

Policy Brief



**STRATEGIC LITIGATION  
IN CASES OF GROSS HUMAN  
RIGHTS VIOLATIONS IN GUATEMALA:  
IMPACT AND LESSONS LEARNED**

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## Introduction

Strategic litigation is a key tool for the defence and promotion of human rights, especially in cases of international crimes. Through the selection of high-impact cases, or cases that demonstrate patterns of human rights violations against vulnerable populations, strategic litigation is part of an overall advocacy strategy designed to raise awareness of a particular issue, to advance the rights of disadvantaged groups, or to promote concrete policy changes. Strategic litigation seeks not only justice in the courtroom, but also to generate changes in legislation, public policies, and institutions. Strategic litigation deploys legal, political, and communication strategies to achieve its multifaceted objectives in favour of progressive social change.<sup>1</sup>

In the field of transitional justice, strategic litigation has served to respond to the demands for justice of victims of grave crimes such as genocide, extrajudicial executions, torture, enforced disappearances, sexual violence, and other violations amounting to war crimes and crimes against humanity. These crimes generally occur in contexts of dictatorships or armed conflicts in which power groups and military forces define political opponents and the civilian population who question the regime as “internal enemies,” who are then targeted and attacked.<sup>2</sup> These actions, which are in violation of domestic and/or international norms, are rarely investigated or prosecuted as judicial systems are often controlled by these same powerful groups, who often impose amnesty laws to guarantee impunity for perpetrators of gross human rights violations. Therefore, one of the first challenges of transitional justice is to build independent judicial institutions capable of investigating and prosecuting those responsible for past human rights violations.<sup>3</sup>

This Policy Brief analyses the impact of and lessons learned from the experience of strategic litigation in cases of serious human rights violations that occurred during Guatemala’s 36-year internal armed conflict (1960-1996), one of the bloodiest in Latin America. The Commission for Historical Clarification (CEH) determined that over 200,000 people were killed, 45,000 were forcibly disappeared, and over a million were internally displaced.<sup>4</sup> Eighty-three per cent of the victims were indigenous, leading to the United Nations to determine that acts of genocide had been committed, a determination that has been confirmed by international as well as Guatemalan courts.<sup>5</sup> These reflections are based on an analysis of the litigation strategies employed in emblematic human rights cases, including the author’s direct observation of the court proceedings and interviews with key stakeholders in Guatemala’s transitional justice process, and on the presentations of national and international experts who participated in the International Seminar on Strategic Litigation organised by Impunity Watch and Redress in Guatemala City on 27 and 28 August 2019.<sup>6</sup>

Since the signing of the peace agreements in 1996, Guatemalan courts have handed down 26 sentences in 21 cases of human rights violations that occurred during the internal armed conflict, including the Dos Erres massacre, the Maya Ixil genocide, the Spanish Embassy massacre, the Sepur Zarco sexual violence and sexual slavery case, and the crimes against Emma and Marco Antonio Molina Theissen. Nearly 70 military officials, soldiers, police officers and members of the civil defence patrols (PACs) have been sentenced for serious human rights violations. In addition, the Inter-American Court of Human Rights (IACtHR) has issued 14 judgments against the State of Guatemala for human rights violations that occurred during the armed conflict.<sup>7</sup> These rulings are the

result of the persistent struggle of the survivors and families of victims, human rights organisations, and independent prosecutors and judges who have laboured to guarantee victims' right to justice.

This document analyses the key elements of strategic litigation in three critical case studies —the Maya Ixil genocide case, the Sepur Zarco sexual violence and sexual slavery case, and the Molina Theissen case. Each of these cases represents a historic first in global justice efforts. The Maya Ixil genocide case marked the first time a former head of state was prosecuted for the crime of genocide in a domestic tribunal. The Sepur Zarco case was the first time that the crime of sexual slavery was prosecuted in a domestic court. The Molina Theissen case marks the first time the intellectual authors of wartime sexual violence were convicted, and it was also the first time the perpetrators of forced disappearance of a child were held accountable.

One key finding is that the survivors and families of victims play a central role in all phases of the legal process. Another is that strategic litigation has proven to be an effective tool not only for demanding the rights of victims to truth, justice, and reparations, but also as a means for revealing how the hegemonic structures of economic, political, and military power continue to operate in Guatemala, years after the formal end of the conflict. With this publication, Impunity Watch seeks to systematise best practices and lessons learned from the strategic litigation of emblematic cases, with the expectation that these lessons can be usefully applied by human rights advocates seeking justice for similar cases in different parts of the world.

The document is organised in four sections. The first section analyses the objectives and components of strategic litigation. The second section briefly describes the background to the Guatemalan experience of transitional justice, focusing on the key factors that made possible a transition from a situation of near-total impunity to the active prosecution of emblematic cases of grave human rights violations. The third section examines the three case studies of strategic litigation and discusses their impact. The final section outlines a series of lessons learned and best practices gleaned from the Guatemalan experience of transitional justice.

# 1. What is Strategic Litigation?

Strategic litigation is a method of social action that employs the law as a tool of social transformation. As a tool to advance a process of legal, social, and/or other policy change that goes beyond the immediate goals of the complainant, other forms of direct action, including advocacy initiatives, media campaigns, lobbying and public protests, usually accompany strategic litigation efforts. At its heart, strategic litigation entails the use of high profile or “emblematic” cases to promote broader structural change. This might include efforts to modify legislation, establish jurisprudence, change public policies, and promote public awareness of social problems or inequities; empower marginalised groups; and to generate a culture of human rights and strengthen the rule of law. One of many strategies advocates use in pursuit of social change, strategic litigation has been employed in many fields, including human rights, public health, land rights, and disability rights, among others.<sup>8</sup>

Case development and legal strategy is a critical component of strategic litigation, but a comprehensive, multi-stakeholder approach that incorporates analysis of the political context, develops a clear communications strategy, and incorporates specific mechanisms to ensure the emotional and physical safety of victims, is fundamental to strategic litigation. This highlights the importance of multidisciplinary collaboration between litigators and other stakeholders, including, among others, victims’ associations, community-based organisations, academics, researchers, journalists, donors and psychologists. It is also important to see strategic human rights litigation as a process, not a single legal intervention. Factors such as political context, victim participation, community support, and funding sources, can change over time, requiring adjustment of the original strategy.<sup>9</sup>

In transitional justice cases, strategic litigation seeks to clarify the facts surrounding specific

cases of wartime atrocities, hold perpetrators accountable, and provide comprehensive reparations for victims. At the same time, it seeks to transform the conditions that led to the violations so as to prevent such abuses from recurring in the future. In this sense, strategic litigation in transitional justice cases should contribute to expanding public understandings of the causes, patterns, and consequences of human rights violations and to promoting public policies, institutional reforms, and/or legislative changes to guarantee non-recurrence. Finally, strategic litigation seeks to empower the victims of violence through their direct participation in the process of justice. By demanding their rights as citizens to legal redress, strategic litigation aims to contribute to restoring their agency and their human dignity.<sup>10</sup>

Strategic litigation is one among an array of strategies and direct action taken by survivors, civil society organisations, lawyers, international allies, and others in seeking justice for wartime atrocities. Other actions may include efforts to secure legislation to create national programmes to search for and identify victims of enforced disappearance or to provide integral reparations to victims, public campaigns to demand the protection of and access to official archives that are critical to providing victims with information that is critical to their truth- and justice-seeking efforts, and commemorative practices to honour and remember the victims of the armed conflict, rebuild community relations, and promote alliances with victims from other sectors of society (students, trade unions, professional associations, religious groups, etc.) in the pursuit of truth, justice, reparations and non-repetition.

## Objectives

The main objectives of the strategic litigation are:

- Guarantee the right of victims to access justice. Strategic litigation affords victims access to legal redress by bring to trial those presumed to be responsible for the crimes, including the intellectual



authors, who often elude prosecution because of their political, economic and military power.

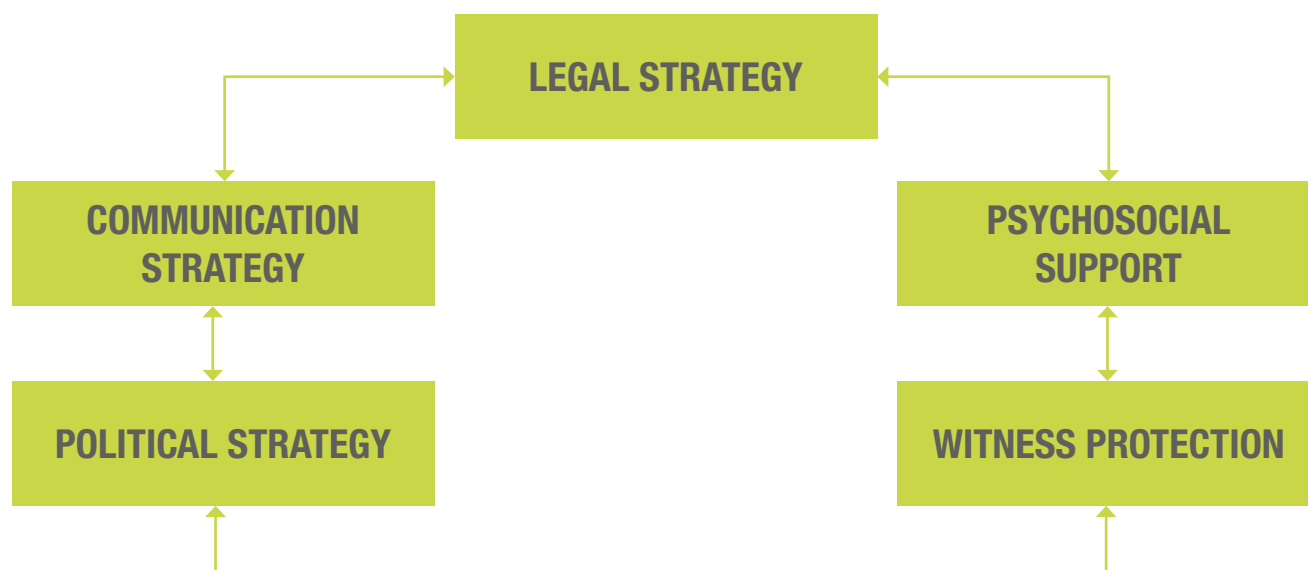
- Contribute to the empowerment of victims as agents of social change. Strategic litigation provides victims the legal and political tools needed to demand justice and transformative reparations that can contribute to changing the conditions of exclusion from citizenship rights and oppression that produced the violations.
- Strengthen the independence of the justice system and supporting institutions. Strategic litigation helps to identify the strengths and weaknesses of legal institutions so that legislative and institutional changes can be proposed to help overcome them.
- Promote awareness of the structural problems. Strategic litigations can reveal and contribute to the transformation of structural problems that form root causes of violence and led to the discrimination of and violations against vulnerable

groups. As such, it can encourage legal, institutional, and social reforms so that such abuses do not recur in the future.

## Components

The key components of the strategic litigation include a legal strategy, which involves documenting the crimes, formulating a formal denunciation, and building a legal case to sustain the criminal accusation; a political strategy, including power mapping and analysis to understand the broader context in which the litigation is occurring and to facilitate identification of allies and of possible sources of backlash; psychosocial support for victims through all phases of the process; a strategic communications plan; and mechanisms to guarantee the safety of victims and witnesses. An interdisciplinary team of professionals must work in a coordinated and collaborative manner in the implementation of these five components, which are set out in more detail, below.

