

ACADEMIC PAPER

# DOCUMENTING GOOD PRACTICE ON ACCOUNTABILITY FOR CONFLICT- RELATED SEXUAL VIOLENCE: *THE SEPUR ZARCO CASE*

MAY 2022

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*THE SEPUR ZARCO CASE*



**PEACE, SECURITY, HUMANITARIAN AND RESILIENCE SECTION  
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Our involvement in this project began when Mujeres Transformando el Mundo (MTM), one of the organizations representing the Maya Q'eqchi' women who survived the violence in *Sepur Zarco*, asked us to share our views with the Criminal Court of First Instance for Drug Trafficking and Crimes Against the Environment on several issues related to conflict-based sexual and gender violence and reparations. We submitted two amicus curiae briefs to the court during the trial. After the landmark judgment was issued, the accused appealed the verdict on several grounds and MTM asked us to brief the Appeals Court on several of the legal issues raised by the defendants, which we did. After the verdict became final, we partnered with MTM and UNWomen to collect, memorialize and disseminate the legal, political, and social strategies that led to the success in the *Sepur Zarco* case, so that others working on similar cases both within and beyond Guatemala could benefit from the best practices – and cautionary lessons – learned from the *Sepur Zarco* experience. This report is the product of that collaborative effort.

There are many individuals and organizations we wish to thank. First and foremost, the authors wish to thank the surviving Maya Q'eqchi' women – affectionately known as the *Abuelas* (Spanish for the grandmothers) – without whose courage, tenacity, strength, mutual support, perseverance and leadership the *Sepur Zarco* case would never have seen the light of day. In a context in which sexual violence during the Guatemalan conflict had remained unacknowledged for decades, they were indispensable to the success of the case.

Equally important were the civil society organizations – in particular Mujeres Transformando el Mundo (MTM) and its director Paula Barrios – whose support for, collaboration with and dedication to seeking

justice for the *Abuelas* was and remains unwavering. Together with the Unión Nacional de Mujeres Guatemaltecas (UNAMG) and the Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP), MTM not only fought alongside the *Abuelas* for justice but also ensured that their voices and demands remained central to the case.

This report is based on interviews with many of the key actors in the case (including the *Abuelas* and community leaders of *Sepur Zarco*, members of civil society organizations involved in the case, experts who testified in the case, the prosecutors, the pre-trial judge and the trial judges), review of the trial verdict (“Sentencia”) and other relevant documents from the pre-trial, trial, appeals and reparations phases of the case, and review of articles and other secondary sources about the case. Over and over again, those we spoke with underscored their deep admiration for the civil society organizations that worked with the *Abuelas* to bring forward this litigation.

Many shared stories with us about the organizations’ deep respect and unmitigated support for the *Abuelas*, their creativity in overcoming obstacles, and their ability to form strategic alliances and work in concert with each other in the service of justice for the *Abuelas*.<sup>1</sup>

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The views expressed in this publication are those of the authors and do not necessarily represent the views of UN Women, UNDP, the United Nations or any of its affiliated organizations.

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1 Alicia LeDuc, *Strategic Alliances as an Impact Litigation Model: Lessons from the Sepur Zarco Human Rights Case in Guatemala*, 25 WILLAMETTE JOURNAL OF INTERNATIONAL LAW AND DISPUTE RESOLUTION 150, 167 (2018).

# ABBREVIATIONS

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<b>ACHR</b>	American Convention on Human Rights
<b>CEH</b>	La Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification)
<b>CICIG</b>	Comisión Internacional contra la Impunidad en Guatemala (International Commission Against Impunity in Guatemala)
<b>CJU</b>	La Colectiva Jalok U
<b>CONAVIGUA</b>	La Coordinadora Nacional de Viudas de Guatemala (National Coordinator of Women Affected by the Internal Armed Conflict)
<b>ECAP</b>	Equipo de Estudios Comunitarios y Acción Psicosocial
<b>FAFG</b>	Forensic Anthropology Foundation of Guatemala
<b>FECI</b>	Fiscalía Especial contra la Impunidad (Special Anti-Impunity Prosecutor’s Office)
<b>IACHR</b>	Inter-American Commission of Human Rights
<b>IACtHR</b>	Inter-American Court of Human Rights
<b>INTA</b>	Instituto Nacional de Transformación Agraria (National Institute of Agrarian Transformation)
<b>La Alianza</b>	Alianza Rompiendo el Silencio y la Impunidad (Alliance to Break the Silence and [Cycle of] Impunity)
<b>MTM</b>	Mujeres Transformando el Mundo (Women Transforming the World)
<b>NISGUA</b>	Network in Solidarity with the People of Guatemala
<b>ODHAG</b>	Oficina de Derechos Humanos del Arzobispado de Guatemala (Human Rights Office of the Archdiocese of Guatemala)
<b>PNR</b>	Programa Nacional de Resarcimiento (National Compensation Program)
<b>PPO</b>	Public Prosecutor’s Office
<b>REHMI</b>	Recuperación de la Memoria Histórica (Recovery of Historical Memory)
<b>SGBV</b>	Sexual and Other Gender-Based Violence
<b>TRC</b>	Truth and Reconciliation Commission
<b>UN</b>	United Nations
<b>UNAMG</b>	Unión Nacional de Mujeres Guatemaltecas (National Union of Guatemalan Women)
<b>WCRO</b>	War Crimes Research Office
<b>WOLA</b>	Washington Office on Latin America

# INTRODUCTION

# INTRODUCTION

Despite increasing evidence of sexual and other forms of gender-based violence (SGBV) committed during periods of conflict or repression, few domestic justice systems have held perpetrators accountable for these crimes. The *Sepur Zarco* case is an exception. In a landmark verdict issued in late February 2016, a Guatemalan court convicted two former military members of, inter alia, sexual violence, sexual slavery, and domestic slavery committed against Maya Q'eqchi' women in and near a military rest outpost in *Sepur Zarco* during the internal armed conflict in Guatemala.<sup>2</sup> This was one of the first convictions of former military members for acts of sexual violence against women committed in the context of the country's armed conflict, and one of the first instances of a domestic court anywhere prosecuting – through the application of national and international laws – sexual slavery in the context of armed conflict as an international crime. A year later, Guatemala's High Risk Crimes Appellate Tribunal unanimously upheld the historic *Sepur Zarco* judgment,<sup>3</sup> which became final in September 2018.<sup>4</sup>

In acknowledging that acts of sexual violence against the women amounted to grave crimes, the *Sepur Zarco* verdict changed the narrative about sexual violence in Guatemala's conflict. Up until then – as in other conflicts in the region and beyond – sexual violence had not been recognized as a distinct crime, equivalent to other crimes committed during the conflict, for which perpetrators could be held accountable. The historic verdict has inspired other women to bring sexual violence claims, both in Guatemala and elsewhere, and to frame these acts as international crimes. In

addition, the transformative reparations awarded in the case – many of which were directed against the State – have become a model for reparations awards.

This report highlights some of the critical developments prior to the case, as well as the social, legal, and political strategies employed in the case, which led to its remarkable success. It will also offer some reflections about the challenges that have emerged since the *Sepur Zarco* case and the potential lessons learned for pending and future litigation of similar cases in the region.

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2 Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01-76-2012-00021, Sentencia, at 1, 492-493, 498, 502 (26 feb. 2016) [hereinafter *Sepur Zarco* Trial Judgment].

3 See Jo-Marie Burt & Paulo Estrada, Court Ratifies Historic *Sepur Zarco* Sexual Violence Judgment, INTERNATIONAL JUSTICE MONITOR (July 21, 2017), <https://www.ijmonitor.org/2017/07/court-ratifies-historic-sepur-zarco-sexual-violence-judgment/>.

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4 Sentencia por el caso *Sepur Zarco* queda en firme, MUJERES TRANSFORMADO EL MUNDO (28 nov. 2018), <https://mujerestransformandoelmundo.org/sentencia-por-el-caso-sepur-zarco-queda-en-firme/>.

The background is split into two main color sections: a blue upper section and a yellow lower section. A large, semi-transparent blue circle overlaps the boundary between the two sections. In the yellow section, there is a large, semi-transparent yellow shape that resembles a stylized '4' or a similar geometric form. The text is white and positioned in the upper left area of the blue section.

BACKGROUND:  
THE *SEPUR ZARCO*  
CASE

# SUMMARY OF THE FACTS

In 1982, during the height of a 36-year conflict between the government of Guatemala and various leftist rebel groups, the Guatemala military attacked the indigenous community of *Sepur Zarco*.<sup>5</sup> Over the course of several months, members of the armed forces detained a number of male Maya Q'eqchi' leaders who had sought to obtain legal title to the lands where they had lived and worked for years<sup>6</sup> – lands that were part of the ancestral territory of the Q'eqchi' but had been illegally converted decades earlier into large, private estates.<sup>7</sup> Concerned by the threat these land claims posed to their economic status, local landowners accused the men of supporting the guerrillas in order to secure the assistance of the Guatemalan military in impeding their efforts.<sup>8</sup> Using lists provided by the landowners,<sup>9</sup> and sometimes even accompanied by them or using their tractors and other modes of transport,<sup>10</sup> the soldiers tied up most of the men and took them back to the landowners' plantations, where the men were beaten, tortured, and ultimately killed or disappeared.<sup>11</sup>

The army then attacked the men's families, burning down their houses, destroying their belongings, and razing their crops and livestock.<sup>12</sup> Soldiers repeatedly raped the men's spouses and other female family members – sometimes in front of the women's children or in public – taunting the women that they could do anything they wanted to them now that the men were gone.<sup>13</sup> Not even pregnant women were spared – the soldiers raped one heavily pregnant woman who was within days of giving birth and another who lost the pregnancy due to the sexual violence.<sup>14</sup>

Several women fled with their children and went into hiding in the mountains, seeking safety.<sup>15</sup> But soldiers swept the mountains, shooting at those they found and dropping bombs from helicopters.<sup>16</sup> Constantly on the run, the women and their families were unable to stay anywhere long enough to build a shelter, instead sleeping under the trees or in hollowed out tree trunks.<sup>17</sup> Exposed to the elements and with little to eat,<sup>18</sup> several of the women's children died from cold and hunger.<sup>19</sup> Others were killed by the soldiers, including one pregnant daughter who was killed with machetes.<sup>20</sup> As one of the *Abuelas* testified, "I thought I would save my children there [in the mountains], so I took them to the mountains to live. But in reality, they died of hunger there in the mountains."<sup>21</sup> After years in

the mountains, the women returned, only to find their homes destroyed and their villages in ruin.<sup>22</sup>

Most of the rest of the women were forced to move right outside the military base, along with some of their sisters and daughters.<sup>23</sup> For months during 1982 and 1983, these women were forced to take turns every few days cooking, washing clothes, and cleaning for soldiers,<sup>24</sup> all without pay.<sup>25</sup> During their "shifts," the women also were repeatedly raped, often by multiple men.<sup>26</sup> Although the "shifts" eventually ended, the women were forced to continue to cook and wash for the soldiers for up to six years, and soldiers continued to rape the women in improvised huts where they were forced to live or when they went to wash clothes in the river.<sup>27</sup> To prevent the women from getting pregnant, the soldiers forcibly injected many of them with birth control or forced them to take birth control pills.<sup>28</sup> At least one woman, Dominga Cuc, who was repeatedly raped in front of her two young daughters, was killed along with her daughters.<sup>29</sup>

The abuses had lasting effects on the *Abuelas* and their families. Many of the *Abuelas* suffered physical and emotional injuries,<sup>30</sup> with permanent consequences for their health.<sup>31</sup> In addition to the physical and emotional harms stemming from the sexual violence,<sup>32</sup> the *Abuelas* suffered intense distress from having to leave their children alone<sup>33</sup> or with a neighbor<sup>34</sup> and knowing



Maria Ba Caal and Felisa Cuc walk down the path to Felisa's dwelling. Felisa Cuc is 81 years old, and is waiting for her home. She wants a house of brick and tin. Photo: UN Women/Ryan Brown

their children were often alone and hungry.<sup>35</sup> Some of the women lost their children and were unable to bury them because they feared the soldiers would find them.<sup>36</sup> One abuela

*remembers that once the soldiers were chasing them, she was running and she was carrying her son on her back and he was dying, she had him in her arms when he died, she didn't manage to bury him, what she did was leave him under a stone, it was very painful the way her children died, she no longer had anything to feed them, and one by one they died, she left three children dead on the mountain as a result of that.*<sup>37</sup>

Others buried their children, but cannot remember where their graves are located.<sup>38</sup> Many still do not know what happened to their husbands, as most of their bodies were

never found.<sup>39</sup> The women also suffered intense stigma and shame from members of their own community. As one of them noted, "we were hated by the town – they told us we were toys, or lovers, of the military."<sup>40</sup>

The abuses also had severe economic consequences for the *Abuelas*. Many of their homes, livestock and crops were destroyed, forcing many to build improvised shelters out of plastic and nylon for themselves and their children.<sup>41</sup> In the words of one survivor: "I suffered so much. They left me with nothing. They burned my house, they burned everything I had, and they burned my land also. It's so painful and very sad what I've lived."<sup>42</sup>

At the same time, they were forced to buy their own soap to wash the soldiers' clothes<sup>43</sup> and to use their own corn to make food for the soldiers,<sup>44</sup> leaving them without enough to feed their own children.<sup>45</sup>

# ENDNOTES:

## Section 2.1

- 5 Much of this background is drawn from the testimony of the *Abuelas*, as well as evidence presented during the *Sepur Zarco* trial. The original pre-trial video recordings of the *Abuelas'* testimony (preuba anticipada) were reviewed, and generally are cited when referring to the *Abuelas'* testimony. For other evidence, the audio recordings of the trial, the expert reports, and the descriptions of the evidence in the trial judgment were consulted.
- 6 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 4:50-8:44 & Part 2, at 5:20-9:30 (Sept. 24, 2012) (testimony of Catarina Caal Rax, describing how soldiers tied up and took her husband); Prueba Anticipada Video, Day 1, Witness 2, Part 1, at 9:29-11:03, 15:33-18:57 & Part 3, at 10:00-12:20 (Sept. 24, 2012) (testimony of Rosario Xo, describing the abduction and disappearance of her husband, who had been pursuing land claims); Prueba Anticipada Video, Day 1, Witness 3, Part 1, at 5:00-20:31 (Sept. 24, 2012) (testimony of Matilde Sub, stating that people dressed in military uniforms tied up her husband and abducted him from her home); Prueba Anticipada Video, Day 1, Witness 4, Part 1, at 5:39-13:00 & Part 3, at 0:30-14:40 (Sept. 24, 2012) (testimony of Antonia Choc, stating that the military took and killed her husband because he was asking for land); Prueba Anticipada Video, Day 2, Witness 1, Part 1, at 5:25-9:13 (Sept. 25, 2012) (testimony of Rosa Tiul, describing how the military took her husband and other men in the village); Prueba Anticipada Video, Day 2, Witness 2, Part 1, at 7:37-10:28, 18:40-20:33 & Part 3, at 03:45-18:54 (Sept. 25, 2012) (testimony of Candelaria Maas Sacul describing how soldiers took her husband in 1982 because he was asking for land); Prueba Anticipada Video, Day 2, Witness 4, Part 1, at 08:40-19:49 (Sept. 25, 2012) (testimony of Manuela Ba, describing how the military tied up, abducted, and forcibly disappeared her husband and other community members because of their land claims); Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 5:14-32:08 & Part 3, at 1:37-32:16 (Sept. 26, 2012) (testimony of Felisa Cuc, describing how soldiers took away her husband and other men who had been asking for land); Prueba Anticipada Video, Day 3, Witness 2, Part 1, at 4:53-20:33 & Part 3, at 0:00-20:29 (Sept. 26, 2012) (testimony of Vicenta Col Pop, describing how soldiers tied up and took her husband and other men from *Sepur Zarco* because they were trying to obtain title to their land); Prueba Anticipada Video, Day 3, Witness 3, Part 1, at 5:01-14:21 (Sept. 26, 2012) (testimony of Margarita Chuc Choc, describing how soldiers detained her husband Antonio Sub Cac and other men from *Sepur Zarco* in 1982); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 5:39-28:02 (Sept. 27, 2012) (testimony of Cecilia Caal, describing how, in 1982, the soldiers took her husband and other men who had been petitioning for land); Prueba Anticipada Video, Day 4, Witness 2, Part 1, at 5:51-20:28 (Sept. 27, 2012) (testimony of Magdalena Pop, describing how soldiers took her husband in 1982); Prueba Anticipada Video, Day 4, Witness 3, Part 1, at 1:40-20:32 (Sept. 27, 2012) (testimony of Carmen Xol Ical, describing how soldiers came to her house, tied up, and took her husband in 1982 because he had been asking for land); Prueba Anticipada Video, Day 4, Witness 4, Part 1, at 5:01-32:02 & Part 3, at 0:00-32:21 (Sept. 27, 2012) (testimony of Demecia Yat, describing how soldiers took her husband and about 18 other men in her community who had been requesting land); *Sepur Zarco* Trial Judgment, at 198-199, 206, 209-210, 214-216, 218, 220, 222-223, 226, 229, 234, 238-239, 243-245, 253, 254, 260-261, 264, 266, 267-268, 272-274 (testimony of Antonia Choc, Candelaria Maas Sacul, Carmen Xol Ical, Catarina Caal Rax, Cecilia Caal, Demecia Yat, Felisa Cuc, Magdalena Pop, Manuela Ba, Margarita Chuc Choc, María Ba Caal, Matilde Sub, Rosario Xo, Rosa Tiul, Vicenta Col Pop); id. at 501-502, 504 (finding of the trial court that the men were targeted principally because they had been trying to reclaim their land); id. at 140, 143 (a historical registry expert located the land claims filed by the husbands of most of the *Abuelas*); Juan Carlos Peláez Villalobos, Peritaje Histórico Registral, at 74-76 (undated) [hereinafter Historical Registry Expert Report of Juan Carlos Peláez Villalobos], at 74-76 (nearly all of the *Abuelas* were connected to land claims filed with the government).
- 7 *Sepur Zarco* Trial Judgment, at 137-138, 140, 143 (testimony of historical registry expert Juan Carlos Peláez Villalobos); Historical Registry Expert Report of Juan Carlos Peláez Villalobos, at 6, 9, 23-24, 29; ALISON CROSBY & M. BRINTON LYKES, BEYOND REPAIR?: MAYAN WOMEN'S PROTAGONISM IN THE AFTERMATH OF GENOCIDAL HARM 32 (2019) [hereinafter BEYOND REPAIR?].
- 8 Prueba Anticipada Video, Day 4, Witness 4, Part 3, at 0:00-32:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Audio Recording, File 13, at 0:35:20-0:36:57 (testimony of historical registry expert Juan Carlos Peláez Villalobos); *Sepur Zarco* Trial Judgment, at 128-129 (testimony of military expert Hector Roberto Rosada Granados); id. at 142 (testimony of historical registry expert Juan Carlos Peláez Villalobos); id. at 248, 323 (testimony of Demecia Yat & Petrona Choc Cuz); id. at 504 (finding of the trial court that the men were falsely accused of aiding the guerrillas); Historical Registry Expert Report of Juan Carlos Peláez Villalobos, at 3, 29, 33, 34; see also Jo-Marie Burt, Gender Justice in Post-Conflict Guatemala, 4 CRITICAL STUDIES 63, 66 (2019); LUZ MÉNDEZ GUTIÉRREZ & AMANDA CARRERA GUERRA, CLAMOR FOR JUSTICE: SEXUAL VIOLENCE, ARMED CONFLICT AND VIOLENT LAND DISPOSSESSION 66 (2015).
- 9 Prueba Anticipada Video, Day 4, Witness 4, Part 3, at 0:00-32:21 (testimony of Demecia Yat); Prueba Anticipada Video,

- Day 3, Witness 3, Part 4, at 7:38-12:00 (testimony of Margarita Chuc Choc); *Sepur Zarco* Trial Judgment, at 203, 248 (testimony of Demecia Yat & Margarita Chuc Choc); see also CLAMOR FOR JUSTICE, at 66; Gender Justice in Post-Conflict Guatemala, at 66.
- 10 Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 5:14-32:08 & Part 3, at 1:37-32:16 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 4, Witness 4, Part 3, at 0:00-32:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 247, 253, 257 (testimony of Demecia Yat & Felisa Cuc).
- 11 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 4:50-8:44 & Part 2, at 7:23-9:30 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 1, at 9:29-19:21 & Part 2, at 11:18-11:49 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 14:57-20:31 (testimony of Matilde Sub); Prueba Anticipada Video, Day 1, Witness 4, Part 1, at 5:39-20:32 (testimony of Antonia Choc); Prueba Anticipada Video, Day 2, Witness 1, Part 1, at 5:25-7:24 & Part 2, at 1:00-2:07 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 2, Part 1, at 7:37-10:28, 14:10-15:43 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 1, at 08:40-19:49 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 05:14-0:32:08 & Part 2, at 0:00-32:26 & Part 3, at 1:37-32:16 (testimony of Felisa Cuc); Day 3, Witness 2, Part 2, at 0:00-20:29 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 2, at 0:00-20:29 & Part 3, at 06:48-20:29 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 2, at 10:00-15:00 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 28:02-33:33 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 2, Part 2, at 0:49-9:11 (testimony of Magdalena Pop); Prueba Anticipada Video, Day 4, Witness 3, Part 1, at 01:40-20:32 & Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 200, 207, 208, 210, 217, 219, 220, 224-226, 230, 235, 239, 247, 255-256, 261, 266, 268, 274-275 (testimony of Antonia Choc, Candelaria Maas Sacul, Carmen Xol Ical, Catarina Caal Rax, Cecilia Caal, Demecia Yat, Felisa Cuc, Magdalena Pop, Matilde Sub, María Ba Caal, Matilde Sub, Rosa Tiul, Rosario Xo, and Vincenta Col Pop); id. at 473-485, 501-502, 504 (findings of the trial court, including that many men were disappeared).
- 12 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 8:44-10:40, 14:59-20:04 & Part 4, at 3:02-5:59 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 3, at 5:45-6:17 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 14:57-20:35 & Part 3, at 0:00-4:43 (testimony of Matilde Sub); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 & Part 3, at 0:30-14:40 (testimony of Antonia Choc); Prueba Anticipada Video, Day 2, Witness 2, Part 3, at 03:45-16:20 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 & Part 3, at 0:00-21:21 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 2, at 0:00-20:29 & Part 3, at 06:48-20:29 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 2, at 10:00-15:00 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 28:02-33:33 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 2, Part 2, at 0:49-9:11 (testimony of Magdalena Pop); Prueba Anticipada Video, Day 4, Witness 3, Part 1, at 01:40-20:32 & Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 200, 207, 208, 210, 217, 219, 220, 224-226, 230, 235, 239, 247, 255-256, 261, 266, 268, 274-275 (testimony of Antonia Choc, Candelaria Maas Sacul, Carmen Xol Ical, Catarina Caal Rax, Cecilia Caal, Demecia Yat, Felisa Cuc, Magdalena Pop, Matilde Sub, María Ba Caal, Matilde Sub, Rosa Tiul, Rosario Xo, and Vincenta Col Pop).
- 13 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 8:44-10:40 & Part 4, at 0:00-3:02 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 2:58-5:00, 7:10-7:42 & Part 3, at 21:30-22:32 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 0:00-10:00 (testimony of Matilde Sub); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 15:36-20:32 & Part 2, at 0:00-20:34 & Part 3, at 0:30-14:40 (testimony of Antonia Choc); Prueba Anticipada Video, Day 2, Witness 1, Part 1, at 12:30-13:30 & Part 2, at 11:09-12:42 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 2, Part 3, at 03:45-16:20 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 & Part 3, at 0:00-05:59 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 & Part 4, at 0:00-29:51 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 2, at 0:00-20:29 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 28:02-33:33 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 2, Part 2, at 0:00-20:29 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 4, Witness 3, Part 1, at 01:40-20:32 & Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 1, at 5:01-32:02 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 207, 210-211, 217, 219-220, 224-225, 230, 235-236, 239, 244, 254-255, 261-262, 264-266, 268-269, 273-275 (testimony of Antonia Choc, Candelaria Maas Sacul, Carmen Xol Ical, Catarina Caal Rax, Cecilia Caal, Demecia Yat, Felisa Cuc, Magdalena Pop, Manuela Ba, María Ba Caal, Matilde Sub, Rosa Tiul, Rosario Xo, and Vincenta Col Pop); see also Gender Justice in Post-Conflict Guatemala, at 77-78.
- 14 Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); Prueba Anticipada Video,

- Day 4, Witness 1, Part 1, at 28:02-33:33 (testimony of Cecilia Caal); *Sepur Zarco* Trial Judgment, at 239 & 265 (testimony of Cecilia Caal & Antonia Choc).
- 15 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 10:40-14:59 & Part 2, at 13:46-15:52 (testimony of Catarina Caal Rax, explaining she left her home because she was afraid of the soldiers who had taken her husband, and she thought her children would be safer in the mountains); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 7:42-9:15 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 5:00-10:00 (testimony of Matilde Sub, describing how she, her mother, and some of her children hid in the mountains for six years); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); *Sepur Zarco* Trial Judgment, at 224, 265, 268-269, 274 (testimony of Antonia Choc, Catarina Caal Rax, Matilde Sub, and Rosario Xo).
- 16 Prueba Anticipada Video, Day 1, Witness 2, Part 3, at 23:33-25:00 (testimony of Rosario Xo); *Sepur Zarco* Trial Judgment, at 224-225, 227, 228, 274 (testimony of Matilde Sub and Rosario Xo).
- 17 Prueba Anticipada Video, Day 1, Witness 1, Part 2, at 17:57-20:31 & Part 3, at 0:00-3:00 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 17:50-18:30 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); *Sepur Zarco* Trial Judgment, at 224-225, 265, 268, 270, 274 (testimony of Antonia Choc, Catarina Caal Rax, Matilde Sub, and Rosario Xo).
- 18 Prueba Anticipada Video, Day 1, Witness 1, Part 3, at 0:00-6:09 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 17:50-18:30 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 10:00-14:57 (testimony of Matilde Sub); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); Prueba Anticipada Video, Day 3, Witness 2, Part 5, at 0:00-02:40 (testimony of Vicenta Col Pop); *Sepur Zarco* Trial Judgment, at 221, 225, 265, 268, 274 (testimony of Antonia Choc, Catarina Caal Rax, Matilde Sub, Rosario Xo, and Vicenta Col Pop).
- 19 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 12:41-17:14, Part 3, at 0:00-6:09, & Part 4, at 0:00-3:02 (testimony of Catarina Caal Rax, describing the deaths of four of her children while in the mountains, including two from starvation); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 12:10-18:30 & Part 3, at 25:20-29:22 (testimony of Rosario Xo, describing the deaths of three of her children from hunger while hiding in the mountains); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 5:00-14:57 (testimony of Matilde Sub, describing how two of her children starved to death in the mountains); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); *Sepur Zarco* Trial Judgment, at 224-225, 227-228, 265, 268, 270, 271, 274 (testimony of Antonia Choc, Catarina Caal Rax, Matilde Sub, and Rosario Xo).
- 20 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 12:41-14:59, Part 2, at 6:09-9:16 & Part 4, at 0:00-3:02 (testimony of Catarina Caal Rax, explaining that soldiers killed two of her children); *Sepur Zarco* Trial Judgment, at 269-270 (testimony of Catarina Caal Rax).
- 21 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 12:41-14:59 (testimony of Catarina Caal Rax) (authors' translation).
- 22 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 12:41-20:04 & Part 4, at 0:00-3:02, 5:59-11:59 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 18:30-19:20 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 10:00-14:57 (testimony of Matilde Sub); *Sepur Zarco* Trial Audio Recording, File 11 at 48:08-51:58 (testimony of Antonia Choc); *Sepur Zarco* Trial Judgment, at 225, 265, 268, 271, 274 (testimony of Antonia Choc, Catarina Caal Rax, Matilde Sub, and Rosario Xo).
- 23 Prueba Anticipada Video, Day 2, Witness 4, Part 3, at 0:00-5:59 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 21:29-22:25 & 32:53-33:33 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 33:33-39:34 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 3, Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical);
- Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Audio Recording, File 21, at 0:00-2:31 (testimony of María Ba Caal); *Sepur Zarco* Trial Judgment, at 204, 207, 230, 232, 235, 247 (testimony of Carmen Xol Ical, Demecia Yat, Manuela Ba, Margarita Chuc Choc, and María Ba Caal).
- 24 Prueba Anticipada Video, Day 2, Witness 1, Part 1, at 13:30-14:50 & Part 2, at 12:42-20:33 & Part 3, at 4:04-6:13 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 & Part 3, at 0:00-5:59 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 2, at 0:00-20:29 & Part 3, at 0:00-06:48 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 1, at 29:50-32:17 & Part 3, at 16:05-16:58 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 33:33-39:34 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 3, Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 1, at 5:01-31:02 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 200, 204, 207, 210, 215-216, 220, 230-231, 235-236, 240, 245, 255 (testimony of Candelaria Maas Sacul, Carmen Xol Ical, Cecilia Caal, Demecia Yat, Felisa Cuc, Margarita Chuc Choc, María Ba Caal, Rosa Tiul, Vicenta Col Pop).

