice systems of Mexico and Guatemala according to the interests of the market and the rights of foreign investors.

Over this ideological platform, IFI's and CEDAW have contributed to establish a hegemonic culture on women's access to justice that aims to transform the state to guarantee minimums of justice and emphasize individual rights and women's physical protection. Based on violence against women paradigm, they envision the problem of a lack of women's access to justice on archaic cultures of gender discrimination embedded in local justice systems. Consequently, they promote formal women's access to justice through the adoption of laws, criminalization of violence against women issues, among others.

In this chapter, I also wanted to address the common demands on justice from grassroots women's movements in Mexico and Guatemala. I emphasized in common principle, values contact zones of diverse groups in women's equal access to justice. As I said in the conclusion of the chapter, they conceive culture as part of the problem of violence against women issues but also as a place of production women's rights to justice from inside and down top perspectives. They also problematize the excessive emphasis on neoliberal reforms on justice systems, considering they do not recognize them as legally plural systems and oversimplify women's oppression in society to an institutional level.

¹⁸⁸ F. Francioni, 2009, pp. 732-734

¹⁸⁹ C., Rodríguez and R. Uprimny, 2003

Based in this context, in the present chapter I use a comparative analysis of the Inter American Court judgments on femicides to identify the problems of translating violence against women into local justice in Mexico and Guatemala. I would like to reiterate that any effort to be as comprehensive as I can on this analysis, it will be limited considering that the information I have is based on the judgments, legal documents of the files of the cases¹⁹⁰ and articles of the feminists have produced during years about their participation in the transnational legal activism of these cases¹⁹¹. Additional elements of analysis could be given, for example, by interviews and a personal follow up of this process from the beginning. The following is an analysis on the translation of the IACtHR judgments based on the context and theoretical approach addresses in the previous chapters.

2. Transnational legal activism and the cases of femicides before the IACtHR

The above contesting context on violence against women in Mexico and Guatemala shows an ambivalent relationship between social movements and human rights law. According to B. Rajagopal, social struggles ‘tend to see law as a force for *statu quo* and domination, which must either be contested as part of a larger political struggle or largely ignored as irrelevant’¹⁹². However, social movements can ‘hardly avoid law as it also provides them space for resistance’¹⁹³. The ambivalence between domination and subversion, define human rights ideas translation by transnational legal activism at the different levels-supranational, national and local.

As it was explained in the introduction, transnational legal activism in Latin America has found in the Inter American System a transnational space where to address different

¹⁹⁰ Most of the documents of the files of the cases before the Inter American Court of Human Rights can be reached at: <http://www.corteidh.or.cr/>.

¹⁹¹ R. Fregoso and C. Bejarano ‘Introduction: A cartography of feminicide in the Americas’ in Fregoso and C. Bejarano (Ed), 2010, pp. 1-42.

¹⁹² B. Rajagopal, ‘Globalization: The Indian Supreme Court and the Narmada Valley Struggle’ in B. de Sousa & C. Rodríguez (ed.) 2005, p. 183.

¹⁹³ Ibidem.

gender related demands. In relation to violence against women, the states' ratification of the Convention of Belen do Para¹⁹⁴ and specific reforms on violence against women in the regional system have tried to give legitimacy to the human rights idea¹⁹⁵. In this sense, the Inter American Court has been prominent to define new extents of violence against women issues through different cases such as Miguel Castro Castro Prison v. Peru¹⁹⁶, Las Dos Erres Massacre v. Guatemala¹⁹⁷, Rosendo Cantú et al. v. Mexico¹⁹⁸, Gonzalez et. al v. Mexico¹⁹⁹ and Veliz Franco v. Guatemala²⁰⁰ among others.

The increasing number of judgments of the IACtHR on violence against women may instinctively lead us to assume that this is a signal of an equivalent increase in the power of the tribunal to protect vulnerable groups of women at the transnational level²⁰¹. The Court has tackled all sorts of violence against women as human rights violations perpetrated by state actors. As I said in the introduction, the two cases on gender-related killings against

¹⁹⁴ Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para" (1994). Article 1

For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2. Violence against women shall be understood to include physical, sexual and psychological violence: a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;

b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and

c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

¹⁹⁵ In the early 90's, the Inter-American Commission began to include the abuse of women on their agenda, including gender related issues in their reports. Years after a Special Rapporteur on Women was able to attend individual complaints in regard to the human rights of women. K. Tiroch, 2010, pp. 377ss.

¹⁹⁶ IACtHR, Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160

¹⁹⁷ IACtHR, Case of the "Las Dos Erres" Massacre v. Guatemala.

¹⁹⁸ IACtHR, Case of Rosendo-Cantú et al. v. Mexico

¹⁹⁹ IACtHR., Case of González et al. ("Cotton Field") v. Mexico

²⁰⁰ IACtHR, Case of Veliz Franco et al. v. Guatemala

²⁰¹ J. Cavallaro and S. Brewer, 'Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter American Court', *The American Journal of International Law*, Vol.102, No.4, Oct., 2008, p. 769.

Mexico and Guatemala, which are subject of this research, are the first cases that tackle directly issues of violence against women as the main topics of the judgments.

However, this success cannot blur the difficulties of transnational women's movements to translate these judgments especially into local justice, which has been denied for a long time for justice systems. The struggle against femicides in Mexico and Guatemala comprehends supranational levels-CEDAW, Inter American Commission and Inter American Court- as a result of a long-lasting but fruitless work at local and at national levels of the State²⁰². Based on the book they published about their experiences in the transnational legal activism in this cases²⁰³, I will first briefly explain their gender justice approach on these events and then how they helped to build on the context of the cases. I will stand out the expert opinions by which they supported the claims of the victims' representatives at the process before the Inter American Court's jurisdiction.

2.1. Contested approaches on femicides/feminicides

As I said in the introduction, the struggle against femicides/feminicides resembles how a transnational movement-conformed by journalists, legal advocates, activists, scholars from the Global North and the Global South- have translated the killings of girls and women in the contexts of Guatemala and Mexico into violence against women. This translation is embedded in a contested field of gender justice approaches, where the use of the concepts of femicide or feminicide has traveled from scholarship to judicial settings and vice versa, and slowly translated into a specific women's right to justice.

In Guatemala and Costa Rica, the struggle against the killings of women has echoed the term *femicide* in its traditional form²⁰⁴, as normative feminism. The term was first used

²⁰² H. Morales, *Femicide and Sexual Violence in Guatemala*, pp. 135-137; A. Chazarro, J. Casey, K. Ruhl, *Getting away with Murder, Guatemala's failure to protect women and Rodi Alvarado's quest for safety*, p. 99

²⁰³ Fregoso and C. Bejarano (Ed), 2010

²⁰⁴ R. Fregoso and C. Bejarano 'Introduction: A cartography of feminicide in the Americas' in Fregoso and C. Bejarano (Ed), 2010, p.6

back in 1976 in a people's tribunal organized by D. Russell in Brussels, where gender international politically engaged studies took place²⁰⁵. In 1992, J. Radford and D. Russell²⁰⁶ delved into the idea of femicides to understand 'the misogynist killing of women by men' in a compilation of studies based on the US, India and the UK. For these Cambridge's professors, the occurrence of femicides hide a patriarchal ideology that 'seeks to control women, to punish who resist violence, and to then blame women for provoking that violence'.²⁰⁷ In their studies, femicides are possible because killer and the judge share this patriarchal ideology, allowing men to walk free.

Based on this concept, Marcela Lagarde introduced *feminicides* to refer the specific murders of women that occurred in 1993 in Ciudad Juarez, Mexico²⁰⁸. Sociologists and anthropologists that refer to feminicide mean not only the act of killing a woman for being a woman, but also a crime that reaches a systematic level because of the state's failure to fulfill its international obligations to investigate and punish the perpetrators of these crimes²⁰⁹. Some of the international influences of this definition come from the conflicts in Bosnia- Herzegovina and in Rwanda, where violations of women's rights were recognized as war crimes. The contribution of feminicide relies is its open construction as a human rights idea, a specific issue of women's access to justice and violence against women, understood in a systematic level. Feminicides do not happen in armed conflicts, but rather because the ordinary judiciary completely fails and causes impunity of these crimes²¹⁰.

²⁰⁵ D. E.H. Russel and N.V. de Ven (Ed) *Crimes Against Women: Proceedings of the International Tribunal*, Berkeley, California, Russell Publications, 1990, p. 7. In that moment, US feminists took the floor like 'witnesses' to state how femicides-murders of women for being women- were part of a widespread violence in the US, that appear in various forms-female infanticide, killings of women for honor, domestic homicide- and were linked to other forms of violence such as harassment or sexual abuse. Ibid. p. 106.