**Graph 1: Components of strategic litigation**



**Legal strategy.** The construction of a viable legal strategy involves the identification of the alleged crimes; the collection of evidence, including victim and direct witness testimony, official documents, forensic and other physical evidence, and expert testimony; the development of the legal theory of the case; and the identification of the levels of responsibility of the alleged perpetrators. There is a debate as to whether strategic litigation cases should focus on those most responsible for the crimes (the intellectual authors, also known as “leadership cases”) as opposed to the material authors, or whether there should be an effort to prove the responsibility of both the material and intellectual authors. Guatemala has pursued the latter strategy, and in some instances convictions of material authors has provided the foundation for the later indictment and/or prosecution of the intellectual authors.<sup>11</sup>

As part of the legal strategy, it is necessary to identify the rights that have been violated; to stipulate the legal basis that underpins the claim or lawsuit, which includes doctrinal analysis, comparative law, and related jurisprudence from national and international courts; to weigh the evidence available in the claim; and to determine the substantive procedural actions to be undertaken. For cases involving the internal armed conflict and crimes perpetrated by the State and its agents, including the army, recovering evidence is challenging due to the time that has elapsed and ongoing official denial of access to information. For this reason, victim and witness testimony as well as expert reports can contribute significantly to reconstructing the crimes, the context in which they occurred, and to identifying those responsible.

Guatemalan legislation provides for the role of co-plaintiff (*querellante adhesivo*) to allow victims or others affected by a crime to participate in the criminal process. Victims’ organisations and human rights groups have used the role of co-plaintiff successfully in several transitional justice cases in Guatemala.

**Political strategy.** The objective of the political component of strategic litigation is two-fold. First, a political strategy must involve an ongoing analysis of the political context

to determine the opportunities for strategic litigation as well as potential challenges or obstacles, and to develop alliances to support the process. Especially in high-profile cases, litigation against powerful individuals or criminal structures is likely to promote backlash. As part of the political strategy, the partners in the strategic litigation should consider doing a power mapping exercise to identify potential allies, neutral parties, and potential sources of opposition.

Second, since strategic litigation aims to promote structural change, it is important to identify the specific goals that are being sought and mechanisms to help achieve them. Goals may be institutional in nature, for example seeking a change in public policies, in legislation, institutional reforms, etc. Alternatively, they may be focused on generating social awareness about specific inequities that require redress.

Key to the political strategy is the creation of public campaigns to raise awareness of the issues; seek out alliances and support from like-minded organisations nationally and internationally; and engage in advocacy efforts with key national and international political actors and institutions. Critical to the success of strategic litigation is the formation of alliances with like-minded groups at the local, national and international levels, including civil society organisations, international organisations, and the diplomatic support of foreign governments. These organisations lend support in a variety of ways: by participating in the hearings as trial monitors, accompaniers, or as members of the public; through the provision of psychological or security support; and by publicly demonstrating support for the case in the press, social media platforms or through symbolic acts of support, among others.

While all of the strategies are interrelated, the political and the communications strategies are especially closely connected. Developing clear messaging and an effective media strategy can help raise awareness and facilitate advocacy work in the political realm.

**Communication strategy.** In strategic litigation, it is key to position the case in public opinion so

that the population can understand the facts and stand in solidarity with the victims and survivors. In this sense, it is important to offer to the media clear and precise information about the legal process and the victims' demands. It is equally relevant to use social media and community media so that the desired message also reaches the communities affected by violence.

Legal issues are complex. Communication experts play a key role in helping to translate intricate legal concepts and processes into clear and accessible language. It might be desirable to produce short summaries of each hearing in concise lay terms for the public, that can be easily reproduced in a variety of media outlets and social media platforms. Designation of a handful of hashtags to help interested followers track the case on Twitter and Facebook, for example, may be an effective strategy.

Especially in contexts where public access to print media may be limited, it is worthwhile to consider developing alternative formats to deliver information, such as television and radio interviews, radio spots, podcasts, press conferences, among others. In countries such as Guatemala, where there are multiple languages, it is desirable to translate these informational campaigns as widely as possible. Direct broadcast of the trial through streaming or social media platforms is also highly desirable, offering the public an opportunity to see justice-making in process and generating interest in the case. It is also important to develop alliances with key media outlets so that they know who to contact with questions about the case, requests for interviews, access to legal documents, to counteract smear campaigns, and so on. Spokespersons may be designated to leverage strategic aspects of the case, and as a safety precaution for others involved in the proceedings.

**Psychosocial support for victims.** In the framework of strategic litigation, psychosocial services are essential and comprise a critical capacity-building tool to enable victims to address the trauma of the violations they suffered, and to be prepared to confront the lengthy process of pursuing justice. This involves psychological and social accompaniment for

the victims of the internal armed conflict, with the goal of contributing to their empowerment and autonomous capacity for participation in the strategic litigation process.<sup>12</sup>

This requires careful study of the cultural and social reality of victims so that these dimensions might be incorporated into the support strategy. This is especially the case for indigenous victims, who are embedded in local communities whose social fabric were torn apart by State-sponsored violence, requiring a focus on community as well as individual psychosocial support. In such cases it is also desirable to promote the creation of local support networks for direct victims and eyewitnesses who testifying in criminal cases.

Mental health support for victims of grave human rights violations must occur before, during and after the legal proceedings. It is also critical that these services are provided in the native languages of the victims. Self-care for the team providing psychological support and accompaniment is also fundamental.

**Security Measures.** A security strategy is necessary to guarantee the physical integrity of the victims, witnesses, experts, and other parties involved in the case, including the legal representatives of the victims, and the prosecutors, judges, lawyers and other justice operators. Security measures are also necessary to ensure the integrity of the material components of the case, including physical evidence, archives, and other documentary evidence. As has been the case in Guatemala, specialist organisations may be called upon to help ensure secure communications, protect data and case material, and ensure the security of local offices.

Even when the Attorney General's Office or the courts provide security measures and protocols, these are not foolproof and are often inadequate, requiring that the organisations supporting the victims develop their own procedures, strategies and protocols to ensure everyone's safety. These may include establishing safe locations for victims to stay during court hearings; guaranteeing safe transportation systems and routes; and accompaniment going into and out of the courtroom and during court



proceedings. Staff must be trained in safety measures and protocols before, during, and after the proceedings.

The presence of national and international trial observers and of international communications media should also be considered, as it sends a signal that the trial and its outcome is of concern to the broader national and international public, providing another level of security that should be considered while developing the security strategy.

## 2. The Guatemalan Transitional Justice Process

In 1996, under the aegis of the UN, the Government of Guatemala signed peace accords with the National Revolutionary Unity of Guatemala (URNG), ending a 36-year internal armed conflict. The peace accords included provisions for the reintegration of guerrilla combatants into political life, the demilitarisation of the Guatemalan State, and reforms to consolidate rule of law, construct a more inclusive economy, and end systemic racism against the indigenous population.<sup>13</sup>

The peace accords also called for the creation of the Commission for Historical Clarification (CEH) to investigate wartime human rights violations.<sup>14</sup> Between 1997 and 1999, the CEH visited 2,000 communities, interviewed 20,000 people, and took the testimonies of 7,338 victims. Its 1999 report, *Memory of Silence*, examined the historical and structural factors contributing to the violence, and determined that during Guatemala's armed conflict more than 200,000 people were killed, 45,000 were forcibly disappeared, and a million people were driven from their homes.<sup>15</sup> The CEH documented 626 massacres and determined that at least 400 villages were destroyed during State-sponsored counterinsurgency operations. The CEH also documented the extensive sexual violence suffered primarily by women during the armed conflict. According to the CEH, 93 per cent of abuses were committed by government forces,

three per cent by the guerrillas, and four per cent was undetermined. Four out of five victims were members of Guatemala's indigenous Maya groups, leading the CEH to conclude that the Guatemalan State had committed acts of genocide against Maya groups in five regions of the country between 1981 and 1983.

The CEH recommended criminal prosecutions of those most responsible for grave human rights violations during the internal armed conflict. As part of the peace process, Congress passed the Law of National Reconciliation (LNR) on 27 December 1996. This law overturned the 1986 self-amnesty law that shielded State agents implicated in human rights violations from criminal prosecution. The LNR allows for amnesty for political crimes, but it also includes a provision, Article 8, which explicitly prohibits amnesty for genocide, enforced disappearance, torture, and other international crimes.<sup>16</sup> However, for years, the amnesty provision was regularly applied to obstruct criminal investigations in wartime atrocity cases, leading human rights activists to criticise it as a mechanism of impunity.<sup>17</sup>

### Pathways to Justice

Despite institutionalised impunity and official denial, victims' associations and their allies in civil society persisted in their demands for accountability for wartime atrocities. They continued to document human rights violations, collect evidence, conduct exhumations, seek access to official documents.

A few investigations of high-profile cases, including the State-sponsored killings of anthropologist Myrna Mack in 1990 and Bishop Juan Gerardi in 1998, advanced to trial and, after long and harrowing processes, achieved convictions of the material and some of the intellectual authors of the crimes.<sup>18</sup> Prosecutions occurred in a few cases concerning massacres as well, including those at Xaman and Tululché.<sup>19</sup> However, in these cases, the defendants were foot soldiers or low-ranking officials, not the intellectual authors or the senior military officers who ordered and oversaw the crimes. Moreover, the investigations and criminal proceedings in these cases were rife with

procedural challenges, and the intimidation of victims, witnesses, judges and prosecutors was common, revealing the danger of pursuing justice in post-war Guatemala.<sup>20</sup>

In the face of the challenges of obtaining justice in Guatemalan courts, victims also began to press their claims for truth and justice before regional and international courts.<sup>21</sup> The Inter-American Court of Human Rights (IACtHR) has handed down at least 14 judgments condemning the State of Guatemala for wartime atrocities and demanding that the State fulfil its obligation to investigate, prosecute, and punish the perpetrators of grave human rights violations.<sup>22</sup>

Victims have also sought pathways to justice by filing charges in foreign courts.<sup>23</sup> In 1999, Nobel Peace Laureate Rigoberta Menchú filed genocide charges against the Guatemalan high command before the Spanish National Court based on the principle of universal jurisdiction.<sup>24</sup> In 2006, Judge Santiago Pedraz requested the extradition of the senior military officials named in the case, but the Guatemalan Constitutional Court rejected the request.<sup>25</sup> While this stymied the Court case in Spain, it also created pressure on Guatemala to pursue domestic prosecution in the genocide case.<sup>26</sup>

## International Support: Building Local Capacity to Fight Impunity

International support for building peace and strengthening the rule of law began in 1994 with the deployment of a UN peacekeeping mission in Guatemala, the United Nations Verification Mission in Guatemala (MINUGUA) (1994-2004). MINUGUA sought to help Guatemala build the conditions for sustained peace. Among its tasks was the implementation of reforms of the justice sector, including a transition to oral and public trials, training judges and magistrates in human rights and international law.

A new phase of international supported followed with the creation of the International Commission Against Impunity in Guatemala (CICIG) in 2007. The CICIG contributed to the creation of the high-risk court system;<sup>27</sup> vetting and the professionalisation of prosecutors and

support staff in the Attorney General's Office; and modernising the selection process for the Attorney General and magistrates, which was key for the appointment of independent professionals to the justice system, such as Claudia Paz y Paz, Guatemala's first female Attorney General, and chief of the Criminal Court of the Supreme Court of Justice, César Barrientos.<sup>28</sup> Of special importance for transitional justice cases, the Attorney General strengthened the Human Rights Prosecutor's Office and the Specialised Unit for Armed Conflict Cases, which had been created in 2005 with support from the UN Office of the High Commissioner for Human Rights (OHCHR) and the UN Development Programme (UNDP).