- 25 Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 4:21-5:03 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 (testimony of Manuela Ba); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 39:34-47:55 & Part 2, at 15:43-19:51 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 3, Part 3, at 0:00-5:31 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 1, at 5:01-32:02 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 207, 215, 231, 236, 240, 245, 256 (testimony of Candelaria Maas Sacul, Carmen Xol Ical, Cecilia Caal, Demecia Yat, Felisa Cuc, Manuela Ba, María Ba Caal).
- 26 Prueba Anticipada Video, Day 2, Witness 1, Part 2, at 16:45-20:33 & Part 3, at 7:47-9:07 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 3:21-4:20, 7:44-9:27, 12:52-14:56 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 & Part 4, at 0:00-29:50 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 2, at 0:00-20:29 & Part 4, at 0:00-20:44 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 2, at 0:00-10:00 & Part 3, at 20:00-25:00 & Part 4, at 32:53-34:12 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 33:33- 51:51 & Part 2, at 0:00-04:52 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 3, Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 & Part 4, at 0:00-32:18 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 200-201, 202, 204, 207, 211-212, 215-216, 219, 221, 230-231, 240, 245, 255 (testimony of Candelaria Maas Sacul, Carmen Xol Ical, Cecilia Caal, Demecia Yat, Felisa Cuc, Manuela Ba, Margarita Chuc Choc, Rosa Tiul, Vicenta Col Pop).
- 27 Prueba Anticipada Video, Day 2, Witness 1, Part 1, at 17:33-18:39 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 15:48-17:58 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 & Part 3, at 5:59-21:21 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 3, at 0:00-06:48 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 21:29-22:25 & 31:40-32:53 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 47:55-51:51 & Part 3, at 03:07-5:59 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 3, Part 2, at 0:00-20:35 & Part 3, at 0:00-5:31 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 & Part 4, at 0:00-32:18 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 204, 207, 208, 210, 212-213, 216, 220, 231, 240, 245, 256 (testimony of Candelaria Maas Sacul, Carmen Xol Ical, Cecilia Caal, Demecia Yat, Felisa Cuc, Manuela Ba, Margarita Chuc Choc, Rosa Tiul, Vicenta Col Pop).
- 28 Prueba Anticipada Video, Day 2, Witness 4, Part 4, at 0:00-5:55 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 2, Part 4, at 0:00-20:34 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 2, at 10:00-15:00 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 3, Part 4, at 0:00-20:28 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00- 29:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 200, 208, 220, 232, 246 (testimony of Carmen Xol Ical, Demecia Yat, Manuela Ba, Margarita Chuc Choc, Vicenta Col Pop).
- 29 Prueba Anticipada Video, Day 3, Witness 3, Part 2, at 15:00-20:00 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 3, Part 2, at 0:00-20:35 & Part 4, at 0:00-20:28 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 4, at 0:00-32:18 (testimony of Demecia Yat); *Sepur Zarco* Trial Audio Recording, File 7, at 30:01-53:08 (testimony of Julia Coc de Chuc); *Sepur Zarco* Trial Judgment, at 200, 231, 283-284, 350-351 (testimony of Carmen Xol Ical, Julia Coc de Chuc, Margarita Chuc Choc, Santiago Seb Ical).
- 30 E.g., Prueba Anticipada Video, Day 1, Witness 1, Part 2, at 17:57-20:31 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 6:04-10:41 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 10:00-14:57 (testimony of Matilde Sub); Prueba Anticipada Video, Day 2, Witness 1, Part 2, at 11:09-12:42 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 12:01-12:51 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 2, Part 2, at 0:00-20:29 & Part 4, at 0:00-20:34 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 39:34-47:55 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 200, 207, 211, 216, 219, 220, 224, 230, 235, 239, 246 (testimony of Candelaria Maas Sacul, Carmen Xol Ical, Cecilia Caal, Demecia Yat, Manuela Ba, Margarita Chuc Choc, María Ba Caal, Rosario Xo, Vicenta Col Pop).
- 31 See, e.g., *Sepur Zarco* Trial Judgment, at 41-53 (expert testimony of Karen Denisse Peña Juez, who conducted a physical and mental evaluation of the victims and some community members, detailing the extensive physical and psychological harm they experienced)."
- 32 Prueba Anticipada Video, Day 4, Witness 4, Part 2 (testimony of Demecia Yat) ("[They raped me] many times. It is very painful for me to remember because they made me feel like I wasn't worth anything.")
- 33 Prueba Anticipada Video, Day 2, Witness 1, Part 2, at 17:10-17:52 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 7:24-7:43 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 2, at 0:00-20:28 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 3, at 00:00-1:37 (testimony of Rosa Tiul);

- Felisa Cuc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 39:34-47:55 (testimony of Cecilia Caal).
- 34 Prueba Anticipada Video, Day 3, Witness 2, Part 3, at 0:00-06:48 (testimony of Vicenta Col Pop); *Sepur Zarco* Trial Judgment, at 220.
- 35 Prueba Anticipada Video, Day 2, Witness 1, Part 2, at 17:10-17:52 (testimony of Rosa Tiul).
- 36 Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 15:05-17:49 & Part 3, at 25:20-29:22 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 10:00-14:57 (testimony of Matilde Sub).
- 37 *Sepur Zarco* Trial Judgment, at 225 (testimony of Rosario Xo) (authors' translation).
- 38 Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); *Sepur Zarco* Trial Judgment, at 265-266.
- 39 Prueba Anticipada Video, Day 1, Witness 1, Part 2, at 7:23-9:30 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 2, at 11:18-11:49 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 3, Part 2, at 14:57-20:35 (testimony of Matilde Sub); Prueba Anticipada Video, Day 1, Witness 4, Part 1, at 13:00-20:32 (testimony of Antonia Choc); Prueba Anticipada Video, Day 2, Witness 1, Part 1, at 7:24-9:13 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 2, Witness 4, Part 1, at 08:40-19:49 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 05:14-0:32:08 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 05:39-28:02 (testimony of Cecilia Caal, describing how, in 1982, the soldiers took her husband and other men who had been petitioning for land); Prueba Anticipada Video, Day 4, Witness 3, Part 1, at 1:40-20:32 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 0:00-29:21 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 206, 239, 264, 268 (testimony of Antonia Choc, Catarina Caal Rax, Cecilia Caal, Manuela Ba); IMPUNITY WATCH, CHANGING THE FACE OF JUSTICE: KEYS TO THE STRATEGIC LITIGATION OF THE *SEPUR ZARCO* CASE, at 9 (2017), [https://cad5e396-f48c-4e90-80f5-27ccad29f65e.filesusr.com/ugd/f3f989\\_ecf455f92a8d4b-2bab87fe44093c2daa.pdf](https://cad5e396-f48c-4e90-80f5-27ccad29f65e.filesusr.com/ugd/f3f989_ecf455f92a8d4b-2bab87fe44093c2daa.pdf).
- 40 Prueba Anticipada Video, Day 3, Witness 1, Part 2 (testimony of Felisa Cuc) (author's translation); see also Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 19:46-21:29 (testimony of Margarita Chuc Choc). See also Prueba Anticipada Video, Day 3, Witness 3, Part 2 (testimony of Margarita Chuc Choc) ("When this happened to me, people hated me, how they mistreated me. The people told me the soldiers raped each moment. They told me they hated me a lot. This hurt me a lot.") (authors' translation).
- 41 Prueba Anticipada Video, Day 3, Witness 1, Part 2, 00:00-32:26 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 2, Witness 4, Part 2, 00:00-20:28 (testimony of Manuela Ba); Prueba Anticipada Video, Day 4, Witness 3, Part 2 (testimony of Carmen Xol Ical).
- 42 Prueba Anticipada Video, Day 1, Witness 1, Part 1, at 14:59-17:14 (testimony of Catarina Caal Rax) (authors' translation). See also Prueba Anticipada Video, Day 3, Witness 1, Part 4, at 00:00-29:51 (testimony of Felisa Cuc) ("I ended up in extreme poverty and with a lot of pain. Now I have survived.... I did everything possible to come because I need an investigation, that there is justice, for what I experienced.") (authors' translation).
- 43 Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 4:21-5:03 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 2, Witness 4, Part 3, at 5:59-21:21 (testimony of Manuela Ba); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 2, at 0:00-20:29 (testimony of Vicenta Col Pop); Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 16:05-16:58 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 1, Part 2, at 15:43-19:51 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 4, Part 1, at 5:01-32:02 & Part 4, at 0:00-32:18 (testimony of Demecia Yat); *Sepur Zarco* Trial Audio Recording, File 21, at 1:05:38-1:06:30 (testimony of Manuela Ba); *Sepur Zarco* Trial Judgment, at 215 (testimony of Candelaria Maas Sacul).
- 44 Prueba Anticipada Video, Day 2, Witness 2, Part 2, at 16:51-17:58 (testimony of Candelaria Maas Sacul); *Sepur Zarco* Trial Judgment, at 216 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 4, Witness 1, Part 3, at 9:11-9:32 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 4, Witness 3, Part 3, at 0:00-5:31 (testimony of Carmen Xol Ical); Prueba Anticipada Video, Day 3, Witness 1, Part 3, at 00:00-1:37 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 3, Witness 2, Part 3, at 0:00-06:48 (testimony of Vicenta Col Pop); *Sepur Zarco* Trial Judgment, at 220.
- 45 Prueba Anticipada Video, Day 3, Witness 1, Part 3, at 00:00-1:37 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 4, Witness 4, Part 2, at 00:00-29:21 (testimony of Demecia Yat) ("I lived crying. My children grew up in poverty. Sometimes I had food to feed them, and sometimes I didn't.") (authors' translation).

## 2.2

# PROCEDURAL HISTORY OF THE CASE

The criminal process in Guatemala has three phases: the preparatory stage, the intermediate stage and the debate and/or trial phase. In this next section, we explain how the criminal process began and what actions and steps were taken which permitted the case to succeed.

### 2011: The preparatory stage

On September 30, 2011, with the support of the Alianza Rompiendo el Silencio y la Impunidad (La Alianza),<sup>46</sup> fifteen surviving female victims initiated the *Sepur Zarco* case by filing a criminal complaint alleging crimes against humanity in the forms of sexual and domestic slavery, among other crimes, with the Criminal Court of First Instance for Drug Trafficking and Crimes Against the Environment of the Municipality of Puerto Barrios, Izabal, at which point

Mujeres Transformando el Mundo (MTM) and Unión Nacional de Mujeres Guatemaltecas (UNAMG) were recognized as civil claimants in the case.<sup>47</sup> The case was assigned to the Human Rights Unit of the Public Prosecutor's Office – a specialized investigative and prosecutorial unit responsible, among other things, for cases involving torture, extrajudicial executions, and forced disappearances, including those committed during Guatemala's internal armed conflict.<sup>48</sup>

### 2011-2013: Relevant investigation proceedings

In late 2011 and early 2012, at the request of the Human Rights Unit and MTM, the Forensic Anthropology Foundation of Guatemala (FAFG) conducted exhumations through which the remains of seven members of the Setoloch community were located.<sup>49</sup> Among those identified was Sebastián Coc, the husband of abuela Rosa Tiul.<sup>50</sup> Two more exhumations were carried out, both at the Tinajas Farm, located within

the Chabil Utzaj sugar mill, in 2012 and 2013, after which an additional 51 remains were found.<sup>51</sup> In 2012, at the request of the prosecutors and civil claimants, the case was transferred to a “High Risk Tribunal” in Guatemala City<sup>52</sup> in order to ensure the *Abuelas'* safety, as well as place the case before judges who were more specialized in international law.<sup>53</sup>

### 2012: Pre-trial evidentiary hearings

In 2012, the prosecutors and civil claimants participated in pre-trial evidentiary hearings before Judge Miguel Ángel Gálvez of the High Risk Tribunal.<sup>54</sup> These hearings, called *anticipo de prueba* or *prueba anticipada*, allow testimony to be recorded for use at a future trial where there is a risk that the witness might not

later be available.<sup>55</sup> In September 2012, at the request of MTM and the prosecutors, nineteen witnesses, including the *Abuelas* and a few other victims of abuses, most of whom were already of an advanced age, testified about the violence they had experienced.<sup>56</sup>

### 2014: Arrest warrants, *Abuelas* as civil claimants, and initial hearing

On June 14, 2014, two suspects – former commander of the *Sepur Zarco* military base and retired lieutenant colonel, Esteelmer Francisco Reyes Girón, and former military commissioner and commander of the civil

patrols in the area, Heriberto Valdez Asig<sup>57</sup> – were arrested.<sup>58</sup> Several witnesses had identified Reyes Girón as the head of the *Sepur Zarco* base and the person who had ordered the women to be brought to the

base, where they were forced to cook for the soldiers and subjected to sexual violence, including by Reyes Girón.<sup>59</sup> Meanwhile, many of the *Abuelas* had testified that Valdez Asig<sup>60</sup> had guided the soldiers who disappeared their husbands to their homes, identified the men to be taken, been present while some of the women were raped at gunpoint, and ordered some of the women to cook for the soldiers.<sup>61</sup>

An important aspect of this phase was the decision in 2014 to recognize as civil claimants in the trial not only MTM and UNAMG, but also the *Abuelas*, who organized and formed the Jalok U Collective,<sup>62</sup> through which they were allowed to participate in the proceedings

## 2014: The intermediate stage hearing

In October 2014, after the requisite period of investigation came to an end, the case moved to the second stage of the process, known as the intermediate stage, the purpose of which was to finalize the Public Prosecutor's Office indictment and to recognize the civil claimants' petition.<sup>65</sup>

During this intermediate stage, Judge Gálvez reviewed the the prosecutor's request, the modifications proposed by the civil claimants, as well as the evidence collected, and confirmed the prosecutors' charges against the accused, with the modifications requested by the *Abuelas* and their representatives.<sup>66</sup> In addition to charges of domestic crimes, both men were charged under Article 378 of the Guatemalan Criminal Code, a provision entitled "Crimes against the duties of

## 2016: Trial and/or oral and public debate

The *Sepur Zarco* trial commenced on February 1, 2016, before a three-judge panel of the High Risk Tribunal presided over by Judge Yassmin Barrios Aguilar and including Judges Patricia Isabel Bustamente Garcia and Gervi Hionardo Sical Guerra.<sup>72</sup> During the trial, which lasted most of the month, the court heard from over 70 witnesses, including Q'eqchi' women survivors, eyewitnesses, other members of the community, and defense witnesses, as well as a plethora of experts.<sup>73</sup> Additional evidence, including military documents and expert reports, also were presented to the court.<sup>74</sup> On February 26, 2016, the court found

and assert their rights using their own voice, strengthening their own political empowerment.<sup>63</sup>

Once the arrest warrants against the accused Reyes Girón and Valdez Asig were executed and the *Abuelas* recognized as civil claimants through the Jalok U Collective, an initial hearing was held, in which the Public Ministry and the civil claimants presented arguments to Judge Miguel Ángel Gálvez of the Criminal Court of First Instance, requesting that the defendants be committed to trial for crimes against the duties of humanity in the form of sexual slavery, domestic slavery and sexual violence. The accused were placed in preventive detention, and the judge scheduled the intermediate stage hearing for the month of October 2014.<sup>64</sup>

humanity," which incorporates both war crimes and crimes against humanity.<sup>67</sup> Specifically, Reyes Girón was charged with "crimes against the duties of humanity" in the forms of sexual violence, sexual slavery, and domestic slavery for the crimes against the *Abuelas*,<sup>68</sup> as well as murder and crimes against the duties of humanity in the form of humiliating and degrading treatment for the killings of Dominga Coc and her two children.<sup>69</sup> Meanwhile Valdez Asig was charged with crimes against the duties of humanity in the form of sexual violence, as well as forced disappearances under Article 201 Ter of the Guatemalan Criminal Code.<sup>70</sup> The accused subsequently filed several challenges, but these were all dismissed.<sup>71</sup>

the accused guilty of all charges and sentenced Reyes Girón to 120 years and Valdez Asig to 240 years.<sup>75</sup> The following week, the same panel of the High Risk Tribunal held a hearing on reparations, ultimately ordering a number of measures against both the defendants themselves and the State of Guatemala.<sup>76</sup> A year later, Guatemala's High Risk Crimes Appellate Court rejected the defendants' appeals<sup>77</sup> and unanimously upheld the historic *Sepur Zarco* judgment,<sup>78</sup> which became final in September 2018.<sup>79</sup>

# ENDNOTES:

## Section 2.2

- 46 La Alianza is made up of three women's rights organizations in Guatemala, namely *Mujeres Transformando el Mundo* (MTM), Unión Nacional de Mujeres Guatemaltecas (UNAMG) and Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP). *Caso Sepur Zarco*, la lucha de las mujeres por la justicia, at 1, *MOVIMIENTO POR LA PAZ* (2016), <https://www.mpd.org/sites/default/files/160210-dossier-alianza-rompiendo-silencio.pdf>.
- 47 Interview with former MTM attorney Jennifer Bravo (Aug. 30, 2019); Interview with UNAMG Executive Director Ada Valenzuela (Aug. 30, 2019); *Sepur Zarco*: El camino de las mujeres hacia la justicia, *SEPARATA SEPUR ZARCO* No. 1, at 5 (ago. 2016), <https://unamg.org/publicaciones>; Gender Justice in Post-Conflict Guatemala, at 76; *CHANGING THE FACE OF JUSTICE*, at 10-11, 15, 16; Strategic Alliances as an Impact Litigation Model: Lessons from the *Sepur Zarco* Human Rights Case in Guatemala, at 170. For a discussion of civil claimants under Guatemalan law, see also *infra* Section IV.B.1.
- 48 Interview with former MTM attorney Jennifer Bravo; Interview with the *Sepur Zarco* prosecutors (Aug. 30, 2019) (statement of Hilda Pineda); Gender Justice in Post-Conflict Guatemala, at 76; *CHANGING THE FACE OF JUSTICE*, at 15; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5.
- 49 Interview with the *Sepur Zarco* prosecutors (statement of Blanca Castañeda); *id.* at 6 (statement of Hilda Pineda); Interview with former MTM attorney Jennifer Bravo; *Sepur Zarco* Trial Judgment; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5; Gender Justice in Post-Conflict Guatemala, at 76, 80-81; Strategic Alliances as an Impact Litigation Model, at 170-171.
- 50 Gender Justice in Post-Conflict Guatemala, at 76, 81.
- 51 *Mujeres Transformando el Mundo*, Año 2011-2013: Exhumaciones caso *Sepur Zarco* (May 16, 2016), <https://mujerestransformandoelmundo.org/ano-2011-2013-exhumaciones-caso-sepur-zarco/>; Interview with former MTM attorney Jennifer Bravo.
- 52 In Guatemala, the request for transfer to the High Risk Tribunal is referred to as a request for a juzgado de competencia ampliada. Interview with pre-trial Judge Miguel Ángel Gálvez (Oct. 28, 2021).
- 53 Interview with former MTM attorney Jennifer Bravo; Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with pre-trial Judge Miguel Ángel Gálvez; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5; Gender Justice in Post-Conflict Guatemala, at 76; *CHANGING THE FACE OF JUSTICE*, at 11, 15.
- 54 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5.
- 55 Congreso de la República de Guatemala, Decreto Numero 51-92, Código Procesal Penal, art. 317 (1992) [hereinafter Guatemala Criminal Procedure Code], [http://www.cicad.oas.org/fortalecimiento\\_institucional/legislations/PDF/GT/decreto\\_congresional\\_51-92\\_codigo\\_procesal\\_penal.pdf](http://www.cicad.oas.org/fortalecimiento_institucional/legislations/PDF/GT/decreto_congresional_51-92_codigo_procesal_penal.pdf); Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with pre-trial Judge Miguel Ángel Gálvez. Guatemala's rules regarding the testimony of witnesses who later may be unavailable are similar to recent rules adopted by international and internationalized criminal tribunals. WCRO and the Academy of Human Rights and International Humanitarian Law, Amicus Curiae Brief on the Inapplicability of Statutory Limitations and Amnesty to War Crimes & Crimes Against Humanity, and the Admissibility of Evidence from Preliminary Evidentiary Hearings ("Anticipos de Prueba") (June 7, 2017).
- 56 Interview with pre-trial Judge Miguel Ángel Gálvez; Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with UNAMG Executive Director Ada Valenzuela; Interview with former MTM attorney Jennifer Bravo; *Sepur Zarco* Trial Judgment, at 198, 206, 209, 214, 218, 222, 229, 234, 238, 243, 253, 260, 264, 267, 272, 330, 339, 345, 353; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5; Gender Justice in Post-Conflict Guatemala, at 76.
- 57 *Asij* is also frequently spelled "Asij." This report uses the spelling followed by the trial court in the *Sepur Zarco* judgment. *Sepur Zarco* Trial Judgment, at 1-2, 375.
- 58 Interview with former MTM attorney Jennifer Bravo; *Sepur Zarco* Trial Judgment, at 2-3, 375-376; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5; *CHANGING THE FACE OF JUSTICE*, at 10-11, 15; Gender Justice in Post-Conflict Guatemala, at 76; Heriberto Valdez Asij, TRIAL INTERNATIONAL (Aug. 29, 2017), <http://web.archive.org/web/20190123235514/https://trialinternational.org/latest-post/heriberto-valdez-asij/>; Strategic Alliances as an Impact Litigation Model, at 158.
- 59 *Sepur Zarco* Trial Judgment, at 241, 331, 339-340 (testimony of Agustín Chen, Cecilia Caal, and Miguel Ángel Caal); see also Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 28:21-31:40 (testimony of Margarita Chuc Choc, stating that she remembers Lieutenant Reyes, who was in charge of the base, because he made her suffer); Prueba Anticipada Video, Day 4, Witness 1, Part 2, at 10:35-15:42 (testimony of Cecilia Caal); Prueba Anticipada Video, Day 5, Witness 1, Part 1, at 2:55-29:49 (testimony of Agustín Chen); *Sepur Zarco* Trial Judgment, at 201, 204 (testimony of Margarita Chuc Choc). Some of the women also stated that they had reported the abuses to Reyes Girón, but he failed to assist them. See, e.g., Prueba Anticipada, Day 3, Witness 1, Part 4, at 0:00-29:50 (testimony of Felisa

- Cuc); Prueba Anticipada, Day 3, Witness 3, Part 2, at 20:00-30:00 (testimony of Margarita Chuc Choc).
- 60 Valdez Asig was also known as “Gilberto Asij,” “El Canche,” “El Canche Asij,” and “Don Canche,” and is referred to by those names in many of the testimonies, including those cited in the next footnote.
- 61 Prueba Anticipada Video, Day 1, Witness 1, Part 2, at 0:00-5:20 (testimony of Catarina Caal Rax); Prueba Anticipada Video, Day 1, Witness 2, Part 1, at 11:26-13:19 & Part 3, at 19:38-20:53 (testimony of Rosario Xo); Prueba Anticipada Video, Day 3, Witness 3, Part 1, at 14:22-21:55 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 3, Part 1, at 1:40-20:32 & Part 2, at 0:00-20:35 (testimony of Carmen Xol Ical); see also *Sepur Zarco* Trial Judgment, at 8, 199, 203, 223, 227, 230, 269, 271 (describing charges, as well as testimony of Catarina Caal Rax, Carmen Xol Ical, Margarita Chuc Choc, and Rosario Xo).
- 62 “Jalok U” means “transformation” or “change” in the q’eqchi’ language. Gender Justice in Post-Conflict Guatemala, at 76; CHANGING THE FACE OF JUSTICE, at 7.
- 63 Interview with UNAMG Executive Director Ada Valenzuela; Interview with former MTM attorney Jennifer Bravo; see also CHANGING THE FACE OF JUSTICE, at 10.
- 64 Interview with former MTM attorney Jennifer Bravo.
- 65 This hearing is known as the audiencia intermedia in Guatemala. Guatemala Criminal Procedure Code, arts. 82(6), 332; Juzgado Primero de Primera Instancia Penal, Narcoactividad y Delitos Contra el Ambiente por Procesos de Mayor Riesgo, Guatemala, Expediente No. C-01076-2012-00021, Resolución de Fase Intermedia, at 4 (14 oct. 2014) [hereinafter *Sepur Zarco* Pre-Trial Decision]; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5.
- 66 *Sepur Zarco* Pre-Trial Decision, at 31-32. For more information about the characterization of the charges, and the civil claimants’ role in framing those charges, see infra Section IV.A.
- 67 Guatemala Criminal Code, art. 378; *Sepur Zarco* Pre-Trial Decision, at 10, 27, 31, 32.
- 68 *Sepur Zarco* Pre-Trial Decision, at 32, 33.
- 69 Id. at 31-32.
- 70 Id.
- 71 Interview with former MTM attorney Jennifer Bravo; see, e.g., Sala Cuarta de la Corte de Apelaciones del Ramo Penal, Narcoactividad y Delitos contra el Ambiente, Constituida en Tribunal de Amparo, Guatemala, Expediente No. 01016-2014-00064, Sentencia Referente a la Acción Constitucional de Amparo 607-2014 (26 feb. 2015).
- 72 *Sepur Zarco* Trial Judgment, at 512; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5; Gender Justice in Post-Conflict Guatemala, at 64.
- 73 See *Sepur Zarco* Trial Judgment, at 20-370.
- 74 Strategic Alliances as an Impact Litigation Model, at 171.
- 75 Id. at 503, 507-08; Interview with presiding trial Judge Yassmin Barrios Aguilar (Sept. 1, 2019); Interview with MTM attorney Esteban Celada Flores (Aug. 29, 2019). The defendants were sentenced to 30 years in prison for crimes against the duties of humanity, and another 30 years for each murder or forced disappearance.
- 76 Interview with presiding trial Judge Yassmin Barrios Aguilar; *Sepur Zarco* Trial Judgment, at 508-511; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5.
- 77 Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01076-2012-00021 Of. 2º, Appeal of Heriberto Valdez Asig (15 mar. 2016) [hereinafter Asig Appeal]; Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01076-2012-00021 Of. 2º, Appeal of Esteelmer Francisco Reyes Girón by his attorney Moises Eduardo Galindo Ruiz (17 mar. 2016) [hereinafter Galindo Appeal]. Dissatisfied with the appeal by his attorney, Mr. Reyes filed a second self-drafted appeal. Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01076-2012-00021 Of. 2º, Appeal of Esteelmer Francisco Reyes Girón (30 mar. 2016) [hereinafter Reyes Appeal].
- 78 Gender Justice in Post-Conflict Guatemala, at 92 (citing Sentencia Número Único 01076-2012-00021, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente del Municipio y Departamento de Guatemala, Ciudad de Guatemala (19 jul. 2017)); Court Ratifies Historic *Sepur Zarco* Sexual Violence Judgment.
- 79 Sentencia por el caso *Sepur Zarco* queda en firme; see also Interview with *Sepur Zarco* prosecutors (statement of Hilda Pineda confirming that the defendants’ various appeals and requests for relief were denied).

# PRE-SEPUR ZARCO DEVELOPMENTS: SURVIVOR-CENTERED MOVEMENT, INTERNATIONAL ENGAGEMENT AND INSTITUTIONAL READINESS

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In reviewing the *Sepur Zarco Abuelas'* journey to justice, one of the clearest lessons learned is how significant certain pre-case developments were to the success of the case, including the comprehensive and sustained support of the survivors by civil society organizations and the contribution of regional and United Nations bodies to the gradual but palpable strengthening of the judicial actors and institutions tasked with investigating and prosecuting complex criminal cases.