²⁰⁶ J. Radford and D. E.H Russel, *The politics of woman Killing*, Twayne Publisher, NY, 1992, xi, xii, xii.

²⁰⁷ Ibid.

²⁰⁸ R. Fregoso and C. Bejarano 'Introduction: A cartography of feminicide in the Americas' in Fregoso and C. Bejarano (Ed), 2010, p. 6

²⁰⁹ M. Lagarde y de los Rios, 'Preface: Feminist keys to understand Feminicide. Theoretical, Political and Legal Construction', in: R. Fregoso and C. Bejarano (Ed), 2010, xxiii.

²¹⁰ R. Fregoso and C. Bejarano in Fregoso and C. Bejarano (Ed), 2010, p. 3

The notions of feminicide/femicides are evolving and more often used now-days, recreated by grass roots organizations and transnational women's movements in the Americas to protest against the impunity of women's killings. The first one was in 1992, the '*ni una más*' campaign in the City of Chihuahua, Mexico, where families of disappeared women protested against impunity of these crimes²¹¹. Years after, the Network of Non-Violence against Women in Guatemala, has referred to a *feminicidal violence* in diverse contexts where women are being killed, such as illegal migration, as marginal urban areas or as post-war Guatemala. Furthermore, while I write down these words, femicides have further development in the core of social protests and legislations in Latin America, that publically denounced women are being killed because of they are women²¹².

The struggle for women's justice in these killings has taken the forms of feminicides and femicides in Latin America, which are a normative gender justice approach in the terms explained in the second chapter. Although *violence against women* is at the bottom of both concepts, these feminists have tried to move away from some assumptions. First, they consider that the context of feminicides/femicides finds a fertile ground where murder rates of men are also high in Latin America. Therefore, these crimes can be considered public and political matters instead of 'private' or 'cultural' issues²¹³. Gender is conceived as a social and cultural construction; thus, feminicide/femicide are also rooted in political, cultural and social asymmetries including power relations based on class, sex and racial hierarchies²¹⁴. Secondly, for them patriarchal control serves as tool of racism, economic oppression and colonialism, therefore rights of living of women should articulate the right

²¹¹ A. Carmona, A. Gomez, and L. Castro, Femicide in Latin America in the Movement for Women's Human Rights, In R. Fregoso and C. Bejarano (Ed), 2010. P. 99.

²¹² Emblematic cases such as Rosa Elvira in Colombia and Chiara Paez in Argentina have been advocated after the cases in Ciudad Juarez and Guatemala. See more: A. Moloney, 'Colombia approves femicide law to tackle violence against women', Thomson Reuters Foundation, 4 June 2015, Available from: <http://www.trust.org/item/20150604161230-nexei/?source=jtOtherNews1> [accessed 29 July 2015] M. Sanchez, 'In 70 Argentine cities right now, protesters are saying 'no more' to killers of women'. Quartz, 3 June 2015, Available from: <http://qz.com/419010/in-70-argentine-cities-right-now-protesters-are-saying-no-more-to-killers-of-women/> [accessed 29 July 2015]

²¹³ R. Fregoso and C. Bejarano in Fregoso and C. Bejarano (Ed), 2010, p.12

²¹⁴ *ibidem*.

to food, shelter and work along with the right to a life free from violence and torture²¹⁵. Thirdly, these rights should not only take state-centered (criminal) forms, but instead alternative ‘community-based approaches for responding to human rights harms, especially ones that empower and involve those affected by femicide and disappearances to participate in deciding what to do about the wrong doing’²¹⁶.

This reflexive approach has been defined by years of transnational legal activism through different levels. I will now address how these conceptions were addressed by expert opinions in the cases of Gonzalez et. al v. Mexico- Cotton field case²¹⁷ and Veliz Franco et. al v. Guatemala²¹⁸ before the Inter American Court, where these feminists took the stand to reform the situation of Ciudad Juarez and Guatemala, but also tried to contest violence against women paradigm from their own perspectives.

2.2. The Cotton Field Case: feminicides in Ciudad Juarez, Mexico, from 1993 to 2005

Since the early 1990’s the bodies of women started appearing mutilated, tortured and often sexually abused in the peripheral zones of Ciudad Juarez, Mexico²¹⁹. Most of them represented a socially marginalized class in Ciudad Juarez- migrants, students and female workers- that came from different parts of Mexico to work at the garment industry settled in the border of Mexico and the US²²⁰. Narrowly estimated, the number of deaths from 1993 to 2005 has come from 450 bodies to thousands, therefore, civil organizations have

²¹⁵ *ibid.* p. 21.

²¹⁶ The authors quoted Law Commission of Canada, *From restorative justice to transformative Justice*, Ottawa, Canada, 1999, p. 29. Fregoso and C. Bejarano, in Fregoso and C. Bejarano (Ed), 2010, p. 21.

²¹⁷ IACtHR, Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205

²¹⁸ IACtHR, Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits and Reparations. Judgment of May 19, 2014. Series C No. 277 (Only in Spanish)

²¹⁹ B. Heiskanen, *Ni Una Mas, Not One More: Activist-Artistic Response to the Juarez Femicides*, Journalism, Media and Cultural Studies Journal, June, 2013, p. 1, Available at: http://www.academia.edu/4040111/_Ni_Una_M%C3%A1s_Not_One_More_Activist-Artistic_Response_to_the_Ju%C3%A1rez_Femicides_

²²⁰ *ibidem*.

tried to come with a consensus of a definite number²²¹. Their different legal and social actions to counteract the continuous murders have been framed by a struggle against the impunity of feminicides, which is focused in the inaction of judicial and administrative authorities in Ciudad Juarez.

The Cotton Field Case²²² is about the disappearance of three women in similar circumstances in Ciudad Juarez, whose bodies were found with signs of extreme violence in a desolated terrain known as *cotton field*. One of the most important documents for the judgment is Inter American Commission's report of these killings in Ciudad Juarez²²³, which contains a formal reduction of women's access to justice to the scope of official justice systems. This seems a logical step considering the limits of international law of human rights to the State's national sovereignty concept, however the expert opinions tried to subverted this assumption, considering other cultural and social dimensions where these violations of women's right to justice took place in the context of Ciudad Juarez.

In this regard, the expert opinion of D. Monarrez²²⁴ addresses some responsibility for these crimes to the local media and local governments, who established campaigns that represented the victims of feminicides as 'libertinas' (libertines) and their families as

²²¹ Although for the case a data base was built, see Annex 3. Categories of feminicides and assassinations of girls and women in Ciudad Juarez, Mexico, 1993-2005

²²² IACtHR., Case of González et al. ("Cotton Field") v. Mexico.

²²³ For the IACHR, 'the response of the authorities to these crimes has been markedly deficient. There are two aspects of this response that are especially relevant. On the one hand, the vast majority of the killings remain in impunity; approximately 20% have been the subject of prosecution and conviction. On the other hand, almost as soon as the rate of killings began to rise, some of the officials responsible for investigation and prosecution began employing a discourse that in effect blamed the victim for the crime. According to public statements of certain highly placed officials, the victims wore short skirts, went out dancing, were "easy" or were prostitutes. Reports document that the response of the relevant officials to the victims' family members ranged from indifference to hostility' IACHR, 'The situation of the Rights of Women in Ciudad Juarez, Mexico': The right to be free from violence'. March 7, 2003, OEA/Ser.L/V/II.117 Doc. 4, para. 4 available at: <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm> [accessed 29 July 2015]

²²⁴ D. Monarrez, Peritaje sobre Femicidio Sexual Sistemico en Ciudad Juarez, Caso 12.489, Gonzalez y otras v. Mexico.p. 10 . Available at: <http://www.corteidh.or.cr/docs/casos/expedientes/Mon%C3%A1rrez.pdf> [accessed 29 July 2015]

broken and poor, among other forms of social stigmatization that contributed to dehumanize victims of feminicides. She also establishes that these crimes affected the most to a vulnerable sector of the society, since the victims were young, ‘morenas’ (dark skin colour) female workers and girls, and all of them were economically marginalized²²⁵.