This increasing professionalism and modernisation strengthened the autonomy of both the Attorney General's Office and the Guatemalan judiciary. In this context, the synergistic relationship between local and global justice began to bear fruit. In 2009, the Attorney General's Office filed a ruling before the Criminal Chamber of the Guatemalan Supreme Court demanding the enforcement of the recent ruling of the IACtHR in the 1982 Dos Erres massacre case. The IACtHR found the State of Guatemala responsible for the killing of 200 civilians and ordered it to abstain from using amnesty laws, statutes of limitations, and similar mechanisms to prevent or obstruct the criminal prosecution of the alleged perpetrators.<sup>29</sup> The Criminal Chamber ruled in favour of the Attorney General's Office, establishing that Inter-American Court rulings are "self-enforcing"; that rulings issued by local courts cannot impede or obstruct their implementation; and ordering that all amnesty requests before the courts be denied.

By using an international ruling to push national cases forward, Guatemalan prosecutors contributed to the establishment of a legal framework that has created new opportunities for the prosecution of those responsible for serious human rights violations. In this context, Attorney General Paz y Paz made considerable progress in wartime atrocity cases. The Human Rights Prosecutor's Office developed a list of priority cases for investigation, focusing on three criteria: (1) cases in which the IACtHR

had determined the international responsibility of the Guatemalan State; (2) cases that illustrated a pattern of State-sponsored human rights violations; and (3) cases that allowed the prosecution of those most responsible for human rights violations. Paz y Paz established new protocols to guide investigations of wartime human rights violations,<sup>30</sup> including a specific protocol focusing on the investigation of sexual violence against women.<sup>31</sup> Prosecutors received special training in international human rights law and were encouraged to collaborate with civil society organisations and with survivors and families of victims to build their cases.

The Human Rights Prosecutor's Office convened a working group with victims' organisations to discuss these criteria and to select cases. Given the limited resources of the Human Rights Prosecutor's Office, ten cases were selected as priority cases.<sup>32</sup> Over the next decade, most of these cases were successfully prosecuted

and convictions were handed down. Courts have handed down convictions in a number of other cases as well, such as the Sepur Zarco sexual violence and sexual slavery case, while trials are pending in other cases such as the mass enforced disappearance case known as CREOMPAZ and the Maya Achi sexual violence case.<sup>33</sup> To date, Guatemalan courts have handed down 26 sentences in 21 cases of human rights violations during the internal armed conflict, convicting more than 70 individuals (Table 1).<sup>34</sup> These cases have produced a new jurisprudence, including establishing that enforced disappearance is a permanent crime; affirmation of the legal theory of command responsibility and of the inapplicability of amnesties for grave human rights violations; and the determination that sexual violence is a form of torture and constitutes a crime against humanity.

**TABLE 1. Convictions in Cases from the Internal Armed Conflict, 1993-2020**

CASE	Date of sentence	Convicted	Authorship	Crimes
Ixtahuacán	1993	2 military commissioners	Material	Murder
Myrna Mack 1st trial	1993	1 major sergeant	Material	Murder
Chorroaj Massacre	1996	1 PAC	Material	Murder
Colotenango	1998	11 PAC	Material	Murder
Rio Negro Massacre 1st trial	1999**	1 military commissioner, 2 PAC*	Material	Murder
Tululché Massacre	1999	1 military commissioner	Material	Murder
Nicholas Chapman Blake	2000	1 PAC	Material	Murder
Anabella Garniga Osorio	2001	1 military commissioner	Material	Murder
Monseñor Juan Gerardi	2001	1 colonel, 1 captain, 1 sergeant, 1 civilian	Intellectual Accomplice	Extrajudicial killing
Myrna Mack 2nd trial	2002	1 coronel**	Intellectual	Murder
Xamán Massacre	2004	1 sub lieutenant, 13 soldiers	Material	Forced disappearance, crimes against humanity
Rio Negro Massacre 2nd trial	2008	5 PAC	Material	Murder, Crimes against humanity

Choatalum	2009	1 military commissioner	Material	Forced disappearance
El Jute	2009	1 colonel, 3 military commissioners	Intellectual	Forced disappearance, Crimes against humanity
Edgar Fernando García 1st trial	2010	2 police agents	Material	Forced disappearance
Dos Erres Massacre 1st trial	2011	1 lieutenant, three Kaibil soldiers	Material	Murder, Crimes against humanity
Plan de Sanchez	2012	1 military commissioner, 4 PAC	Material	Murder, Crimes against humanity
Dos Erres 2nd trial	2012	1 Kaibil soldier	Material	Murder, Crimes against humanity
Edgar Enrique Sáenz Calito	2012	1 (former) chief of National Police	Intellectual	Forced disappearance, CAH
Edgar Paredes Cheguen Chiquimula	2013	1 military commissioner	Material	Forced disappearance, Crimes against humanity
Ixil Genocide	2013***	1 former head of state and army general	Intellectual	Genocide, Crimes against humanity
Edgar Fernando García 2nd trial	2013	1 colonel, 1 former chief of National Police	Intellectual	Forced disappearance, Crimes against humanity
Spanish Embassy Massacre	2015	1 former chief of National Police	Intellectual	Murder, Crimes against humanity
Sepur Zarco Sexual Violence/ Sexual Slavery	2016	1 lieutenant 1 military commissioner	Intellectual Material	Murder, Crimes against humanity, Forced disappearance
Molina Theissen	2018	2 generals (1 former army chief, 1 former chief of military intelligence), 2 colonels	Intellectual	Crimes against humanity, Aggravated Sexual Assault, Forced disappearance
Las Dos Erres 3rd trial	2018	1 Kaibil soldier	Material	Crimes against humanity

Source: Table developed by author and Impunity Watch, based on legal judgments.

\* PAC=Civil Defense Patrol. \*\* The convicted official escaped and remains a fugitive of justice. \*\*\* Sentence was overturned.

The next section will explore three emblematic cases of strategic litigation: the Maya Ixil genocide case, the Sepur Zarco sexual violence and sexual slavery case, and the Molina Theissen case, which centered on the arbitrary detention, torture, and sexual violence of Emma Molina Theissen and the enforced disappearance of her 14-year-old brother.

### 3. Case of Studies of Strategic Litigation

#### The Maya Ixil Genocide Case

**The verdict.** On 10 May 2013, High Risk Court “A,” presided by Judge Yassmín Barrios

alongside judges Pablo Xitumul and Patricia Bustamante, found retired general and former de facto president of Guatemala Efraín Ríos Montt (1982-1983) guilty of genocide and crimes against humanity against the Maya Ixil population and sentenced him to 80 years in prison.<sup>35</sup> Retired general Mauricio Rodríguez Sánchez, the head of military intelligence under Ríos Montt, was acquitted. The judgment against Ríos Montt came 30 years after the crimes and more than a decade after the Association for Justice and Reconciliation (AJR), an association of 22 communities in five regions affected by government violence during the 36-year internal armed conflict, and the Center for Human Rights Legal Action (CALDH) first brought a complaint to the Attorney General’s Office in 2000.<sup>36</sup>

For years, the former dictator Ríos Montt enjoyed parliamentary immunity and could not be prosecuted. But when his congressional mandate ended on 14 January 2012,<sup>37</sup> Attorney General Paz y Paz issued the indictment against Ríos Montt on charges of genocide and crimes against humanity against the Maya Ixil population.<sup>38</sup> Paz y Paz had long worked in human rights organisations and upon assuming her new position as head of the Attorney General's Office promised to prioritise the prosecution of wartime atrocity cases. This political will, along with the long-standing determination of the victims and national and international human rights organisations, were key to the success of this case.

The judgment was hailed internationally as an historic victory for Guatemala and for global justice. It marked the first time a former head of State was prosecuted in a domestic court for the crime of genocide, and the first time that Guatemala was holding a former head of State accountable for grave human rights violations. The Ixil genocide trial and verdict were especially significant for Guatemala's historically marginalised and excluded indigenous populations, as it acknowledged that the genocide was not the result of "bad apples" but was official State policy. By holding a former head of State responsible for crimes committed on his order and demonstrating that these were crimes attributable to the State, rather than 'excesses' committed by individual soldiers or rogue military units, the Ríos Montt verdict struck at the heart of the institutionalised impunity that surrounded grave crimes cases in Guatemala.

**Building the case.** The Ixil genocide case was the first to successfully use strategic litigation in Guatemalan courts. The case was constructed collaboratively by government prosecutors, the legal representatives of the victims, the victims themselves who participated as co-plaintiffs in the case, and a team of researchers. The core of the case were the direct testimonies of 100 Ixil survivors, who testified about the atrocities they, their families, and their communities endured. Ten courageous women who were victims of sexual violence also gave wrenching testimony

about the multiple rapes they endured at the hands of soldiers.<sup>39</sup>

Supporting evidence included physical evidence resulting from exhumations in the Ixil region that demonstrated a pattern of mass executions; official military documents, some of which were obtained through strategic litigation by CALDH; and 26 reports from national and international experts addressing a variety of topics, including the army's scorched earth policies and the mass forced displacement of the Ixil population; the Guatemalan army's deployment of sexual violence as a weapon of war; and the historic racism that informed these genocidal policies. For the victims, the guilty verdict represented both an acknowledgment of the grave abuses suffered at the hands of the State and a recognition of their rights as citizens to legal and moral repair.<sup>40</sup>

The plaintiffs conducted extensive and ongoing analyses of the political context before, during and after the proceedings. The Ríos Montt trial took place shortly after retired general Otto Pérez Molina was elected president. Pérez Molina, who had been a commander in the Ixil region during the Ríos Montt government, asserted publicly that no genocide had occurred in Guatemala, setting the stage for a contentious public battle over the legitimacy of the genocide proceedings.<sup>41</sup> Conservative politicians and pro-military groups challenged the legitimacy of the trial, accused participants of being guerrilla sympathisers and using the justice system to exact revenge on the military, and launched intimidation campaigns against victims, witnesses and judicial operators.

Plaintiffs developed alliances at the local, national and international levels to counteract these smear campaigns, focusing on the legal case and the right of the victims to access justice and reparations. To offset negative mainstream media campaigns, the plaintiffs developed alternative means of communication; they live-streamed the proceedings via an independent platform; they published daily summaries of the proceedings; and they developed a dense network of allies in the national and international media to publish accurate information about the



proceedings. International observers were a constant presence in the courtroom, including diplomats from the United States, Argentina and the European Union. CALDH also worked closely with the Attorney General's Office and national and local accompaniers, adopting strict security protocols to ensure the security of the victims and witnesses.

### **Backlash and the undoing of the verdict.**

On 20 May 2013, ten days after the verdict was handed down, the Constitutional Court (CC), under intense pressure by the military and business elites,<sup>42</sup> ruled to partially suspend the genocide proceedings arguing “procedural violations,” effectively undoing the Ríos Montt conviction.<sup>43</sup> Ríos Montt was released from custody, though he remained under house arrest. Rodríguez Sánchez, who had been freed, was returned to a military hospital.

The undoing of the genocide verdict revealed profound vulnerabilities within Guatemala's justice sector and the ability of *de facto* powers to circumscribe transitional justice efforts. Survivors and families of the victims who celebrated the verdict now felt vulnerable, and some feared for their physical safety. The plaintiffs developed local mechanisms to support those who had testified in the trial and continued to work with victims to prepare them for an eventual retrial.