## 3.1

# ROLE OF CIVIL SOCIETY ORGANIZATIONS AND THE IMPACT OF THE TRIBUNAL OF CONSCIENCE

### 3.1.1

#### The Importance of Providing Psychosocial Support to Survivors

Bringing litigation against the perpetrators of sexual violence required the *Abuelas* to break decades of internal and external silence fostered not only by their own feelings of guilt and shame, but also by national and local cultures that blamed women for the violence they had suffered. At the time, many within Guatemala believed that “rape d[id] not exist” and that women “wanted,” “consented to,” and “enjoyed” the sexual acts – rape was thus “an act of female promiscuity, and, in the best of cases, infidelity.”<sup>80</sup> These beliefs had the effect of silencing victims and inhibiting them from bringing cases against the perpetrators, an effect that was reinforced by the failure of authorities to take these crimes seriously or to properly investigate them given their own often-biased beliefs.<sup>81</sup>

These national patterns were replicated and reinforced within indigenous communities, where the intersection of these attitudes with indigenous beliefs intensified the stigmatization and ostracization of survivors and further entrenched their silence. In these communities, victims were viewed as willing participants and accomplices of the army – “traitors” who had voluntarily abandoned their husbands and communities to become “the soldiers’ women.”<sup>82</sup> Such conduct not only violated sexual norms of abstinence and fidelity common to both Mayan and Guatemalan culture, for which the women, and not the perpetrators, were seen as responsible,<sup>83</sup> in Mayan communities, the perception that these were consensual relationships meant that victims were viewed as violating Mayan

cultural norms against inter-ethnic unions intended to ensure the survival of Mayan culture.<sup>84</sup> As such, rape was understood not as an act of violence against the woman, but rather as an attack by the woman against the community itself.<sup>85</sup> This had devastating consequences on Mayan survivors of sexual violence, who were subjected to extensive social punishment – including verbal and physical abuse, rejection by their families, and ostracization by their communities – leading many to remain silent about what they had suffered or even move to other communities where no one knew they had been raped to protect themselves and avoid such consequences.<sup>86</sup> The social stigmatization was particularly severe in *Sepur Zarco*, where many of the *Abuelas* had been forced to move to the military base and provide sexual and domestic services for years, leading to widespread public knowledge of the rapes.<sup>87</sup> As one survivor from *Sepur Zarco* explained,

*The only solution we found was to shut ourselves in and remain silent in order to survive. We couldn't tell anybody, not a soul, what had happened to us for fear of what would happen to us and those who were close to us.*<sup>88</sup>

The journey to break this silence started in the early 2000s, when Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)<sup>89</sup> began providing psychosocial support to indigenous women affected by the conflict in the area of the Polochic Valley, which includes *Sepur Zarco*.<sup>90</sup> Much of this support was designed to accompany a process of exhumations in the

region to locate those who had been disappeared during the conflict, and thus initially, most of the women involved spoke only of their disappeared husbands or the harms experienced by their communities.<sup>91</sup> With time, however, many of the women also began to speak about the sexual violence that they had suffered, mostly at the hands of the military.<sup>92</sup>

In 2003, the Unión Nacional de Mujeres Guatemaltecas (UNAMG) and ECAP joined together to support the women's efforts to heal, break their silence, and pursue justice.<sup>93</sup> Together ECAP and UNAMG set up the "Consortio Actoras de Cambio: Mujeres en Búsqueda de Justicia" ("Actors for Change Consortium: Women in Search of Justice"),<sup>94</sup> a partnership created to help repair the social fabric of communities that had been devastated by the conflict and ensure that the voices of Maya indigenous women who were survivors of sexual violence were heard as part of the truth telling and accountability process in Guatemala.<sup>95</sup> The strategy pursued by these organizations involved a holistic methodology that included psychosocial and medical support, training in women's rights, recovery of historical memory, social sensitization, and political advocacy in support of justice and reparations for the victims.<sup>96</sup>

Together, the Consortium worked with over 100 indigenous women survivors of sexual violence in the regions of Huehuetenango, Chimaltenango, and Alta Verapaz, including about 60 in *Sepur Zarco*.<sup>97</sup> Key to this strategy was a program of psychosocial support and human rights trainings that had been designed to help indigenous survivors face the violence and take back control over their lives without "denying, forgetting or repressing the past."<sup>98</sup> Through the establishment of women's self-help groups, the Consortium created a safe space where the women, with the help of a psychologist, could share, process and reframe the sexual and other violence they had experienced without fear of being judged.<sup>99</sup> By telling their stories in their own words – in many cases for the first time – to other women who listened to and believed them, the women started to let go of their internalized guilt and assert their own truth about what they had suffered and the consequences it had on their lives.<sup>100</sup> These conversations were supported by other activities, such as art therapy and dance, that helped the women relax and express themselves.<sup>101</sup> Even after

all these years, the women of *Sepur Zarco* continue to remark on the importance of this support in their own healing and in preparing them to be strong enough to pursue justice:

*First, I think it is important to remember what we did before going to seek justice. For example, what I remember very well is that we started to work on healing with ECAP and UNAMG. We began by working on our pain. We made paintings, we made drawings. About 10 years [later], MTM appeared. It was another way of preparing ourselves. It was justice. So we already felt strong because before, when the other two organizations arrived, we were sick and quiet ladies who were full of shame. We hardly spoke. But with the arrival of these organizations, it strengthened us, they supported us.<sup>102</sup>*

*I spoke about the rape. I felt that it was the only safe space where I could do so and also relax. It's not easy to talk about. I began to stop being afraid or worried, and to stop feeling sad about everything bottled up inside me.<sup>103</sup>*

The women's self-help groups also strengthened the relationships and trust between the women, leading to the creation of a network of solidarity and support that would be vital in the processes of truth-telling and justice seeking to come.<sup>104</sup> The intimacy of the self-help groups – in which women shared their stories not only of the sexual violence they had experienced, but also of the loss of husbands or fathers, the resulting economic hardship, the helplessness they had felt, and the pain of losing children – established strong bonds of cohesion and trust between the women.<sup>105</sup> In *Sepur Zarco*, for instance, the women pledged to assist and protect one another in their daily lives, a pledge they later applied to their pursuit of justice.<sup>106</sup> These bonds of solidarity were strengthened through annual meetings of the women from different regions and linguistic groups, meetings that also reinforced to the women the collective nature of the sexual violence they had suffered.<sup>107</sup>

Importantly, these self-help groups also encouraged the women to reframe the violence they had experienced as a collective crime perpetrated against them rather than as isolated incidents. Hearing one another's stories

enabled the women to understand the shared, rather than individual, nature of the sexual violence they had endured, while broader social and historical discussions allowed the woman to situate that violence within a larger context of social, ethnic, and gender oppression that had been exacerbated during the war.<sup>108</sup> In addition, discussions about how sexual violence had been used by the Guatemalan military as a weapon of war to attack the indigenous population helped the women understand not only why they had been attacked but also that they had neither deserved nor been responsible for what happened to them.<sup>109</sup> With time, they stopped speaking of “their crimes”<sup>110</sup> – a term that laid the blame at their own feet – and began to speak about the responsibility of the State and the possibility of justice:<sup>111</sup>

*Back then when we didn't participate in workshops, we didn't used to think about the possibility of justice. We were scared, we felt very bad. [War] had made us sick, sad, with no energy. By the grace of God I didn't die. Then we saw that it was possible to attribute responsibility to those who committed these crimes against us.*<sup>112</sup>

With the support of the self-help groups, the women also began the process of publicly breaking the silence, seeking public recognition for the first time about what had happened to them. For example, in 2008, in collaboration with the Perquín School of Art, some of the women created a public mural to express and denounce the violence they had experienced during the war, as well as the pain and suffering they had felt.<sup>113</sup> The mural – which was titled “Women Breaking The Silence” – was painted on a “mobile” wall so that it could be shown in multiple places, thereby increasing the number of people who would see and learn about what had happened to the women.<sup>114</sup> After the mural was publicly presented, several women commented that it felt good to have someone listen to and value their stories, and that they wanted to continue this process of creating spaces in which their voices would be heard and respected.<sup>115</sup> The following year, the Consortium published a book of some of the women's stories called *Weavings of the Soul (Tejidos que lleva el alma)*.<sup>116</sup> Building upon earlier memorializations of Guatemala's conflict – which had acknowledged the sexual violence crimes committed during the armed conflict but failed to investigate them with the same depth as other crimes – the book was

intended not only to contribute to the reconstruction of historical memory regarding sexual violence during the war, but also to center and elevate the voices of survivors, document the causes and impact of that violence on women and indigenous communities, help break the stigma and silence surrounding that violence, and serve as a first step toward justice by recognizing the responsibility of the perpetrators and the State.<sup>117</sup>

As time went on and the women became more comfortable speaking about what had happened to them, they also felt increasingly empowered to demand acknowledgement of and redress for the sexual violence they had suffered.<sup>118</sup> Many of the women already were active in victims' organizations that had fought for years for the State to recognize and redress the crimes committed against indigenous families and communities, but these organizations had been primarily focused on torture, forced disappearances, extrajudicial killings, massacres, and other violations.<sup>119</sup> With the help of the Consortium, some of the women – particularly the Q'eqchi' women – decided to denounce the sexual violence they had suffered before the National Compensation Program (Programa Nacional de Resarcimiento, or PNR),<sup>120</sup> a government program established in 2003 to provide reparations to individuals harmed during the internal armed conflict.<sup>121</sup> Despite provisions in the PNR that explicitly listed sexual violence among the violations to be redressed and provided that survivors' needs should be given special attention,<sup>122</sup> the Q'eqchi' women who went to the PNR reported that they were treated with suspicion and disbelief and forced to repeat portions of their testimony multiple times.<sup>123</sup> Other women, who went to a different regional office, were threatened with jail if they failed to tell the truth.<sup>124</sup> When some of the women ultimately received compensation, the PNR failed to take into account the need to do so securely and confidentiality, resulting in yet further public exposure, renewed stigmatization, and new divisions.<sup>125</sup> In addition, the PNR's exclusive focus on compensation – despite provisions recognizing the need for comprehensive reparations – left the social structures of blame and stigmatization untouched.<sup>126</sup> Dissatisfied, many of the women expressed an interest in other options for telling their stories, ones that would enable them to dispel the narrative that they were responsible for the sexual violence that they suffered.<sup>127</sup>



Mural entitled “Women Breaking the Silence,” from ECAP, *MUJERES ROMPIENDO EL SILENCIO 53* (2009).

### 3.1.2

## Breaking the Silence Through the Tribunal of Conscience

A concerted effort to advance the process of truth-telling and justice was launched in 2009, when *Mujeres Transformando el Mundo* (MTM) joined ECAP and UNAMG to create the “Alianza Rompiendo el Silencio y la Impunidad” (“Alliance to Break the Silence and Impunity” or the “Alliance”).<sup>128</sup> Identifying themselves as feminist organizations, the members of the Alliance saw their role as addressing the issue of sexual violence through the voices of women affected by that violence.<sup>129</sup> At the time, however, there was little hope that an actual case would be investigated by the judiciary. The High Risk Tribunals, which would later hear the *Sepur Zarco* case, had just been established in 2009 and they were not perceived as being ready to hear sexual violence cases stemming from the conflict.<sup>130</sup> Survivors and the civil society organizations that supported them thus explored alternative measures that would allow survivors to recount the history of sexual violence perpetrated against them during the conflict and provide them with some form of redress, even if symbolic.<sup>131</sup>

In 2009, the Alliance, in coordination with CONAVIGUA and the feminist newspaper *La Cuerda*, decided to plan a public mock trial that would reveal the abuses suffered by indigenous women, position them as protagonists in the quest to attain truth and justice, and spur the judiciary to take on cases of sexual violence.<sup>132</sup> The idea for the mock trial came from one of the founders of the *Consortio Actoras de Cambio*, who had participated in the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, which took place in Tokyo, Japan in 2000.<sup>133</sup> The 4- day mock

trial in Tokyo was designed to publicly shed light on the ongoing fight for justice, truth, and reparation for the so-called “comfort women,” most of them Korean, who were subjected to rape and sexual slavery by Japanese soldiers before and during the Second World War.<sup>134</sup> Although the tribunal lacked the power to enforce its judgment against Japan for committing crimes against humanity, the proceedings established a public record of the past, focused global attention on the crimes, and added legitimacy to the women’s reparation claims.<sup>135</sup> The Alliance thus modeled the Guatemalan Tribunal of Conscience on the mock trial carried out in Tokyo, as well as other symbolic actions in Latin America that had exposed sexual violence in the region,<sup>136</sup> hoping to publicly break the silence around the military’s commission of sexual violence during the Guatemalan internal armed conflict and highlight the need for accountability against the perpetrators, none of whom had yet been charged or tried.<sup>137</sup> In particular, by organizing the process as a mock trial, the Alliance hoped to provide an example to the Guatemalan judiciary of the kinds of cases and legal arguments that were possible, and motivate judicial actors to initiate prosecutions.<sup>138</sup>

The Alliance also hoped that the Tribunal’s symbolic justice would serve as a cathartic exercise for survivors to unburden themselves of the “guilt” that they had lived with for so long and re- direct the blame onto those who were actually responsible for the crimes.<sup>139</sup> Another objective was to show the detrimental effects of the sexual violence committed against women during the armed conflict, and highlight the ongoing gender-based violence plaguing Guatemala.<sup>140</sup> Because much of the

contemporary violence toward women in Guatemala shares similar characteristics with the sexual violence committed during the war, the Alliance thought that revisiting this history might help to address some of the underlying societal and structural causes of violent crimes committed against women.<sup>141</sup> The Alliance was hopeful that the Tribunal of Conscience would spur discussion about sexual violence – often considered a taboo topic – and encourage the public to take action to combat violence against women.<sup>142</sup>

The Tribunal of Conscience Against the Sexual Violence Committed Against Women During the Internal Armed Conflict (“Tribunal of Conscience”) was held in Guatemala City on March 4-5, designed to closely mirror

the structure of a criminal trial, the Tribunal had prosecutors, judges, testimony from survivors and experts, and documentary and other evidence, and issued a final judgment.<sup>144</sup> Remarkably, approximately 800 people attended the event, including survivors, members of domestic civil society organizations, justice system actors, state officials, members of the international community, including from the UN, and the general public.<sup>145</sup> Also in attendance were the *Sepur Zarco Abuelas* who, although they did not testify, were inspired by the process to tell their own stories and eventually seek justice within the Guatemalan courts.<sup>146</sup> The following sections examine the preparation and conduct of the Tribunal of Conscience, its impact, and lessons learned.

### 3.1.2.1

#### Tribunal Strategies: Preparation and Presentation

The Tribunal of Conscience required the civil society organizations involved to carry out a well-thought-out strategy before and during the proceedings. Together, they articulated a three-prong strategy that drew upon their complementary areas of expertise: UNAMG organized the political strategy and communication campaign; ECAP offered psychosocial support to the women to strengthen their capacities and leadership; and MTM led the legal strategy.<sup>147</sup> This highly successful, multi-disciplinary strategy later formed the basis for their division of labor on the historic *Sepur Zarco* case.<sup>148</sup>

During the year leading up to the Tribunal of Conscience, the Alliance worked closely with the Mayan women to prepare them for the proceedings.<sup>149</sup> Preparatory workshops were held in Chimaltenango, Huehuetenango, and Alta Verapaz, during which the Alliance explained the process – including the potential consequences, both positive and negative – to the women, while seeking to avoid unduly raising their expectations.<sup>150</sup> Psychosocial support, which ECAP had already been providing,<sup>151</sup> also remained crucial during this period to help the women strengthen their presentation skills and overcome their fears of speaking publicly about the sexual violence they had experienced, as well as prepare their families and communities to support them and ensure their safety during the proceedings.<sup>152</sup>

Importantly, the Alliance did not view the women as subjects of their expertise, but rather as partners and key actors throughout the process – a role that would later characterize the *Sepur Zarco* proceedings as well.<sup>153</sup> In their preparatory workshops and consultations, the Alliance sought to define the objectives and organization of the Tribunal collectively with the women, and closely listened to the questions and concerns they raised.<sup>154</sup> When challenges arose, the Alliance consulted with and respected the decisions, both individual and collective, of the women themselves.<sup>155</sup> For example, one of the initial issues faced by the Alliance was determining who would testify.<sup>156</sup> Although ECAP and UNAMG had been working for years with over 120 women victims of sexual violence from Chimaltenango, Huehuetenango and Alta Verapaz,<sup>157</sup> most of the women still had not revealed to their families the sexual violence they had suffered.<sup>158</sup> In addition, many of the women expressed fear of publicly revealing the violence they had experienced, including the possibility that they might be threatened.<sup>159</sup> This was no idle concern – several of the women working in the organizations that constituted the Alliance had previously received threats<sup>160</sup> – and some of the perpetrators of the sexual violence continued to live in the area.<sup>161</sup> In the end, the women chose amongst themselves who would testify and represent their unified voice before the Tribunal.<sup>162</sup> The remaining

women, many of whom were eager to be involved in the Tribunal, took on roles as companions and witnesses.<sup>163</sup>

Another critical preparatory activity undertaken by the Alliance in the year before the Tribunal was a public education campaign – called *Ni Olvido Ni Silencio* (Neither Forgetfulness Nor Silence) – to raise awareness about the problem of sexual violence in Guatemala and mobilize support among key civil society actors and the general public.<sup>164</sup>

After a year of preparation, the first day of the Tribunal of Conscience began with an introduction of the key participants of the Tribunal, including the four judges – Juana Méndez Rodríguez, Gladys Canales, Teddy Atim, and Shihoko Niikawa – all of whom were deeply committed to combatting sexual violence, and some of whom were themselves survivors.<sup>165</sup> Juana Méndez, a Guatemalan Quiché Mayan and survivor of sexual violence at the hands of the State’s civil police, won a criminal case in 2008 against the officer who raped her, marking the country’s first criminal conviction of a member of Guatemala’s security forces for rape.<sup>166</sup> Canales, a Peruvian who had been subjected to sexual violence and torture while wrongly imprisoned by the administration of former Peruvian President Alberto Fujimori, used her experience to fight for other women as the Director of the National Coordinator of Women Affected by the Internal Armed Conflict (Coordinadora Nacional de Mujeres Afectadas por el Conflicto Armado Interno).<sup>167</sup> Atim—originally from Uganda—has dedicated herself to seeking justice and reparations for women who have been subjected to sexual violence during periods of armed conflict.<sup>168</sup> Niikawa—a human rights activist from Japan—helped to organize the 2000 Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery in Tokyo.<sup>169</sup> Not only did the presence of these diverse international activists against sexual violence heighten the event’s credibility and profile, but their involvement was also deeply meaningful to the Mayan women and helped to create a safe public space in which to share their stories.<sup>170</sup>

Following the introduction of the judges, the Tribunal’s prosecutors, two well-regarded women’s rights attorneys, presented the context and legal foundation for state responsibility for sexual violence crimes committed during Guatemala’s internal armed conflict.<sup>171</sup>



*Judges of the Tribunal of Conscience read the verdict, from NI OLVIDO NI SILENCIO, at 174.*

As the prosecutors explained, considerable evidence existed, and would be presented during the Tribunal, that the Guatemalan State had systematically and regularly used rape and other sexual violence as a weapon of war against indigenous women and girls in order to undermine indigenous communities that were perceived as supporting the non-state forces.<sup>172</sup> Yet despite the considerable evidence of these crimes, the State had failed to satisfy its obligation to seriously and effectively investigate and punish these crimes and provide comprehensive reparations to the survivors.<sup>173</sup> The prosecutors emphasized the importance of addressing this impunity, observing that the failure of the State to act had had the effect of entrenching a culture that normalizes and tolerates violence, particularly sexual violence against women and girls, and that this violence remained ongoing, coining the notion of a continuum of sexual violence against women.<sup>174</sup>

The Tribunal of Conscience then proceeded to “break the silence” with testimony from seven women from different regions of Guatemala who testified about their experiences of abuse and sexual violence during the internal armed conflict.<sup>175</sup> Although hailing from different areas of Guatemala, many of the same themes emerged from their testimonies—the devastating impact of the sexual violence on their lives; the ongoing physical and emotional pain; the shame and discrimination to which they had been subjected by society; the responsibility of the State for these crimes; and the State’s failure to provide proper reparations.<sup>176</sup> Nearly all of the women

spoke of the widespread commission of sexual violence within their communities, consistent with their roles as representatives for the other Mayan women,<sup>177</sup> as well as linked the sexual violence to the wider violence unleashed on their families and communities.<sup>178</sup> They also explicitly linked the sexual violence of the past to that in the present, calling for justice not only for themselves and the others harmed during the conflict but also for all women who continued to be subjected to sexual violence in contemporary Guatemala.<sup>179</sup> To highlight the country's ongoing problem of sexual violence, Ana Lucía Morán, then-Executive Director of MTM and Secretary of the Tribunal, spoke about contemporary acts of sexual violence, particularly against indigenous communities fighting to hold on to their land.<sup>180</sup> As she explained, although the land grabs were often initiated by private individuals and corporations, particularly mining companies, they were supported and executed by the State itself and often accompanied by mass violence, including burning homes, destroying crops, and raping women.<sup>181</sup> Included in her speech were statements by women who had been subjected to sexual violence by law enforcement and private security forces during these evictions.<sup>182</sup>

As the women prepared to share these testimonies, additional last-minute protective measures were deemed necessary to protect the women's safety.<sup>183</sup> The most visible of these was the improvisation of a sort of shadow theater, in which the women testified behind a curtain, with a spotlight shining behind them so that only their silhouettes were visible.<sup>184</sup> Also present behind the curtain were an interpreter and a psychologist, the latter of whom was there to provide emotional support.<sup>185</sup> Although not part of the original plan, the shadow theater came about after several of the women slated to testify expressed last-minute concerns about publicly identifying themselves as sexual violence survivors and the potential for further discrimination or retaliation to which they might be subjected, particularly given the high levels of impunity in Guatemala and the fact that some of the perpetrators still lived in their communities.<sup>186</sup> In an additional step to protect the identities of the women, whose communities could easily be identified based on their clothing, all of the Mayan women – regardless of whether they were testifying – donned white blouses.<sup>187</sup> Importantly, decisions about these protective measures were made jointly



*Survivor giving testimony from behind a screen at the Tribunal of Conscience, from NI OLVIDO NI SILENCIO, at 173.*

by the women and the civil society organizations that organized the Tribunal, ensuring that the women and their needs remained at the center of the process.<sup>188</sup>

In order for the diverse audience members to understand the women's testimonies, interpretation was provided between Spanish and six Mayan languages, as well as English.<sup>189</sup> These interpretations were incredibly important to the Mayan women and their communities, who are often effectively excluded from the public sphere because of the rarity of interpretation into indigenous languages.<sup>190</sup> There were, however, significant challenges in the interpretive process, particularly in the translation of terms and concepts that have no linguistic or cultural equivalent in the other languages. Terms such as "rape" and "reparations" do not exist in most Mayan languages, for example, meaning that the interpreters had to find ways of explaining these concepts.<sup>191</sup>

On the second day, a wide range of supporting evidence was submitted to the Tribunal that not only corroborated the women's testimonies of sexual violence, but also provided the legal foundation for attributing those crimes – and the corresponding responsibility for reparations – to the Guatemalan state. Among other written evidence, the prosecutors submitted the reports of the Commission for Historical Clarification (known by its Spanish acronym CEH) and the Human Rights Office of the Archdiocese of Guatemala (in Spanish, ODHAG), which, as previously described, included sections documenting the commission of



Audience members listening to the testimony during the Tribunal of Conscience, from *NI OLVIDO NI SILENCIO*, at 172.

sexual violence during Guatemala’s internal armed conflict.<sup>192</sup> Two videos were played containing additional testimonies from survivors of sexual violence.<sup>193</sup> Finally, seven expert witnesses from various disciplines testified, laying out the historical and cultural context in which the crimes had been committed and supporting the women’s calls for accountability.<sup>194</sup> This extensive use of expert testimony was designed to demonstrate that cases of sexual violence can be successfully proven even absent physical evidence of the crimes – evidence that was impossible to obtain for decades old crimes and yet was nonetheless frequently required by Guatemalan courts.<sup>195</sup> These expert testimonies – including those on military strategy, culture, and gender – also enabled the Alliance to develop and test expert theories that would later be used in the *Sepur Zarco* case.<sup>196</sup>

At the end of the second day, the Tribunal concluded with a final judgment that underscored the State’s responsibility for sexual violence during the country’s armed conflict and its insufficient efforts to provide justice and reparations to the victims.<sup>197</sup> The judges held that crimes of sexual violence committed during the conflict in Guatemala should be characterized as crimes against the duties of humanity under article 378 of the Guatemalan Criminal Code, were not subject to a statute of limitations, and had been perpetrated mostly by state agents and thus were attributable to the State.<sup>198</sup> Although symbolic, the verdict sent a strong signal to the representatives from the Guatemalan justice system

– including Supreme Court justices, prosecutors, and members of International Commission Against Impunity in Guatemala (known by its Spanish acronym CICIG) – who had been invited to observe the mock trial.<sup>199</sup> By breaking the silence on conflict-related sexual violence, it was hoped that the Tribunal would impel the judiciary to take up cases of sexual violence during the armed conflict, while the presentation of a well-strategized and supported legal case would provide a road map of how such cases could be successfully prosecuted and won.<sup>200</sup>

The significant national and international attention that the event drew also helped to break down some of the taboos against discussions of sexual violence and start a national dialogue while contributing to similar conversations at an international level.<sup>201</sup> This attention was due in large part to UNAMG’s highly successful communications and outreach campaign, which was designed to raise public awareness of the sexual violence endured by women and to emphasize the need to break the silence surrounding, and combat impunity for, those crimes.<sup>202</sup> As part of that strategy, the Tribunal was broadcast live on two radio stations, as well as streamed via MTM’s website.<sup>203</sup> Live interviews of some of the Tribunal participants were also broadcast, and national and international media covered the event.<sup>204</sup> UNAMG later replicated and built upon these communication strategies to publicize and garner support for the *Sepur Zarco* case in the period leading up to and during the trial.<sup>205</sup>

The Tribunal of Conscience was considered a historic accomplishment – the first time that female survivors of sexual violence during the armed conflict spoke publicly about, and demanded justice for, the crimes they endured.<sup>206</sup> Their ability to speak out publicly in a forum designed not only to raise the consciousness of Guatemalan society but also to inspire action was a direct result of years of efforts by the members of the Alliance in supporting and preparing the women, as well as their immense work organizing the Tribunal’s legal and communications strategies.<sup>207</sup> By breaking the silence surrounding sexual violence in Guatemala and highlighting innovative legal strategies that could be used to pursue justice, the Tribunal served as an essential step toward the *Sepur Zarco* case, as discussed in the next section.