Her analysis of the context of Ciudad Juarez represents how these feminists resist the assumption that culture in private realms caused these killings, they instead relate their causes to the transformations of neoliberal globalization on Ciudad Juarez, where garment industry has replaced the state’s territoriality and violence and insecurity substituted the state’s sovereignty²²⁶. For her, the understanding of feminicides implies the context of a high level of social and economic inequality created by economic exploitation, on one hand, the promotion of enterprise and their exclusiveness on land tenure; and on the other, a considerable social oppression for the lack of healthcare, schools and shelters for the most of the border population. Among the failure of the public services, she also points out the rampant impunity of local justice systems, whose corruption has contributed to these crimes with fabrication of witnesses and lack of preventive measures for vulnerable women in risk zones in Ciudad Juarez.

Her analysis is complemented by another expert opinion of Marcela Lagarde y de los Rios²²⁷, who mentions different sets of measures that could have been taken under the Ley General de Mexico, that includes prompt alerts on feminicidal violence within coordination within federal, regional and local levels²²⁸. She also mentions several rights that were violated under the protection of the right to live free from violence in the case of feminicides that will be further developed in the analysis of the judgments.

²²⁵ *ibid.* p. 11.

²²⁶ *Ibid.* p. 13.

²²⁷ M. Lagarde y de los Rios, Peritaje rendido el 20 de abril de 2009, available at: <http://www.corteidh.or.cr/docs/casos/expedientes/Lira.pdf> [accessed 29 July 2015]

²²⁸ *ibid.* P. 12. See Annex 2. Table Violent deaths of women in Guatemala 2000-2006

2.3. Veliz Franco et al. v. Guatemala: femicides from 2001-2006

The case of Veliz Franco et al. v. Guatemala (2014) was possible after the international success of Cotton Field case (2009). It represents, as I said, a different gender justice approach from feminicides, since emphasizes in individual killings of women, primarily because they are women. As I said in the introduction, the case is about a 15-years old girl that disappears in Ciudad de Guatemala and, then, she is found dead with signs of extreme violence in a desolated field in Mixco, Guatemala. This case is accompanied by statistic evidence of violent deaths of women in the national territory of Guatemala since the year of 2001 to 2006. This case is also considered emblematic since Guatemala has registered more violent deaths of women than the rest of Latin American countries²²⁹.

The expert opinion by M. E Solis²³⁰ took distance of a concept of culture restricted at private spheres and analyzed this case in politic and public spaces, such as the justice systems of Guatemala. She denounced the gender bias of criminal investigation that tends to undermine crimes against women and girls in justice systems. She addresses from a gender-related approach the failures of compliance of criminal investigation standards in Guatemala, such as documentation and the analysis of the crimes scenes and the body, documentation of evidence and witnesses. She mentions that there is a lack of legitimacy of justice systems in Guatemala that has resulted in lynching and other informal ways to take justice in their own hands. Solis also mentions that legal measures are not enough, especially when there is a lack of resources to finance justice systems.

²²⁹ Central American Council of Human Rights, Ombudsman, I Regional Report: Situation and Analysis of Femicide in the Central American Region, San Jose, 2006, p 41

²³⁰ IACtHR, Intervención Perito Maria Eugenia Solis Garcia [01:10:29-01:20:05] Audiencia Pública, Caso Veliz Franco y Otros Vs. Guatemala, parte 1. [online video] May 15, 2013, available at: <http://vimeopro.com/corteidh/caso-veliz-franco-y-otros-vs-guatemala>

After intervention of the Judge Eduardo Ferrer Macgregor²³¹ asking on what basis a pattern of discrimination against women is alleged, Solis answers that in her study of files the criminal investigations, authorities tend to inquire into women and girls' sexual lives in the investigations and then stopped all procedures and state actions. Social stigmatization of women and girls is not only related to their sex but also to their conditions of poverty according to her study. This stigma weights to continue criminal investigation of these cases.

As it was argued, the expert opinion specifies that gender bias in official justice systems operation was the main cause of the impunity of femicides in Guatemala. However, it does not go in depth for other social and cultural structural conditions of the context of Ciudad de Guatemala or any particular setting that led to the occurrence of the killings of women at such a high rate. However, other academic work in femicides in Guatemala point out broader causes such as the civil war and post-civil war that Guatemala lived since 1970's until the 1990's. For D. Carey and M. Torres²³² a period called 'La Violencia' in Guatemala translated into a long history of acceptance of gendered violence and the military government's and the judiciary's role in normalizing misogyny.

For D. Weissmann, since the beginning of the civil war 'the military focused on subduing popular movements, especially labor union and worker's groups; and committed daily human rights violations to ensure control of economic resources on behalf of corporations such as the United Fruit Company'²³³. According this author, the causes of feminicides are a combination of past and present circumstances: the civil war atrocities that often targeted women and 'the expandable nature of the female maquila workers that contributes to current epidemic of femicide'²³⁴. The author considers parallel circumstances

²³¹ *ibid.* [01:49:01-01:55:41].

²³² D. Carey and M. Torres, Precursors to femicide, *Guatemalan Women in a Vortex of Violence*, Latin American Research Review, Vol. 45, no. 3, 2010, p. 143.

²³³ D. Weissmann in Fregoso and C. Bejarano (Ed), 2010, p.229

²³⁴ *ibid.* pp. 229-230

of economic transformation lived in Guatemala and Ciudad Juarez are embedded in the causes of these killings, the failure of formal governance structures that aim to protect and promote women at all levels of society and the conditions of poverty and inequality that dehumanize women as cheap labor. She criticizes how violence against women, as type of deviance, represents people as naturally violent. There are no natural circumstances in the causes of these events, in her words ‘the murders of women illustrate that the synthesis of abstract virtues such as free markets and efficiency with privatization and the abandonment of social-welfare programs results in despair and death’²³⁵.

3. Problems of translating culture and local justice

The problems defined in the first section of this chapter point out the conflicting relationship between culture, gender justice initiatives and neoliberal reforms on local justice systems. Therefore, in this final part of the analysis I would premise the specific realms where I find the problems that in this regard the translation of the Inter American Court’s judgments on feminicides and feminicides has into local justice systems in Guatemala and Mexico. The idea is to address this relation considering this previous development and assessing how far the IACtHR translation of the context into human rights ideas, recognizes and articulates alternatives to solve specific problems.

3.1. Strategic uses of patriarchal culture as root causes of women’s rights violations

When I was doing my legal internship at the Center for Justice and International Law (CEJIL) an organization that litigates in behalf of victims before the Inter American Court of Human Rights, we used to make jokes of whether the legal concepts by which we carefully supported the smallest details of any case really matter, since we all knew states will loose the case anyway. The violations of human rights that reach the IACtHR’s floor are so outrageous and serious, that none doubts that states will loose. The final decision is

²³⁵ *ibid.* p. 230.

not what matters, but rather the process and principles that are represented on the IACtHR's judgments.

Considering the problems further elaborated in chapter II, we will analyze in these judgments how the IACtHR's considers local and national cultures as the root causes of violations of women's rights. I will point out which arguments of the Inter American Court hold this position in both judgments and then come with my assessment of the Court's translation of culture.

3.1.1. Concept of a local traditional culture in the Cotton Field Case

In the Cotton Field Case the cultural understanding of the context of Ciudad Juarez is based almost only on evidence shared by international organizations of women's rights from the Global North-the CEDAW, Amnesty International, the IACHR²³⁶. The multiple and diverse opinions of universities, social organizations, political leaders and activists from Latin America that became part of this case through the figure of *amici curiae*- who also contributed with grassroots' evidence to the case- are not included in the translation.

The discussion on these reports is centered in the unknown number of bodies of the women's dead bodies found in Ciudad Juarez and the seriousness of the violence perpetrated against women since 1993 to 2005²³⁷. Due to the uncertainty about the number of bodies, the Court proceeds to consider these crimes were committed under three specific

²³⁶ Case of González et al. ("Cotton Field") v. Mexico, para.s 117-120

²³⁷ 'The Court takes note that there are no reliable assumptions about the number of murders and disappearances of women in Ciudad Juárez, and observes that, whatever the number, it is alarming. Over and above the numbers which, although significant, are not sufficient to understand the seriousness of the problem of violence experienced by some women in Ciudad Juárez, the arguments of the parties, together with the evidence they have provided, indicate a complex phenomenon, accepted by the State (supra para. 115), of violence against women since 1993, characterized by specific factors that this Court considers it important to highlight'. Ibid, para. 121.

patterns: common social and sex of the victims²³⁸, common method²³⁹ and a ‘gender-based violence cultural pattern’.