Victims and their civil society allies continue to uphold the 10 May 2013 verdict as legitimate.<sup>44</sup> They argue that while their legal victory had been denied them, the trial court judgment still represents an historic and symbolic victory for Guatemala's indigenous people and for all victims of the internal armed conflict. They translated the judgment into Ixil and held several ceremonies in the Ixil region to reinforce their symbolic victory over impunity. As Juan Francisco Soto, executive director of CALDH, stated: “We demonstrated in a court of law that there was genocide in Guatemala. The verdict was vacated, but this was done using procedural arguments—questionable ones at that—rather than substantive ones.”<sup>45</sup>

**The retrial.** After several false starts, the retrial started in 2017, but the defendants would be

prosecuted separately, since Ríos Montt had been declared mentally unfit and the proceedings against him continued behind closed doors and without the defendant present. While their faith in the justice system had been undermined with the Constitutional Court ruling, victims decided to participate in the retrial, revealing their belief in the importance of criminal justice and accountability. One of the most important moments in the retrial came when the court traveled to Nebaj to take victim testimony in the Ixil region, where the crimes were committed.<sup>46</sup>

Ríos Montt died in April 2018, in the midst of the retrial against him.<sup>47</sup> In September 2018, High Risk Court “B” unanimously found that the Guatemalan Army committed genocide against the Ixil population, but in a split 2-1 decision, acquitted Rodríguez Sánchez of criminal responsibility.<sup>48</sup> The victims were upset at the acquittal, but also recognised that their testimonies helped prove, for a second time, that the Guatemalan army committed genocide. At an assembly of the AJR, Edwin Canil told the 150 plus members in attendance: “We have come a long way since 2000. We are not accusing soldiers; we are accusing the highest military authorities. We cannot give up. We have to take from this a renewed commitment to continue the struggle for justice.”<sup>49</sup> The faces in the room nodded in agreement, revealing the tenacity of the Guatemalan victims' movement, which remains steadfast in its pursuit of justice.

Currently, there are two ongoing proceedings focusing on new genocide charges against senior military officials. Retired general and former army chief Benedicto Lucas García and two other senior officials face charges of genocide and crimes against humanity against the Maya Ixil population between 1978 and 1982.<sup>50</sup> Another trial is pending against Ríos Montt's chief of military operations, retired general Luis Enrique Mendoza García, for the crimes of genocide and crimes against humanity against the Maya Ixil.<sup>51</sup>

## The Sepur Zarco sexual violence and sexual slavery case

**The verdict.** On 26 February 2016, High Risk Court “A,” presided by Judge Yassmín Barrios alongside judges Patricia Isabel Bustamente and Herbis Sical, found two military officials guilty in the Sepur Zarco sexual violence and sexual slavery case. The court sentenced retired Lieutenant Colonel Esteelmer Reyes Girón and Heriberto Váldez “El Canche” Asig to 30 years in prison for crimes against humanity, including sexual violence, sexual and domestic servitude, and humiliating and degrading treatment, against 15 Q’eqchi’ women from Sepur Zarco.<sup>52</sup> Reyes Girón, who was the commander of the military detachment in the community of Sepur Zarco, was sentenced to an additional 90 years for the murder of Dominga Coc and her daughters Anita and Hermelinda. Váldez Asig, who was a military commissioner in the area, was convicted on seven counts of enforced disappearance, elevating his sentence to 240 years. The verdict was ratified in 2017.<sup>53</sup>

The Sepur Zarco verdict was widely hailed as a landmark judgment with global significance for the struggle to end violence against women, past and present.<sup>54</sup> The verdict is the result of the resistance, resilience, and courage of the Q’eqchi’ women who decided to pursue justice despite numerous challenges. They achieved a judgment that not only convicted the perpetrators but that also included a comprehensive reparations programme that seeks to redress the immediate harm done to victims and their families and to change the underlying structural conditions that led to these systemic human rights violations in the first place.

**Building the case.** The Sepur Zarco case was the result of an alliance between the Jalok U Collective, composed of the Q’eqchi’ women survivors, and the Alliance to Break the Silence and Impunity, comprised of three Guatemalan civil society organisations —Women Transforming the World (MTM), the National Union of Guatemalan Women (UNAMG), and the Community Studies and Psychosocial Action Team (ECAP). Together, these organisations built a comprehensive, multi-disciplinary

litigation strategy that sought to establish a legal precedent that facilitates official and public acknowledgement of the Guatemalan army’s use of rape as a weapon of war and sexual and domestic slavery as mechanisms of social control. They also sought the implementation of public policies and legislation to prevent sexual violence against women in war and peacetime.<sup>55</sup> The proceedings also demonstrated a pattern seen elsewhere, in which private interests (in this case, local landowners), marshalled the support of the military to eliminate indigenous community leaders who demanding that the return of their historic land.

Critical to the success of the Sepur Zarco case was the long-term work of the Alliance member organisations with the women-survivors, their families, and the local community. The Alliance organisations began working with the women of Sepur Zarco in the early 2000s. Many of the women-survivors did not speak about what had happened to them with each other, let alone with their families or others in their community. The Alliance member organisations provided psychosocial support and worked with the broader community to help overcome the stigma and fear associated with sexual violence. This was a first step to “breaking the silence” that often surrounds sexual violence.<sup>56</sup>

The Alliance also helped the women survivors understand their right to legal redress. In March 2010, the Alliance and other feminist groups organised the first Tribunal of Conscience on Sexual Violence Against Women during the Internal Armed Conflict. Indigenous women from Sepur Zarco and other regions of the country publicly testified about the systematic sexual violence they endured at the hands of the military during the internal armed conflict.<sup>57</sup> Alliance members point to this event as a watershed moment that showed the women-survivors of Sepur Zarco the power of testimony both for individual transformation and for broader societal change. It also strengthened their resolve to pursue justice in their case in a court of law.<sup>58</sup> In September 2011, the Alliance filed a complaint on behalf of the women-survivors at a court in Puerto Barrios, Izabal.<sup>59</sup> As the case moved through the Guatemalan legal system, the women survivors established the *Jalok*

*U* Collective—which means “transformation” in Q’eqchi’—and petitioned to be co-plaintiffs in the case. They were now participating not merely as victims giving testimony, but as citizens exercising their right to legal redress.

As the trial got underway on 1 February 2016, the Alliance and the Jalok *U* Collective developed a sophisticated communications strategy that had as a core objective advancing the idea that sexual violence in war or in peacetime was unacceptable and that the State should advance specific policies toward eliminating violence against women. Towards that end, they engaged local and international media, children and youth, and conducted outreach with victims of sexual violence from other regions of the country. Overall, media coverage was positive. However, some media outlets sought to frame the case as “ideologically motivated” and to discredit the participants as motivated by financial gain. Throughout the course of the trial, the Foundation against Terrorism, the Daughters of Guatemala Movement, and other pro-military figures spread the idea that the trial was being used to fuel hatred of elderly members of the military who were being “unjustly” prosecuted.<sup>60</sup> The plaintiffs countered such narratives with clear and consistent messaging that focus on the idea that sexual violence is an abhorrent practice and can never be part of official State policy.

The Alliance pursued an expansive outreach campaign and enlisted the support and solidarity of like-minded groups nationally and internationally. Dozens of women survivors of wartime sexual violence from other regions of the country participated as observers of the Sepur Zarco trial day in expression of solidarity with the grandmothers of Sepur Zarco. Diplomats and other international dignitaries attended the trial, including then U.S. Ambassador Todd Robinson and Nobel Peace Laureates Rigoberta Menchú and Jody Williams. High-school children also attended several hearings, each holding a single red carnation and handmade signs that read “#WeAreAllSepurZarco” (#*TodosSomosSepurZarco*). National and international observers monitored and reported on the trial, providing a dense web of civil society support that revealed the significance of these

proceedings for a broad public in Guatemala and beyond.<sup>61</sup>

The trial set other important precedents for protecting survivors, especially in sexual violence cases. In order to avoid revictimising the women-survivors, the pretrial judge video-recorded their testimonies during evidentiary hearings in 2012 and accepted them as evidence. The court acceded to the plaintiffs’ request that these testimonies be broadcast into the courtroom during the public trial, so that the women would not have to repeat their testimonies and to help prevent their revictimisation. The court also allowed the women to cover their faces with their iconic shawls to grant them an additional layer of protection from media coverage and from the defendants and their supporters.

As in the genocide case, key to the legal success of the case was direct victim testimony, which was complemented with expert reports that helped support the case. The court heard more than 150 hours of testimony, including the harrowing testimonies of the 15 Q’eqchi’ women survivors and co-plaintiffs, as well as 16 men from the community. Other witnesses included a former soldier who had been based at Sepur Zarco, an ex-military commissioner, and three former civil patrolmen. More than a dozen expert witnesses also testified, offering important contextual information about the nature of the military’s counter-insurgency strategy, the history of land conflict in Sepur Zarco and the surrounding area, and the use of rape as a weapon of war.<sup>62</sup> One unique aspect of this trial was the presentation of the human remains of the 51 men whose bodies were exhumed in 2012. Because of humidity and other factors, only seven were positively identified, including Sebastian Coc, the husband of Rosa Tiul, one of the survivors and co-plaintiff to the case.<sup>63</sup>

**Impact of the verdict.** The Sepur Zarco charted a litigation methodology for cases of sexual violence against women, demonstrating that it is possible for survivors of sexual violence to pursue justice and to participate on their own terms in the judicial process. The women survivors of Sepur Zarco transcended the category of victim, as they became co-plaintiffs in the prosecution of the defendants. Their pursuit of a legal

remedy for the harms suffered also affirmed their role as Guatemalan citizens, a role long denied to them as indigenous women. The case also forged critical alliances between feminist, human rights, and victims organisations, setting an example of collaborative engagement for future cases. The active efforts to involve youth in the process helped create inter-generational connections and new forms of understanding and communication about past violence and the need to challenge a culture of impunity for sexual and gender-based violence, past and present.

The Sepur Zarco case also set important precedents in the use of evidence, the validity of victims' testimonies, and the innovative use of expert witness reports, which helped counteract the continued refusal of the Guatemalan State to provide access to official documents, and helped prove the criminal responsibility of the defendants in this case. The verdict was widely discussed in the national and international press, and helped challenge the use and normalisation of sexual violence against women in war and in peacetime. The verdict also paved the way for the investigation and criminal prosecution of other cases of sexual violence crimes committed during the internal armed conflict in Guatemala. As will be discussed below, in 2018, four officials were convicted of aggravated sexual assault in another conflict-era case, the Molina Theissen case, and criminal proceedings are pending against at least four PAC members in the Maya Achi sexual violence case.<sup>64</sup>

In addition, the reparations measures ordered by the court offers a compelling model for responding to mass atrocity crimes in an integral and meaningful way. The reparations ordered by the court address the violations of bodily integrity suffered by the women-survivors and other members of the community, as well as the structural conditions that contributed to their condition of extreme vulnerability. The court ordered the defendants to pay reparations to the victims in the case, and it directed the authorities to continue the search for victims of enforced disappearance in Sepur Zarco. Most critically, the court enjoined the government to address the conflict at the heart of the case by reopening the community's claim for land restitution, and

mandated specific improvements in education and health care in the community, especially for girls and women. In an effort to address the imperative on non-recurrence, the court issued a series of orders, including educating the military on women's human rights, passing legislation to prevent sexual and gender based violence, and translating the Sepur Zarco judgment into all 24 Mayan languages.

## The Molina Theissen Case

**The verdict.** On 23 May 2018, High Risk Court "C," with Judge Pablo Xitumul presiding, alongside judges Eva Recinos Vásquez and Elvis Hernández Domínguez, handed down a unanimous conviction against four senior military officials in the Molina Theissen case. Among those convicted were powerful military figures, including retired army brigadier generals Benedicto Lucas García and Manuel Callejas y Callejas, former chief of the general staff of the Guatemalan army and former chief of military intelligence, respectively. The court found all four officials guilty of crimes against humanity for the illegal capture, torture and rape of Emma Molina Theissen and sentenced them to 25 years in prison. The court sentenced the same four men to an additional eight years for the crime of aggravated sexual assault against Emma. Lucas García, Callejas y Callejas, and one other official were sentenced to an additional 25 years for the enforced disappearance of Emma's 14-year-old brother, Marco Antonio Molina Theissen, who remains disappeared to this day. One official was acquitted of all charges.<sup>65</sup>

Emma Molina Theissen was 21 years of age when she was detained at a military checkpoint on 27 September 1981. She was a militant of the Patriotic Worker Youth (JPT). Soldiers found party documents she had been charged with delivering to her comrades and brought her to the military base in Quetzaltenango, where she was subjected to torture and was repeatedly raped in an effort to get her to provide the names and locations of her comrades. Emma managed to escape from the military base on 5 October, and made it to safety and eventually left the country, and has lived in exile ever since. The following day, military intelligence officers



set out to recapture her, but did not find her, instead kidnapping and forcibly disappearing her 14-year-old brother Marco Antonio.