### 3.1.2.2

#### The Tribunal's Impact

It is hard to overstate the impact of the Tribunal of Conscience, which many advocates agree paved the way for the filing of a criminal complaint before the courts of Guatemala in 2011 by 15 Q'eqchi' women from the *Sepur Zarco* community.<sup>208</sup> Alliance members have described the Tribunal as a “watershed moment,” particularly for the *Abuelas*, who attended the event and witnessed firsthand the “power of testimony both for individual transformation and for broader societal change.”<sup>209</sup> By beginning the process of breaking down taboos surrounding public discussions of sexual violence, the Tribunal opened up a space for, and strengthened the resolve of, the *Abuelas* to share their own stories and seek justice for what had happened to them and their husbands.<sup>210</sup> Moreover, even though it was not identical to a judicial process, the Tribunal helped the *Abuelas* understand how the justice system operated and convinced them that it was possible to gather and marshal evidence into a compelling case.<sup>211</sup> When the women who had been working with the Alliance gathered after the Tribunal, the *Abuelas* of *Sepur Zarco* expressed a desire to “transcend the symbolic in order to search for justice.”<sup>212</sup> They were ready to begin a criminal process.<sup>213</sup>

Importantly, the Tribunal of Conscience and the years of psychosocial work with the larger group of women also established a strong community of indigenous survivors ready to support the *Abuelas* throughout the legal process. In meetings after the Tribunal to discuss next steps, the women agreed together that the *Sepur Zarco Abuelas* would bring a case on behalf of all of them, much like the women had earlier chosen who would represent them all at the Tribunal.<sup>214</sup> While it was true from a legal perspective that the case would only encompass the facts of what had happened at *Sepur Zarco*, these participatory decisions by the larger group of women ensured that they felt included in the legal process from the beginning and, indeed, gave them an important role in accompanying and supporting the *Abuelas*.<sup>215</sup>

The work of organizing the Tribunal, as well as the earlier years of psychosocial support, also built and

reinforced strong bonds of trust between the members of the Consortium and the women<sup>216</sup> – trust that would be essential during the long years of litigation. This trust was not easy to gain; there were many within the *Sepur Zarco* community that worried that the organizations simply wanted to profit from their pain and then would disappear.<sup>217</sup> Others in the community – even the women – initially found it difficult to believe in and listen to the members of the Consortium because they were not used to seeing strong female leaders.<sup>218</sup>

The Tribunal was also helpful in setting the organizational and legal strategies that would be used throughout the legal process. The tri-partite division of labor that had been established for the Tribunal, in which each organization was responsible for its area of expertise, was shown to be highly successfully and formed the basis for their ongoing collaboration on the historic *Sepur Zarco* case.<sup>219</sup> The Tribunal of Conscience also enabled the Alliance to plan out and conduct a test run of their legal strategies, including the incorporation of international law through article of Guatemala's Criminal Code, the focus on the military's use of sexual violence as a weapon of war, and the extensive use of experts. Moreover, the Tribunal brought to the forefront many of the issues that would need to be addressed in litigating a sexual violence case like *Sepur Zarco*, such as the special precautions necessary to protect the women's security, privacy, and physical and emotional well-being.<sup>220</sup> Echoes of the Tribunal's strategies, such as the testimony of the women from behind a curtain, would later be seen in similar measures adopted at trial, such as the use of shawls to cover the women's faces.<sup>221</sup>

The Tribunal of Conscience was thus an essential step toward bringing the *Sepur Zarco* case and, ultimately, the conviction of the perpetrators of the sexual violence, sexual slavery and domestic slavery committed against those women. The next section details the key lessons learned from this experience, as well as from the earlier years of psychosocial support.

# ENDNOTES:

## Section 3.1

- 80 ECAP & UNAMG, TEJIDOS QUE LLEVA EL ALMA: MEMORIA DE LAS MUJERES MAYAS SOBREVIVIENTES DE VIOLACIÓN SEXUAL DURANTE EL CONFLICTO ARMADO 210 (2011) (quoting ANDREA DIEZ, ESO NO SE ESCUCHA: INCLUSIÓN DE LOS HECHOS DE VIOLENCIA SEXUAL EN LAS CAUSAS POR VIOLACIONES A DERECHOS HUMANOS EN GUATEMALA 86 (2006)); see also Strategic Alliances as an Impact Litigation Model: Lessons from the *Sepur Zarco* Human Rights Case in Guatemala, at 193. Interestingly, some have suggested that this misconstruction of rape is rooted in larger societal patterns in Guatemala in which even many consensual sexual relationships include violence during intimacy. In this context, “rape is not seen as an attack on the integrity and sexual freedom of women,” it simply “looks like sex.” TEJIDOS QUE LLEVA EL ALMA, at 114; see also Interview with Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP) staff (Feb. 26, 2021) (statement of Director Susana Navarro noting that many of the women in the psychosocial support groups initially thought that the sexual violence they had experienced was normal).
- 81 TEJIDOS QUE LLEVA EL ALMA, at 221; CLAMOR FOR JUSTICE, at 61; AMNESTY INTERNATIONAL, GUATEMALA: NO PROTECTION, NO JUSTICE: KILLINGS OF WOMEN IN GUATEMALA 21 (2005).
- 82 Interview with the *Abuelas of Sepur Zarco* (Aug. 31, 2019) (statements of Margarita Chuc Choc and Felisa Cuc); Interview with expert Monica Esmeralda Pinzón González (Aug. 29, 2019); Prueba Anticipada Video, Day 3, Witness 1, Part 2, at 0:00-32:26 (testimony of Felisa Cuc); TEJIDOS QUE LLEVA EL ALMA, at 230, 236-37; CHANGING THE FACE OF JUSTICE, at 22; Strategic Alliances as an Impact Litigation Model, at 192-193 (sexual violence survivors also were called “women of the army” and “soldiers’ women”); Entrevista con Maudi Tzay, NISGUA (3 oct. 2016) (interview with Maudi Tzay, community psychologist from ECAP) [hereinafter Interview with Maudi Tzay], <https://nisgua.org/entrevista-con-maudi-tzay-ecap/>. The conflict intensified these suspicions, with community members often assuming that victims had chosen these relationships in order to save themselves. TEJIDOS QUE LLEVA EL ALMA, at 230-31.
- 83 Many indigenous survivors internalized this blame, and the sense of shame and guilt that accompanied it; they felt that it was their fault that they had not been able to avoid being raped, and thus interpreted the rape they suffered as adultery, a failure to keep their promises of fidelity to their husbands. TEJIDOS QUE LLEVA EL ALMA, at 135 (“Sienten que es su responsabilidad no haber podido mantener la promesa de fidelidad hecha cuando se casaron, esto es, no haber podido evitar la violación.”); see also id. at 235, 377; CLAMOR FOR JUSTICE, at 61-62.
- 84 TEJIDOS QUE LLEVA EL ALMA, at 70-71, 73-74, 106-08, 233, 236. As in many cultures, these norms are directed primarily at women. Id. at 74.
- 85 Id. at 236.
- 86 Id. at 74-75, 241-42, 246, 252, 254, 272, 274; COMISIÓN PARA EL ESCLARECIMIENTO HISTÓRICO, GUATEMALA, MEMORIA DEL SILENCIO, ¶ 2384 (1999); CLAMOR FOR JUSTICE, at 60-61.
- 87 See supra Section II.A; CLAMOR FOR JUSTICE, at 61; TEJIDOS QUE LLEVA EL ALMA, at 240.
- 88 CLAMOR FOR JUSTICE, at 60 (quoting Olivia Yat).
- 89 ECAP is an organization dedicated to helping individuals and communities recover from the psychological, social, and cultural damage caused by political violence in Guatemala. ECAP, MUJERES ROMPIENDO EL SILENCIO 13 (2009), [http://www.contralatortura.org/uploads/9201fo\\_162940.pdf](http://www.contralatortura.org/uploads/9201fo_162940.pdf).
- 90 Interview with Maudi Tzay. The initial engagement was limited to providing support to the wives of disappeared persons during the process of excavation and exhumation of their bodies. Ibid.
- 91 Interview with ECAP staff (statement of Director Susana Navarro); Interview with Maudi Tzay; Strategic Alliances as an Impact Litigation Model, at 165.
- 92 Interview with Maudi Tzay; Strategic Alliances as an Impact Litigation Model, at 165.
- 93 Interview with UNAMG Executive Director Ada Valenzuela; TEJIDOS QUE LLEVA EL ALMA, at 5; Gretel Mejía Bonifazi, *Combatiendo el silencio e impunidad en delitos de violencia sexual a través de alianzas feministas: un análisis del caso Sepur Zarco en Guatemala*, 20 REVISTA DEL INSTITUTO DE INVESTIGACIONES AMBROSIO L. GIOJA 115, 130 (2018); *Sepur Zarco: El camino de las mujeres hacia la justicia*, at 5.
- 94 This Consortium eventually separated due to differences among the partners. See Interview with UNAMG Executive Director Ada Valenzuela; Interview with Maudi Tzay.
- 95 Interview with UNAMG Executive Director Ada Valenzuela; Interview with ECAP staff (statement of Director Susana Navarro); NI OLVIDO NI SILENCIO: TRIBUNAL DE CONCIENCIA CONTRA LA VIOLENCIA SEXUAL HACIA LAS MUJERES DURANTE EL CONFLICTO ARMADO EN GUATEMALA 13 (IRANTZU MENDIA AZKUE & GLORIA GUZMÁN ORELLANA EDS., 2012) [hereinafter NI OLVIDO NI SILENCIO]; CLAMOR FOR JUSTICE, at 74.
- 96 NI OLVIDO NI SILENCIO, at 15; MUJERES ROMPIENDO EL SILENCIO, at 29-31; CLAMOR FOR JUSTICE, at 75.
- 97 Interview with ECAP staff (statement of Director Susana Navarro); Interview with ECAP staff (statement of psychologist Debora Yancoba); Interview with UNAMG Executive Director Ada Valenzuela; Interview with Maudi Tzay; Strategic Alliances as an Impact

- Litigation Model, at 165-66; CLAMOR FOR JUSTICE, at 75.
- 98 TEJIDOS QUE LLEVA EL ALMA, at 372; see also CHANGING THE FACE OF JUSTICE, at 21. Individual support also was provided to the women as needed. MUJERES ROMPIENDO EL SILENCIO, at 21.
- 99 Interview with ECAP staff (statement of Director Susana Navarro); TEJIDOS QUE LLEVA EL ALMA, at 372, 375- 376; MUJERES ROMPIENDO EL SILENCIO, at 22; Strategic Alliances as an Impact Litigation Model, at 166.
- 100 TEJIDOS QUE LLEVA EL ALMA, at 376; MUJERES ROMPIENDO EL SILENCIO, at 22, 26; Strategic Alliances as an Impact Litigation Model, at 166, 194; CLAMOR FOR JUSTICE, at 75.
- 101 MUJERES ROMPIENDO EL SILENCIO, at 31, 45-46; TEJIDOS QUE LLEVA EL ALMA, at 374.
- 102 Interview with the *Abuelas of Sepur Zarco* (statement of Margarita Chuc Choc) (authors' translation).
- 103 CLAMOR FOR JUSTICE, at 75 (quoting Mariana Maquín, another member of the *Sepur Zarco* group).
- 104 TEJIDOS QUE LLEVA EL ALMA, at 372; MUJERES ROMPIENDO EL SILENCIO, at 22; Strategic Alliances as an Impact Litigation Model, at 194; CLAMOR FOR JUSTICE, at 76.
- 105 MUJERES ROMPIENDO EL SILENCIO, at 23, 26.
- 106 CLAMOR FOR JUSTICE, at 76.
- 107 MUJERES ROMPIENDO EL SILENCIO, at 34.
- 108 Id. at 22, 24; TEJIDOS QUE LLEVA EL ALMA, at 372-374, 377; CLAMOR FOR JUSTICE, at 75-76; CHANGING THE FACE OF JUSTICE, at 21-22.
- 109 TEJIDOS QUE LLEVA EL ALMA, at 374, 377-378; MUJERES ROMPIENDO EL SILENCIO, at 22.
- 110 TEJIDOS QUE LLEVA EL ALMA, at 273.
- 111 Id. at 378.
- 112 CLAMOR FOR JUSTICE, at 75 (quoting Estela Maaz, another member of the *Sepur Zarco* group).
- 113 MUJERES ROMPIENDO EL SILENCIO, at 31-32. Although the mural was primarily focused on sexual violence in another region, and not *Sepur Zarco*, some Q'eqchi' women participated in the process. Id. at 31.
- 114 Id. at 31-32, 53.
- 115 Id. at 32.
- 116 Interview with UNAMG Executive Director Ada Valenzuela; see generally TEJIDOS QUE LLEVA EL ALMA. The first edition of the book was published in 2009. *Sepur Zarco: El camino de las mujeres hacia la justicia*, at 5.
- 117 Interview with UNAMG Executive Director Ada Valenzuela; TEJIDOS QUE LLEVA EL ALMA, at 3, 5, 6-8; see also CLAMOR FOR JUSTICE, at 78.
- 118 MUJERES ROMPIENDO EL SILENCIO, at 36; TEJIDOS QUE LLEVA EL ALMA, at 422.
- 119 TEJIDOS QUE LLEVA EL ALMA, at 417, 419; BEYOND REPAIR?, at 33.
- 120 MUJERES ROMPIENDO EL SILENCIO, at 35; TEJIDOS QUE LLEVA EL ALMA, at 417, 422-423.
- 121 TEJIDOS QUE LLEVA EL ALMA, at 418.123 Id. at 425-426.
- 124 Id. at 426.
- 125 Id. at 426-428.
- 126 Id. at 418, 426-427.
- 127 NI OLVIDO NI SILENCIO, at 15.
- 128 Interview with former MTM attorney Jennifer Bravo; see also *Sepur Zarco: El camino de las mujeres hacia la justicia*, at 5; Strategic Alliances as an Impact Litigation Model, at 167.
- 129 *Sepur Zarco: El camino de las mujeres hacia la justicia*, at 5; NI OLVIDO NI SILENCIO, at 6.
- 130 Interview with former MTM attorney Jennifer Bravo.
- 131 See Interview with Maudi Tzay.
- 132 See NI OLVIDO NI SILENCIO, at 13-16; BEYOND REPAIR?, at 70; *Combatiendo el silencio e impunidad en delitos de violencia sexual a través de alianzas feministas*, at 133.
- 133 Interview with ECAP staff (statement of Director Susana Navarro); Alison Crosby & M. Brinton Lykes, *Mayan Women Survivors Speak: The Gendered Relations of Truth Telling in Postwar Guatemala*, 5 THE INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE 456, 464 (2011); NI OLVIDO NI SILENCIO, at 15; BEYOND REPAIR?, at 68.
- 134 NI OLVIDO NI SILENCIO, at 15; BEYOND REPAIR?, at 68; Christine Lévy, *The Women's International War Crimes Tribunal, Tokyo 2000: a feminist response to revisionism?*, CLIO 125, 126 (2014), <https://journals.openedition.org/cliowgh/508>.
- 135 *The Women's International War Crimes Tribunal, Tokyo 2000: a feminist response to revisionism?*, at 139; *Mayan Women Survivors Speak*, at 464; BEYOND REPAIR?, at 68.
- 136 In 1998, for instance, several Guatemalan civil society organizations organized a Tribunal of Conscience for Women's Human Rights, which highlighted sexual violence and violence against indigenous peoples during the armed conflict. BEYOND REPAIR?, at 68; see also Interview with ECAP staff (statement of Director Susana Navarro).
- 137 NI OLVIDO NI SILENCIO, at 15.
- 138 Interview with former MTM attorney Jennifer Bravo; NI OLVIDO NI SILENCIO, at 17.
- 139 NI OLVIDO NI SILENCIO, at 15.
- 140 Id. at 16.
- 141 Id. at 14; see also Interview with UNAMG staff (Aug. 30, 2019) (noting that they wanted the Tribunal of Conscience to highlight the "continuum" of sexual violence). This theme was revisited in greater detail in a second Tribunal of Conscience, held in 2019. Tribunal de Conciencia: La Violencia Sexual en el Pasado y el Presente es un Crimen (25-26 jun. 2019), <https://docs.google.com/viewerng/viewer?url=https://fger.org/wp-content/uploads/2019/06/flt26062019.pdf>; Sentencia, Tribunal de Conciencia: La Violencia Sexual en el Pasado y el Presente es un Crimen (26 jun. 2019), <https://docs.google.com/viewerng/viewer?url=https://fger.org/wp-content/uploads/2019/06/SENTENCIA-Tribunal-de-Conciencia.pdf>.
- 142 See NI OLVIDO NI SILENCIO, at 17.
- 143 Interview with former MTM attorney Jennifer Bravo; NI OLVIDO NI SILENCIO, at 14, 18 (Tribunal de Conciencia contra la Violencia Sexual hacia las Mujeres durante el Conflicto Armado Interno); Strategic Alliances as an Impact Litigation Model, at 167.
- 144 Interview with former MTM attorney Jennifer Bravo;

- NI OLVIDO NI SILENCIO, at 17-19; Mayan Women Survivors Speak, at 467.
- 145 Interview with former MTM attorney Jennifer Bravo; NI OLVIDO NI SILENCIO, at 17, 18, 20; Mayan Women Survivors Speak, at 457; Strategic Alliances as an Impact Litigation Model, at 168.
- 146 Interview with ECAP staff (statement of Director Susana Navarro); Interview with ECAP staff (statement of psychologist Debora Yancoba); Interview with UNAMG staff; Interview with UNAMG Executive Director Ada Valenzuela; Interview with Maudi Tzay; *Sepur Zarco*: El camino de las mujeres hacia la justicia, at 5; Strategic Alliances as an Impact Litigation Model, at 168.
- 147 Interview with former MTM attorney Jennifer Bravo; Caso *Sepur Zarco*, la lucha de las mujeres por la justicia, at 2; CHANGING THE FACE OF JUSTICE, at 13; NI OLVIDO NI SILENCIO, at 15.
- 148 Caso *Sepur Zarco*, la lucha de las mujeres por la justicia, at 2; CHANGING THE FACE OF JUSTICE, at 13.
- 149 NI OLVIDO NI SILENCIO, at 16; BEYOND REPAIR?, at 70
- 150 NI OLVIDO NI SILENCIO, at 16; BEYOND REPAIR?, at 91.
- 151 See supra Section III.A.1 regarding psychosocial support.
- 152 NI OLVIDO NI SILENCIO, at 16-17.
- 153 See infra Section IV.B for more information about the role of the *Abuelas* in the *Sepur Zarco* case.
- 154 NI OLVIDO NI SILENCIO, at 15.
- 155 Id.
- 156 Id.
- 157 Id. at 13.
- 158 BEYOND REPAIR?, at 63.
- 159 Interview with ECAP staff (statement of psychologist Debora Yancoba); NI OLVIDO NI SILENCIO, at 15.
- 160 NI OLVIDO NI SILENCIO, at 15.
- 161 Interview with ECAP staff (statement of Director Susana Navarro); Interview with former MTM attorney Jennifer Bravo; Mayan Women Survivors Speak, at 470; Strategic Alliances as an Impact Litigation Model, at 168; BEYOND REPAIR?, at 63; see also infra Section IV.C regarding the presence of perpetrators in the *Sepur Zarco* community.
- 162 Interview with ECAP staff (statement of psychologist Debora Yancoba); NI OLVIDO NI SILENCIO, at 16.
- 163 NI OLVIDO NI SILENCIO, at 15.
- 164 BEYOND REPAIR?, at 70; Mayan Women Survivors Speak, at 467.
- 165 NI OLVIDO NI SILENCIO, at 18, 165; BEYOND REPAIR?, at 70; Morna Macleod, Ethical Tribunals and Gendered Violence in Guatemala’s Armed Conflict, in INDIGENOUS WOMEN AND VIOLENCE: FEMINIST ACTIVIST RESEARCH IN HEIGHTENED STATES OF INJUSTICE 184, 193-194 (Lynn Stephen & Shannon Speed eds., 2021), [http://mornamacleod.net/wp-content/uploads/2021/08/StephenSpeed\\_2ndPages.pdf](http://mornamacleod.net/wp-content/uploads/2021/08/StephenSpeed_2ndPages.pdf); Interview with former MTM attorney Jennifer Bravo.
- 166 NI OLVIDO NI SILENCIO, at 18; Una indígena guatemalteca es la primera mujer maya que logra que encarcelen a un policía por haberla violado, EUROPA PRESS (10 mayo 2009), <https://www.europapress.es/sociedad/noticia-guatemala-indigena-guatemalteca-primera-mujer-maya-logra-encarcelen-policia-haberla-violado-20090510052602.html>.
- 167 NI OLVIDO NI SILENCIO, at 18; Ana Monzón, La vida después de haber sido encarcelada y tratada como terrorista por casi 8 años, EL COMERCIO (20 dic. 2018), <https://elcomercio.pe/lima/personajes/vida-despues-haber-sido-encarcelada-tratada-terrorista-8-anos-noticia-ecpm-587817-noticia/>.
- 168 NI OLVIDO NI SILENCIO, at 18.
- 169 Id. at 18; BEYOND REPAIR?, at 68.
- 170 Mayan Women Survivors Speak, at 469, 471; BEYOND REPAIR?, at 81.
- 171 NI OLVIDO NI SILENCIO, at 18-19, 23-30.
- 172 Id. at 23-25.
- 173 Id. at 23, 29-30.
- 174 Id. at 23.
- 175 Six of the women were survivors of sexual violence, id. at 31-44, 47-49, while the seventh spoke about her sister’s experience, id. at 44-47. An eighth woman spoke about violence against women after the conflict, id. at 19, and is addressed below. See also Mayan Women Survivors Speak, at 467-468.
- 176 NI OLVIDO NI SILENCIO, at 19, 31-44, 47-49; Mayan Women Survivors Speak, at 468.
- 177 See earlier in this section describing how the women chose who would speak at the Tribunal of Conscience.
- 178 NI OLVIDO NI SILENCIO, at 31-46.
- 179 Id. at 33, 39, 44.
- 180 Id. at 49, 165; BEYOND REPAIR?, at 70; Mayan Women Survivors Speak, at 468; see also Interview with former MTM attorney Jennifer Bravo.
- 181 NI OLVIDO NI SILENCIO, at 49-51.
- 182 Id. at 19, 51-53.
- 183 Interview with former MTM attorney Jennifer Bravo; Mayan Women Survivors Speak, at 457, 470; BEYOND REPAIR?, at 82.
- 184 Interview with former MTM attorney Jennifer Bravo; Mayan Women Survivors Speak, at 457, 470; Ethical Tribunals and Gendered Violence in Guatemala’s Armed Conflict, at 194.
- 185 Mayan Women Survivors Speak, at 471.
- 186 Interview with ECAP staff (statement of Director Susana Navarro); Interview with former MTM attorney Jennifer Bravo; Mayan Women Survivors Speak, at 470; Strategic Alliances as an Impact Litigation Model, at 168; BEYOND REPAIR?, at 63. Some in the audience expressed disappointment at the lack of engagement with the women testifying and questioned whether placing the women behind a curtain undercut the concept of survivors coming forward to publicly “break the silence,” but one of the Tribunal’s organizers explained that while some of the women were “ready ... to show their faces” and testify freely, it was Guatemala – with its culture of systemic injustice – that was not ready. Mayan Women Survivors Speak, at 470-471. Some audience members also expressed surprise that the family and community members of the women testifying had no apparent role in the process. Id. at 471.

- 187 Mayan Women Survivors Speak, at 470; BEYOND REPAIR?, at 82.
- 188 Interview with ECAP staff (statement of Director Susana Navarro).
- 189 Simultaneous interpretation was provided into four indigenous languages, while consecutive interpretation was provided into another two. NI OLVIDO NI SILENCIO, at 19; Mayan Women Survivors Speak, at 469; BEYOND REPAIR, at 81; Strategic Alliances as an Impact Litigation Model, at 200.
- 190 Mayan Women Survivors Speak, at 469; BEYOND REPAIR?, at 81.
- 191 BEYOND REPAIR?, at 81, 164; see also Mayan Women Survivors Speak, at 469.
- 192 NI OLVIDO NI SILENCIO, at 9-10, 20.
- 193 Id. at 20; see also id. at 19, 49, 51-53, 159, 161 (confirming that evictions by security forces – which was the topic of one of the videos – were accompanied by extensive sexual violence).
- 194 See generally id. at 20, 55-145. In addition, the reports of two other experts were provided to the Tribunal. Id. at 20 n.18.
- 195 See Interview with former MTM attorney Jennifer Bravo; BEYOND REPAIR?, at 71; Mayan Women Survivors Speak, at 467 & n.47.
- 196 See NI OLVIDO NI SILENCIO, at 55-146; see infra Section IV.D on the expert reports and testimony in the *Sepur Zarco* case.
- 197 NI OLVIDO NI SILENCIO, at 21, 157-163.
- 198 Id. at 21, 157-163. The Tribunal acknowledged that sexual violence also was committed by members of revolutionary forces. Id.
- 199 Id. at 17; Interview with former MTM attorney Jennifer Bravo; BEYOND REPAIR?, at 71. One of the attendees at the Tribunal of Conscience – Telma Aldana – later became the Attorney General, overseeing the investigation and trial of the *Sepur Zarco* case. Interview with former MTM attorney Jennifer Bravo.
- 200 See Interview with former MTM attorney Jennifer Bravo; NI OLVIDO NI SILENCIO, at 17-18.
- 201 Strategic Alliances as an Impact Litigation Model, at 168, 200; *Combatiendo el silencio e impunidad en delitos de violencia sexual a través de alianzas feministas*, at 136.
- 202 NI OLVIDO NI SILENCIO, at 17; Interview with UNAMG Executive Director Ada Valenzuela.
- 203 NI OLVIDO NI SILENCIO, at 19; Mayan Women Survivors Speak, at 468; BEYOND REPAIR?, at 71; Strategic Alliances as an Impact Litigation Model, at 200. The radio stations were la Radio Universitaria Guatemala (Guatemala University Radio) and la Radio Internacional Feminista (International Feminist Radio). NI OLVIDO NI SILENCIO, at 19.
- 204 Strategic Alliances as an Impact Litigation Model, at 200; BEYOND REPAIR?, at 71; Isabel Munera, *El difícil camino de la Justicia*, EL MUNDO (21 abr. 2010), <https://www.elmundo.es/america/2010/04/20/noticias/1271798992.html>.
- 205 Strategic Alliances as an Impact Litigation Model, at 200; see infra Section IV.B.
- 206 Interview with former MTM attorney Jennifer Bravo; Interview with UNAMG Executive Director Ada Valenzuela.
- 207 Interview with UNAMG Executive Director Ada Valenzuela; NI OLVIDO NI SILENCIO, at 13-20.
- 208 NI OLVIDO NI SILENCIO, at 21; BEYOND REPAIR?, at 91.
- 209 Gender Justice in Post-Conflict Guatemala, at 76.
- 210 Strategic Alliances as an Impact Litigation Model, at 168, 200; *Combatiendo el silencio e impunidad en delitos de violencia sexual a través de alianzas feministas*, at 136; Gender Justice in Post-Conflict Guatemala, at 76.
- 211 Interview with former MTM attorney Jennifer Bravo; Strategic Alliances as an Impact Litigation Model, at 168. 212 Interview with UNAMG staff (authors' translation); see also Interview with ECAP staff (statement of Director Susana Navarro); id. at 2 (statement of psychologist Debora Yancoba); Interview with Maudi Tzay; Interview with former MTM attorney Jennifer Bravo; Strategic Alliances as an Impact Litigation Model, at 168.
- 213 Interview with ECAP staff (statement of Director Susana Navarro).
- 214 Interview with former MTM attorney Jennifer Bravo; Interview with ECAP staff (statement of Director Susana Navarro); Strategic Alliances as an Impact Litigation Model, at 168; see earlier in this section describing how the women chose who would speak at the Tribunal of Conscience. The women were aided in making these decisions by MTM and the other civil society organizations, who helped to explain the kinds of facts that made for stronger legal cases, such as survivors who had experienced similar abuses and who could identify the perpetrators. Interview with former MTM attorney Jennifer Bravo.
- 215 Interview with ECAP staff (statement of Director Susana Navarro).
- 216 Interview with former MTM attorney Jennifer Bravo.
- 217 Id.
- 218 Id.
- 219 Interview with UNAMG Executive Director Ada Valenzuela; *Caso Sepur Zarco, la lucha de las mujeres por la justicia*, at 2; *CHANGING THE FACE OF JUSTICE*, at 13.
- 220 See earlier in this section on the decision to have the women speak from behind a curtain.
- 221 See infra Section IV.C.
- 222 This was based on the IACHR's powers to carry out in situ visits and issue reports on the general human rights situation of a country. See, generally, American Convention on Human Rights, Art. 41; Statute of the Inter-Am. Comm. H.R., Art. 18; Regulations of the Inter-Am. Comm. H.R., Arts. 53-57, 60. By the time the *Sepur Zarco* case was decided in February 2016, the IACHR had carried out several onsite visits and published nine reports on the human rights situation in Guatemala and related matters. See generally <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/reports/country.asp>

## 3.2

# INTERNATIONAL ENGAGEMENT AND INSTITUTIONAL READINESS: THE IMPACT OF THE INTER- AMERICAN SYSTEM OF HUMAN RIGHTS AND THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA

### 3.2.1

#### Impact of the Inter-American System of Human Rights

The Inter-American Human Rights System (IAHRS) has played an essential role in fostering accountability for grave abuses committed in Guatemala. In addition to monitoring and documenting the massive human rights violations affecting the civilian population during the conflict by the Inter-American Commission of Human Rights' (IACHR),<sup>222</sup> the Inter-American Court of Human Rights (IACtHR) has issued landmark judgments addressing the perpetration of crimes against humanity in Guatemala and condemning the impunity that prevailed in the country.<sup>223</sup> Although the *Sepur Zarco* case was never brought before the Inter-American human rights organs, the IACHR's reporting and the IACtHR's judgments reinforced Guatemala's responsibility for the gross human rights violations that transpired during the conflict and

made clear the state's duty to investigate and punish the perpetrators of such violations, as well as to grant comprehensive reparations to the victims.