The state of Mexico admits there are violent killings against women in Ciudad Juarez since 1993 and its explanation of the causes weights in the rest of the IACtHR’s translation of culture. Based on a CEDAW’s report of these killings²⁴⁰, the State admits the victims were maquila workers and argues the change of roles of women in economy has not been accompanied by a change in traditionally patriarchal attitudes and mentalities. According to CEDAW, since maquilas prioritized working with women in Ciudad Juarez that also created a conflict with local traditions. Based on this argument, the State accepts a ‘culture of discrimination against all women’ is the cause of the problem²⁴¹.

After giving a significant space to the state’s explanation, the Court also considers the CEDAW’s report as evidence that the murders, kidnappings, disappearances and domestic violence are rooted in ‘the customs and mindsets’ of a culture of violence and discrimination²⁴². Additionally, the Tribunal considers the UN Rapporteur on violence against women that also referred to ‘the forces of change that challenge the very basis of machismo’ including the incorporation of women into the workforce, which gives them economic independence and offers new opportunities for education and training²⁴³.

²³⁸ According to the plaintiffs, were students or workers in the maquila industries or in stores or other local businesses, some of whom had only lived in Ciudad Juárez for a relatively short time. Additionally, according to the reports of the IACtHR and CEDAW the victims were all young women, including girls, women workers – especially those working in the maquilas – who are underprivileged, students or migrants. Ibid, para.s 122, 124

²³⁹ Ibid., para. 125, 126

²⁴⁰ CEDAW, 2005.

²⁴¹ Case of González et al. (“Cotton Field”) v. Mexico, para. 132

²⁴² ibid. para. 133.

²⁴³ Ibid. parra. 134.

3.1.2. National culture as essence in the Case of Veliz Franco et al. v. Guatemala

In this case, the Court was more open selecting the evidence- it already had the Cotton field precedent. In this case, the Court ordered *ex officio* reports of the CEDAW, the Commission for the Historical Clarification of Guatemala, statistic reports of the United Nations Development Program and the Guatemalan International Commission against Impunity in Guatemala among other state and international organizations' reports²⁴⁴.

In this case, the Court cautiously elaborates the context of these killings based on human rights reports by Amnesty International, the United Nations Development Program and the IACHR, as well as expert testimonies on behalf of the representatives of the victims. Data in those documents was fundamental to prove that from the year 2000 onwards in Guatemala i) there was a significant increase of women's homicides and ii) there was homicidal violence that affected proportionately more women than men. Thus, the Court concludes that the violent death and disappearance of Maria Isabel Veliz Franco²⁴⁵ occurred during this phenomenon of "homicidal violence against women" in Guatemala. This time, the Court considers the data in light of a long lasting post-conflict in Guatemala, based on national organizations that have documented murders of women and other kinds of gender-based violence during this time, which remain in impunity²⁴⁶. For the Court, the situation of impunity following the end of the armed conflict is reflected today in a culture of violence, which particularly affects women²⁴⁷.

Following this context and similarly to the analysis of the *Cotton Field* case, the IACtHR examined three more common factors in the killings of women in Guatemala. First, the victims shared some common characteristics, women that lived in marginal urban

²⁴⁴ IACtHR, Case of Veliz Franco et al. v. Guatemala, para. 53

²⁴⁵ *ibid.* parrs. 73-78

²⁴⁶ *ibid.* para. 68, 69, 81, 83 and 83.

²⁴⁷ *Ibid.* para 69.

areas²⁴⁸. Secondly, there is also a common method of killing them, which is preceded by sexual abuse and a disproportionate and extreme violence perpetrated against them²⁴⁹. Thirdly, despite the Court admits there must be other reasons for these killings, the Tribunal gives space to a declaration of state body, the Office of the Ombudsman, who states the existence of these killings is related to ‘the discrimination that is culturally-rooted in Guatemalan society and has been considered that this violence is inserted in the context of discrimination against women in Guatemala in different spheres’²⁵⁰. In the footnote of the declaration²⁵¹, the Court quotes other organizations of human rights, such as Amnesty International, that consider that ‘the patriarchal culture to be the specific cause [of the] phenomenon [of the violence] in Guatemala’²⁵².

There is not enough development about this factor that allows me to premise in which way the Court understands culture, rather than the statistic work and the assessment of few state bodies and international organizations. In this case the Court does not give the importance to a notion of culture as the structural cause of these killings as other factors, such as justice systems, but still incorporates a notion of culture as national essence and an obstacle of women’s rights.

3.1.3. Assessment of IACtHR’s translation of these events

The authority of the IACtHR to sanction states and establish among them a desirable behavior is not only given by its nature as a treaty body of the Inter American System. As an international human rights organization, its authority is also based on its translation of

²⁴⁸ The Court includes an assertion of Amnesty International that considered ‘[...] it was mainly in urban areas such as Guatemala City or Escuintla that this type of incident took place, and that the women victims generally lived in poor neighborhoods or were students’ Ibid. para. 78

²⁴⁹ ‘The “brutality of the violence used,” the presence of “signs of sexual abuse” on the corpses or their mutilation has also been indicated as “characteristic of many of the cases of the women victims of murder.” Also that “[m]any of [the] women were kidnapped and, in some cases, were retained for hours, or even days, before being murdered.” Expert witness Ana Carcedo Cabañas indicated that the “Guatemala Judiciary acknowledge[d] the existence of this disproportionate cruelty in the deaths of women.’. *ibid.*, para 78.

²⁵⁰ Ibid. para 80.

²⁵¹ *ibid.*, para. 80, footnote 87 of the judgment.

²⁵² Ibidem.

the events according to the values of a transnational community of human rights²⁵³, where local cultures are considered the root-cause of violations of women's rights. In both judgments, the Court strategically used notions of culture as static traditions or national essence in order to vindicate their membership to the transnational community that can punish and sanction local old-fashioned and dangerous ways of living. This is particularly strong in the Cotton Field Case, when the Court only selects abstracts of international organizations of the Global North that already have assessed the situation of Ciudad Juarez as a problem of traditional cultures. The numerous positions of organizations from Latin America, some of them at the grassroots level, were not included in the construction of the context, despite organizations from the Global North used their information.

Some silences of Court's translation are meaningful in regard to the analysis of previous chapters. In the Cotton Field Case, the Court dismisses the expert opinion of J. Monarrez about how these violations are taken in a public space instead of private and are a result of economic exploitation that particularly affects women. On the contrary, the Court weighs the UN rapporteur's general assessment that the incorporation of women into workforce has given 'economic independence and offers new opportunities'. There is not evidence of such an affirmation in regard with female maquila workers, but the Court's translation in this section is based more on a culturally constitutive role of international organizations²⁵⁴, the moral authority of modernity against undefined old traditions that attempt against women's safety. The cultural values of modernity, such as progress, development and civilization, seem to blind the Court in regard how these killings were perpetrated in a context of where women's economic exploitation has increased the insecurity of women and their dehumanization.

²⁵³ S. E. Merry, P. 89

²⁵⁴ *ibidem*

A similar situation can be analyzed of the paragraph 80 of the case of *Veliz Franco v. Guatemala*²⁵⁵, where a notion of culture as national essence is translated as a structural cause of the increased number of killings of women in the territory. The isolated reading of this assertion can lead to the consideration that femicides are taken place in the whole territory of Guatemala for a sort of national cultural belonging to exercise violence against women. It is hard to imagine what kind effects an affirmation as such, with the authority of an international court of human rights, can have out of the legal text and in the daily experiences of Guatemalans. For instance, a global actor interested in restricting the border between the US and Mexico, can generalize that Guatemalan or Latin American men are naturally violent since national culture determines a women's killing behavior in men.

Therefore, the uses of national or local static cultures related to violence are useful for political aims but they are arguably sustained in an empirical social analysis. In the judgments, they are used to translate human rights into context, which comprehends fair social demands-such as women's the right to justice in these killings cases- but also other interests from dominant actors- such as economic, social and cultural exclusion of migrants.

Furthermore, the Court overlooks the important social and cultural differences within the victims of Ciudad Juarez and Guatemala. In both cases, there is discrimination against women because some deviant patriarchal cultures against women. However, not all women are the victims of femicides, only social and economic underprivileged women. Cultures, women and men are conceived as essential entities in these judgments and states use these conceptions to justify their lack of commitment with human rights obligations.