The Molina Theissen verdict was widely applauded as a major breakthrough in criminal accountability for holding responsible the intellectual authors of serious international crimes. The Molina Theissen judgment marks the second time a Guatemalan court has punished wartime sexual violence, after the historic 2016 Sepur Zarco judgment opened the pathway for criminal accountability for sexual violence. While the Sepur Zarco case illustrated the way the army used sexual violence to control local communities and put an end to land conflicts in detriment of indigenous communities, the Molina Theissen case showed how the army used sexual violence as a means of torture to extract information from female detainees.

This was also the first time anyone has been convicted for the enforced disappearance of a child in Guatemala. This is critical, since according to the Commission for Historical Clarification, some 5,000 children were the victims of enforced disappearance during the internal armed conflict. The case focused attention on the military's abhorrent practice of targeting the children of presumed dissidents, and on the broader problem of the systematic practice of enforced disappearance against presumed regime opponents.

**Building the case.** After the peace accords were signed in 1996, the Molina Theissen family relaunched their efforts to achieve truth and justice. They called on the Ombudsman's Office to reopen its special investigation into the enforced disappearance of Marco Antonio, but there was little progress in the case. In 1998, the family filed a complaint before the Inter-American System of Human Rights with support from the Mutual Support Group (GAM) and the Center for Justice and International Law (CEJIL). In a 2004 ruling, the IACtHR found the State of Guatemala responsible for the enforced disappearance of Marco Antonio and ordered Guatemala to identify, prosecute and punish the material and intellectual authors of the crime, along with a series of other reparations.<sup>66</sup> The State of Guatemala paid the reparations

ordered by the Court and issued a public apology to the family. It did not, however, pursue an investigation into the perpetrators, nor did it return Marco Antonio's remains to the family. A breakthrough in the case did not come until January 2016, when Guatemalan authorities arrested 18 senior military officials in relation to this case and the CREOMPAZ mass enforced disappearance case.

Human rights lawyer Alejandro Rodríguez and CALDH represented the Molina Theissen family in the case before the Guatemalan courts. As with the Ixil genocide and the Sepur Zarco cases, the human rights lawyers worked closely with the Human Rights Prosecutor's Office on the case. They adopted the strategic litigation methodology, applying a multidisciplinary legal and political strategy, along with a communications plan, psychosocial support for the complainants, and a system to guarantee the safety of the victims and witnesses. On the legal front, the plaintiffs pieced together fragments of evidence, including direct victim and witness testimony, official documents, and expert reports, to determine the chain of command responsibility of the army chief of staff and other senior military officials for the crimes against the Molina Theissen family. The trial also documented the key role of military intelligence in surveilling, persecuting, and physically harming those, like the Molina Theissen family, that it perceived as "internal enemies." In terms of outcome, it successfully mandated punishment of the highest authorities responsible for the illegal detention, torture, and sexual violence of Emma Molina Theissen, and the enforced disappearance of Marco Antonio Molina Theissen.<sup>67</sup>

As in the previous cases discussed, the plaintiffs developed a strategy to analyse the political situation and its possible impact on the proceedings, which was especially important given that the defendants in the case were senior military officials who retained powerful connections to the structures of political and economic power in Guatemala and also to organised crime.<sup>68</sup> As the case was advancing through the court system, the government of then president Jimmy Morales was launching an all-out war on the legal institutions and



international organisations supporting Guatemala's anti-corruption and anti-impunity efforts. In 2019, Morales unilaterally shuttered the CICIG, despite widespread international protest and broad domestic support for the international anti-graft agency.<sup>69</sup> Pro-military sectors launched a campaign against the Molina Theissen family and CEJIL, accusing them of being motivated by hatred of the armed forces and their desire to profit financially from the trial. They also claimed that the family was lying about Marco Antonio, suggesting he had not been disappeared but was alive living in Costa Rica with the Molina Theissen family. However, the fact that the crimes included sexual violence against a 21-year-old woman and the enforced disappearance of a child made it very difficult for those challenging the legitimacy of the trial to build a convincing case. The plaintiffs developed clear and consistent messaging around this idea to counteract the attacks against the Molina Theissen family and the others involved in the case.

**Impact of the verdict.** The Molina Theissen case is a powerful example of the role that survivors and families of victims play in pushing domestic justice systems to respond to demands for justice for State-sponsored atrocities. It is also an excellent example of how victims seek out alternative paths to justice when it is denied to them in their domestic jurisdictions. In this case, the Molina Theissen family brought their case to the Inter-American Human Rights System, which in this and many other cases has played an important role in pressing domestic systems to respond to victims' demands for truth, justice, and reparations.<sup>70</sup>

As in the Ixil genocide and the Sepur Zarco trial, the plaintiffs built strong alliances with national and international organisations. National and international observers monitored and reported on the trial and provided a constant presence in the courtroom to mitigate some of the verbal attacks on the victims and their legal representatives, though at times trial observers and members of the press were also attacked and accused of being biased against the defendants. Diplomats and international dignitaries attended the proceedings, and there was wide national and international coverage of

the trial. There were also several public events to support the Molina Theissen family, such as a music concert organised by musician Fernando López in Guatemala City in December 2016 in honour of Marco Antonio; a public exhibit depicting Marco Antonio's childhood bedroom as it was the day of his disappearance; and media interviews with Emma Molina Theissen, her mother and her sisters about their pursuit of justice and their desire to have Marco Antonio's remains returned to them so that they can give him a proper burial.

The Molina Theissen case represents an important innovation in terms of jurisprudence for sexual violence crimes. Rather than being subsumed under crimes against humanity, as was the case in the Sepur Zarco judgment, prosecutors charged and obtained convictions against the defendants for the crime of aggravated sexual assault, which highlights the extreme malice employed in the military's use of rape as a weapon of war.<sup>71</sup>

The court also ordered a series of reparations, including the return of Marco Antonio's remains to the family.<sup>72</sup> To date, however, the Guatemalan State has failed to locate the remains of Marco Antonio and return them to the family for proper burial, nor has it created a national genetic database to facilitate the search of the 45,000 victims of enforced disappearance. Several appeals are pending, so the judgment has not yet been ratified.

## 4. Lessons Learned

### The central role of victims in transitional justice processes

Survivors and the families of victims of human rights violations are the driving agents of demands for truth, justice, reparation, and memory in post-conflict societies. The capacity of victims' associations to organise, develop alliances with domestic and international human rights organisations, and mobilise public opinion in favour of their demands is critical to the success of transitional justice. So too is their participation in the design and implementation

of transitional justice programmes and mechanisms.

Victims of human rights violations in Guatemala have mobilised for years to overcome a series of obstacles to achieving justice, though it is also true that many victims have yet to see justice done in their cases. Victims' demands for justice are based on their rights as citizens to legal redress, as well as on the international obligations of States to guarantee victims' rights to truth, justice, and reparation. When the local justice system failed victims, victims sought redress in international courts, which served as a pressure point on the domestic justice system to provide legal redress, as exemplified in the Molina Theissen case. Victims, who have demonstrated persistence and resilience in the face of denial and structural, institutionalised impunity, play a central role in transitional justice processes.

During the conflict, victims and victims' associations were ignored, repressed, and stigmatised. The transitions toward representative democracy that occurred after the peace processes created new opportunities for victims to make their voices heard, to organise and press for their demands, and to build alliances with human rights organisations and other civil society actors, including community-based organisations, journalists and the media, academics, and artists, among others. Individual victims have played critical leadership roles, as have myriad local and regional victims' associations in building strong networks to promote and defend victims' rights in post-conflict Guatemala.

In transitional justice criminal proceedings, it is of critical importance to ensure victim participation as well as the adoption of victim-centered approaches that engage with victims in ways that are respectful of their dignity and autonomy, and that are carefully constructed to avoid revictimisation. This is especially necessary in cases that involve sexual violence. Mechanisms and procedures must be put in place to protect the mental, physical and emotional health of victims.

In Guatemala, the *querellante adhesivo*

(complementary or private prosecutor) system allows for victims to participate in judicial proceedings in a complementary prosecutorial role alongside the Attorney General's Office. This has been important in guaranteeing victim participation in transitional justice trials, though this does not guarantee that the criminal proceedings themselves will be victim-centered. Many factors work against victim-centered approaches in criminal justice processes. By definition, criminal trials are focused on demonstrating the culpability of alleged perpetrators. They thus must emphasise due process guarantees for the accused, which is often abused by defence lawyers, sometimes to the detriment of an expeditious judicial process. Heavy caseloads in prosecutor's offices can take the focus off the victims' need for sensitive treatment and including the victims in the development of the case.

As direct consequence of the protocols put in place by Claudia Paz y Paz, prosecutors have adopted victim-centred practices in their criminal investigations and in their work with victims, particularly victims of sexual violence. Prosecutors were given special training to investigate human rights violations, especially sexual violence crimes, in a way that was respectful of victims. Special protocols were established to conduct investigations in such a way as to ensure that victims' rights and dignity were respected. Guatemalan courts have also adopted victim-centred practices designed to demonstrate respect for victims and limit possibilities for revictimisation. For example, in some instances pretrial courts have agreed to admit into evidence the recorded testimonies of victims, which are later broadcast during the criminal proceedings, so that the victim not have to repeat their painful testimonies, as was the case in both the Sepur Zarco and the Molina Theissen trials.

Special attention is therefore needed to ensure that procedures are in place that protect the rights of victims, prevent revictimisation, and ensure victims' access to justice throughout the process. Trainings and workshops in victim-centered approaches for law enforcement officials, public prosecutors, judicial operators, attorneys, and other service providers is critical

for ensuring respect for victims at all levels of the justice process. Ideally, the legal institutions that engage with victims of human rights violations should adopt protocols to ensure respectful treatment of victims by their agents, from the moment of the initial investigation, to the taking of testimony, to the engagement with the victim during the criminal proceedings.

## **The critical role of alliance-building and interdisciplinary approaches to strategic litigation**

Critical to successful strategic litigation in each of the cases examined here has been the construction of alliances with like-minded organisations nationally and internationally, and the adoption of interdisciplinary approaches to strategic litigation. Victims' associations have worked closely with human rights organisations, groups dedicated to psychosocial support of victims, advocacy based organisations, and groups focusing on security issues.

Human rights organisations, which are comprised of interdisciplinary teams of legal and other professionals whose mission is to promote and defend human rights, have played a critical role in support of victims and victims' associations in their pursuit of truth, justice, reparations and non-repetition. Human rights organisations have worked in close collaboration with victims' associations to develop domestic and international strategies to overturn self-amnesty laws, challenge institutionalised impunity, and asserting the obligation of the State to investigate, prosecute and punish gross human rights violations.

Human rights organisations have also played a fundamental role in structuring interdisciplinary approaches to strategic litigation, incorporating all the components discussed above in order to pursue individual cases that will have a larger social, legal or political impact. In Guatemala, human rights groups developed strategic alliances with the Human Rights Prosecutor's Office to strengthen their criminal investigation, collect victim and witness testimony, build legal arguments, compile evidence, and access official documents. They have also helped construct

integral approaches to psychosocial support for victims, witness protection measures, and advocacy and communications strategies.