More specifically, the impact of the IACtHR had a direct relevance to the *Sepur Zarco* case by recognizing that: (1) the state was involved in the perpetration of crimes against humanity against the civilian population, particularly indigenous communities, during the internal armed conflict; (2) those crimes involved not only extrajudicial executions, forced disappearances, and torture, but also sexual violence against women and girls; (3) the state's duty to investigate requires the punishment of the physical and intellectual perpetrators of those crimes, as well as the inapplicability

of amnesty laws to those crimes; and (4) survivors and their families are entitled to comprehensive and transformative reparations. The following section analyzes these findings in greater detail, along with

the impact of these findings within Guatemala and on the Guatemalan courts' ability to adjudicate the *Sepur Zarco* case.

### 3.2.1.1

#### The Role of the Guatemalan State in Crimes against Humanity against Indigenous Communities

In a series of judgments involving human rights violations committed during Guatemala's internal armed conflict, the IACtHR established that the state had perpetrated massive and systematic human rights violations, particularly against indigenous peoples. Specifically, the IACtHR judgments helped establish that during the conflict the Guatemalan state adopted a "National Security Doctrine" to respond to the insurgency, a doctrine that equated any opposition to the state and its policies as subversion and labeled those opponents as "domestic enemies."<sup>224</sup> Among those identified as "domestic enemies" were entire communities of Mayan indigenous peoples, which the State believed were supporting – or might be inclined to support – the guerrillas.<sup>225</sup> As a result, pursuant to this doctrine, the Guatemalan military committed massive human rights violations against the indigenous civilian population, including massacres, forced displacement, and the destruction of entire communities.<sup>226</sup> The era between 1978 and 1983 – the same period during which the Guatemalan military attacked the community of *Sepur Zarco* – was the most violent and brutal of the armed conflict, resulting in the vast majority of human rights violations.<sup>227</sup> During this period, "scorched earth operations" were conducted by the Guatemalan military to "eliminate individuals or groups of individuals 'defined as enemies' and to 'terrorize the population,'" including over 626 massacres.<sup>228</sup>

In support of its findings, the IACtHR frequently cited the report of the Comisión para el Esclarecimiento Histórico (Commission of Historical Clarification, hereafter CEH),<sup>229</sup> which described in detail the Guatemalan government's abusive state policies and practices in a manner that would later be useful in the prosecution of wartime atrocity cases, including the *Sepur Zarco* case.<sup>230</sup> Relying on the work done at the domestic level to document the crimes perpetrated during the conflict, the

report found that "83.3% of the victims of violations to human rights and acts of violence . . . belonged to [the] Mayan ethnicity [and] 16.5% belonged to the mestizo group."<sup>231</sup> Furthermore, the CEH report referenced reports and findings of the IACHR on the human rights situation in Guatemala, published since 1981, which were essential to document the facts on the ground during the conflict.<sup>232</sup> Although the CEH report was initially rejected by the Guatemalan state, the IACtHR continued to reference it in several cases.<sup>233</sup> Moreover, in 2009, the CEH report was publicly recognized by then-President Alvaro Colom.<sup>234</sup> Significantly, the *Sepur Zarco* judgment considered this report as evidence of the context of violence in Guatemala during the internal armed conflict, using it to help contextualize and assess the allegations of the *Abuelas* and other witnesses regarding the human rights violations they experienced.<sup>235</sup>

Despite initial refusals by the Guatemalan state to acknowledge its responsibility for the violations it had committed – a refusal that served as one of the motivating factors for the *Abuelas* to bring their own case to court – the state eventually accepted a modicum of responsibility.<sup>236</sup> In fact, there was a shift in Guatemala's attitude towards the Inter-American system as a whole, reflecting increased acceptance of its responsibility of human rights violations and a willingness to participate in friendly settlement procedures through the Inter-American system.<sup>237</sup> In addition, after publicly recognizing the CEH report, President Colom subsequently issued a formal apology to the victims of abuses perpetrated by the Guatemalan state.<sup>238</sup> Some victims perceived this increased acceptance of state responsibility as creating space for further accountability.<sup>239</sup> Ultimately, this policy shift in the relationship between Guatemala and the Inter-American system, together with the evidence provided in the IACHR's reports and IACtHR's judgments, contributed to

demonstrating the role of the state in the perpetration of gross human rights violations against the indigenous

community during the conflict in domestic criminal cases, including *Sepur Zarco*.<sup>240</sup>

### 3.2.1.2

#### Sexual Violence during the Conflict

The IACtHR's establishment that sexual violence was perpetrated during the conflict and was part of a systemic policy to destroy indigenous populations corroborated victims' accounts that sexual violence had occurred in Guatemala and that it was a human rights violation. The IACtHR specifically found that sexual violence was used in the country as a tactic by the military in its attempts to destroy indigenous communities in opposition to it.<sup>241</sup> For example, in *Rio Negro*, the Court found that the military committed "mass or indiscriminate and public rape, at times accompanied by the death of pregnant women or the induction of abortions" in order "to destroy a woman's dignity at the cultural, social, family and individual levels."<sup>242</sup> Moreover, the Court's finding in *Rio Negro* established systemic patterns of sexual violence that later corroborated the testimony of the women in *Sepur Zarco*, including the fact that many women were forced to flee to neighboring mountains to escape the abuse of military officials aimed at eliminating them.<sup>243</sup>

The IACtHR's condemnation of the impunity in Guatemala emphasized the need for adequate reports, investigations, and judicial proceedings for crimes of sexual violence, providing a framework for investigative

and judicial systems to demand justice by bringing cases against state officials, as was later done in *Sepur Zarco*.<sup>244</sup> For example, in *Veliz Franco*, the IACtHR recognized that violence against women had "gone unnoticed."<sup>245</sup> The Court noted, in particular, how Guatemala's failure to investigate and punish perpetrators of gender-based violence during the armed conflict had led to continued violence against women.<sup>246</sup> This included the use of harmful gender stereotypes in the context of judicial processes, where victims of violence were blamed, further perpetrating impunity.<sup>247</sup> Accordingly, the IACtHR reminded Guatemala of its obligation to prevent violence against women, specifying that the State "must prevent risk factors and also strengthen institutions so that these can respond effectively to cases of violence against women."<sup>248</sup> The IACtHR judgments ordered Guatemala to investigate, identify, and prosecute the perpetrators of such sexual violence, in addition to other forms of violence such as extrajudicial executions, forced disappearance and torture.<sup>249</sup> As explained in the next section, Guatemala gradually opened investigations and began complying with this duty to investigate.

### 4.2.1.3

#### Guatemala's Duty to Investigate Human Rights Violations Committed during the Conflict

In its judgments, the IACtHR required Guatemala to open impartial, timely, and effective investigations to determine the truth, emphasizing the need for survivors and their families to know the facts about the abuses perpetrated by state agents against them, as was later sought by the *Abuelas* in the case of *Sepur Zarco*.<sup>250</sup> The Court deplored the "total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations" in several cases against Guatemala.<sup>251</sup> The Court recognized that this existing impunity contributed to continuing violence and "fosters chronic recidivism of

human rights violations, and total defenselessness of victims and their relatives."<sup>252</sup> Accordingly, the Court sought to mitigate this impunity by clarifying that a State's duty to investigate is triggered the moment the human rights violation is brought to its attention.<sup>253</sup>

In addition, the Court's judgments interpreted the scope of the duty to investigate crimes against humanity in Guatemala to include an obligation to investigate the facts as international crimes, and not simply as ordinary crimes under domestic law.<sup>254</sup> Although the Court

recognized that domestic authorities have the authority to categorize criminal conduct, it concluded in the Rio Negro case that States have an obligation to categorize “massive, systematic and grave human rights violations” in ways that adequately reflect the gravity of the acts.<sup>255</sup> The Court therefore found inadequate Guatemala’s investigation of two massacres because they had been investigated and prosecuted as ordinary murders.<sup>256</sup> This approach was later followed in domestic cases of wartime atrocities in Guatemala. In *Sepur Zarco*, for instance, the pre-trial judge citing the principle of conventionality control developed by the IACTHR,<sup>257</sup> framed the crimes charged in the proceedings as international crimes by resorting to international sources, in particular human rights treaties binding upon Guatemala, customary international law rules, and the case law of the IACTHR.<sup>258</sup>

Moreover, the Court clarified that the duty to investigate includes the requirement to investigate all those involved in the planning and execution of the crimes, leading to the understanding that not only the physical perpetrators but also indirect and intellectual authors should be prosecuted for their offenses, as was later done in domestic Guatemalan cases such as *Sepur Zarco*.<sup>259</sup> For example, in Rio Negro, the IACTHR ordered the state to ensure effective investigations were conducted to determine the identities of “all alleged masterminds and perpetrators of the massacres and the subsequent persecution” of the civilians in the Rio Negro community.<sup>260</sup>

The Court also affirmed that Guatemala’s duty to investigate includes the obligation to reject the application of domestic norms, such as amnesty laws, that could constitute an obstacle to the prosecution of the conflict-related crimes.<sup>261</sup> This holding was later adopted by the High Risk Appellate Court in *Sepur Zarco*, which rejected the defense’s claim that the 1996 National Reconciliation law’s amnesty provisions barred the prosecution of the accused.<sup>262</sup> For instance, in the Case of Myrna Mack Chang, the IACTHR held that “all amnesty provisions . . . designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations.”<sup>263</sup> This aspect of the IACTHR’s jurisprudence was relied upon by the Guatemalan Constitutional Court to hold that amnesties are inapplicable to genocide, forced disappearances, and crimes against humanity.<sup>264</sup>

Lastly, the IACTHR established that Guatemala has an obligation to ensure that survivors have a right to participate in investigative and judicial processes, and must eliminate obstacles to such participation, including the unique obstacles faced by indigenous survivors and their families.<sup>265</sup> For example, the IACTHR held that indigenous survivors and their relatives should be provided with interpreters so that they can understand and be understood in judicial proceedings.<sup>266</sup> The IACTHR additionally ordered Guatemala to set aside funds for victims and their families so that they may cover expenses associated with initiating judicial proceedings.<sup>267</sup>

The IACTHR’s extensive jurisprudence pressured Guatemala to criminally prosecute those responsible for the harms documented by the Court.<sup>268</sup> In 2009, Guatemala began to prosecute and punish several perpetrators of the violations.<sup>269</sup> State prosecutors worked with civil society organizations, such as the Forensic Anthropology Foundation of Guatemala (FAFG), to conduct investigations and exhume bodies of victims.<sup>270</sup>

Moreover, in their decisions, Guatemalan judges often referenced the Inter-American system, demonstrating their familiarity with the system’s jurisprudence.<sup>271</sup> For instance, in *Sepur Zarco* the pre-trial judge charged the two suspects with forced disappearance even though this crime was only codified in Guatemala in 1996, over a decade after the crimes took place. The judge followed the IACHR’s interpretation, which characterized this conduct as a continuous crime the perpetration of which is not completed until the fate of a victim is established. Given that the absence of information about the disappeared victims in the *Sepur Zarco* case continued after 1996, the judge concluded that it was possible to charge the suspects with this crime.<sup>272</sup> Finally, the Guatemalan Criminal Chamber prompted the Guatemalan Congress to reform the Code of Criminal Procedure to allow further compliance with the IACTHR’s jurisprudence.<sup>273</sup> Among other things, the revised Code afforded victims a more active role in the criminal process,<sup>274</sup> a role that was essential in the case of *Sepur Zarco*, in which the women of *Sepur Zarco* actively participated throughout all stages of the case.

These prosecutions and convictions “breached the wall of impunity in Guatemala, illustrating the capacity of the country’s legal system to investigate and adjudicate

complex human rights cases and laying the groundwork for the prosecution of senior military officials in several

cases.”<sup>275</sup> Moreover, the convictions reaffirmed for victims “their rights as citizens to legal and moral redress.”<sup>276</sup>

### 3.2.1.4 Reparations

The IACtHR’s recognition that victims of human rights violations have a right to effective and comprehensive reparations intended to eliminate the effects of the violations, and its affirmation that reparation including not just restitution, but also rehabilitation, satisfaction, compensation, and guarantees of non-repetition, inspired survivors, including the *Abuelas* in *Sepur Zarco*, to request similarly transformative reparations in domestic cases.<sup>277</sup> Although such reparative measures can take a variety of forms, the IACtHR in its judgments against Guatemala consistently ordered the state to: (1) publicly acknowledge the harms committed by its agents;<sup>278</sup> (2) publish the judgment in indigenous languages;<sup>279</sup> (3) provide victims with psychosocial and medical services;<sup>280</sup> (4) address the loss of property and land during the armed conflict;<sup>281</sup> (5) educate state agents about human rights protections;<sup>282</sup> and (6) take measures to restore the community and its traditions.<sup>283</sup>

In recognition that public acknowledgment of the harms inflicted by the State could contribute to assuaging the pain of survivors, the IACtHR repeatedly ordered Guatemala to publicly recognize the harms committed by its agents during the armed conflict.<sup>284</sup> For instance, it ordered the State to erect memorials displaying victims’ names.<sup>285</sup> The Court recognized that these measures were critical to both breaking the silence around the violations that had taken place during the conflict and memorializing them for future generations.<sup>286</sup>

The Court’s requirement that Guatemala publish its judgments in the language of the victims’ communities ensured widespread access to its findings of facts.<sup>287</sup> In addition to the publications being in the language of the affected communities, the Court ordered that they be in an accessible format, such as a radio broadcast or webpage posting.<sup>288</sup> The Court additionally required the state to publish the results of investigations and criminal proceedings conducted in

accordance with the Court’s findings in a manner that was accessible to all Guatemalans.<sup>289</sup>

Additionally, the IACtHR found that many survivors of gross human rights violations required psychosocial and medical services for the abuses they suffered, including for the suffering they endured as a result of the impunity present in Guatemala society.<sup>290</sup> For instance, the Court recognized that the lack of adequate investigations and prosecutions into the forced disappearances of persons directly harmed survivors and their families as they continued to suffer from depression and other ailments.<sup>291</sup> Furthermore, the Court acknowledged the need for survivors not only to receive compensation for psychological and medical services already rendered, but also to be granted immediate access to medical treatment, to the extent practicable, in areas close to the residence of the victim and their surviving family members.<sup>292</sup>

Furthermore, the harms to victims often included loss of land and property which they could not hope to regain access to without the State’s cooperation. As a result, the IACtHR, in limited instances, ordered the state to adopt restitution measures. For instance, in *Plan de Sanchez*, the IACtHR ordered Guatemala to implement a housing program for all surviving victims of the massacre.<sup>293</sup>

Acknowledging that victims of human rights abuses are largely at the mercy of the state agents that control the investigations and prosecution into the harms suffered, the IACtHR also ordered as a form of reparation that Guatemala institutionalize a permanent education program for its armed forces, police, security agencies, judges, and prosecutors on human rights standards and the exercise of due diligence in the investigation and prosecution of violations of those standards.<sup>294</sup>

Lastly, in recognition of the particular impact of the harms on the Mayan community and its traditions, the IACtHR ordered innovative reparations designed to restore the community and its traditions.<sup>295</sup> This, for

example, included ordering Guatemala to establish effective mechanisms to recover and identify the bodies of the deceased and return them to their families for proper burial pursuant to Mayan tradition.<sup>296</sup>

The reparations had a significant impact on victims and Guatemalan society as a whole. For instance, public apologies and memorialization of the abuses

*... contributed to a shift in the way victims of the armed conflict perceive[d] themselves. Whereas those affected by state violence once saw themselves as passive victims of state violence, by recovering their own local histories, locating and burying their dead, holding commemorations and building memorials, they have come to see themselves as survivors who resisted state repression. Memorialization has served as a process of empowerment for many victims, who now have a clear understanding of themselves as citizens who actively demand their rights to truth, justice, reparation and memory.<sup>297</sup>*

Furthermore, Guatemala's public apologies for the abuses state agents committed during the armed conflict and the wide dissemination of these apologies "helped to build consensus among the population

that the state was indeed responsible for earlier violations."<sup>298</sup> For instance, in Plan de Sanchez, the state complied with the IACTHR's order of reparations by having the Vice President issue an official apology during a public ceremony in the victims' village.<sup>299</sup> In sum, the Inter-American cases fostered "bring[ing] justice for Mayans by creating a domino effect of legal accountability for thousands accused of similar human rights violations in Guatemala."<sup>300</sup>

Indeed, these comprehensive and transformative reparations inspired other survivors to make similar requests in several cases before the Guatemalan judiciary. Significantly, the reparations expert in *Sepur Zarco* explicitly stated that she drew inspiration for her report from IACTHR orders for transformative and comprehensive reparations.<sup>301</sup> Ultimately, the reparation orders in the *Sepur Zarco* case included educational materials for children, the translation of the court's judgment into twenty-four Mayan languages, the installation of a health center in *Sepur Zarco*, the provision of housing and access to land in victim communities, and the development of cultural projects for the women of *Sepur Zarco*, among others.<sup>302</sup>

### 3.2.2

## Impact of the International Commission Against Impunity in Guatemala ("CICIG")

The International Commission Against Impunity in Guatemala, known by its Spanish acronym CICIG (Comisión Internacional contra la Impunidad en Guatemala), also played an important role in fostering accountability for grave abuses committed in Guatemala. Responding to alarming levels of corruption and violence in the years following the peace accords that ended the 36-year conflict in Guatemala, the United Nations signed an agreement with the country to establish an independent, international body to assist the Public Prosecutor's Office and other law enforcement institutions with the investigation of crimes by illegal security forces and clandestine security structures.<sup>303</sup> During its twelve years of operation, from 2007 to 2019, CICIG participated in the investigation and prosecution of over 120 cases, leading to over 400 convictions, including many against

high-ranking public officials.<sup>304</sup> Significantly, CICIG also promoted legal and institutional reforms necessary to strengthen the justice system and prevent the resurgence of these illegal networks.<sup>305</sup> Although its mandate did not extend to human rights abuses, CICIG's focus on ending impunity and reforming the judicial sector in Guatemala increased the country's capacity to prosecute complex cases, including civil war era atrocity cases such as *Sepur Zarco*.<sup>306</sup>

CICIG originally grew out of a civil society proposal calling for an international commission to investigate illegal security structures that had been part of the military's counterinsurgency apparatus during Guatemala's internal armed conflict, and which continued to threaten those seeking justice for crimes committed during the conflict.<sup>307</sup> Although the country's peace

accords had included commitments to eradicate such organizations and protect human rights,<sup>308</sup> these illegal groups continued to be embedded within key parts of the government and were believed to be responsible for an increasing number of attacks on human rights defenders, reporters, forensic anthropologists, and others documenting atrocity crimes and human rights violations.<sup>309</sup> Moreover, their influence over key justice sector institutions – such as the Public Prosecutor’s Office, the judiciary, and the police – enabled these illegal organizations to thwart efforts at accountability for both current crimes and past atrocities.<sup>310</sup> Under sustained pressure from civil society and the international community, and facing a number of economic and political crises, in 2003 the Guatemalan government requested assistance from the UN to establish an international commission to assist in investigating and dismantling these illegal groups and aid in the fight against corruption and impunity.<sup>311</sup>

After years of negotiations and setbacks, CICIG was finally established in 2007 as an innovative hybrid mechanism with a broad mandate to assist Guatemalan authorities in investigating and dismantling illegal and clandestine security structures.<sup>312</sup> CICIG’s design was unlike that of any other entity at the time, essentially creating an internationalized prosecutor’s office to conduct investigations and bring criminal charges within domestic courts alongside domestic prosecutors and under domestic law.<sup>313</sup> This unique design, which was based on a Guatemalan law that permits “private prosecutors”<sup>314</sup> – a civil law concept that more traditionally enabled victims or their representatives to participate in the prosecution of those responsible for the crimes

against them – was meant to complement and strengthen national justice institutions.<sup>315</sup> In particular, it was hoped that an independent prosecutorial entity would be able to cut through the corruption endemic in state institutions, including the justice system, to improve the rule of law in Guatemala while simultaneously building the capacity and independence of those institutions.<sup>316</sup> To do this successfully, CICIG also was granted the authority to refer public officials who committed offenses or attempted to interfere with CICIG’s work for administrative disciplinary proceedings, as well as to recommend legislative and policy reforms.<sup>317</sup>

During its years of operation, CICIG – working alongside with the Public Prosecutor’s Office – demonstrated that it was possible to hold accountable those previously considered untouchable.<sup>318</sup> Over the course of its mandate, CICIG investigations dismantled a ring of police officials and high-level politicians who were murdering prisoners, trafficking drugs, and laundering money, among other crimes; contributed to the U.S. conviction of a former president; and uncovered a massive tax fraud ring that ultimately brought down a sitting president and vice-president, among other high-profile cases.<sup>319</sup> Although its mandate did not include the investigation human rights violations or wartime atrocities, such as those prosecuted in *Sepur Zarco*, its work resulted in the strengthening of various legal institutions, which in turn bolstered Guatemala’s ability to prosecute organized crime and corruption cases. This, coupled with the actions to strengthen the investigative and strategic criminal prosecution capacities of the Human Rights Prosecution Office, contributed – as the following section describes – to paving the way for *Sepur Zarco*.<sup>320</sup>

### 3.2.2.1

#### CICIG’s Impact on Guatemala’s Capacity to Investigate and Prosecute Serious Crimes

CICIG’s work led to a number of institutional developments that improved Guatemala’s ability to investigate and prosecute complex criminal cases. For instance, CICIG played a critical “role in ensuring the appointment of conscientious attorneys general,”<sup>321</sup> who not only prioritized corruption cases but also encouraged collaboration with civil society organizations working with victims of grave crimes committed during the

conflict.<sup>322</sup> Legislative reforms encouraged by CICIG led to the adoption of new selection procedures for the Attorney General, including the establishment of a selection committee to review candidates’ qualifications and make recommendations to the President.<sup>323</sup> These reforms also opened the process to public input – an opportunity that CICIG and civil society organizations seized to assess the qualifications of and rank

candidates for Attorney General, as well as identify candidates that should be disqualified.<sup>324</sup> Importantly, CICIG also supported the ouster of a corrupt Attorney General – who had been appointed in contravention of these procedures and who had tried to block CICIG’s investigations – by going public with serious allegations, backed by evidence, that the new appointee was tied to illegal activities.<sup>325</sup> His removal – and a second selection process that followed the reforms, again guided by the substantial input of CICIG and civil society, among others – led to the appointment of Claudia Paz y Paz as Attorney General.<sup>326</sup> Although there were plainly challenges in the implementation of the new reforms, ultimately the new process and the active participation of CICIG and civil society facilitated the appointment of highly competent and independent attorneys general.<sup>327</sup>

Importantly, Attorney General Paz y Paz, and later her successor Thelma Aldana, proved themselves to be critical actors in Guatemala’s fight against impunity and corruption who also “dedicated themselves to accountability for grave crimes in Guatemala.”<sup>328</sup> A human rights attorney who had collected histories from victims of the internal conflict as part of the Archbishop’s Human Rights Office and worked on cases of genocide and war crimes, Paz y Paz “aggressively” pursued cases of atrocities from the internal conflict, including cases of conflict-related SGBV.<sup>329</sup> She established protocols that systematized the investigation and prosecution of human rights violations, including a protocol specifically for sexual violence cases committed during the armed conflict, and ensured that prosecutors were trained in international human rights law.<sup>330</sup> In addition, Paz y Paz encouraged prosecutors “to collaborate with civil society organizations, survivors, and families of victims to collect evidence and build their cases,”<sup>331</sup> something they would later do in the *Sepur Zarco* case. Although she served for a shorter period than a regular term, Paz y Paz equipped prosecutors with the tools and skills necessary to successfully prosecute cases of conflict-related atrocities.<sup>332</sup>

Given CICIG’s time-limited mandate, CICIG prioritized strengthening the investigative and analytical capacity of the Public Prosecutor’s Office (PPO), supporting structural, strategic, and personnel reforms that would enable the PPO to conduct complex prosecutions, including, eventually, the *Sepur Zarco* case.<sup>333</sup> In 2008, CICIG signed a bilateral agreement with the PPO to establish

a special unit within the PPO, which eventually became known as the Special Anti-Impunity Prosecutor’s Office (Fiscalía Especial contra la Impunidad, or FEI), dedicated to working with CICIG on “high-impact” cases.<sup>334</sup> Staffed with prosecutors selected, vetted, and trained by CICIG, FEI worked side by side with CICIG to design and conduct investigations, searches, interrogations, case management strategies, and trial preparation, leading to significant knowledge transfer to and capacity building of Guatemalan prosecutors that were reinforced through specialized trainings.<sup>335</sup> CICIG also helped the PPO establish or expand specialized units for the investigation and prosecution of certain crimes.<sup>336</sup> Although much of the work was focused on illegal security structures, the PPO’s improved ability to sift through data, identify systemic patterns of criminal behavior, and link individual crimes to a larger organization would be critical in human rights cases like *Sepur Zarco*, which not only relied on hundreds of documents and pieces of physical evidence, but also had to demonstrate that the individual crimes were part of a widespread and systematic pattern of violence in order to meet the elements of the crimes.<sup>337</sup>

CICIG’s mandate to investigate and dismantle illegal networks led it to apply a strategic criminal investigation approach – a methodology that it also encouraged and supported within the Public Prosecutor’s Office.<sup>338</sup> In particular, CICIG promoted the adoption of a new investigation strategy at the Public Prosecutor’s Office, one that moved the office away from case-by-case investigations to group investigations of criminal networks.<sup>339</sup> Attorney General Paz y Paz later applied this theory of strategic litigation to criminal prosecutions of wartime atrocities, focusing the office’s efforts on those most responsible for the policies that led to widespread killings and displacement, such as former head of state Ríos Montt.<sup>340</sup>

Taking on these high-profile cases required an effective witness protection program, and CICIG worked closely with the Public Prosecutor’s Office to expand and improve the protections available to victims and witnesses.<sup>341</sup> Although Guatemala had a pre-existing witness protection law,<sup>342</sup> the program lacked sufficient resources and key systems, such as special police officers dedicated to witness protection, which impeded the participation of witnesses in criminal cases.<sup>343</sup> CICIG helped to develop guidelines, regulations, and best practices manuals on witness protection; identified safe houses; recommended

legal reforms; and established and trained a specialized police group dedicated to preserving the confidentiality of investigations and protecting witness.<sup>344</sup> CICIG's role in refining and strengthening witness protections in Guatemala has been particularly important for the prosecution of serious human rights violations and grave crimes, given the ongoing threat of retaliation still faced by many victims.<sup>345</sup> For example, in the *Sepur Zarco* case, the pre-trial judge relied on a legal reform promoted by CICIG to maintain the anonymity of witnesses, including the *Abuelas*, until trial.<sup>346</sup>

Finally, CICIG boosted the capacity of the Public Prosecutor's Office to conduct complex criminal investigations by successfully lobbying Congress to authorize new investigative tools and training prosecutors to use them.<sup>347</sup> Certain of these tools also increased the efficiency of and resources available to

the Public Prosecutor's Office, thereby enabling it to focus on larger and more complex cases, such as cases of conflict-related atrocities such as *Sepur Zarco*. For example, legislative reforms authorizing the use of plea bargaining enabled prosecutors to more quickly and efficiently dispose of cases against low-level members of criminal organizations, freeing resources to focus on higher-level individuals or more strategic cases.<sup>348</sup> CICIG also was instrumental in the adoption of the Asset Seizure Law,<sup>349</sup> which allowed judicial institutions to use property seized following an organized crime or corruption conviction.<sup>350</sup> In the first three years following the law's passage, Guatemalan authorities seized over \$3 million.<sup>351</sup> The enactment of this law led to an increase in financial resources for the Public Prosecutor's Office, further increasing its ability to pursue large and complex cases.<sup>352</sup>