²⁵⁵ 'It is also worth noting that the Office of the Ombudsman, a State body, has linked the existence of violent acts perpetrated against women in 2001 to "the discrimination that is culturally-rooted in Guatemalan society," and has considered that this violence is inserted in the context of discrimination against women in Guatemala in different spheres. The Coordinating Body for the Prevention, Punishment and Eradication of Family Violence and Violence against Women (CONAPREVI), another State agency, has made similar observations'. IACtHR. Case of *Veliz Franco et al. v. Guatemala*, para. 80

Based on notions of culture as tradition and national essence in Guatemala and Mexico, the Inter American Court reproduces and reaffirms the values of the transnational modernity behind its translation: autonomy, formal equality before the law and physical protection of the body. Culture as a cause of violations of women's rights justifies projects of human rights that are attached to trouble some conceptions of local justice systems in both judgments. I will address this issue in the next section.

3.2. Impunity of femicides/feminicides, from cultural causes to inefficiency of local justice systems

Based on the above notions of culture as a cause of these murders, both judgments focus on how violations of the rights to justice in these cases have been translated in violations of other rights, such as the rights to life and to physical integrity. Therefore, I will analyze how the Court articulates more comprehensive forms of women's safeguard according to specific context of impunity and whether it goes beyond the interest to physically protect their bodies and reform local justice. I will also analyze until what the extent the Court recognizes the fragmentary and legally plural local justice systems of the states of Guatemala and Mexico in order to guarantee women's rights. Considering these questions, in my analysis of the judgments I will focus on the strategies of the IACtHR to translate these ideas into the context of local justice of Mexico and Guatemala.

3.2.1. Cotton Field Case: Culture of gender-violence and impunity

Based on identifying a culture of violence against women as the cause and the context of these murders, the Court asserts that officials of the state of Chihuahua and Ciudad Juárez blamed victims for their fate based on gender prejudices²⁵⁶. The Court, then, argues

²⁵⁶ 'Evidence provided to the Court indicates, inter alia, that officials of the state of Chihuahua and the municipality of Juárez made light of the problem and even blamed the victims for their fate based on the way they dressed, the place they worked, their behavior, the fact that they were out alone, or a lack of parental care'. IACtHR, Case of González et al. ("Cotton Field") v. Mexico, para. 154

a relationship between a culture of gender violence and the impunity of these crimes as it follows:

Based on the foregoing, the Court concludes that, since 1993, there has been an increase in the murders of women, with at least 264 victims up until 2001, and 379 up to 2005. However, besides these figures, which the Tribunal notes are unreliable, it is a matter of concern that some of these crimes appear to have involved extreme levels of violence, including sexual violence and that, in general, they have been influenced, as the State has accepted, by a culture of gender-based discrimination which, according to various probative sources, has had an impact on both the motives and the method of the crimes, as well as on the response of the authorities. In this regard, the ineffective responses and the indifferent attitudes that have been documented in relation to the investigation of these crimes should be noted, since they appear to have permitted the perpetuation of the violence against women in Ciudad Juárez. The Court finds that, up until 2005, most of the crimes had not been resolved, and murders with characteristics of sexual violence present higher levels of impunity²⁵⁷.

Based on this conclusion, the Court proceeds to articulate different types of inaction of the state in the first 72 hours of disappearance of the three victims²⁵⁸, emphasizing that gender stereotypes of policemen caused the lack of action in the cases²⁵⁹. Interestingly, the following allegations on violence against women are not based on ‘evidence’ but rather institutional and state positions in this regard. The Court considers in order of importance first, the State’s recognition of such a situation in Juárez; secondly, the reports of the IACHR’s Rapporteur, CEDAW and Amnesty International indicating such murders are a manifestations of gender based violence, and thirdly, pointing out that the three victims were women and subjected to other kinds of aggressions, such as sexual violence, disappearance and abduction²⁶⁰.

Although the Court affirms these crimes occurred in a context of gender violence since 1993 and the lack of minimum action from policemen and justice systems during this period of time, the Tribunal disregards the possible participation of public officials in these killings, which was alluded by the representatives of the victims and the statement by J.

²⁵⁷ Ibid., para. 164 [emphasis added]

²⁵⁸ Ibid. para. 180

²⁵⁹ Ibid. para. 208.

²⁶⁰ Ibid. paras. 227- 231.

Monarrez²⁶¹. The Court considers that based on the evidence, it is not possible to know whether the perpetrators are public officers or private individuals ‘acting with their support and tolerance’²⁶². The Tribunal concludes that the lack of evidence does allow confirming state responsibility to respect the right to life, right to humane treatment and the right to personal liberty.

However, considering the Mexico’s recognition of a cultural context of gender violence in Ciudad Juarez, the Court proceeds to analyze whether the State took the necessary measures to find the victims alive according to the circumstances surrounding these cases. In this regard, the Tribunal finds that Mexico did not act promptly during the first hours and days following the reports of disappearances²⁶³.

The lack of evidence on the killings of the three women, leads the Court to focus only in what happened after they were reportedly disappeared, which is an assessment on the state’s criminal investigations: the irregularities in handling of evidence, the alleged fabrication of guilty parties, the delay of investigations and methods of proper research. The Court concludes that the state violated the right to justice and the right to effective judicial investigation, according to the following consideration:

[...]The foregoing allows the Court to conclude that impunity exists in the instant case and that the measures of domestic law adopted have been insufficient to deal with the serious human rights violations that occurred. The State did not prove that it had adopted the necessary norms

²⁶¹ Ibid. para. 242

²⁶² *ibidem*.

²⁶³ ‘The State did not act promptly during the first hours and days following the reports of the disappearances, losing valuable time. In the period between the reports and the discovery of the victims’ bodies, the State merely carried out formalities and took statements that, although important, lost their value when they failed to lead to specific search actions. In addition, the attitude of the officials towards the victims’ next of kin, suggesting that the missing persons’ reports should not be dealt with urgently and immediately, leads the Court to conclude reasonably that there were unjustified delays following the filing of these reports. The foregoing reveals that the State did not act with the required due diligence to prevent the death and abuse suffered by the victims adequately and did not act, as could reasonably be expected, in accordance with the circumstances of the case, to end their deprivation of liberty. This failure to comply with the obligation to guarantee is particularly serious owing to the context of which the State was aware – which placed women in a particularly vulnerable situation – and of the even greater obligations imposed in cases of violence against women by Article 7(b) of the Convention of Belém do Pará’. Para. 284

or implemented the required measures, in accordance with Article 2 of the American Convention and Article 7(c) of the Convention of Belém do Pará, that would have permitted the authorities to conduct an investigation with due diligence. This judicial ineffectiveness when dealing with individual cases of violence against women encourages an environment of impunity that facilitates and promotes the repetition of acts of violence in general and sends a message that violence against women is tolerated and accepted as part of daily life²⁶⁴.

Based on the lack of due diligence of the judiciary in the three cases, the Court recognizes that the complete failure of official justice systems sends a message that these crimes are allowed by the State and therefore, impunity is translated into continuous crimes. According to the Court, Mexico did not guarantee and adopt the necessary measures for the enjoyment of the right to life, right to humane treatment and the right to personal liberty, based on the Inter American Convention of Human Rights and the art. 7 of the Convention Belen do Para.

The Court only gives space to the voices of the victims to assess the psychological damage that has been inflicted on them due to the lack of proper response of the State through its judicial systems²⁶⁵. Additionally, the Tribunal finds the violation of the personal integrity of the victims, which until certain extent recognizes impunity as a condition of these crimes, which is an element of the notion of feminicides of the representatives of the victims²⁶⁶.

Finally, the Court declares a comprehensive set of measures of reparation, most of them destined to repair domestic policies, laws, protocols and institutions in compliance with violence against women's standards. Likewise, it urges Mexico to modernize justice systems through coordination and harmonization between local, state and national levels²⁶⁷

²⁶⁴ *ibid.* para, 284

²⁶⁵ Para.s 416-418.

²⁶⁶ '[...]the irregular and deficient actions of the state authorities when trying to discover the whereabouts of the victims after their disappearance had been reported; the lack of diligence in determining the identity of the remains, the circumstances and causes of the deaths; the delay in the return of the bodies; the absence of information on the evolution of the investigations, and the treatment accorded the next of kin during the whole process of seeking the truth has caused them great suffering and anguish.' Para.424.