A key component of strategic litigation is developing a clear communications strategy that positions human rights violations committed during the periods of internal armed conflict as crimes of international importance that are not subject to statutes of limitations, and which States have the obligation to investigate, prosecute, and punish. This is necessary to build public support for the criminal justice process, reduce the space for spoilers, and ensure broad support for victims. A strategy to assess and address the risks and vulnerabilities associated with litigation is also a necessary component of strategic litigation. Finally, strategic litigation in transitional justice cases foresees the need to generate capacities to address the psychosocial effects of violence for individuals, families and communities and promote healing at each of these levels, develop mechanisms to prevent revictimisation during the litigation process, and to strengthen the leadership and community involvement of victims in the defence of their human rights.

Each of the three trials discussed here developed a comprehensive communications strategy with clear messaging that helped build support for the victims and the pursuit of justice. They were all broadcast on local and national radio stations across the country and live streamed on the Internet, which gave broad swaths of society access to view the proceedings and learn about the systematic violations of human rights that occurred during the internal armed conflict. The plaintiffs invited diverse sectors of society to participate as observers of the proceedings through the trials, further expanding the reach of the proceedings, especially the youth.

## **Prosecutorial and judicial independence of courts and the international jurisprudence**

The formation of special units to investigate and adjudicate cases of human rights violations is critical to successful criminal prosecutions. So too is the provision of the necessary knowledge

and expertise on the applicable legal framework and the application of relevant international human rights law and jurisprudence for prosecutors and judges. In Guatemala, the Attorney General's Office created the Human Rights Prosecutor's Office, which in turn created specialised units to investigate different types of cases, including one to investigate human rights violations related to the internal armed conflict. The prosecutors within this unit have received specialised training in international human rights law and understanding of the context that gave rise to human rights violations in Guatemala.

Additionally, prosecutors came to understand the importance of working collaboratively with victims and human rights lawyers and organisations representing them in building cases and have developed synergistic relationships with victims and human rights organisations in the investigation and construction of their legal cases. They have also acquired experience investigating and litigating cases of gross human rights violations. This cadre of highly trained and experienced litigators has allowed for investigations of these cases to continue, even when political will at the level of the broader political system has been wanting.

The creation of the high-risk court system in the Guatemalan Judiciary has been critical for the advancement of independent criminal prosecutions in cases of conflict-era human rights violations. Assuring the existence of independent judges, with relevant levels of specialisation in international human rights law, is critical to the success of these processes. Special courts that guarantee heightened security assure greater protection for judges and other stakeholders engaged in complex and sensitive cases. Such systems also provide judges with specialised training in complex criminal cases and in international human rights law and jurisprudence. Taken together, these measures help strengthen the independence of judges and of the judicial system overall. The high-risk court system has been fundamental for ensuring fair and impartial trials for defendants, while also ensuring victims access to justice, and have resulted in important convictions in human rights cases in Guatemala.

## Support for victims and especially women survivors of sexual violence

Support for victims in post-conflict settings must be a critical component of the transitional justice process. This is especially true for women who are survivors of sexual violence. Support includes psychosocial support for individual victims, their families, and their communities, to help them cope with the trauma of the abuses they have suffered and likely continue to suffer. An integral approach that connects individual healing with family and community forms of healing is critical in societies such as Guatemala, in which State violence targeted not only individuals but entire communities and ethnic groups, in order to rebuild community relations, trust, and resilience. State provision of individual and community-based psychosocial support has been lacking; instead, such support is most often provided by specialised NGOs or independent professionals.

Guatemala offers compelling models of collaborative engagement between victims' associations and human rights organisations in support of individual victims, their families and their communities. One example is the Alliance Breaking Silence and Impunity discussed above, which has worked for years with the women survivors of Sepur Zarco, as well as with their families and their communities, prioritising individual and collective forms of healing and community rebuilding. For years, the women survivors lived in isolation from one another and rarely spoke of what happened to them. The Alliance helped the women overcome the feelings of shame and fear that they had endured for so many years, building trust among the women survivors and helping them to overcome their fear and isolation. Socialising the extreme violence and mistreatment they suffered helped them find ways to talk about what happened with their families and the broader community. This individual and communal approach helped break down the social stigma of being a victim of sexual violence. Work with the broader community was necessary to help others understand that the women survivors were not to blame for what happened to them, to facilitate



their reintegration into the social fabric, and ultimately to building community-wide support for the women to seek justice in a court of law.

Survivors, families of victims and their civil society allies continue to face serious risks even decades after the moment of transition to democracy in post-conflict societies. Witness protection and security for human rights defenders must be a priority during the transitional justice process. Attacks against human rights defenders have been an ongoing feature of the post-transition period, particularly when entrenched elites feel that their interests are at risk. This is in part due to the fact that many of the structures that engaged in violence during the conflict periods remain operational. The impunity that accompanied postwar settlements in El Salvador and Guatemala in particular has made this an unsettling part of the post-conflict reality in each of these countries, fueling corruption and violence. The reactivation of these structures of impunity was evident during the Ríos Montt genocide trial, for example. Survivors and families of victims who testified in the genocide trial reported being harassed and threatened in their local communities. Victim-witnesses, human rights workers, and judicial operators were viciously attacked in the press, on social media, and through paid advertisements in the media and anonymous circulars. Human rights activists and judicial operators, including the judges and prosecutors in the genocide case, have also faced frivolous lawsuits that seek to silence them and limit their activities.

## The role of the international community

**International civil society.** The international community has played a critical role in support of victims' rights to truth, justice and reparation. In terms of strategic litigation efforts, international human rights organisations have supported litigation efforts in regional and foreign courts, which as in the Molina Theissen case becomes a point of pressure on the domestic justice system to act. Such organisations may also support local litigation efforts on an advisory basis.

Academics and independent researchers have also supported strategic litigation in different capacities. Some have served as expert witnesses in domestic prosecutions, offering their expert knowledge on the case at hand. Others have served as trial monitors, organised international forums to draw attention to and support of the ongoing criminal trials, coordinated delegations of international observers to highly contentious criminal trials, and lobbied their local governments to support criminal prosecutions for human rights violations.

High-profile members of international civil society have also accompanied criminal trials. For example, Nobel Laureates Jody Williams and Rigoberta Menchu Tum assisted several sessions of the Sepur Zarco trial, and the Chair of the United Nations Working Group on Enforced or Involuntary Disappearance, Bernard Duhaime, attended a session of the Molina Theissen trial. The presence of such dignitaries signals the global importance of these cases and invites greater international attention.

**International and intergovernmental organisations.** International and intergovernmental organisations play significant roles in the success of strategic litigation. As already noted, the Inter-American System of Human Rights has played a critical role by monitoring Guatemala's response to victims' demands for justice, issuing reports, press releases, holding public hearings, issuing recommendations, and in some instances, issuing judgments. These diverse forms of action have played a fundamental role in the ongoing efforts of victims pursuing strategic litigation in domestic courts for grave human rights violations.

International human rights organizations have also contributed to strategic litigation processes by directly supporting international litigation efforts, by amplifying these efforts through research, communications and advocacy campaigns, trial monitoring, and related efforts.

**The donor community.** Private foundations, foreign governments, churches, and individual donors have helped sustain the work of victims'



organisations. Yet, victims' associations often have limited access to funding and often suffer from organisational precariousness. Philanthropy at the domestic level is simply not widely available, making international support so critical.

Ensuring robust and independent victims' organisations is key to ensuring victim participation and influence over the transitional justice process. When victims have the tools and resources to organise autonomously, they are better situated to mobilise in favour of specific transitional justice mechanisms and policies and to have a voice in the formulation and implementation of those policies. The persistent activism of the victims and the organisations representing them has been decisive in the landmark criminal prosecutions examined here, but also in other transitional justice processes such as the search for the victims of enforced disappearance and in pressuring governments to recognise victims' rights to integral reparations.

## Conclusion

The implementation of strategic litigation in these three emblematic cases —the Maya Ixil genocide case, the Sepur Zarco sexual violence and sexual slavery case, and the Molina Theissen case— represents a paradigm shift for developing transitional justice cases.

In each of these cases, the successful application of strategic litigation is a testimony to the perseverance, resilience, and determination of the survivors and families of the victims. They persisted in their demands for truth and justice and sought creative ways to advance domestic justice despite systems of institutionalized impunity and official denial. Central to these efforts was the labour of human rights activists and organisations that provided psychosocial support, legal assistance, and accompaniment for many years.

Critical to the success of strategic litigation efforts in Guatemala has been the close coordination between prosecutors, plaintiffs, and supporting human rights organisations in the investigation and prosecution of the cases, and the

participation of victims in the process, not only as witnesses who testify about the abuses they endured, but as co-plaintiffs who are exercising their rights to legal redress. Underlying these successes has been long-term work at the individual and community levels, incorporating psychological support, accompaniment, and workshops to make victims aware of their legal rights.

Demanding legal redress has helped transform the victims in these cases to citizens who have exercised their rights by demanding justice and being heard in a court of law. Even in the Ixil genocide case, in which the 2013 conviction was undone by a controversial ruling of the Constitutional Court, the process of seeking justice, achieving an indictment against the former dictator Efraín Ríos Montt, facing him in a court of law on an even playing field, transformed the victims into citizens, contributed to rewriting the history of Guatemala's recent past, and helped teach new generations about the atrocities that occurred during the internal armed conflict.

The cases studied here have also generated important jurisprudence and standards of evidence. The Sepur Zarco ruling is a critical breakthrough for national jurisprudence by explicitly mentioning in its preamble that sexual violence, sexual and domestic servitude, and humiliating and degrading treatment constitute forms of crimes against humanity. Although they are not specified in the sentencing part of the ruling, this is the first time that such crimes have been mentioned in a conflict-era judgment.

At the same time, deficiencies remain. The State of Guatemala has weakened the Human Rights Prosecutor's Office, depriving it of sufficient personnel and resources to conduct complex criminal investigations and bring them to fruition through indictments and arrests of suspects. Hundreds of cases remain uninvestigated. In addition, the prevailing approach is to criminally investigate individual cases rather than using the strategic criminal prosecution methodology, which would facilitate the prosecution of connected cases by region, group of victims, *modus operandi* and alleged perpetrators.

Another concern is the increase in threats and harassment of judges and prosecutors involved in conflict-era crimes by associations of retired military officials and far-right groups that oppose the fight against impunity. These groups also engage in spurious lawsuits and malicious litigation against judicial operators, as well as hate and smear campaigns in social media platforms. In 2019, they sought—ultimately unsuccessfully—to reform the 1996 Law of National Reconciliation in such a way that would end all future criminal prosecutions for war-related human rights violations and free all those convicted or awaiting trial for such crimes.<sup>73</sup>

While there are worrisome indicators in the current context, a number of criminal trials for conflict-era human rights violations remain pending, including the CREOMPAZ case; two separate proceedings for the Maya Ixil genocide trial; the Maya Achi sexual violence case; trials against new defendants in the Dos Erres massacre case; and the Tululche massacre case.<sup>74</sup> In addition to these cases, there are more than 1,000 complaints before the Attorney General's Office. At least a dozen of these have

a sentence from the Inter-American Court of Human Rights finding the State of Guatemala responsible for the crimes and ordering the investigation, prosecution, and punishment of those responsible. This is the case, for example, in the Military Diary case. The Inter-American Court issues its ruling in 2012, but to date there have been no arrests in the case.

Even as obscure forces have forged alliances to roll back the progress in the struggle against corruption and impunity in Guatemala and to restore the reign of impunity that obstructed justice for so many years, victims' groups continue to demand their rights to justice for the abuses they suffered during the internal armed conflict. At the present juncture, the future of strategic litigation efforts in Guatemala remains uncertain. Nevertheless, Guatemala's bold and unlikely experiment in justice for wartime atrocities remains an example to the world of what is possible when victims and their allies work together in pursuit of truth and justice.