### 3.2.2.2

#### CICIG's Impact on Judicial Independence and Capacity

CICIG also played an important role in addressing pervasive corruption in Guatemala's judicial system, spearheading reforms that improved the process of selecting and removing judges, resulting in a more competent and independent judiciary. Co-optation of the judiciary by corrupt judges, including those with links to the illegal structures that CICIG had been established to address, had long been an impediment to the prosecution of atrocity crimes stemming from Guatemala's internal armed conflict, and unquestionably impeded CICIG's efforts to address these structures.<sup>353</sup> In 2009, Congress adopted a CICIG-proposed law that created new procedures for electing judges, including the establishment of a set of minimum qualifications for candidates and the solicitation of public comments.<sup>354</sup> CICIG and dozens of civil society organizations joined together to evaluate the qualifications of more than a thousand candidates for the Supreme Court and appellate courts and make recommendations for appointments.<sup>355</sup> CICIG also openly and forcefully identified several Supreme Court candidates as "unfit" due to their alleged links to illegal activity, and, after six of those candidates were nevertheless elected, appealed to the Constitutional Court, resulting in the suspension of

the election and a re-vote that kept half of the allegedly unfit judges off the court.<sup>356</sup> In the subsequent elections of appellate and constitutional court judges, none of the candidates that CICIG objected to were elected.<sup>357</sup>

Although later elections were far from free of influence peddling and corruption,<sup>358</sup> CICIG continued to take bold steps in the fight against the pervasive corruption and malfeasance in the judiciary. In late 2012, for instance, CICIG produced a report entitled "The Impunity Judges" (*Los Jueces de la Impunidad*), which named 18 sitting judges whose decisions "favored criminal networks" and the "politically powerful."<sup>359</sup> In response, the Supreme Court lifted the immunity of nearly half of the named judges in order to allow for further investigation of the allegations and potential prosecution,<sup>360</sup> resulting in the conviction or civil sanction of some of them.<sup>361</sup> Over the next few years, CICIG pursued criminal charges against several judges for accepting bribes and breach of public duty.<sup>362</sup>

In addition, CICIG significantly improved judicial independence by supporting the creation of "High Risk Tribunals" – the type of court that would later hear the *Sepur Zarco* case – to ensure greater security for judges,

lawyers and witnesses involved in sensitive cases.<sup>363</sup> Established in 2009 following a proposal from CICIG, these courts were explicitly granted competence over serious human rights violations – including genocide, torture, and forced disappearance, among others – as well as organized crime, money laundering, and drug trafficking.<sup>364</sup> Located in Guatemala City but with jurisdiction over the entire country, these centrally located courts have enhanced security measures, making them better able to guarantee the safety of judicial personnel and litigants than can courts in rural areas.<sup>365</sup> This contributed not only to a greater willingness among victims to bring such cases, but also to greater independence among judges on the court.<sup>366</sup> The creation of centralized courts also enabled a level of specialization among the court’s judges, including in international law.<sup>367</sup> Prosecutor Hilda Pineda explicitly cited both the greater security for the *Abuelas* and the need for specialized judges who could interpret and apply international law in explaining her decision to request the transfer of the *Sepur Zarco* case to the High Risk Tribunals.<sup>368</sup>

Since their creation, nearly all cases involving grave crimes have been tried in the High Risk Tribunals.<sup>369</sup> For example, only three years after the creation of these High Risk Tribunals, a strengthened Public Prosecutor’s Office brought charges of genocide and crimes against humanity against former head of state Efraín Ríos Montt and his then-military chief of intelligence, based on 15 massacres and other crimes committed against the

Maya Ixil population living in the Quiché region between March 1982 and August 1983.<sup>370</sup> The charges alleged Ríos Montt was responsible for not only murders, torture and forcible displacement of the victims, but also acts of sexual violence.<sup>371</sup> Ríos Montt was convicted of genocide and crimes against humanity on the basis of these acts, including the sexual violence.<sup>372</sup> In assessing the evidence submitted to show that the accused had the requisite genocidal intent, the court found that

*under Ríos Montt’s rule, women were a “military objective.” Women and girls were not only raped as the “spoils of war,” but as part of the “systematic” and intentional plan to destroy the Ixil ethnic group by exercising violence on women’s bodies as a way to destroy the social fabric and thereby ensure the destruction of the Ixil population.<sup>373</sup>*

Taking into account the context in which the sexual violence was committed, the court was able to conclude that the sexual violence had been used as part of a deliberate strategy to destroy the Ixil ethnic group.<sup>374</sup> Although Guatemala’s Constitutional Court later annulled his conviction on procedural grounds,<sup>375</sup> the case paved the way for additional grave crimes trials and, more specifically, for the prosecution of sexual violence as a grave crime.<sup>376</sup> Those involved in the *Sepur Zarco* case believe that without the High Risk Tribunals, cases like that against Ríos Montt and later *Sepur Zarco* would almost certainly never have occurred.<sup>377</sup>

# ENDNOTES:

## Section 3.2

- 223 By February 2016, the IACtHR had also adopted 17 judgments against Guatemala regarding human rights violations perpetrated during the conflict. See generally <https://www.oas.org/en/iachr/decisions/cases.asp?Year=2016&Country=GTM220> See earlier in this section on the decision to have the women speak from behind a curtain.
- 224 Case of the Plan de Sánchez Massacre v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 105, ¶ 42(2), 42(7) (Apr. 29, 2004); Case of the “Las Dos Erres” Massacre v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 211, ¶¶ 71-73 (Nov. 24, 2009); Case of the Río Negro Massacres v. Guatemala, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 250, ¶ 57 (Sept. 4, 2012).
- 225 Case of the Río Negro Massacres, ¶ 58; Case of the Plan de Sánchez Massacre, ¶ 42(5).
- 226 Case of the Río Negro Massacres v. Guatemala, ¶ 58; Case of the Plan de Sánchez Massacre, ¶ 42(5).
- 227 Case of the Plan de Sánchez Massacre, ¶ 42(5); Case of the “Las Dos Erres” Massacre, ¶ 71.
- 228 Case of the Río Negro Massacres, ¶ 57; Case of the Plan de Sánchez Massacre, ¶ 42(6)-42(7); Case of the “Las Dos Erres” Massacre, ¶ 73.
- 229 COMISIÓN PARA EL ESCLARECIMIENTO HISTÓRICO, GUATEMALA, MEMORIA DEL SILENCIO.
- 230 See *infra* Section IV.D. (referencing use of the report in the *Sepur Zarco* judgment). See also e.g., Case of the “Las Dos Erres” Massacre, ¶¶ 73, 130, 152; Case of the Río Negro Massacres, ¶¶ 58, 61, 189; Case of Chitay Nech et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 66 (May 25, 2010); Case of Tiu Tojin v. Guatemala, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Judgment, (ser. C) No. 190, ¶ 48 (Nov. 26, 2008).
- 231 Case of Chitay Nech et al., ¶ 66 (quoting the report of the Commission for Historical Explanations); see, e.g. Case of the Las Dos Erres Massacre, ¶¶ 70-73.
- 232 Elena Martínez Barahona & Martha Gutiérrez, Impact of the Inter-American Human Rights System in the Fight Against Impunity for Past Crimes in El Salvador and Guatemala, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM 255 (2018), [https://link.springer.com.proxyau.wrlc.org/chapter/10.1007%2F978-3-319-89459-1\\_10](https://link.springer.com.proxyau.wrlc.org/chapter/10.1007%2F978-3-319-89459-1_10) (“The IAHRs officials, in their work on human rights violations undertaken in the midst of the conflicts, not only denounced the abuses but also documented them in detail, thereby providing supporting evidence which helped later efforts to establish the truth. The IAHRs’s documentation of serious human rights abuses has therefore made a significant contribution to efforts to uncover the truth in both El Salvador and Guatemala.”).
- 233 Impact of the Inter-American Human Rights System in the Fight Against Impunity for Past Crimes in El Salvador and Guatemala, at 251.
- 234 Jo-Marie Burt, Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador, DUE PROCESS OF LAW FOUNDATION, 28 (2018), [http://www.dplf.org/sites/default/files/pictures/transitional\\_justice\\_final.pdf](http://www.dplf.org/sites/default/files/pictures/transitional_justice_final.pdf).
- 235 See *Sepur Zarco* Trial Judgment, at 420-421.
- 236 Impact of the Inter-American Human Rights System in the Fight Against Impunity for Past Crimes in El Salvador and Guatemala, at 260 (explaining that, until 2000, the Guatemalan government denied responsibility for actions committed in the armed conflict, and that this approach did not change until President Alfonso Portillo took office, prompting the state to admit responsibility in several cases before the IAHRs); Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America, DUE PROCESS OF LAW FOUNDATION 10, 13 (2007), <http://www.dplf.org/sites/default/files/1190403828.pdf>.
- 237 OPEN SOCIETY JUSTICE INITIATIVE, FROM RIGHTS TO REMEDIES: STRUCTURES AND STRATEGIES FOR IMPLEMENTING INTERNATIONAL HUMAN RIGHTS DECISIONS 48 (2013), <https://www.justiceinitiative.org/uploads/7d34546e-dfe6-450b-82ec-77da3323d4bd/from-rights-to-remedies-20130708.pdf>; Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America, at 11-13, 27 (“[I]n March 2000, in a surprising move, the Portillo government declared that it would comply with the recommendations issued by the Commission concerning 44 cases of extrajudicial execution in 1990 and 1991 and five cases of forced disappearance in the same period. In April, in those cases, the government formally ‘accepted responsibility for the facts determined by the Commission and the consequent violations of the Convention (as well as of the Constitution of Guatemala).’ In the same period, the president announced his intention to reach friendly settlements with petitioners in several other cases, and these were eventually reached ‘on the basis of the State’s express acknowledgement of its institutional responsibility for the violations denounced, its commitment to pursue justice, and its commitment to ensure reparations for the victims and their families.’ In August 2000, during a visit of the Commission to Guatemala, the government agreed to accept responsibility in nine other well-known cases and then further expanded the list to include other cases for friendly settlements.”).
- 238 Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador, at 28. 239 Victims Unsilenced: The Inter-American Human Rights

- parties); Case of Véliz Franco et al. v. Guatemala, ¶¶ 69, 223 (referencing the culture of violence in Guatemala following the end of the armed conflict and how violence against women “has gone unnoticed”).
- 245 Case of Véliz Franco, ¶ 69.
- 246 Id., ¶ 69.
- 247 Id., ¶¶ 212-13. The *Abuelas* faced similar stereotypes when bringing the case of *Sepur Zarco*.
- 248 Id., ¶ 136.
- 249 See, e.g., Case of the Las Dos Erres Massacre, ¶¶ 139-41; Case of the Río Negro Massacres, ¶¶ 203, 227-228.
- 250 See e.g., Case of Tiu Tojin, ¶ 76; Case of Blake v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 48, ¶ 65 (Jan. 22, 1999); Case of Chitay Nech et al., ¶¶ 92, 193, 196; Case of the Río Negro Massacres, ¶ 223.
- 251 Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 37, ¶ 173 (Mar. 8, 1998).
- 252 Case of the “White Van” (Paniagua-Morales et al.), ¶ 173.
- 253 Case of Véliz Franco et al., ¶ 183.
- 254 Case of the Río Negro Massacres, ¶¶ 199-203.
- 255 Id., ¶ 203.
- 256 Id., ¶ 203.
- 257 The principle of control of conventionality “creates the international obligation on all state parties to the ACHR to interpret any national legal instruments (the constitution, law, decrees, regulations, jurisprudence etc.) in accordance with the ACHR and with the Inter-American corpus juris more generally (also called the “block of conventionality”). Wherever a domestic instrument is manifestly incompatible with the Inter-American corpus juris, state authorities must refrain from application of this law, in order to avoid any violation of internationally protected rights. State authorities should exercise this conventionality control ex officio, whilst ensuring they always act within the framework of their respective competences and the corresponding procedural rules, as defined internally by states.” Eduardo Ferrer Mac-Gregor, *Conventionality Control the New Doctrine of the Inter-American Court of Human Rights*, 109 AJIL Unbound 93 (2015).
- 258 *Sepur Zarco* Pre-Trial Decision, at 25-28. See *supra* Section IV.A.
- 259 Case of the Plan de Sánchez Massacre v. Guatemala, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 116, ¶ 98 (Nov. 19, 2004); Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 77, ¶ 99 (May 26, 2001); Case of the Las Dos Erres Massacre, ¶ 233.
- 260 Case of the Río Negro Massacres, ¶ 257.
- 261 Case of the Plan de Sánchez Massacre, Reparations, ¶ 99; Case of the Las Dos Erres, ¶¶ 129, 233; Case of the Río Negro Massacres, ¶ 257.
- 262 Jo-Marie Burt, *Court Ratifies Historic Sepur Zarco Sexual Violence Judgment*, INT’L JUST. MONITOR (July 21, 2017).
- 263 Case of Myrna Mack Chang v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 276 (Nov. 25, 2003); see Case of Molina Theissen v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 108, ¶ 84 (July 3, 2004); Case of the Las Dos Erres Massacre, ¶ 131.
- 264 Guatemala, Constitutional Court, Expediente 1933-2012, *Apelación de Sentencia de Amparo*, 5 (2013), <https://app.vlex.com/#vid/470258858>; see Sophie Beaudoin, *Guatemalan Court Rules out Amnesty for Genocide and Crimes Against Humanity*, INT’L JUST. MONITOR (Oct. 14, 2015), <https://www.ijmonitor.org/2015/10/guatemalan-court-rules-out-amnesty-for-genocide-and-crimes-against-humanity/>.
- 265 Case of Tiu Tojin, ¶¶ 97, 99-100.
- 266 Id., ¶ 100 (“[T]he State must ensure that [victims belonging to the Maya indigenous community] understand and are understood in the legal proceedings started, thus offering them interpreters or other effective means for said purpose.”).
- 267 Id., ¶ 100.
- 268 *Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador*, at 34.
- 269 See e.g., Amanda Kistler, *Disappeared but Not Forgotten: A Guatemalan Community Achieves a Landmark Verdict*, NACLA (Jan. 5, 2010), <https://nacla.org/article/disappeared-not-forgotten-guatemalan-community-achieves-landmark-verdict> (referencing the conviction in the case against Felipe Cusanera Coj was the first time a Guatemalan domestic court acknowledged the state’s utilization of enforced disappearances as a military tactic); *Genocide of Mayan Ixil Community*, CENTER FOR JUSTICE AND ACCOUNTABILITY, <https://cja.org/what-we-do/litigation/the-guatemala-genocide-case/> (highlighting that the Rios Montt case was the first state acknowledgment of the genocide); *Guatemala Dos Erres Massacre Soldier Given 6,060 Years*, BBC NEWS (Mar. 13, 2012), <https://www.bbc.com/news/world-latin-america-17349774>; *Guatemala: Fifth Former Soldier Convicted over Role in Dos Erres Massacre*, AMNESTY INTERNATIONAL (Mar. 14, 2012), <https://www.amnesty.org/en/latest/news/2012/03/guatemala-fifth-former-soldier-convicted-over-role-dos-erres-massacre/>; *Plan de Sanchez Massacre, Guatemalan Human Rights Commission* (Sept. 1, 2011), <https://www.ghrc-usa.org/our-work/important-cases/plan-de-sanchez/>.
- 270 See *Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador*, at 35; *Transcript: Accountability in Guatemala: The Role of Forensic Anthropology*, OPEN SOCIETY FOUNDATION 2 (2014), [https://www.opensocietyfoundations.org/uploads/03c3daa5-2814-408f-b26f-8c8166781b29/accountability-guatemala-role-forensic-anthropology-20140326\\_o.pdf](https://www.opensocietyfoundations.org/uploads/03c3daa5-2814-408f-b26f-8c8166781b29/accountability-guatemala-role-forensic-anthropology-20140326_o.pdf); Denis Martinez and Luisa Gomez, *A Promise to be Fulfilled: Reparations for Victims of the Armed Conflict in Guatemala, REPARATIONS, RESPONSIBILITY & VICTIMHOOD IN TRANSITIONAL SOCIETIES* 12 (2019), <https://reparations.qub.ac.uk/assets/uploads/Guatemalan-Report-ENG-LR.pdf>.
- 271 Wendy Johara Maldonado Urbina, *The Justice Spring of the Judicial System in Guatemala and the Implementation of the Judgements Issued by the Inter-American Court of Human Rights*, JOURNAL OF HUMAN

- RIGHTS PRACTICE 213 (2020), <https://academic.oup.com/jhrp/article/12/1/211/5891918> by American University user on 31 October 2021 (“The Criminal Chamber of the Supreme Court, under the leadership of Judge Barrientos, was determined to comply with international law and with the judgments against Guatemala decided by the Inter-American Court. Therefore, it began to take a series of decisions and actions, among which were those described below.”). National judges were trained on the standards and judgments of the IACtHR, which led, in part, to the state’s self-execution of IACtHR judgments in several instances. *Id.* at 213-14.
- 272 *Sepur Zarco* Pre-Trial Decision, at 24, 30.
- 273 Urbina, *The Justice Spring of the Judicial System in Guatemala*, at 215.
- 274 *Id.*
- 275 *Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador*, at 35.
- 276 *Id.*, at 37.
- 277 See e.g., *Case of the Río Negro Massacres*, ¶ 248; *Case of the Las Dos Erres Massacre*, ¶ 226; *Case of the Plan de Sánchez Massacre Reparations*, ¶¶ 53-54, 80 (describing the need for measures of reparation that “have the effect of restoring the memory of the victim, acknowledging their dignity, and consoling their next of kin”).
- 278 *Case of the Plan de Sánchez Massacre, Reparations*, ¶¶ 100-101; *Case of Chitay Nech et al.*, ¶¶ 246-248.
- 279 *Case of the Plan de Sánchez Massacre, Reparations*, ¶ 102; *Case of the Río Negro Massacres*, ¶¶ 274-275.
- 280 *Case of the Las Dos Erres Massacre*, ¶¶ 269-270; *Case of the Río Negro Massacres*, ¶¶ 289.
- 281 *Case of the Plan de Sánchez Massacre Reparations*, ¶¶ 72-74, 105.
- 282 *Case of Myrna Mack Chang*, ¶ 282; *Case of the Las Dos Erres Massacre*, ¶¶ 251-253;
- 283 *Case of the Río Negro Massacres*, ¶ 285.
- 284 *Case of Myrna Mack Chang*, ¶ 278; *Case of Molina Theissen, Reparations and Costs*, ¶ 87.
- 285 *Case of the “Street Children” (Villagrán Morales et al.), Reparations and Costs*, ¶ 103; *Case of Myrna Mack Chang*, ¶ 286; *Case of Chitay Nech et al.*, ¶ 251.
- 286 *Case of the Las Dos Erres Massacre*, ¶ 265; *Case of the Río Negro Massacres*, ¶¶ 279-280.
- 287 *Case of the Río Negro Massacres*, ¶ 274.
- 288 *Case of Chitay Nech*, ¶ 245; *Case of the Las Dos Erres Massacre*, ¶ 256; *Case of Tiu Tojin*, ¶ 108.
- 289 *Case of the Las Dos Erres Massacre*, ¶ 236; *Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253*, ¶ 328 (Nov. 20, 2012).
- 290 *Case of the Plan de Sánchez Massacre, Reparations*, ¶¶ 107-108; *Case of the Río Negro Massacres* ¶¶ 287-289 (ordering that these measures of rehabilitation be provided “by the healers of the Maya Achí community, in keeping with their own health practices and using traditional medicines,” as requested by the victims).
- 291 See *Case of Blake, Reparations*, ¶ 57; *Case of Molina Theissen, Reparations and Costs*, ¶¶ 68-69.
- 292 See *Case of Chitay Nech*, ¶ 256; *Case of the Las Dos Erres Massacre*, ¶ 270.
- 293 *Case of the Plan de Sánchez Massacre, Reparations*, ¶ 105.
- 294 *Case of Myrna Mack Chang* ¶ 282; *Case of the Las Dos Erres Massacre*, ¶ 251.
- 295 *Case of the Plan de Sánchez Massacre, Reparations*, ¶¶ 109-110 (granting reparations to the Mayan Achi community as a whole); see *Case of the Río Negro Massacres*, ¶ 285 (ordering the State to design and implement a program to rescue the culture Maya Achi affected by the massacres).
- 296 *Case of Bámaca Velásquez v. Guatemala, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 91*, ¶¶ 81-83 (Feb. 22, 2002) (acknowledging that “for the Mayan culture, Mam ethnic group, funeral ceremonies ensure the possibility of the generations of the living, the deceased person, and the deceased ancestors meet anew. Thus, the cycle between life and death closes with these funeral ceremonies.”); *Case of Chitay Nech*, ¶¶ 238-239.
- 297 *Transitional Justice in the Aftermath of Civil Conflict: Lessons from Peru, Guatemala and El Salvador*, at 43.
- 298 *Impact of the Inter-American Human Rights System in the Fight Against Impunity for Past Crimes in El Salvador and Guatemala*, at 263.
- 299 See *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, at 16-17.
- 300 Jeffrey Davis & Edward H. Warner, *Reaching Beyond the State: Judicial Independence, the Inter-American Court of Human Rights, and Accountability* in Guatemala, *JOURNAL OF HUMAN RIGHTS* 249 (2007), <https://doi.org/10.1080/14754830701338591>.
- 301 See *Interview with expert Dosiá Calderón* (Mar. 16, 2021).
- 302 *Sepur Zarco* Trial Judgment, at 509-511. For more information on reparations awarded in the *Sepur Zarco* case, see Section IV.E below.
- 303 *Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala (“CICIG”)* (Dec. 11, 2006), [http://cicig.org/uploads/documents/mandato/cicig\\_acuerdo\\_en.pdf](http://cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf); see also OPEN SOCIETY JUSTICE INITIATIVE, *OPTIONS FOR JUSTICE: A HANDBOOK FOR DESIGNING ACCOUNTABILITY MECHANISMS FOR GRAVE CRIMES* 381, 383-385 (2018), <https://www.justiceinitiative.org/uploads/89c53e2e-1454-45ef-b4dc-3ed668c8c188/options-for-justice-20180918.pdf>; OPEN SOCIETY JUSTICE INITIATIVE, *AGAINST THE ODDS: CICIG IN GUATEMALA* 3-4, 16-17, 31-37 (2016), <https://www.justiceinitiative.org/uploads/88ffaefco-09bf-4998-8ef3-e2a175e3f455/against-odds-cicig-guatemala-20160321.pdf>; WOLA, *THE INTERNATIONAL COMMISSION AGAINST IMPUNITY IN GUATEMALA: A WOLA REPORT ON THE CICIG EXPERIENCE* 3-4, 9, 22 (2015), [https://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA\\_CICIG\\_ENG\\_FNL\\_extra%20page.pdf](https://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf).
- 304 *CICIG, INFORME DE CIERRE: EL LEGADO DE JUSTICIA EN GUATEMALA*, at 51-52 (2019), [https://www.cicig.org/cicig/informes\\_cicig/informe-de-labores/informe-final-de-labores/#informe](https://www.cicig.org/cicig/informes_cicig/informe-de-labores/informe-final-de-labores/#informe);

- Fact Sheet: the CICIG's Legacy in Fighting Corruption in Guatemala, WOLA (2019), <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/>; Verónica Michel, Institutional Design, Prosecutorial Independence, and Accountability: Lessons from the International Commission against Impunity in Guatemala (CICIG), 10 *LAWS* 58, 58, 64 (2021), <https://www.mdpi.com/2075-471X/10/3/58/htm>.
- 305 Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala, art. 2(1); A WOLA REPORT ON THE CICIG EXPERIENCE, at 4, 9, 26; OPTIONS FOR JUSTICE, at 384.
- 306 See Gender Justice in Post-Conflict Guatemala, at 75.
- 307 Interview with presiding trial Judge Yassmin Barrios Aguilar; AGAINST THE ODDS, at 3, 16, 29; A WOLA REPORT ON THE CICIG EXPERIENCE, at 3-4; WOLA, ADVOCATES AGAINST IMPUNITY: A CASE STUDY ON HUMAN RIGHTS ORGANIZING IN GUATEMALA (2008), [https://www.wola.org/wp-content/uploads/2009/01/cicig\\_advocates\\_against\\_impunity.pdf](https://www.wola.org/wp-content/uploads/2009/01/cicig_advocates_against_impunity.pdf). For more information about these clandestine organizations, see generally SUSAN C. PEACOCK & ADRIANA BELTRÁN, WOLA, HIDDEN POWERS IN POST-CONFLICT GUATEMALA (2003), <https://www.wola.org/wp-content/uploads/2003/09/Hidden-Powers-Long-Version.pdf>.
- 308 Comprehensive Agreement on Human Rights, Doc. A/48/928 (1994), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N94/169/83/PDF/N9416983.pdf?OpenElement>; see also HIDDEN POWERS IN POST-CONFLICT GUATEMALA, at 13.
- 309 HIDDEN POWERS IN POST-CONFLICT GUATEMALA, at 3, 7-8, 51, 52-57, 62; United Nations Verification Mission in Guatemala, Thirteenth report on human rights of the United Nations Verification Mission, Doc. No. A/57/336, ¶¶ 3, 5, 53-54, 58-63, 66 (Aug. 22, 2002), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/No2/534/10/pdf/No253410.pdf?OpenElement>.
- 310 HIDDEN POWERS IN POST-CONFLICT GUATEMALA, at 7-8, 14; Thirteenth report on human rights of the United Nations Verification Mission, ¶¶ 53-54.
- 311 OPTIONS FOR JUSTICE, at 382; AGAINST THE ODDS, at 29; A WOLA REPORT ON THE CICIG EXPERIENCE, at 3.
- 312 See generally Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala; see also A WOLA REPORT ON THE CICIG EXPERIENCE, at 3-5, 9, 22; AGAINST THE ODDS, at 3-4, 16-17, 31-37; OPTIONS FOR JUSTICE, at 383-385, 391. Although CICIG was the product of an agreement with the UN and led by a UN-appointed commissioner, it was not an official UN entity and was not subject to UN oversight. Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala, art. 5(1); OPTIONS FOR JUSTICE, at 384, 394-395; AGAINST THE ODDS, at 8; Yulia Krylova, Outsourcing the Fight against Corruption: Lessons from the International Commission against Impunity in Guatemala, 9 *GLOBAL POLICY* 95, 96-97 (2018), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1758-5899.12518>.
- 313 Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala, art. 3(1)(b); A WOLA REPORT ON THE CICIG EXPERIENCE, at 9-10; CICIG, TWO YEARS OF WORK: A COMMITMENT TO JUSTICE, at 4 (2009), [https://cicig.org/uploads/documents/informes/INFOR-LABO\\_DOCo2\\_20090901\\_EN.pdf](https://cicig.org/uploads/documents/informes/INFOR-LABO_DOCo2_20090901_EN.pdf).
- 314 Guatemala Criminal Procedure Code, art. 116 (allowing “querrelantes adhesivos,” a term that was translated as “private prosecutor” in the agreement that established CICIG). Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala, art. 3(1)(b) Throughout this report, the term “querellantes adhesivos” is translated as “civil claimants.”
- 315 A WOLA REPORT ON THE CICIG EXPERIENCE, at 22; see also AGAINST THE ODDS, at 90-91; OPTIONS FOR JUSTICE, at 383-385. An earlier 2004 agreement proposed to create an International Commission Against Illegal Groups and Clandestine Security Organizations (“CICIACS”) with the authority to investigate and prosecute cases in Guatemalan courts independent of the prosecutor’s office. That agreement, however, was criticized by Congress and rejected by the Constitutional Court, which concluded that endowing independent prosecutorial powers to an international entity violated Guatemala’s Constitution. AGAINST THE ODDS, at 3, 29, 31-32; A WOLA REPORT ON THE CICIG EXPERIENCE, at 4-5; OPTIONS FOR JUSTICE, at 379, 382-383.
- 316 See A WOLA REPORT ON THE CICIG EXPERIENCE, at 3-4; AGAINST THE ODDS, at 16-17.
- 317 Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala, arts. 2(c), 3(1)(d).
- 318 AGAINST THE ODDS, at 11, 57; A WOLA REPORT ON THE CICIG EXPERIENCE, at 2, 18-19.
- 319 A WOLA REPORT ON THE CICIG EXPERIENCE, at 11-12, 16-17, 19, 22-23; AGAINST THE ODDS, at 11, 44, 46, 54-55, 70, 76-77, 81-82, 84-85.
- 320 AGAINST THE ODDS, at 34, 91-92 (stressing that although CICIG was, in principle, designed to “focus on contemporary institutional weaknesses and criminal structures, not atrocity crimes of the past..., a strengthened, more independent prosecution office would have greater capability to deal with the past as CICIG-assisted reforms improved the judicial sector as a whole”).
- 321 OPTIONS FOR JUSTICE, at 388.
- 322 Gender Justice in Post-Conflict Guatemala, at 75.
- 323 OPTIONS FOR JUSTICE, at 393; AGAINST THE ODDS, at 46-47; Jo-Marie Burt, The Justice We Deserve: War Crimes Prosecutions in Guatemala, 56 *LATIN AMERICAN RESEARCH REVIEW* 214, 220 (2021), <https://larrlasa.org/articles/10.25222/larr.776/>.
- 324 AGAINST THE ODDS, at 53, 55.
- 325 A WOLA REPORT ON THE CICIG EXPERIENCE, at 14, 20; AGAINST THE ODDS, at 53.
- 326 AGAINST THE ODDS, at 55; A WOLA REPORT ON THE CICIG EXPERIENCE, at 14, 20.
- 327 OPTIONS FOR JUSTICE, at 393; see also The Justice We Deserve, at 220.