²⁶⁷ Paras 498, 502 and 508

and creating electronic databases and centers of documentation of these murders. In regard to the coordination within levels of the state, the representatives of the victims slightly address state fragmentation pointing out the impossibility to transfer the cases from local jurisdiction to the Federal jurisdiction in detriment of their access to justice²⁶⁸. However, the Court dismisses the argument considering representatives did not support their request ‘with clear, pertinent and sufficient arguments concerning the problems of access to justice that could have arisen from domestic law applicable to the mechanism of transfer to the federal jurisdiction’²⁶⁹. The Tribunal also considered the representatives ‘did not provide arguments on the specific evidence about the policies designed by the State to resolve the problem in recent years’²⁷⁰. Therefore, it is not possible to assert what position the Court could had in relation these problems of state unity.

3.2.2. Veliz Franco et al. v. Guatemala: A gender-based approach for efficient local justice

According to the Court, the State has taken diverse measures considering that discrimination against women is ‘culturally-rooted in Guatemalan society’²⁷¹. However, the Court considers the problem remains considering the expert witness Maria Eugenia Solis’ opinion that only 9% of the gender-related crimes were investigated in Guatemala²⁷², which show a tendency of investigators of these cases to doubt the victims and to blame them for their lifestyle as well as a discriminatory bias to inquire these crimes²⁷³.

²⁶⁸ ‘The representatives indicated that a mechanism under national law is needed to facilitate and regulate the transfer of cases from the local jurisdiction to the Federal jurisdiction because, in this case, “one of the main problems that permitted and still permit violations of the human rights of the victims of violence against women and femicide is the impossibility for the Federation to intervene, review and, if applicable, rectify the irregularities and deficiencies in cases filed in the common jurisdiction.” They indicated that, even though the federal level created the Commission to Prevent and Eliminate Violence against the Women of Ciudad Juárez in 2004, it never had the legal authority to propose or to rectify the actions of the local jurisdiction officials’. Para 513.

²⁶⁹ Ibid. Para. 520

²⁷⁰ Ibidem

²⁷¹ IACtHR, Case of Veliz Franco et al. v. Guatemala, para. 81-83

²⁷² Ibid. para. 88

²⁷³ Ibid. para. 90.

Based on different documents and this expert opinion, the Court begins to point out the failures on every step taken in the investigation of Maria Isabel Veliz Franco. The Tribunal notes the state's inactions in the discovery, removal, identification and record of the corpse, lack of interviewing witnesses and examination of evidence, among further detailed state inactions in criminal investigation. The Court specially notes the changes in the investigators and prosecutors during almost 10 years, mislaid evidence and, again, aspects related to the allegations of gender discrimination in their investigations²⁷⁴.

The Tribunal considered girls like Maria Isabel are more vulnerable in contexts defined by gender violence; therefore examination of state responsibility in human rights violations should be stricter²⁷⁵. Similarly to the *Cotton field* case, the Court reiterated that in these contexts, Guatemala is obliged to thoroughly investigate cases of missing women from the moment that a legal complaint is lodged and presume the high risk that women could face violent deaths.²⁷⁶ Likewise, the Court did not find conclusive evidence that she remained deprived of liberty by state actors prior the moment at which she lost her life, therefore, finds no arguments connecting acts or omissions by the State to the violation of this right.

However, the Court considers the state knew the context of the increase in the number of the murders, followed by the reports of the IACHR²⁷⁷ that recommended

²⁷⁴ Ibid. para 118.

²⁷⁵ Ibid., para. 137 and ss.

²⁷⁶ The Court proceeds to the same examination, in which assesses: '(a) whether the State was, or should have been, aware of the situation of real and immediate danger of María Isabel Veliz Franco; (b) whether, being aware, it had a reasonable possibility of preventing or avoiding the perpetration of the crime and, if so, (c) whether it exercised due diligence with measures or actions to avoid the violation of the rights of this child whether the State was or should have been, aware of the situation of real and immediate danger'. Ibid, paras. 141- 142.

²⁷⁷ IACHR, Follow-up Report on the compliance by the State of Guatemala with the recommendations made by the Commission in the Fifth Report on the Situation of Human Rights in Guatemala, of December 18, 2002, para. 53. Cited in IACtHR, Case of Veliz Franco et al. v. Guatemala, para. 151.

Guatemala to be sensitive and take effective responses in regard to these continues crimes, which were not exceptional. The Court, then, asserts that the State was aware of the dangerous situation of Maria Isabel Franco from the context and there was a possibility that Maria Isabel was alive when her mother reported her disappearance to the authorities. Therefore, the Tribunal concludes that Guatemala violated its obligation to ensure the free and full exercise of the rights to life and to personal integrity²⁷⁸, in relation to the rights of the child²⁷⁹ and to the general obligation to ensure rights without discrimination and other state obligations in regard with violence against women²⁸⁰.

In this case, the Court directly uses the Convention of Belen do Para, considering the body was found with signs of extreme violence that indicate they were a gender-related crime²⁸¹. Therefore, despite there is a partial recognition of the State in regard of some failures of the investigation, the Court proceeds to establish some basic standards in the case of a crime against a girl. In this regard, the Court also defines an ideal of justice:

‘In light of this obligation, once the State authorities become aware of an incident, they should open a serious, impartial and effective investigation ex officio and immediately. This investigation should be conducted using all legal means available and be designed to determine the truth. The State’s obligation to investigate must be fulfilled diligently in order to avoid impunity and a repetition of this type of act. Thus, the Court recalls that impunity encourages the repetition of human rights violations’²⁸².

In a similar way of the Cotton Field case, the Court relates the lack of an ideal efficient investigation with the impunity of these crimes. Therefore, the Court proceeds to point out the standards of criminal investigations from a gender approach, considering the precedent of Gonzalez et al. v. Mexico, as other judgments that have tackled the rights of

²⁷⁸ Art. 4(1) and 5(1) of the American Convention

²⁷⁹ Art. 19 of the American Convention

²⁸⁰ Art. 1. of the American Convention and art. 7 (b) of the Convention of Belem do Para.

²⁸¹ IACtHR, Case of Veliz Franco et al. v. Guatemala, para. 151

²⁸² *ibid.* para. 183.

women in tangential manner²⁸³. The Tribunal considers the standards of irregularities following the discovery of the body of Maria Isabel, the subsequent actions of State officials (preservation of the crime scene, site inspection, removal of the body, chain of custody among others) failures to adopt precautionary measures for a suspect, discrimination and absence of gender- based investigation, and reasonable time for an investigation.

I will analyze only the element of discrimination and absence of gender-based investigation, which is related to the subject of this research. In this aspect, the Court approaches the concept of *women's equal access to justice*, in the sense it recognizes that the principle of equal and effective protection by the law implies i) the State must abstain from actions that are addressed at creating discrimination; ii) the State must adopt positive measures to reverse or change any discriminatory situation which exist in their societies that prejudice a specific group of individuals; iii) the state has a duty of protection that the State must exercise with regard to the acts and practices of third parties that maintain or encourage discriminatory situations²⁸⁴.

Based on these principles and other organizations of human rights- among which the Court mentions the European Court of Human Rights- the Court considers that gender-based violence²⁸⁵ is a form of discrimination against women and notes again the relationship between ineffectiveness of justice systems and impunity as it follows:

‘The Court reiterates that the ineffectiveness of the courts in individual cases of violence against women encourages an environment of impunity that facilitates and promotes the general repetition of such acts of violence and sends a message that violence against women can be tolerated and accepted, which encourages its perpetuation and society's acceptance of the phenomenon, the

²⁸³ Paras. 187 and ss.

²⁸⁴ Ibid. para. 206.

²⁸⁵ According to the Court is violence directed against a woman because she is a woman, or violence that affects women disproportionately. Para. 207.

perception and sensation of insecurity for women, and also their continued lack of confidence in the system for the administration of justice. This ineffectiveness or indifference is, in itself, discrimination against women in access to justice. Consequently, when there are specific indications or suspicions of gender-based violence, the failure of the authorities to investigate the possible discriminatory motives for an act of violence against a woman may constitute, in itself, a form of gender-based discrimination²⁸⁶.

In this regard, the Court mentions some failures already mentioned and amplifies the duties of the states for investigation of cases of gender-based murder of women and violence against women in general, such as the pertinent evidence to determine that sexual violence has occurred²⁸⁷.

Based on these considerations, the Court directly uses the Convention Belen do Para to determine that the investigation into the murder of Maria Isabel has not been conducted with gender perspective in keeping with the special obligations imposed by the Convention of Belen do Para, and therefore, the state violated the right to equal protection of the law²⁸⁸ in relation to the state obligation of non discrimination.