## End Notes

<sup>1</sup>Helen Duffy, *Strategic Human Rights Litigation: Understanding and Maximising Impact* (Hart Publishing, 2018).

<sup>2</sup>The concept of “internal enemy” is one of the central components of the Doctrine of National Security, which was applied in numerous countries in Latin America in the context of the Cold War. According to the Inter-American Court of Human Rights: “During this conflict, the State applied what was known as the ‘National Security Doctrine,’ based on which it used the concept of ‘internal enemy,’ which initially referred to the guerrilla organizations, but was expanded to include [all those persons who identified] with communist ideology or who belonged to an organization—whether it be a trade, social, religious or student organization— or those who, for whatever reason, were not in favor of the established regime.” Inter-American Court of Human Rights, Case of Gudiel Álvarez et al. (“*Diario Militar*”) v. Guatemala, Judgment of November 20, 2012 (*Merits, reparations and costs*), [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_253\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_253_ing.pdf).

<sup>3</sup>Human rights activist Helen Mack made this point during the Impunity Watch 2019 Seminar, in reference to the 1990 extrajudicial execution of her sister Myrna Mack: “When we realized that the investigation stalled and the legal proceeding remained stuck at the level of the justice of the peace, it was up to me to conduct the investigation [into Myrna’s murder] practically by myself. The Attorney General’s Office did not support the investigation because it considered it to be dangerous. The case went from courtroom to courtroom, because the judges were fearful and excused themselves from hearing the case.” Helen Mack, Director of the Myrna Mack Foundation, International Seminar on Strategic Litigation, Impunity Watch and Redress, Guatemala City, 27-28 August 2019.

<sup>4</sup>Commisson for Historical Clarification (CEH), *Memoria del Silencio* (Guatemala City, 1999).

<sup>5</sup>Jo-Marie Burt, “Avances y retos en la justicia transicional en Guatemala,” in *Experiencias sobre justicia, verdad y memoria frente a crímenes de Estado*, edited by José Antonio Guevara Bermúdez et. al. (Ciudad de México: City: Comisión Mexicana de Defensa y Promoción de los Derechos Humanos Rights, 2019).

<sup>6</sup>A brief summary of the seminar can be found on the Impunity Watch website: <https://www.impunitywatch.org/impunity-watch-brings-together-guat>.

<sup>7</sup>Impunity Watch, *Avances y obstáculos de la justicia transicional en Guatemala*, Guatemala City, 2018, <https://www.impunitywatch.org/post/avances-y-obstaculos-de-la-justicia-transicional-en-guatemala>.

<sup>8</sup>Helen Duffy, *Strategic Human Rights Litigation*, op. cit.; Tamar Ezer, *Advancing Public Health Through Strategic Litigation Impacts* (New York: Open Society Foundations, 2018), <https://www.justiceinitiative.org/uploads/fd7809e2-bd2b-4f5b-964f-522c7c70e747/strategic-litigation-impacts-insights-20181023.pdf>.

<sup>9</sup>Open Society Justice Initiative, *Strategic Litigation Impacts: Insights from Global Experience* (New York: Open Society Foundations, 2018), <https://www.justiceinitiative.org/publications/strategic-litigation-impacts-insights-global-experience>.

<sup>10</sup>Birsna Caxaj Álvarez et. al, *Changing the Face of Justice: Keys to the Strategic Litigation of the Sepur Zarco Case* (Guatemala City: Impunity Watch, Alliance to Break the Silence and Impunity ECAP MTM UNAMG, 2017).

<sup>11</sup>This was the case with the Dos Erres massacre. After the conviction of several members of the Kaibil special forces unit that carried out the crime, the de facto president and head of the Guatemalan army at the time of the massacre, General Efraín Ríos Montt, was charged and indicted in this case. However, he died before the case was sent to trial. J.M. Burt and P. Estrada, “Ríos Montt to Face Second Genocide Trial for the Dos Erres Massacre,” *International Justice Monitor*, 3 April 2017, <https://www.ijmonitor.org/2017/04/rios-montt-to-face-second-genocide-trial-for-the-dos-erres-massacre/>.

<sup>12</sup>*Apoyo y Acompañamiento Comunitario en Salud Mental*, Programa de Apoyo al Proceso de Paz y Conciliación Nacional/Cooperación Técnica Alemana (Ciudad de Guatemala, 2006), <https://www.ecapguatemala.org.gt/sites/default/files/Modulo8%20Diplomado%20SMC.pdf>.

<sup>13</sup>Suzanne Jonas, *Of Centaurs and Doves: Guatemala's Peace Process* (Routledge, 2000).

<sup>14</sup>An earlier commission, the Interdiocesan Project for the Recovery of Historical Memory (REHMI), was launched by the Human Rights Office of the Archdiocese of Guatemala in 1995; its report, entitled *Guatemala Nunca Más*, was published in 1998.

<sup>15</sup>CEH, *Memoria del Silencio* (Guatemala, 1999).

<sup>16</sup>Decreto No. 145-1996, *Ley de Reconciliación Nacional*, Congreso de la República de Guatemala, <https://www.acnur.org/fileadmin/Documentos/BDL/2002/0148.pdf>.

<sup>17</sup>Myrna Mack Foundation, *Apuntes sobre los engranajes de la impunidad en casos de violaciones a los derechos humanos en Guatemala* (Guatemala City, 2004).

<sup>18</sup>Myrna Mack Foundation, *Apuntes sobre los engranajes de la impunidad*, op. cit.; Francisco Goldman, *The Art of Political Murder: Who Killed the Bishop?* (New York: Grove Press, 2008).

<sup>19</sup>Myrna Mack Foundation, *Apuntes sobre los engranajes de la impunidad*, op. cit.

<sup>20</sup>Amnesty International, *Guatemala's Lethal Legacy: Past Impunity and Renewed Human Rights Violations*; Susan Kemp, "The Inter-relationship Between the Guatemalan Commission for Historical Clarification and the Search for Justice in National Courts," *Criminal Law Forum* 15 (2004): 67-103.

<sup>21</sup>One of the earliest cases to come before the Guatemalan courts was the Plan de Sánchez massacre. When a judge dismissed the case, the civil complainant, the Center for Human Rights Legal Action (CALDH), brought it before the Inter-American Human Rights System. In 2004 the Inter-American Court of Human Rights found the Guatemalan state responsible for the massacre and ordered it to investigate, prosecute and punish the perpetrators. Inter-American Court for Human Rights, *Case of the Plan de Sánchez Massacre v. Guatemala*, Judgment of 29 April 2004, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_105\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_105_ing.pdf).

<sup>22</sup>The Inter-American Commission on Human Rights has investigated numerous other cases but only a handful have advanced to the IA Court. María Marín Quintana, *Guatemala. Cumplimiento de las decisiones del Sistema Interamericano de Derechos Humanos: desafíos en materia de justicia* (Fundación CEJIL Mesoamérica, 2016).

<sup>23</sup>These include: the Panel Blanca case (2001); the forced disappearance and extrajudicial execution of Efraín Bámaca (2002); the extrajudicial execution of Myrna Mack (2003); the arbitrary detention and torture of Maritza Urrutia (2003); the forced disappearance of Marco Antonio Molina Theissen (2003); the Plan de Sánchez massacre (2004); the extrajudicial execution of Jorge Carpio and others (2004); the forced disappearance of María Tiu Tojín and her daughter Josefa (2008); the Dos Erres massacre (2009); the forced disappearance of Florencio Chitay Nech and others (2010); the Rio Negro massacre (2012); the Military Diary case (2012); the Chichupac, Rabinal massacre (2016); and the Xaman massacre (2018). Inter-American Court of Human Rights, *Medidas provisionales y Supervisión de Cumplimiento de Sentencia. Caso de los Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal, Caso Molina Theissen y otros 12 casos contra Guatemala*, 12 March 2019, [https://www.corteidh.or.cr/docs/supervisiones/aldeachichupac\\_12\\_03\\_19.pdf](https://www.corteidh.or.cr/docs/supervisiones/aldeachichupac_12_03_19.pdf).

<sup>24</sup>Naomi Roht-Arriaza, "Making the State Do Justice: Transnational Prosecutions and International Support for Criminal Investigations in Post Armed Conflict Guatemala," *Chicago Journal of International Law* 9:1(2008):79-106.

<sup>25</sup>Pedraz continued to investigate, taking witness and expert testimony in 2008 and 2009. But, without a defendant, he could not render a verdict. Roht-Arriaza, "Making the State Do Justice."

<sup>26</sup>Amy Ross, "The Ríos Montt Case and Universal Jurisdiction," *Journal of Genocide Research* 18:2-3 (2016): 361-376.



<sup>27</sup>Comisión Internacional de Juristas, *Buenas Prácticas y Resultados de la Justicia Especializada en Femicidio y Mayor Riesgo*, 2016, <https://www.icj.org/wp-content/uploads/2017/04/Guatemala-Feminicidio-y-Riesgo-Publications-Thematic-Reports-2016-SPA.pdf>.

<sup>28</sup>The CICIG was unilaterally shuttered by the government of Jimmy Morales in 2019. Open Society Justice Initiative, *Against the Odds: The CICIG in Guatemala* (New York: OSJI, 2016), <https://www.justiceinitiative.org/publications/against-odds-cicig-guatemala>.

<sup>29</sup>Inter-American Court for Human Right. 2009. *Case of the “Las Dos Erres” Massacre v. Guatemala, Judgment of November 24, 2009 (Preliminary Objection, Merits, Reparations, and Costs)*, Parr.129, [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_211\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf).

<sup>30</sup>Instrucción General para la Investigación y Persecución Penal de las Graves Violaciones a los Derechos Humanos Cometidos Durante el Conflicto Armado Interno, No. 2-2011, Ministerio Público, Ciudad de Guatemala, 12 May 2011.

<sup>31</sup>Instrucción General para la Investigación de Hechos de Violencia Sexual Ocurredos en el Marco del Conflicto Armado Interno, No. 2-2012, Ministerio Público, Ciudad de Guatemala, 30 March 2012.

<sup>32</sup>This includes the following cases: the Dos Erres massacre; the forced disappearances at El Jute; the forced disappearance of Fernando García; the Maya Ixil genocide case; the Spanish Embassy massacre; the Molina Theissen case; the Río Negro massacre; the forced disappearance of Edgar Sáenz Calito; the Comalapa Military Base case; and the Military Diary case.

<sup>33</sup>On the Creompaz case, see: Jo-Marie Burt, “Eight Military Officers to Stand Trial in Creompaz Grave Crimes Case,” *International Justice Monitor*, 17 June 2016, <https://www.ijmonitor.org/2016/06/eight-military-officers-to-stand-trial-in-creompaz-grave-crimes-case/>. On the Maya Achi case, see Jo-Marie Burt and Paulo Estrada, “Former Civil Defense Patroller Sent to Trial in Maya Achi Sexual Violence Case,” *International Justice Monitor*, October 16, 2020, <https://www.ijmonitor.org/2020/10/former-civil-defense-patroller-sent-to-trial-in-maya-achi-sexual-violence-case/>.

<sup>34</sup>Convictions were overturned in two cases (Rio Negro 1999 and Ixil genocide 2013) bringing the total number of convicted to 68.

<sup>35</sup>*SentenciaporgenicidioydelitoscontralosdeberesdelahumanidadcontraelPuebloMayaIxil,C-01070-201-000215*, Tribunal Primerode Sentencia Penal, Narcoactividad y Delitos contra el Medio ambiente, 10 May 2013, <https://drive.google.com/folderview?id=0BxOjd8OI5wmhcUhNU3ZMQy1TeUU&usp=sharing>.