- 328 OPTIONS FOR JUSTICE, at 393; see also *The Justice We Deserve*, at 220; *Gender Justice in Post-Conflict Guatemala*, at 75.
- 329 *The Justice We Deserve*, at 220; *AGAINST THE ODDS*, at 57; Guatemala's Claudia Paz: "For Crimes of Past and Present, Justice Must Be Done", ICTJ (Nov. 12, 2012), <https://www.ictj.org/news/guatemalas-claudia-paz-crimes-past-and-present-justice-must-be-done>; Steven Dudley, *The War of Paz y Paz: The Revolution, INSIGHT CRIME* (Apr. 23, 2014), <https://insightcrime.org/investigations/the-war-of-paz-y-paz-the-revolution/>.
- 330 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with former MTM attorney Jennifer Bravo; *The Justice We Deserve*, at 220; *AGAINST THE ODDS*, at 57; *Gender Justice in Post-Conflict Guatemala*, at 75.
- 331 *The Justice We Deserve*, at 220; *Gender Justice in Post-Conflict Guatemala*, at 75.
- 332 *AGAINST THE ODDS*, at 6, 64, 67, 74; *Gender Justice in Post-Conflict Guatemala*, at 75; David Gagne, Claudia Paz y Paz, *On the Revolution She Started in Guatemala*, *INSIGHT CRIME* (July 29, 2016), <https://insightcrime.org/news/analysis/claudia-paz-y-paz-and-the-revolution-she-started-in-guatemala/>.
- 333 A WOLA REPORT ON THE CICIG EXPERIENCE, at 10; *Outsourcing the Fight against Corruption*, at 98; *OPTIONS FOR JUSTICE*, at 393.
- 334 TWO YEARS OF WORK: A COMMITMENT TO JUSTICE, at 9; A WOLA REPORT ON THE CICIG EXPERIENCE, at 10; *OPTIONS FOR JUSTICE*, at 386; *AGAINST THE ODDS*, at 9, 43; MINISTERIO PÚBLICO REPÚBLICA DE GUATEMALA, MEMORIA DE LABORES MINISTERIO PÚBLICO AÑO 2009, at 27 (2010), <https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Información%20Pública%20de%20Oficio/05%20Misión,%20visión%20y%20objetivos/Memoria%20de%20Labores/Memoria-de-Labores-2009.pdf>; EL LEGADO DE JUSTICIA EN GUATEMALA, at 52. Originally, FECl was known as the Unidad Especial de Fiscalía de Apoyo a la CICIG. TWO YEARS OF WORK: A COMMITMENT TO JUSTICE, at 9; *AGAINST THE ODDS*, at 43, 100.
- 335 *AGAINST THE ODDS*, at 100, 102; A WOLA REPORT ON THE CICIG EXPERIENCE, at 10; *OPTIONS FOR JUSTICE*, at 386; TWO YEARS OF WORK: A COMMITMENT TO JUSTICE, at 9; CICIG, *International Commission Against Impunity in Guatemala Report on the Fifth Year of Activities 26* (2012) [hereinafter *CICIG's Fifth Annual Report*], <https://www.cicig.org/history/uploads/documents/2012/COM-067-20120911-DOCo2-EN.pdf>.
- 336 Interview with former MTM attorney Jennifer Bravo; *OPTIONS FOR JUSTICE*, at 393; EL LEGADO DE JUSTICIA EN GUATEMALA, at 16, 54; A WOLA REPORT ON THE CICIG EXPERIENCE, at 10.
- 337 See EL LEGADO DE JUSTICIA EN GUATEMALA, at 54; see also *Sepur Zarco* Trial Judgment, at 370-435 (listing 220 documents presented to the court during trial).
- 338 *CICIG's Fifth Annual Report*, at 6-8; *Outsourcing the Fight against Corruption*, at 97; EL LEGADO DE JUSTICIA EN GUATEMALA, at 47-48.
- 339 A WOLA REPORT ON THE CICIG EXPERIENCE, at 10; *AGAINST THE ODDS*, at 67, 102.
- 340 Guatemala's Claudia Paz: "For Crimes of Past and Present, Justice Must Be Done".
- 341 *OPTIONS FOR JUSTICE*, at 393; A WOLA REPORT ON THE CICIG EXPERIENCE, at 13-14; *AGAINST THE ODDS*, at 61, 118; *Outsourcing the Fight against Corruption*, at 98; *Witness Protection: A Necessary Tool in Justice Administration*, *CICIG* (Sept. 27, 2011), <https://www.cicig.org/history/index.php?page=0046-20110927E>.
- 342 Guatemala, Congreso de la República de Guatemala, Decreto No. 70-96, Ley Para la Protección de Sujetos Procesales y Personas Vinculadas a la Administración de Justicia Penal (1996), [http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilacionesCompilacionesCompilaciones%20Leyes%20Penales/expedientes/17\\_LeyProteccionSujetosProcesales.pdf](http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilacionesCompilacionesCompilaciones%20Leyes%20Penales/expedientes/17_LeyProteccionSujetosProcesales.pdf); see also Guatemala, Congreso de la República de Guatemala, Decreto No. 21-2006, Ley contra la Delincuencia Organizada, arts. 103-104 (2006), [https://www.congreso.gob.gt/detalle\\_pdf/decretos/12907](https://www.congreso.gob.gt/detalle_pdf/decretos/12907).
- 343 EL LEGADO DE JUSTICIA, at 60; A WOLA REPORT ON THE CICIG EXPERIENCE, at 13-14; *AGAINST THE ODDS*, at 43 n.97; *OPTIONS FOR JUSTICE*, at 393.
- 344 EL LEGADO DE JUSTICIA, at 60; A WOLA REPORT ON THE CICIG EXPERIENCE, at 14; *OPTIONS FOR JUSTICE*, at 393; *Witness Protection: A Necessary Tool in Justice Administration*; Guatemala, Congreso de la República de Guatemala, Decreto No. 17-2009, Ley del Fortalecimiento de la Persecución Penal, arts. 7-14, 16-22 (2009), <http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20decretos/Do17-2009.pdf>.
- 345 See JO-MARIE BURT, DUE PROCESS OF LAW FOUNDATION, *TRANSITIONAL JUSTICE IN THE AFTERMATH OF CIVIL CONFLICT 74* (2018) (describing harassment and threats against witnesses in the Ríos Montt trial), [https://www.dplf.org/sites/default/files/pictures/transitional\\_justice\\_final.pdf](https://www.dplf.org/sites/default/files/pictures/transitional_justice_final.pdf); see also Jo-Marie Burt & Paulo Estrada, *The Anti-CICIG Campaign in Guatemala: Implications for Grave Crimes Cases (Part II)*, *INTERNATIONAL JUSTICE MONITOR* (Oct. 4, 2017), <https://www.ijmonitor.org/2017/10/the-anti-cicig-campaign-in-guatemala-implications-for-grave-crimes-cases-part-ii/>.
- 346 Interview with pre-trial Judge Miguel Ángel Gálvez. For more information about this and other protective measures implemented in the *Sepur Zarco* case, see *infra* Section IV.C.
- 347 *Outsourcing the Fight against Corruption*, at 98; *AGAINST THE ODDS*, at 10, 43, 50-51, 102, 110; *OPTIONS FOR JUSTICE*, at 386-387; A WOLA REPORT ON THE CICIG EXPERIENCE, at 2, 12-13.
- 348 Miguel Zamora, *Institutional Inoculation: The International Commission Against Impunity in Guatemala (CICIG)*, *International Rule of Law Mechanisms, and Creating Institutional Legitimacy in Post-Conflict Societies*, 57 *COLUMBIA JOURNAL OF TRANSNATIONAL LAW* 535, 568-569, 571 (2019), <https://www.jtl.columbia.edu/volume57-3/institutional-inoculation-the-international-commission-against-impunity-in-guatemala>.

- la-cicig-international-rule-of-law-mechanisms-and-creating-institutional-legitimacy-in-post-conflict-societies; see also AGAINST THE ODDS, at 10, 50, 110.
- 349 Guatemala, Congreso de la República de Guatemala, Decreto Número 55-2010, Ley de Extinción de Dominio (2010), [https://www.cicig.org/uploads/documents/reforma\\_institucional/REFOR-INST\\_DOC01\\_2011125\\_ES.pdf](https://www.cicig.org/uploads/documents/reforma_institucional/REFOR-INST_DOC01_2011125_ES.pdf); EL LEGADO DE JUSTICIA, at 62; AGAINST THE ODDS, at 55.
- 350 AGAINST THE ODDS, at 55, 118; Ley de Extinción de Dominio, art. 47.
- 351 Héctor Silva Ávalos & Parker Asmann, 5 Takeaways from CICIG, Guatemala's Anti-Corruption Experiment, *INSIGHT CRIME* (Sept. 5, 2019), <https://insightcrime.org/news/analysis/5-takeaways-cicig-guatemala-anti-corruption-experiment/>; see also EL LEGADO DE JUSTICIA, at 62-63.
- 352 See Ley de Extinción de Dominio, art. 47.
- 353 See AGAINST THE ODDS, at 48, 103; *HIDDEN POWERS IN POST-CONFLICT GUATEMALA*, at 7-8, 14, 42, 43, 45; Thirteenth report on human rights of the United Nations Verification Mission, ¶¶ 53-54; A WOLA REPORT ON THE CICIG EXPERIENCE, at 19, 21; OPTIONS FOR JUSTICE, at 392-393; EL LEGADO DE JUSTICIA EN GUATEMALA, at 41-45.
- 354 AGAINST THE ODDS, at 46-47, 48; OPTIONS FOR JUSTICE, at 393.
- 355 AGAINST THE ODDS, at 48-49; A WOLA REPORT ON THE CICIG EXPERIENCE, at 18.
- 356 AGAINST THE ODDS, at 48-49; A WOLA REPORT ON THE CICIG EXPERIENCE, at 14, 18.
- 357 AGAINST THE ODDS, at 49, 61; A WOLA REPORT ON THE CICIG EXPERIENCE, at 14.
- 358 See, e.g., AGAINST THE ODDS, at 75-76; IACHR, *SITUATION OF HUMAN RIGHTS IN GUATEMALA: DIVERSITY, INEQUALITY AND EXCLUSION*, ¶¶ 20, 375-380 (2015) [hereinafter IACHR 2015 REPORT ON THE SITUATION OF HUMAN RIGHTS IN GUATEMALA], <http://www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf>.
- 359 See generally CICIG, *LOS JUECES DE LA IMPUNIDAD* (2012), <http://kpbs.media.clients.ellingtoncms.com/news/documents/2012/12/07/COM-093-20121129-DOC01-ES.pdf>; see also AGAINST THE ODDS, at 66.
- 360 AGAINST THE ODDS, at 68.
- 361 Guatemala: ocho condenados por adopción irregular de niña, 20 MINUTOS (18 jun. 2015) (describing conviction of Judge Mario Fernando Peralta Castañeda), <https://www.20minutos.com/noticia/b81843/guatemala-ocho-condenados-por-adopcion-irregular-de-nina/>; Tribunal de Honor del CANG impone su tercera sanción en el año, *SOY502* (17 mar. 2015) (describing civil sanctions against former Judge Rossana Maribel Mena Guzmán), <https://www.soy502.com/articulo/tribunal-honor-cang-impone-tercera-sancion-ano>.
- 362 IACHR 2015 REPORT ON THE SITUATION OF HUMAN RIGHTS IN GUATEMALA, ¶¶ 399-400; AGAINST THE ODDS, at 77, 80.
- 363 Interview with presiding trial Judge Yassmin Barrios Aguilar; *TWO YEARS OF WORK: A COMMITMENT TO JUSTICE*, at 19; EL LEGADO DE JUSTICIA EN GUATEMALA, at 60-61; A WOLA REPORT ON THE CICIG EXPERIENCE, at 14; OPTIONS FOR JUSTICE, at 393; Gender Justice in Post-Conflict Guatemala, at 75.
- 364 Guatemala, El Congreso de la República de Guatemala, Decreto Número 21-2009, Ley de Competencia Penal en Procesos de Mayor Riesgo, art. 3 (2009) [hereinafter Law Establishing the High Risk Tribunals], [https://oig.cepal.org/sites/default/files/2009\\_gtm\\_d21.pdf](https://oig.cepal.org/sites/default/files/2009_gtm_d21.pdf); see also Interview with presiding trial Judge Yassmin Barrios Aguilar; *TWO YEARS OF WORK: A COMMITMENT TO JUSTICE*, at 19; CICIG, *TERCER AÑO DE LABORES*, at 21 (2010), [https://www.cicig.org/history/uploads/documents/informes/INFOR-LABO\\_DOC05\\_20100901\\_ES.pdf](https://www.cicig.org/history/uploads/documents/informes/INFOR-LABO_DOC05_20100901_ES.pdf); OPTIONS FOR JUSTICE, at 381.
- 365 Law Establishing the High Risk Tribunals, art. 1 (providing jurisdiction over “high risk” cases committed in the territory of Guatemala); EL LEGADO DE JUSTICIA EN GUATEMALA, at 61; OPTIONS FOR JUSTICE, at 83, 393-394; A WOLA REPORT ON THE CICIG EXPERIENCE, at 14; Guatemalan Court for High Risk Crimes, CENTER FOR JUSTICE AND ACCOUNTABILITY, <https://cja.org/where-we-work/guatemala/related-resources/general-rios-montt-trial-in-guatemala-2/guatemalan-court-for-high-risk-crimes-2/>.
- 366 OPTIONS FOR JUSTICE, at 393-394; Guatemalan Court for High Risk Crimes.
- 367 See *CHANGING THE FACE OF JUSTICE*, at 15.
- 368 Id.
- 369 Gender Justice in Post-Conflict Guatemala, at 75; The Anti-CICIG Campaign in Guatemala: Implications for Grave Crimes Cases (Part II); *TRANSITIONAL JUSTICE IN THE AFTERMATH OF CIVIL CONFLICT*, at 34.
- 370 See OPTIONS FOR JUSTICE, at 380, 389; see generally OPEN SOCIETY JUSTICE INITIATIVE, *JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RÍOS MONTT* (2013), <https://www.justiceinitiative.org/uploads/bbdf1b25-f6c4-4370-8a54-f310bbe552f9/judging-dicator-trial-guatemala-rios-montt-11072013.pdf>.
- 371 OPTIONS FOR JUSTICE, at 389.
- 372 *JUDGING A DICTATOR*, at 12-13 (the trial court found that “the nature of the violence deployed against the Maya Ixil included massacres; forced disappearances; torture and cruel, inhuman and degrading treatment; rape and sexual violence against women and girls; infanticide and the abduction of children; the destruction of crops to induce starvation; the razing of civilian non-combatant villages, burning of houses, and forcible displacement in subhuman conditions, or forcible relocation of surviving populations into militarized ‘model villages’; and aerial bombardments, and control of populations, territory and natural resources”) (emphasis added) (citing Ríos Montt Trial Judgment of May 2013, at 108, 111, 113-14, 130, 137, 138, 140, 141-43, 683-84, 688-89, 699); OPTIONS FOR JUSTICE, at 389.
- 373 *JUDGING A DICTATOR*, at 14 (citing Ríos Montt Trial Judgment of May 2013, at 689, 691).
- 374 Id.
- 375 Guatemala, Corte de Constitucionalidad, Expediente 1904-2013, Amparo (20 mayo 2013) [hereinafter Ríos Montt Constitutional Court Decision], <https://www.legal-tools.org/doc/ad2653/pdf/>; see also *JUDGING A DICTATOR*, at 17; OPTIONS FOR JUSTICE, at 389.
- 376 Interview with presiding trial Judge Yassmin Barrios Aguilar.
- 377 Id. at 2.

# PRE-TRIAL AND TRIAL STRATEGIES: INNOVATIVE APPROACHES TO SURVIVOR-CENTERED ADVOCACY

The litigation of the *Sepur Zarco* case required extensive and systematic planning, preparation, strategizing.<sup>378</sup> Thus, another set of critical lessons learned relate to the innovative pre-trial and trial strategies employed by the actors involved in the case, including the groundbreaking strategy to center the *Sepur Zarco* case around sexual violence and to charge sexual violence as an international crime under the Guatemalan Criminal Code; the active role of civil society organizations and the *Abuelas* in the investigation, charges, and trial; efforts taken to protect the *Abuelas* and avoid their re-traumatization; key evidentiary strategies, including the extensive use of domestic and international experts at trial; and the *Abuelas'* demand for broad and transformative reparations, which are discussed in turn below.

<sup>378</sup> Interview with MTM attorney Esteban Celada Flores.

## 4.1

# GROUNDBREAKING STRATEGY TO CENTER THE *SEPUR ZARCO* CASE AROUND SEXUAL AND GENDER-BASED VIOLENCE AND TO CHARGE SUCH VIOLENCE AS INTERNATIONAL CRIMES UNDER THE GUATEMALAN CRIMINAL CODE

As the first case in Guatemala to bring charges for conflict-related sexual violence, including sexual slavery,<sup>379</sup> *Sepur Zarco* changed the narrative about sexual violence both by breaking the silence about these crimes and by demanding equal justice for their commission. Before *Sepur Zarco*, few cases in Guatemala had addressed conflict-related sexual violence in any significant way. Most cases related to the internal armed conflict had focused on forced disappearances, massacres, and genocide,<sup>380</sup> despite significant evidence that sexual violence had taken place alongside these crimes.<sup>381</sup> For example, in the genocide case against former dictator Ríos Montt, prosecutors decided not to bring separate charges for rape or sexual violence – despite extensive evidence of these crimes – out of a concern that “such charges would ‘weaken’ the case.”<sup>382</sup> Instead, rape was included as one of many acts constituting the crimes of genocide and crimes against the duties of humanity.<sup>383</sup> As one Guatemalan judge later remarked, this failure to include charges for conflict-related SGBV in earlier cases gave the impression that prosecutors did not consider these acts worthy of prosecution.<sup>384</sup> In contrast, the civil

claimants in *Sepur Zarco* blazed an important and innovative new path by centering the charges around the sexual violence against the *Abuelas*, in a purposeful attempt to raise the visibility of how sexual violence had been used by the State during the armed conflict.<sup>385</sup>

As mentioned earlier, the accused in the *Sepur Zarco* case were charged with sexual violence and sexual and domestic slavery under Article 378 of the Guatemalan Criminal Code, a provision entitled “Crimes against the duties of humanity.”<sup>386</sup> While the accused could have been charged with rape or other forms of sexual violence as ordinary domestic crimes, prosecuting these crimes as individual, isolated acts would have missed the context in which they were committed: namely, that they were a part of the military’s strategic plan to punish the men of *Sepur Zarco* for their attempt to protect their lands and to instill fear in their community,<sup>387</sup> which in turn was part of a broader military plan to defeat those perceived as insurgents.<sup>388</sup> The *Abuelas* and their representatives were determined to make this larger context visible, and in their initial complaint, filed directly with the court in September 2011, they characterized these crimes as crimes against the duties of humanity.<sup>389</sup>

The prosecution’s strong support for this strategy was vital to its ultimate success, but the prosecutors were initially reluctant to pursue this as-yet-untested approach. In September 2011, when the *Abuelas* filed their complaint, nearly all of the successful prosecutions for serious human rights abuses committed against indigenous peoples during Guatemala’s internal conflict had proceeded as ordinary, rather than international, crimes.<sup>390</sup> Only a handful of complaints had been filed under Article 378 – including those against former dictator Ríos Montt<sup>391</sup> and for the Plan de Sanchez massacre<sup>392</sup> – but most had yet to proceed to trial.<sup>393</sup> Over the next two years, from late 2011 to 2013, a few judgments were handed down under Article 378,<sup>394</sup> but in a tremendous setback, the Constitutional Court overturned the most high profile of these judgments, that against former dictator Ríos Montt, in May 2013.<sup>395</sup> Although the Constitutional Court’s decision was based on alleged violations of due process, rather than any concern about Article 378,<sup>396</sup> it underscored the challenges of prosecuting individuals for serious human rights abuses committed during Guatemala’s

armed conflict. Aware of the legal battles yet to come, and given the dearth of successful prosecutions under Article 378, the prosecutors had lingering questions about the viability of the civil claimant’s preferred legal approach.<sup>397</sup> As Prosecutor Hilda Pineda explained:

*Deep down I was a little afraid. I mean, that this wouldn’t make sense to the courts... that they wouldn’t accept it. It wasn’t so much that we didn’t want to risk a different legal qualification that wasn’t applicable, but instead, how were the judges going to accept this, if they hadn’t had this type of case?*<sup>398</sup>

In addition to questions about the viability of claims under Article 378, many of the prosecutors were more familiar with, and thus more comfortable, bringing cases for domestic crimes. As prosecutor Hilda Pineda explained:

*I wanted to use the crimes established in the Guatemalan Penal Code, I didn’t want to leave the domestic arena. Because I was thinking about guaranteeing the victims’ access to justice and being able to sustain the judgment, in case it was a guilty verdict, all the way to the Supreme Court, because I knew all the challenges it would entail.*<sup>399</sup>

Though it took time, by 2014 when the indictment was presented, the prosecution was firmly committed to prosecuting the accused for crimes against the duties of humanity.<sup>400</sup>

Although the decision to prosecute the conflict-related SGBV crimes against the women as crimes against the duties of humanity was important, the civil claimants wanted to go further by explicitly charging the accused with “crimes against the duties of humanity” in the form of sexual violence and sexual and domestic slavery.<sup>401</sup> As Esteban Celada Flores, one of the attorneys with MTM, eloquently explained, “that which is not named, does not exist”<sup>402</sup> – it therefore cannot be challenged and changed. Specifying the form of the crimes thus was essential to help break the silence around

sexual violence and to challenge cultural norms that enable the continuation of such violence.<sup>403</sup> The problem was that Article 378 does not explicitly list these crimes; instead, it refers generally to violations of international humanitarian law and certain acts committed against the “civilian population,” leaving unclear whether SGBV crimes could be specifically charged against the accused.<sup>404</sup> The prosecution therefore framed the initial charges against the accused simply as “crimes against the duties of humanity” under Article 378<sup>405</sup> and left all mention of the sexual violence for the later description of the conduct.<sup>406</sup>

Dissatisfied with the decision to omit the terms sexual violence and sexual and domestic slavery in the title of the charges, the civil claimants decided to exercise their right under Guatemalan law to request an expansion or modification of the charges.<sup>407</sup> In an intermediate stage hearing before Judge Gálvez, MTM – as part of its litigation strategy – presented a detailed chart listing each act of violence that each abuela had suffered, explaining how each of those acts would be proven, and then characterizing those acts as meeting the elements of particularized crimes, such as the crime against the duties of humanity in the form of sexual slavery or in the form of domestic slavery.<sup>408</sup> These specific crimes were drawn from international conventions, including the Rome Statute of the International Criminal Court, which, although not explicitly listed in Article 378, arguably were incorporated therein.<sup>409</sup> By presenting this information in a different and more detailed format, the civil claimants sought to both highlight the range of violence inflicted upon the women, as well as more clearly identify the specific crimes to which they had been subjected.<sup>410</sup> The civil claimants therefore asked the court to explicitly charge Reyes Girón and Asig with crimes against the duties of humanity in the form of sexual violence – which covered not only the rapes the women were subjected to, but also other violence such as the forced birth control – as well as to charge Reyes Girón with crimes against the duties of humanity in the form of sexual and domestic slavery.<sup>411</sup>

Faced with this difference between the prosecutors and the civil claimants as to how the charges should be characterized,<sup>412</sup> pre-trial Judge Miguel Ángel Gálvez, who was responsible for characterizing and confirming the charges against the accused, permitted the

case to go to trial both on the basis of Article 378 and in several of the specific forms requested by the civil claimants.<sup>413</sup> As Judge Gálvez explained, Article 378 is an open or “blank penal law,”<sup>414</sup> meaning that although it does not describe in detail the conduct proscribed, it makes reference to other sources of law binding on Guatemala and allows a court to define the proscribed conduct by reference to those other sources.<sup>415</sup> Specifically, Article 378 refers “to international conventions and especially the [1949] Geneva Conventions” ratified by Guatemala in 1952, as well as other sources of international law binding on Guatemala, which he noted included crimes against humanity.<sup>416</sup> Thus, in his view, Article 378 permitted the court to adjudicate acts constituting crimes under customary or conventional international law binding on Guatemala at the time they occurred. Moreover, as Judge Gálvez observed, Article 378 includes language incorporating both war crimes and crimes against humanity, meaning that either type of international crime – and its various forms – may be prosecuted under Guatemalan law. Together, this permitted him to charge the accused with “crimes against the duties of humanity” in the forms of sexual violence and sexual and domestic slavery, all of which arguably constituted war crimes and/or crimes against humanity at the time the crimes were committed.<sup>417</sup> Nonetheless, Judge Gálvez was careful only to recharacterize charges where recharacterization had been requested by the civil claimants, even though other charges arguably merited a new classification. For example, the killing of Dominga Cuc and her two children could have been characterized as extrajudicial killings, but Judge Gálvez chose to confirm the charges of murder, as requested by the prosecution, and avoid inserting himself into questions that had not been placed before him.<sup>418</sup> Many of those involved in the case credit Judge Gálvez – and his decision on how to frame the charges – as key to the success of the case.<sup>419</sup>

Although *Sepur Zarco* is known for its emblematic and groundbreaking sexual violence charges, it also underscores that it is possible to center a case on sexual violence without fragmenting those charges from those for other grave crimes that were committed as part of the same attack. For example, the *Sepur Zarco* case included charges against Valdez Asig for the forced disappearance of seven men, all husbands

or sons of the *Abuelas*.<sup>420</sup> The pre-trial court's decision confirming these charges contributed to a growing body of jurisprudence in Guatemala on the legality of bringing forced disappearance charges even where the original disappearance occurred before the entry into force of the relevant domestic criminal provision.<sup>421</sup> Valdez Asig was eventually convicted of these forced disappearances.<sup>422</sup> Importantly, the inclusion of these offenses enabled the prosecutors and civil society organizations accompanying the *Abuelas* to weave a more complete story of the violence that had been perpetrated against the *Abuelas* by helping to explain why the women and their families had been attacked.<sup>423</sup> *Sepur Zarco* thus serves as an example of how multiple offenses can be prosecuted together to more comprehensively address the range of abuses to which a community has been subjected, thereby establishing a more complete historical record and providing a fuller degree of accountability, while still remaining focused on SGBV.