Interestingly, after this analysis, the Court changes the language in which considered the cause of these violations as a national culture and underlines that ‘gender-based violence against women is a historical, social and cultural problem that is deeply-rooted in Guatemalan society’²⁸⁹. In this sense, the Court amplifies the reasons of these killings from cultural to historic explanations, considering that in the context of Guatemala ‘during and after the armed conflict, women suffered specific forms of gender-based violence, while the perpetrators remained in total impunity due to the inability of the courts of justice to investigate, prosecute and punish those responsible, as appropriate’²⁹⁰.

²⁸⁶ Ibid. para. 207. [emphasis added]

²⁸⁷ Ibid. para. 210.

²⁸⁸ Art. 24 of the American Convention.

²⁸⁹ IACtHR, Case of Veliz Franco et al. v. Guatemala, para.223.

²⁹⁰ ibídem.

The Court considers that this investigation should have been conducted with a gender perspective, based on norms and protocols for investigating gender-based killings. On the contrary, the Tribunal considers there was a lack of due diligence and the investigations included actions of a discriminatory nature. Consequently, the Court concludes that ‘the domestic investigation has not ensured the access to justice of next of kin of María Isabel Veliz Franco’ which constitutes a violation of the rights to judicial guarantees and to judicial protection²⁹¹, and the rights to equality before the law²⁹².

Finally, the Court orders a comprehensive set of measures of reparation, which include the conduction of a gender- perspective investigation properly, and initiating the corresponding criminal proceedings, following specific lines of investigation in relation to sexual violence, ensuring victims can participate effectively in criminal proceedings. In regard to justice systems, the Court orders a package of modernization reforms that includes i) drawing up a plan to reinforce and allocate of adequate resources to the National Institute of Forensic Sciences of Guatemala (INACIF in Spanish) in order to expand its activities in the national territory²⁹³ ii) implementing the full functioning of the specialized jurisdictional organs and the special prosecutor’s office²⁹⁴; iii) implementing educational and training programs for state officials who are members of the Judiciary, the Public Prosecution Service, and the National Civil Police, and who are involved in the investigation of the murder of women²⁹⁵.

²⁹¹ Articles 8(1) and 25(1) of the American Convention

²⁹² Article 24 of the Convention, in relation to the general obligations contained in Articles 1(1) and 2 of the American Convention, and in Articles 7(b) and 7(c) of the Convention of Belém do Pará.

²⁹³ Ibid. para. 268

²⁹⁴ Ibid. para. 270

²⁹⁵ Ibid. para. 275

3.2.3. Assessment of the Court's translation on these judgments

As previously analyzed, Mexican and Guatemalan justice systems have been subjected to overlapping and discontinuous sovereignties, in which neoliberal reforms in Latin America are also responsible of the crisis ²⁹⁶. The contexts of feminicides/femicides show new forms of insecurity and violence, which allow the killings of women. The causes of these phenomena are still diverse according to literature, but in the context of the judgments transnational legal activism and the IACtHR judgments point out a failure of states to administrate justice in the most basic forms and in areas where globalization has intensified forms of violence against women.

In general, the two judgments of the Inter American Court comprise an intelligent and well-thought analysis on violence against women. Legally, both contain sophisticated and comprehensive considerations that other texts of women's rights have not articulated yet, for example, the conception of an equal access to justice, which considers specific conditions of discrimination experienced by women in Ciudad Juarez and Guatemala through justice systems. In this regard, the decisions are focused on the proper administration of justice systems, which must pursue objectivity, transparency, efficiency and independence criteria.

There are relevant differences in the Inter American Court's translation of the facts between the two judgments. In the Cotton Field case, the Court gave more weight to cultural explanations to order justice reforms in the State of Mexico. In this regard, it is important to recognize the Cotton Field Case takes the risk of recognizing the State's international responsibility for the actions of individuals. Therefore, the Court weighs the declarations of the State and general conclusions of CEDAW more than other kind of evidence in the context. In the Veliz Franco Case, the Court made an effort to be accurate of the facts of the context in regard to the multiple failures of justice systems. In this

²⁹⁶ R. Sieder, 2011, p. 173

judgment, the use of culture as the cause of these violations does not play a significant role, what it certainly does is the efficiency of justice systems, whose lack of gender perspective is translated in impunity of these crimes.

However, the IACtHR's translation of violence against women into context is restricted to tackle the killings of women in a structural manner, in the way it was explained in the previous chapter. Crimes against women are not uniquely a consequence from national or local cultures of discrimination against them, but from a complete withdraw of state protection on citizens, where extreme forms of globalization can take place and oppress particularly marginal groups.

According to the expert opinion of J. Monarrez and the report by Amnesty International²⁹⁷ the victims of feminicides in Ciudad Juarez and Guatemala were women living in marginal urban areas and border cities, women with low payment, domestic employees, sex workers, migrant workers, and former female members of youth gangs. The social class of the victims, their particular situation of poverty, was a matter of concern in these two documents that are part of the file of both cases. However, the Court overlooks this situation, which is barely mentioned in the final decisions and weakly linked to the causes of femicides.

In this regard, transnational legal activism is also responsible of the gaps of addressing the problem, since they did not sufficiently highlight them within a myriad legalist documents. This assessment shows how much potential transnational legal activism has in order to propose initiatives on the state performance before the Inter American stand, but this power also comes with a new burden to define precisely the state's and society's structural problems and to know specific complex solutions to address them.

²⁹⁷ Amnesty International, Guatemala: No Protection, no Justice: Killings of Women in Guatemala, 9 June 2005, AMR 34/017/2005, available at: <http://www.refworld.org/docid/45bf6e4d2.html> [accessed 28 July 2015]

I conclude that the translation of the Inter American Court behind these judgments offers the imaginary of unitary states, whose local justice systems failed due to the inefficiency of individuals, whose prejudices are rooted in static local/national cultures of violence against women. Therefore, the Court's measures for these problems are associated with the urgent modernization of the states, in founding and specialization of efficient and transparent justice administration. Therefore, the Court's translation weighs a hegemonic culture of women's access to justice to guarantee their rights. This conclusion has important consequences for the cases, since most of their causes are located in cultural, economic and social realms and most of the measures of reparation consist in the adoption of laws and documents. Certainly, the IACtHR's measures are insufficient to tackle the causes of femicides, but it certainly offers a political space for the assertion of women's rights and legitimacy to make issues a matter of transnational debate.

CONCLUSION

The current research on the translation of the Inter American Court of Human Rights' judgments on femicides into local justice provides more insights than mere analysis of the legal texts. In broader sense, my research gives me an approach on the implications to translate social concerns into human rights language. Although each chapter has a detailed conclusion, I would like to premise how this thesis offered me an important reflection in relation to the extents and limitations on human rights translations into particular contexts.

In this research, I acknowledge human rights translations are used as instruments of social change, which primarily aim to influence state decision-making at a transnational level. Although human rights translations represent how actors envision social changes, they are not the transformation itself. Human rights translations are embedded in the foundational idea of modernity and as such, contain different limitations to create the structural changes that they promise.

In this regard, I argued the problems of translating violence against women into particular contexts rely on its strategic uses of local cultures as obstacles of modernity, civilization, progress and enjoyment of women's rights. Thus, principles and normative assumptions of a transnational modernity are incorporated in violence against women's translation into contexts.

Some limitations of a translation in this regard should be highlighted in the context of this research. Violence against women is a state-centered human rights approach that tends to overlook how women's rights are created at the margins of state action within legally plural orders in Mexico and Guatemala. A state centered approach also entails

important limitations to understand new forms of violence against women where extreme globalization has taken place and has strengthened the fragmentation of state sovereignties.

This global situation brings additional problems for violence against women translations into particular contexts. The killings of women in Ciudad Juarez, Mexico and Guatemala are recognized in Latin American for a combination of global processes generally seen in our countries: lack of state compliance with labor rights, neoliberal state reforms and the withdraw of the state in protecting the most classic rights such as the right to justice. Neoliberal globalization has devastating human effects in these settings, since these cases represent the consequences of high levels of poverty and inequality, insecurity and the replacement of the state by organized crime. The occurrence of femicides in Mexico and Guatemala is explained as the result of these oppressive globalization processes over a specific group of women: low income workers, migrant women and students and through neoliberal reforms on justice that have weakened its functions.

Therefore, a state centered approach on human rights and the assumption of local cultures as obstacles of modernity are the most important problems of violence against women's translations into local contexts. Behind violence against women, transnational women's movements and global financial institutions compete and work together to define the role of local justice. In the context of Mexico and Guatemala, I explained violence against women has been translated into 'women's access to justice'. Important international human rights organizations have echoed this translation of violence against women in the cases of femicides, which also served as a platform to introduce neoliberal justice reforms according to the interests of the market and globalization. In these reforms, local cultures as obstacles of women's rights, modernity, civilization and progress, are strategically used in translation to put in practice neoliberal justice reforms in Mexico and Guatemala.