<sup>36</sup> The original complaint included charges against several members of the military high command between 1978 and 1985 for genocide and crimes against humanity against five different Mayan indigenous groups. Prosecutors decided to separate the cases and focus on the Ixil genocide case, for which there was strong evidence. Regarding those other officials, retired general Romeo Lucas García, who presided over Guatemala between 1978 and 1982, died in 2006. His brother, retired general and former army chief Benedicto Lucas García, was arrested in 2016; he was convicted in the Molina Theissen case in 2018 and is awaiting trial in the Ixil genocide and the CREOMPAZ mass disappearance cases. Charges against two other members of the High Command —Ríos Montt’s successor as president and his former defense minister, retired general Óscar Humberto Mejía Vítores, and army chief under Ríos Montt retired general Hector Mario López Fuentes— were dropped on account of the state of their health; both are now deceased.

<sup>37</sup>Because of the international arrest order connected to the Spanish case, he could not leave Guatemala without risking arrest.

<sup>38</sup>The charges focused on scorched earth campaigns that resulted in the deaths of at least 1,771 people, the forced displacement of 29,000 people, and sexual violence against at least nine women.

<sup>39</sup>See International Federation of Human Rights (FIDH), *Genocide in Guatemala: Rios Montt Guilty* (July 2013), <https://www.fidh.org/IMG/pdf/rapguatemala613uk2013.pdf>

<sup>40</sup>Jo-Marie Burt, “From heaven to hell in ten days: the genocide trial in Guatemala,” *Journal for Genocide*



*Research*, 18:2-3 (2016): 143-169.

<sup>41</sup>Martín Rodríguez Pellecer, 'Quiero que alguien me demuestre que hubo genocidio', Plaza Pública, 25 July 2011, <http://www.plazapublica.com.gt/content/quiero-que-alguien-me-demuestre-que-hubo-genocidio>; Pérez Molina as cited, *Diario de Centroamérica*, 14 March 2013, <http://www.dca.gob.gt/index.php/template-features/item/14263-%E2%80%99Cen-guatemala-no-hubo-genocidio%E2%80%9D.html>; *Prensa Libre*, 15 May 2014, [http://www.prensalibre.com/noticias/politica/punto\\_resolutivo-Genocidio-Efrain\\_Rios\\_Montt-Caso\\_por\\_Genocidio-Otto\\_Perez\\_Molina-Congreso\\_0\\_1138686279.html](http://www.prensalibre.com/noticias/politica/punto_resolutivo-Genocidio-Efrain_Rios_Montt-Caso_por_Genocidio-Otto_Perez_Molina-Congreso_0_1138686279.html).

<sup>42</sup>The day after the verdict was handed down, army veterans staged a public protest in front of the Matamoros prison, demanding Ríos Montt's release, and the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF) held a press conference at which it decried the verdict as a stain on Guatemala's international reputation and called for its reversal. J.M. Burt, "Historic Verdict in Guatemala's Genocide Case Overturned by Forces of Impunity," *NACLA Report on the Americas*, 17 June 2013, <http://nacla.org/news/2013/6/17/historic-verdict-guatemala's-genocide-case-overturned-forces-impunity-0>.

<sup>43</sup>This was a 3-2 split decision; the two magistrates argued in separate dissenting opinions that the alleged due-process violation had been remedied and in any case the decision to overturn a conviction in a case involving grave crimes was disproportionate to the alleged violation, and that the Constitutional Court violated the normal rules of appeal by emitting a decision before the case went to the Court of Appeals. See International Federation of Human Rights (FIDH), *Genocide in Guatemala: Ríos Montt Guilty*.

<sup>44</sup>The plaintiffs filed a petition before the Inter-American Commission on Human Rights asserting that the Guatemalan state has failed to fulfill its obligation to guarantee victims their right to access justice. "International Complaint against the Guatemalan State for Denial of Justice in the Genocide Case," Press release of AJR, CALDH, CEJIL and BDH, 7 November 2013, <http://nisgua.blogspot.com/2013/11/survivors-submit-complaint-against.html>.

<sup>45</sup>Author interview, Juan Francisco Soto, Guatemala City, 15 November 2013.

<sup>46</sup>Jo-Marie Burt and Paulo Estrada, "Victims Testify in Genocide Retrial of Ríos Montt and Rodríguez Sánchez," *International Justice Monitor*, 14 December 2017, <https://www.ijmonitor.org/2017/12/victims-testify-in-genocide-retrial-of-rios-montt-and-rodriguez-sanchez/>.

<sup>47</sup>J.M. Burt and P. Estrada, "The Legacy of Ríos Montt, Guatemala's Most Notorious War Criminal," *International Justice Monitor*, 3 April 2018, <https://www.ijmonitor.org/2018/04/the-legacy-of-rios-montt-guatemalas-most-notorious-war-criminal/>.

<sup>48</sup>Jo-Marie Burt, "Imperfect Justice in Guatemala," *NACLA Report on the Americas*, October 12, 2018, <https://nacla.org/news/2018/10/12/imperfect-justice-guatemala>.

<sup>49</sup>*Ibid.*

<sup>50</sup>J.M. Burt and P. Estrada, "'No One Told This to Me. I Saw It with My Own Eyes.' Survivor Addresses Court As Evidentiary Phase of Maya Ixil Genocide Case Nears Conclusion," *International Justice Monitor*, 17 March 2020, <https://www.ijmonitor.org/2020/03/no-one-told-this-to-me-i-saw-it-with-my-own-eyes-survivor-addresses-court-as-evidentiary-phase-of-maya-ixil-genocide-case-nears-conclusion/>.

<sup>51</sup>J.M. Burt and P. Estrada, "Another Senior Military Official Indicted on Genocide Charges in Guatemala," *International Justice Monitor*, 5 December 2019, <https://www.ijmonitor.org/2019/12/another-senior-military-official-indicted-on-genocide-charges-in-guatemala/>.

<sup>52</sup>Tribunal de Sentencia "A" Causa penal 01076-2012-00021, Sentencia del 26 de febrero de 2016, p. 492.

<sup>53</sup>J.M. Burt and P. Estrada, "Court Ratifies Historic Sepur Zarco Judgment," *International Justice Monitor*, 21 July 2017, <https://www.ijmonitor.org/2017/07/court-ratifies-historic-sepur-zarco-sexual-violence->

judgment/.

<sup>54</sup>Impunity Watch and Alliance to Break the Silence and Impunity, *Changing the Face of Justice*.

<sup>55</sup>Alliance to Break the Silence and Impunity, *Caso Sepur Zarco: la lucha de las mujeres por la justicia*, Guatemala City, n.d., p. 4.

<sup>56</sup>Interview, Paula Barrios, MTM, Guatemala City, 1 October 2015.

<sup>57</sup>Irantzu Mendia Azkue y Gloria Guzmán Orellana, eds., *Ni olvido, ni silencio. Tribunal de Conciencia contra la violencia sexual hacia las mujeres durante el conflicto armado en Guatemala* (Guatemala City: Unión Nacional de Mujeres Guatemaltecas, 2012), [http://publ.hegoa.efaber.net/uploads/pdfs/207/Ni\\_olvido,\\_ni\\_silencio.pdf?1488539728](http://publ.hegoa.efaber.net/uploads/pdfs/207/Ni_olvido,_ni_silencio.pdf?1488539728).

<sup>58</sup>Interview, Paula Barrios, MTM, Guatemala City, 1 October 2015.

<sup>59</sup>In 2012, investigators conducted exhumations, locating the remains of 51 individuals. Seven of those were positively identified, including the husband of Rosa Tiul, a complainant in the Sepur Zarco case.

<sup>60</sup>Impunity Watch and Alliance to Break the Silence and Impunity, *Changing the Face of Justice*.

<sup>61</sup>Jo-Marie Burt, “Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery Trial,” *Critical Studies* 4 (2019):63-96.

<sup>62</sup>Ibid.

<sup>63</sup>J.M. Burt, “Human Remains Presented as Evidence in Sepur Zarco Trial,” *International Justice Monitor*, 11 February 2016, <https://www.ijmonitor.org/2016/02/human-remains-presented-as-evidence-in-sepur-zarco-trial/>.

<sup>64</sup>J.M. Burt and P. Estrada, “El caso de violencia sexual contra mujeres achi toma nuevo rumbo,” *Gazeta*, 9 May 2021, <https://gazeta.gt/el-caso-de-violencia-sexual-contra-mujeres-maya-achi-toma-nuevo-rumbo/>.

<sup>65</sup>*Molina Theissen Verdict*, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente de Mayor Riesgo Grupo “C,” Guatemala, May 23, 2018, <https://drive.google.com/file/d/1-RQammFu9ONdWEy9BolQoucWoURDuQvo/view>.

<sup>66</sup>Inter-American Court of Human Rights. 2004. *Case of Molina-Theissen v. Guatemala, Judgment of May 4, 2004 (Merits)*, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_106\\_ing1.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_106_ing1.pdf); *Case of Molina-Theissen v. Guatemala, Judgment of July 3, 2004 (Reparations and Costs)*, [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_108\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_108_ing.pdf).

<sup>67</sup>J.M. Burt and P. Estrada, “Four Retired Military Officials Convicted in Molina Theissen Case,” *International Justice Monitor*, 23 May 2018, <https://www.ijmonitor.org/2018/05/four-retired-senior-military-officers-found-guilty-in-molina-theissen-case/>.

<sup>68</sup>Until the time of his arrest, Lucas García remained a powerful figure in Guatemalan political life. Callejas y Callejas is reportedly the founder and leader of the *Cofradía* (The Brotherhood) organized crime network. See: Alejandra Gutiérrez Valdizán, “Benedicto,” *Plaza Pública*, 22 August 2016, <https://www.plazapublica.com.gt/content/benedicto>; and “El padrino de los poderes paaraleles: el general Callejas y Callejas,” *Centro de Medios Independientes*, 26 January 2017, <https://cmiguate.org/el-padrino-de-los-poderes.-paralelos-el-general-callejas-y-callejas/>.

<sup>69</sup>Mariano González, “Los sentidos de la CICIG y la lucha contra la corrupción,” *Plaza Pública*, 11 March 2019, <https://www.plazapublica.com.gt/content/sentidos-de-la-cicig-y-la-lucha-contra-la-corrupcion>.

<sup>70</sup>Alejandra Vicente, Director of Redress International, International Seminar on Strategic Litigation, Impunity Watch, Guatemala City, August 2019.

<sup>71</sup>*Molina Theissen Verdict*, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente de Mayor Riesgo Grupo “C,” Guatemala, 13 May 2018, <https://drive.google.com/file/d/1-RQammFu9ONdWEy9BolQoucWoURDuQvo/view>.

<sup>72</sup>Ibid.

<sup>73</sup>J.M. Burt and P. Estrada, “The Future of War Crimes Prosecutions in Guatemala,” *International Justice Monitor*, 14 December 2020, <https://www.ijmonitor.org/2020/12/the-future-of-war-crimes-prosecutions-in-guatemala/>.

<sup>74</sup>Ibid.



Impunity Watch is an international organization that promotes accountability for serious human rights violations in countries emerging from a violent past, and works together with civil society organizations, particularly with women and victims of armed conflict, to build peace and the rule of law.

In this policy brief we analyze the lessons learned from the strategic litigation of emblematic cases of gross human rights violations in Guatemala. The case of genocide against the Maya Ixil people, the case of sexual violence and sexual slavery against the women of the Sepur Zarco community, and the case of crimes against humanity suffered by the Molina Theissen family are especially examined. In the document we explain the objectives and components of strategic litigation and the central role of victims throughout the entire process.

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