Since the Inter American Court's judgments on femicides mainly incorporates this sense of 'women's access to justice' over other possible gender justice approaches, I concluded the translation of judgments reinforce neoliberal justice reforms and globalization in these settings. This conclusion shows a paradox of translating violence against women as a right to access justice in cases of femicides: it is neoliberal transformation of states what caused the lack of protection of women from extreme globalization in these settings, but it is only through neoliberal justice reforms driven on transnational spaces that women can access to formal justice. At the end, although a further comprehensive study on the actions of transnational women's movements can expand the impacts of the IACtHR's judgments, I consider they mainly offer a tool for those in power. It is only being sensitive and taking action against the cruelty and uncivilized neoliberal exploitation of women in Ciudad Juarez and Guatemala as opposed to the most basic principles of modernity of human rights, that these judgments are able to scape their own limitations. However, this is not likely to happen when the judgments mainly reproduce neoliberal ideas of the state and local justice.

ANNEXES

Annex 1. Photos of ‘The redressing injustice installation’ by Irene Simmons. Las Cruces, Mexico, 2006²⁹⁸



²⁹⁸ Photos taken from Advocacy For the Women of Juarez, Redressing Injustice, A collaborative Art Installation, Available at: http://web.stanford.edu/dept/csre/EV_artExhibits.htm (Accessed 29 July 2015)

Annex 2. Photos of political empowerment of indigenous women in Zapatista Movement²⁹⁹



EZLN commander Esther.



Zapatistas march demanding women's and indigenous rights on International Women's Day, March 8, 2000.

JANET SCHWARTZ

²⁹⁹ Photo taken from A. Hernandez Castillo, 2002, pp. 39 and 41

Annex 3. Table 1. Categories of *feminicides* and assassinations of girls and women in Ciudad Juarez, Mexico, 1993-2005³⁰⁰

Category	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total Cases	%
Feminicides															
Intimate Feminicide ³⁰¹	8	5	7	7	10	8	7	13	10	16	16	5	14	126	28.5
Systematic Sexual Feminicide ³⁰²	9	7	20	22	17	17	7	9	15	6	7	6	8	150	33.9
Feminicide based on sexually stigmatized occupations ³⁰³	3	2	3	3	0	2	4	0	3	1	0	2	2	25	5.7
Assassinations															
Organized crime and narco-trafficking ³⁰⁴	1	1	5	4	4	2	1	8	4	5	0	3	3	41	9.3
Community violence ³⁰⁵	0	4	8	3	3	8	3	2	5	9	4	2	4	55	12.4
Negligence	0	0	2	0	1	0	0	1	2	1	1	0	1	9	2.0
Not specified	3	2	4	5	5	2	3	4	1	3	0	2	2	36	8.1
Total for year	24	21	49	44	40	39	25	37	40	41	28	20	34	442	100

³⁰⁰ Source: Elaboration by Julia Monarrez Fragoso from Femicides Database, 1993-2005. El Colegio de la Frontera Norte. C. Lopez, G. Caballero, C. Rodriguez, *Feminicide in Latin America in the Movement for Women's human rights*, in Fregoso and C. Bejarano (Ed), 2010, pp. 164-165

³⁰¹ This category includes infant and familial feminicide

³⁰² This includes organized and unorganized feminicide

³⁰³ Included are women working in nightclubs as waitresses, dancers and sex workers.

³⁰⁴ This category includes assassinations due to robbery or child or juvenile violence.

³⁰⁵ From information available, there is no evidence of premeditation, although it is possible that this presumption will be dismissed during the judicial process.

Annex 4. Table 2. Violent deaths of women in Guatemala 2000-2006³⁰⁶

Year	Assassinations of Women
2000	213
2001	302
2002	317
2003	409
2004	497
2005	624
2006 ³⁰⁷	590+
Total	2950

Source: National Civil Police, Guatemala City, 2006

³⁰⁶ Table 1. Taken from M. Trujillo, *Femicide and sexual violence in Guatemala* in Fregoso and C. Bejarano (Ed), 2010, p.128

³⁰⁷ As of November, 2006. This statistic is not a total, since women's corpses appear daily, and the compilation of statistics is delayed.

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ABSTRACT

This thesis aims to give further extents to Sally Engle Merry's work on the troublesome translation of violence against women into local contexts. To do so, problems of using this human rights idea into local justice are analyzed based on the comparative analysis of two judgments of the Inter American Court of Human Rights about the cases of killings and disappearances of women occurred in Guatemala and Ciudad Juarez, Mexico.

In the first part, this thesis explains that human rights translations into particular contexts consist in the asymmetries of power in which continuous creation of human rights takes place: a transnational modernity that lies across these translations. As a result, problems of translating violence against women are defined based on the strategic uses of culture as obstacles to women's rights, progress, civilization and modernity.

In the second part, the thesis delimits the context of these judgments based on economic globalization processes and neoliberal justice reforms implemented in Mexico and Guatemala. Here the thesis draws unequal forms of participation to translate violence against women into women's access to justice and explains the cases of femicides are a result of economic exploitation of women's labor and other forms of global oppression.

Based on a case study that compares Inter American Court's judgments on femicides with this context of women's access to justice, this thesis concludes that the Court's translation on violence against women privileges the interests of neoliberal justice reforms over the victims' demands on justice, since it does not address the structural causes of the violations of their rights. This thesis hopes to offer elements of discussion over the limitations of human rights translations into particular contexts and make a small contribution to a reflection over social realities, which human rights ideas aim to transform.

Key words: Violence against women, Culture, Neoliberal Justice Reforms, Inter American Court of Human Rights

ZUSAMMENFASSUNG

Diese Arbeit hat zum Ziel, weitere Ausführungen zu Sally Engle Merrys Arbeit über die schwierige Arbeit zur Übersetzung der Gewalt gegen Frauen im lokal Kontexten hinzuzufügen. Hierfür wurden Probleme, die diese Menschenrechtsidee in örtlicher Justiz benutzen, analysiert, basierend auf vergleichenden Analysen zweier Urteile des Interamerikanischen Gerichtshof für Menschenrechte über Fälle von Morde und Verschleppungen von Frauen in Guatemala und Ciudad Juarez, Mexiko.

Im ersten Teil erklärt diese Arbeit, dass die Übersetzungen von Menschenrechten in bestimmten Kontexten aus den Machtasymmetrien bestehen, in denen die kontinuierliche Schaffung von Menschenrechten stattfinden: eine transnationale Modernität, die über diesen Übersetzungen liegt. Dadurch werden Probleme der Übersetzungen von Gewalt gegen Frauen definiert, basierend auf der strategischen Verwendung von Kultur als Hindernisse für die Rechte der Frauen, Fortschritt, Zivilisation und Modernität.

Im zweiten Teil werden die Kontexte der beiden Urteile auf der Grundlage wirtschaftlicher Globalisierungsprozesse und neoliberaler Justizreformen in Mexiko und Guatemala beschrieben. Hier werden Schlüsse von ungleichen Formen von Beteiligung an der Übersetzung der Gewalt gegen Frauen zu deren Zugang zum Justizsystem gezogen und die Fälle von Frauenmord als Resultat wirtschaftlicher Ausbeutung der Frauenarbeit und anderer Formen globaler Unterdrückung erklärt.

Basierend auf der Fallstudie, die Urteile des Interamerikanischen Menschenrechtsgerichtshofs mit dem Kontext des Zugangs der Frauen zum Justizsystem vergleicht, kommt diese Arbeit zu dem Schluss, dass die Übersetzung des Gerichtshofs im Zusammenhang mit Gewalt gegen Frauen die Interessen neoliberaler Justizreformen über die Forderungen der Opfer auf Gerechtigkeit privilegiert, da er nicht die strukturellen Ursachen der Verletzung ihrer Rechte adressiert. Diese Arbeit wird als Anregung verstanden, neue Elemente zur Diskussion über die Beschränkungen der Übersetzungen von Menschenrechten in bestimmten Kontexten zu liefern und einen Beitrag zur Reflexion über gesellschaftliche Realitäten zu leisten, die die Ideen der Menschenrechte zu ändern abzielen.

Schlüsselwörter: Gewalt gegen Frauen, Kultur, Neoliberale Justizreformen

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