Finally, the characterization of SGBV as crimes against the duties of humanity had a number of important impacts. First, it reinforced the systemic nature of the sexual violence against the victims, making clear that the acts committed against them were not isolated

or the product of rogue soldiers but rather a part of a broader counter-insurgency military plan. Second, it made plain that the circumstances in which the acts occurred were coercive, and that in those circumstances, genuine, voluntary consent of the victims was highly unlikely, if not impossible. This, in turn, allowed the victims – who, before the case, were frequently “referred to by the inhabitants of *Sepur Zarco* as ‘the women of the soldiers,’ implying their consent”<sup>424</sup> – to shift the blame from them to the perpetrators, helping them to heal from the stigma and isolation they experienced and to regain their dignity within their community.<sup>425</sup> Finally, in characterizing acts of SGBV as crimes against the duties of humanity, the charges challenged the narrative about sexual violence in Guatemala's conflict, which had been largely invisible until the *Sepur Zarco* case. Although evidence of sexual violence was used in the *Ríos Montt* case, it was used in conjunction with other crimes to help prove that genocide had occurred<sup>426</sup> and was not the primary focus of the case. By contrast, sexual violence and sexual and domestic slavery remained at the center of the *Sepur Zarco* case, sending the clear message that those crimes were as grave as other crimes committed during the conflict, for which perpetrators could and should be held accountable.

# ENDNOTES:

## Section 4.1

379 Id.

380 See, e.g., Guatemala, Corte Suprema de Justicia, Cámara Penal, Caso Nos. 150-2010 y 157-2010, at 6 (17 feb. 2011) (forced disappearance case) [hereinafter Supreme Court Decision in the Case against Felipe Cusanero Coj]; Guatemala, Corte Suprema de Justicia, Cámara Penal, Caso Nos. 1758-2012 y 1779-2012, at 4 (10 abr. 2013) [hereinafter Supreme Court Decision in the Case of the Plan de Sánchez massacre], <http://www.oj.gob.gt/files/Ley%20Acceso%20a%20la%20Informacion%20Publica/Articulo%2012/Art.%2012%20numeral%201/Delitos%20contra%20deberes%20de%20humanidad,%20asesinato%201758-2012%20y%201779-2012.pdf>; Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, Caso No. C-01076-2010-00003 (2 ago. 2011) [hereinafter Trial Judgment in the Case of the Dos Erres Massacre], <http://www.derechos.org/nizkor/guatemala/doc/2erres12.html>; Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente, C-01076-2011-00015, Sentencia (10 mayo 2013) [hereinafter Ríos Montt Trial Judgment of May 2013], <https://www.legal-tools.org/doc/riztst/pdf>.

381 See, e.g., Case of Plan de Sánchez Massacre v. Guatemala, ¶¶ 42(18), 42(42) (describing rapes committed during the Plan de Sánchez massacre).

382 Strategic Alliances as an Impact Litigation Model, at 182.

383 Shawn Roberts, Witnesses testify to rape in genocide trial; defense also objects to documents, INTERNATIONAL JUSTICE MONITOR (Apr. 3, 2013) (describing evidence of rape), <https://www.ijmonitor.org/2013/04/witnesses-testify-to-rape-in-rios-montt-genocide-trial-defense-also-objects-to-documents/>; JUDGING A DICTATOR, at 41-42, 47 (providing partial judgment in the Ríos Montt case, in which the court concluded that rape and sexual violence had been perpetrated as part of the crimes of genocide and crimes against humanity).

384 Interview with pre-trial Judge Miguel Ángel Gálvez.

385 Interview with UNAMG Executive Director Ada Valenzuela.

386 See supra Section II.B on the procedural history of the case.

387 See supra Section II.B; *Sepur Zarco* Trial Judgment, at 38-39, 41 (testimony of expert Rita Laura Segato).

388 See *Sepur Zarco* Trial Judgment, at 68-69 (testimony of expert Prudencio García Martínez de Murguía).

389 See supra Section II.B; Interview with former MTM attorney Jennifer Bravo, at 8; Interview with MTM attorney Esteban Celada Flores; CHANGING THE FACE OF JUSTICE, at 15. The original complaint also included charges of torture and genocide. Interview with

former MTM attorney Jennifer Bravo; CHANGING THE FACE OF JUSTICE, at 15. Laura Cools & Brisna Caxaj, Guatemala: How the *Sepur Zarco* Women Lifted Impunity for Sexual Violence, JUSTICEINFO.NET (June 21, 2017), <https://www.justiceinfo.net/en/justiceinfo-comment-and-debate/opinion/33648-guatemala-the-sepur-zarco-trial-how-to-successfully-litigate-wartime-sexual-violence-for-a-transformative-impact-5-key-lessons.html>. It is worth noting that the argument that conflict-related SGBV crimes should be prosecuted as grave international crimes had been advanced before the *Sepur Zarco* case. For instance, one of the experts who testified as part of the 2010 Tribunal of Conscience noted that “the cases of rape that occurred during Guatemala’s armed conflict should not be interpreted as isolated cases nor viewed as ordinary crimes, but as part of those crimes that offend the conscience of humanity and are part of international criminal law.” NI OLVIDO NI SILENCIO, at 129-130 (expert opinion of Fernando López Antillón) (authors’ translation). As indicated earlier, the argument was also raised in the Ríos Montt trial. See JUDGING A DICTATOR, at 14 (citing Ríos Montt Trial Judgment of May 2013, at 689, 691).

390 These cases include the 1993 and 2002 convictions of different perpetrators for the murder of anthropologist Myrna Mack. Guatemala, Corte Suprema de Justicia,

Cámara Penal, Casos Nos. 109-2003 y 110-2003, Sentencia (14 ene. 2003) [hereinafter Supreme Court Decision of 2003 in the Myrna Mack Case], [https://www.dplf.org/sites/default/files/casacion\\_109-2003\\_y\\_110-2003\\_caso\\_myrna\\_mack\\_o.pdf](https://www.dplf.org/sites/default/files/casacion_109-2003_y_110-2003_caso_myrna_mack_o.pdf); Ex-Guatemala Soldier Convicted in Murder of Anthropologist, LOS ANGELES TIMES (Feb. 13, 1993), <https://www.latimes.com/archives/la-xpm-1993-02-13-mn-1373-story.html>. There also had been a limited number of cases for forced disappearances under Guatemala’s criminal code, including the 2009 conviction of former paramilitary Felipe Cusanero Coj for the disappearances of six people in the 1980s. Supreme Court Decision in the Case against Felipe Cusanero Coj, at 6; Amanda Kistler, Disappeared but Not Forgotten: A Guatemalan Community Achieves a Landmark Verdict, NACLA (Jan. 5, 2010), <https://nacla.org/article/disappeared-not-forgotten-guatemalan-community-achieves-landmark-verdict>.

391 Civil society organizations in Guatemala filed a criminal complaint against former Guatemalan dictator Ríos Montt in 2001, but the case did not proceed to trial until 2013. JUDGING A DICTATOR, at 2-3; FIDH, GENOCIDE IN GUATEMALA: RÍOS MONTT GUILTY 7-8 (2013), <https://www.fidh.org/IMG/pdf/rapguatemala613uk2013.pdf>.

392 Although a criminal complaint was filed in the Plan de Sánchez massacre case as early as 1992, trial was not

- held until 2012. Case of the Plan de Sánchez Massacre v. Guatemala, ¶ 42(31); Supreme Court Decision in the Plan de Sanchez Case, at 3-4.
- 393 One exception was the August 2011 judgment in the Dos Erres Massacre case, which found four former members of the military guilty of murder and crimes against the duties of humanity. See generally Trial Judgment in the Case of the Dos Erres Massacre.
- 394 See *id.* Guatemala’s High Risk Tribunal handed down at least two judgments under Article 378 in 2012. In February, the Court found a former military commissioner and several former members of the civil self-defense patrols guilty of murder and crimes against the duties of humanity for the Plan de Sanchez massacre. Supreme Court Decision in the Plan de Sanchez Case, at 3-4. Then in August, former police commander Pedro García Arredondo was found guilty of forced disappearance and crimes against the duties of humanity for his role in the disappearance of college student Édgar Enrique Saenz Calito in 1981. Guatemala, Corte Suprema de Justicia, Cámara Penal, Caso No. 722-2013, at 3-5 (26 sept. 2013) [hereinafter Supreme Court Decision in the Case Against Pedro García Arredondo], <http://www.oj.gob.gt/files/Ley%20Acceso%20a%20la%20Informacion%20Publica/Articulo%2012/Art.%2012%20numeral%201/Delitos%20contra%20deberes%20de%20humanidad,%20desaparici%C3%B3n%20forzada%20722-2013.pdf>. The Supreme Court of Justice affirmed both judgments the following year. See Supreme Court Decision in the Plan de Sanchez Case; Supreme Court Decision in the Case Against Pedro García Arredondo. That same year, the High Risk Tribunal also found Ríos Montt guilty of genocide and crimes against the duties of humanity. See generally Ríos Montt Trial Judgment of May 2013.
- 395 Ríos Montt Constitutional Court Decision.
- 396 *Id.*; Guatemala annuls Ríos Montt’s genocide conviction, BBC (May 21, 2013), <https://www.bbc.com/news/world-latin-america-22605022>.
- 397 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda).
- 398 *Id.* (statement of Hilda Pineda) (authors’ translation). The civil claimants likewise describe this early period, though civil, as one of “many conflicts... there were disputes with the Public Prosecutor’s Office” over the legal characterization of the crimes. Interview with former MTM attorney Jennifer Bravo (authors’ translation).
- 399 *Id.* at 15-16 (statement of Hilda Pineda) (authors’ translation).
- 400 See *id.* at 17 (statement of Hilda Pineda); Guatemala, Juzgado Primero de Primera Instancia Penal, Narcoactividad y Delitos Contra el Ambiente por Procesos de Mayor Riesgo, Guatemala, Expediente No. C-01076-2012-00021, Audiencia de Fase Intermedia, at 2, 4, 27 (3 oct. 2014) [hereinafter *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014] (requesting confirmation of the charges against the accused for, inter alia, crimes against the duties of humanity).
- 401 Interview with MTM attorney Esteban Celada Flores.
- 402 *Id.* at 3 (authors’ translation).
- 403 *Id.* at 11.
- 404 See Guatemala Criminal Code, art. 378.
- 405 *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 2, 27 (statement of prosecutor).
- 406 *Id.* at 6-9 (statement of prosecutor).
- 407 Interview with former MTM attorney Jennifer Bravo, at 20-21; Interview with MTM attorney Esteban Celada Flores; see Guatemala Criminal Procedure Code, art. 337; *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 30, 38, 40, 44-45; see also CHANGING THE FACE OF JUSTICE, at 16.
- 408 *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 31-37; Interview with MTM attorney Esteban Celada Flores; Interview with former MTM attorney Jennifer Bravo.
- 409 Interview with MTM attorney Esteban Celada Flores; Interview with pre-trial Judge Miguel Ángel Gálvez.
- 410 Interview with MTM attorney Esteban Celada Flores.
- 411 *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 32-38, 44; Interview with MTM attorney Esteban Celada Flores. The civil claimants also proposed to charge Reyes Girón with crimes against humanity in the form of torture, cruel and inhuman treatment, forced labor, and forced displacement. *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 32-38.
- 412 Interview with pre-trial Judge Miguel Ángel Gálvez.
- 413 *Sepur Zarco* Pre-Trial Decision, at 27, 31, 32; Interview with pre-trial Judge Miguel Ángel Gálvez; Interview with former MTM attorney Jennifer Bravo; Interview with MTM attorney Esteban Celada Flores.
- 414 Interview with pre-trial Judge Miguel Ángel Gálvez; *Sepur Zarco* Pre-Trial Decision, at 10; see also Interview with MTM attorney Esteban Celada Flores.
- 415 See Interview with pre-trial Judge Miguel Ángel Gálvez; Francisco Muñoz Conde & Mercedes García Aran, DERECHO PENAL 39 (4<sup>a</sup> Ed., 2000) (“we find ourselves before a blank penal law where part of this structure (generally, the definition part of the factual situation) is not contained in the criminal law itself but rather refers to a different norm”) (authors’ translation), quoted in FERNANDO ARTURO LÓPEZ ANTILLÓN & MARÍA MARTÍN QUINTANA, INSTITUTO DE ESTUDIOS COMPARADOS EN CIENCIAS PENALES DE GUATEMALA, VIOLENCIA DE GÉNERO EN CONFLICTOS ARMADOS: ESTRATEGIAS PARA LA PERSECUCIÓN PENAL 51 (2007), [http://www.bantaba.ehu.es/obs/files/view/violencia\\_de\\_genero.pdf?revision\\_id=74163&package\\_id=74143](http://www.bantaba.ehu.es/obs/files/view/violencia_de_genero.pdf?revision_id=74163&package_id=74143). The phrase “blank penal law” comes from the German word, blankettstrafgesetz, which was first used by Karl Binding in his 1872 work, DIE NORMEN UND IHRE UBERTRETUNG, in which he defines the phrase as: “those incomplete laws, which limit themselves to setting a certain penalty, leaving to another legal norm the task of completing the law with a determination of the precept, that is, the specific description of the punishable conduct.” IMPUNITY WATCH, MONITOREO DE LA JUSTICIA TRANSICIONAL

- EN GUATEMALA, TOMO II: DERECHO A LA JUSTICIA PARA LAS VÍCTIMAS DEL CONFLICTO ARMADO INTERNO 16 n.14 (2014) (author's translation) (internal citations omitted), [https://static.wixstatic.com/ugd/f3f989\\_c51086dfaa6e-4beba8e957a073d83f96.pdf](https://static.wixstatic.com/ugd/f3f989_c51086dfaa6e-4beba8e957a073d83f96.pdf).
- 416 *Sepur Zarco* Pre-Trial Decision, at 10-11, 24; Interview with pre-trial Judge Miguel Ángel Gálvez. Notably, this position is consistent with that of other experts. See, e.g., MONITOREO DE LA JUSTICIA TRANSICIONAL EN GUATEMALA, at 16 (“In effect, war crimes, crimes against humanity, and genocide, which are categorized as international crimes, are contemplated in the Guatemalan Penal Code (lex scripta). For technical reasons it is affirmed that war crimes and crimes against humanity are provided for by article 378, since the elements and constituent conduct of said crimes allow their integration in a single legal provision, and thus in order to identify them it is necessary to make use of international treaties duly ratified by Guatemala. In addition, both crimes against the duties of humanity and genocide are part of Chapter IV (Of crimes of international transcendence) which includes crimes that offend the entire world and respond to international obligations acquired by the State.”) (authors’ translation).
- 417 *Sepur Zarco* Pre-Trial Decision, at 10, 27, 31, 32; *Sepur Zarco* Trial Judgment, at 91-98 (expert testimony of Paloma Soria Montañez); see also WCRO & the Academy of Human Rights and International Humanitarian Law, Amicus Brief on Rape, Sexual Violence, Sexual Slavery, Domestic Slavery, and Outrages Upon Personal Dignity as War Crimes and Crimes Against Humanity Under International Law (Feb. 23, 2016).
- 418 Interview with pre-trial Judge Miguel Ángel Gálvez.
- 419 Interview with UNAMG Executive Director Ada Valenzuela, at 14, 18; see also Interview with former MTM attorney Jennifer Bravo.
- 420 *Sepur Zarco* Trial Judgment, at 1, 9-11; *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 6.
- 421 In Guatemala, the crime of forced disappearance did not enter into force under the Guatemalan Criminal Code until 1996, more than a decade after the *Abuelas*’ husbands disappeared, thus raising the question of whether such charges were consistent with the principle of legality, which among other things precludes the prosecution of conduct that was not criminal at the time it was committed. Guatemala Criminal Code, art. 201 ter; see also *Sepur Zarco* Pre-Trial Decision, at 12 & 20 (forced disappearance charges were under art. 201 ter of the Guatemalan Criminal Code), 12 & 30 (art. 201 ter was enacted in 1993 and went into force in 1996), 24 (observing that the crimes took place in 1982, well before the entry into force of art. 201 ter, and discussing the principle of legality issue). This principle – which applies to all cases in Guatemala by virtue of the country’s constitution and the ICCPR – is essential to protect an accused’s fundamental rights, particularly the right to due process, as the *Sepur Zarco* court recognized. *Sepur Zarco* Pre-Trial Decision, at 24; Guatemala, Constitución Política, art. 15 (1993), <https://www.ine.gob.gt/archivos/informacionpublica/ConstitucionPolitica dela Republica de Guatemala.pdf>. The prosecution successfully argued, however, that the principle of legality was not violated in the *Sepur Zarco* case. Drawing on both Guatemalan and international law – particularly the Inter-American Convention on Forced Disappearance of Persons, the Declaration on the Protection of All Persons from Enforced Disappearance, and the jurisprudence of the Inter-American Court – the prosecution argued that forced disappearance is a “continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.” *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 21-22, 24 (authors’ translation). Judge Gálvez agreed. Referring to the jurisprudence of both Guatemala’s Constitutional Court and the Inter-American Court of Human Rights, as well as an amicus brief provided to the court, Judge Gálvez held that the crime of forced disappearance is a continuous or ongoing violation that extends from the moment the disappearance first occurs until the fate of the person is known. *Sepur Zarco* Pre-Trial Decision, at 24 (“the crime of forced disappearance continues in time, so long as the person does not appear the crime continues to be committed”) (authors’ translation); see also id. (“one of the main characteristics of the crime of forced disappearance is that it is of continuous or permanent nature due to the particular legal characteristic of the crime that it extends in time from the beginning of the act until the fate and whereabouts of the victims are known”) (authors’ translation). As a result, prosecution of an individual for the disappearance of an individual that occurred prior to the entry into force of the Guatemala’s criminal prohibition on forced disappearance does not violate the principle of legality because the crime remains ongoing. Id.
- 422 *Sepur Zarco* Trial Judgment, at 502, 508.
- 423 See supra Section II.A (background section explaining the rationale behind the forced disappearances and the attacks on the men’s families).
- 424 Guatemala: How the *Sepur Zarco* Women Lifted Impunity for Sexual Violence.
- 425 NISGUA, *Sepur Zarco*: Q’eqchi’ women set a precedent in Guatemala with first-ever conviction for sexual and domestic slavery, at 4 (Mar. 2016) (“According to [former director of UNAMG] Luz Méndez, this healing process has helped survivors ‘shed the feelings of guilt from their own shoulders and transfer it to those of the perpetrators...’”), <https://nigua.org/wp-content/uploads/J-11-Sepur-Zarco-NISGUA-Report-March-2016.pdf>.
- 426 See the discussion of the Ríos Montt case earlier in this section.

## 4.2

# ACTIVE ROLE OF CIVIL SOCIETY ORGANIZATIONS AND THE ABUELAS IN THE INVESTIGATION, CHARGES, AND TRIAL

The active involvement of civil society organizations and the *Abuelas* throughout the investigation and trial was crucial to the success of the *Sepur Zarco* case. Indeed, the case might never have happened at all without their involvement, since it was the *Alianza* and the *Abuelas* themselves that initiated the case in September 2011 by filing the criminal complaint.<sup>427</sup> Once the case was underway, the civil society organizations and the *Abuelas* – who were officially recognized as civil claimants<sup>428</sup> – continued to be responsible for key decisions throughout the investigation and trial, including the characterization of the crimes, the requests for protective measures, the legal strategies employed during the trial, and the reparations requested. Their ceaseless and courageous work was essential to the success of the *Sepur Zarco* case.

Throughout the case, the three civil society organizations accompanying the *Abuelas* divided the labor based on the “distinct capacities” of each organization, much as they had done during the Tribunal of Conscience.<sup>429</sup> ECAP continued to provide psychosocial support to the *Abuelas*, MTM was responsible for the

litigation and legal strategy, and UNAMG worked on the advocacy, media, and communications strategy.<sup>430</sup> The following sub-sections examine some of the key issues with respect to the latter two responsibilities, while psychosocial support is examined in the next section, on protective measures.

### 4.2.1

#### Legal strategy: Initiating the case, setting its strategic direction, and coordinating with the prosecutors

The civil society organizations and the *Abuelas* played a key role from the very start of the litigation, filing the original criminal complaint (*querrela*) in a court in Puerto Barrios, Izabal.<sup>431</sup> Similar to certain other civil law jurisdictions,<sup>432</sup> Guatemala permits victims and/or their representatives to participate in criminal cases as civil claimants (*querellantes adhesivos*), either by petitioning a court to initiate a criminal case or by joining

a criminal case initiated by the Public Prosecutor’s Office.<sup>433</sup> The advantage of the former is that it leaves no discretion to the prosecutor’s office as to whether to open a case – once the court determines the complaint meets the requirements, the court opens an official court file and then transfers the complaint to the prosecutor’s office to take up the case.<sup>434</sup>

Importantly, filing the complaint themselves gave the civil claimants greater control not only over the opening of the *Sepur Zarco* case, but also its strategic direction. By drafting a complaint characterizing the crimes against the *Abuelas* and their families as crimes against the duties of humanity,<sup>435</sup> the civil claimants sought to show prosecutors how crimes of sexual violence – which had not yet been prosecuted in Guatemala as crimes against the duties of humanity<sup>436</sup> – could be pursued as international crimes. Indeed, the prosecutor responsible for the investigation phase of the case described the original complaint as an “enormous aid,” both in explaining the relevant law on international crimes, as well in providing so much evidence of the claims that the complaint was “practically a book.”<sup>437</sup>

During the investigative phase of the case, the civil society organizations and the *Abuelas* worked tirelessly to cooperate with the prosecutors, sharing evidence, ideas, and legal precedents.<sup>438</sup> Shortly after filing the complaint, the civil claimants met with Attorney General Claudia Paz y Paz and other prosecutors to introduce themselves, request that the case be assigned to the Human Rights Office, and offer their assistance.<sup>439</sup> One of the very first forms of evidence obtained, therefore, were the written declarations of the *Abuelas*, which were taken in the neighboring town of El Estor.<sup>440</sup> Not only did the women make themselves available, but the civil claimants organized everything in advance, including obtaining a room with the necessary infrastructure to conduct the interviews and bringing competent Q’eqchi’-Spanish translators,<sup>441</sup> thereby ensuring that there would be no impediments to taking the declarations. The civil claimants also located other witnesses, including, for example, a former military commissioner; made requests to the prosecutors for specific investigative actions, many of which were undertaken; and identified and coordinated with experts in order to obtain a wide range of expert reports and testimony.<sup>442</sup> It was also at MTM’s request that the Public Prosecutor’s Office filed for the case to be transferred to the High Risk Tribunal, given Izabal’s reputation as having a very high level of impunity.<sup>443</sup>

Although the civil claimants invested significant efforts to establish a strong working relationship with the prosecutors, they were not afraid to express disagreement when they thought it was critical to the progress or strategy of the case.<sup>444</sup> One of the most

significant areas of discord was over the characterization in the charges, as already described,<sup>445</sup> but it was not the only one. For example, in 2014, during the transition of Attorney General Paz y Paz to Attorney General Aldana, there was a perceived delay in – and resistance to – moving the case forward.<sup>446</sup> Although specific perpetrators had been identified, the prosecutors decided that it was not an opportune moment to request arrest warrants.<sup>447</sup> An attorney with MTM at the time described the civil claimants’ frustration:

*At one point, we had an argument with the Public Prosecutor’s Office during a hearing. It was in 2014. The Public Prosecutor’s Office did not want to request the arrest warrants, because they said it was not the right political time. When is the political time right to request arrest warrants? When? So, the Public Prosecutor’s Office did not want to carry out its investigative work.<sup>448</sup>*

Often, when these types of disagreements arose, MTM attempted to persuade the prosecutors through meetings and workshops to adopt different strategies or priorities.<sup>449</sup> But when these attempts were unsuccessful, MTM was not unwilling to request assistance from the court.<sup>450</sup> For example, MTM bypassed the prosecutors and asked the court to issue warrants for the arrest of the accused, which it did.<sup>451</sup> Not long thereafter, again concerned that the prosecutors were not moving the case forward quickly enough, MTM and the *Abuelas* asked the court to summon the prosecutors to present the evidence collected thus far in the investigation in order to advance the process.<sup>452</sup>

Later, in the year leading up to the trial, the civil claimants held regular workshops in order to jointly prepare for trial with the prosecutors.<sup>453</sup> According to MTM attorney Esteban Celada Flores, these workshops were essential to ensure a united legal strategy for trial:

*These kinds of workshops, of exchanges and of group building allowed us to approach and understand the language used by the Attorney General’s office. It was a way of telling them that we weren’t against them. On the contrary, we were trying to strengthen their work. This finally enabled us to become cohesive and develop a common logic, even in terms of how to present evidence. There were agreements with the Attorney General and*

*with Paula from MTM. We reached a consensus and managed to make better decisions as to how to present the evidence.*<sup>454</sup>

These workshops – which addressed oral presentations and examinations, documentary evidence, witness preparation, and expert witnesses – were also helpful to bring together the diverse work styles of the prosecutors and civil claimant attorneys, as well as to identify their particular strengths and how to best divide the work:

*Why this type of workshop? Well, we knew there were between eight and ten lawyers in both teams, the Attorney General's office team and the MTM team. We all had litigation experience, but each of us had a unique way of litigating, this workshop ... was useful for us to consolidate the litigation strategy, to form a litigation team with a single but also collective strategy, which enhanced the way the case was defended.*

*This workshop helped us to identify our strengths and weaknesses as litigants and to work as a team, respecting our knowledge and experience.*<sup>455</sup>

Similar workshops were held daily during the trial – with the prosecutors when they were available – to review the trial's progress each day and plan for the following day.<sup>456</sup>

Ultimately, through the efforts of both MTM and the prosecutors, a strong relationship was forged between the two that enabled close coordination of their efforts and the ultimate success of the *Sepur Zarco* case. As prosecutor Hilda Pineda recalls,

*Although there were disagreements with the claimants, well, we had the same aim, right? Achieving justice for the victims. We had no doubt about that, none of us had. So then we coordinated.*<sup>457</sup>

## 4.2.2

### Advocacy, Media, and Communications Strategy: Litigating Outside the Courtroom

Also critical to the success of the *Sepur Zarco* case was the implementation of an advocacy, media, and communications campaign that sought to raise the profile of the case and reframe sexual violence as a crime.<sup>458</sup> Despite years of efforts by UNAMG and other organizations<sup>459</sup> – including the organization of the Tribunal of Conscience<sup>460</sup> – survivors of sexual violence in Guatemala continued to face stigmatization and blame for the violence they suffered.<sup>461</sup> Early campaign efforts were therefore focused on protecting the *Abuelas* by re-positioning sexual violence as a crime.<sup>462</sup> As UNAMG Executive Director Ada Valenzuela explained, “We’d say that there are guilty parties, that there are culprits, that it was not the women’s fault, but rather a crime.”<sup>463</sup> These early messages helped to combat the stigma that the *Abuelas* and other survivors faced and transfer the blame to the perpetrators, thus “lifting up” the *Abuelas*.<sup>464</sup> Alongside these messages, UNAMG also worked to raise the profile of the case by providing information about the struggle for justice in *Sepur Zarco* through posters, buttons, radio spots, billboards, media coverage and other materials.<sup>465</sup>

In addition, although the crimes in *Sepur Zarco* had taken place three decades earlier, UNAMG and the other civil society organizations sought to underscore what they called the “continuum of violence,” meaning the connections between sexual violence perpetrated during the armed conflict and Guatemala’s high rate of sexual violence and femicide in the present.<sup>466</sup> As these organizations understood, impunity for sexual violence in the past contributed to the entrenchment of a culture of normalization and toleration of sexual violence against women, leading to the continuation of high levels of sexual violence in the present.<sup>467</sup> By bringing attention to the *Sepur Zarco* case, the Alliance hoped not only to support the success of the litigation, but also to spur societal changes and reduce violence against women. As UNAMG’s Executive Director Ada Valenzuela explained, “Sexual violence should stop being part of women’s lives in this country. That means changing attitudes, changing stereotypes, changing the educational system, beyond the *Sepur Zarco* sentence.”<sup>468</sup> This aim was equally important to the *Abuelas*, who wanted to ensure that no one else experience the suffering they lived through.<sup>469</sup>

Drawing out the connections between sexual violence in the past and present also had important benefits for the *Sepur Zarco* litigation, as it helped the case garner support from a wide array of survivors and human rights organizations both domestically and internationally.<sup>470</sup> Some of these organizations – such as the Human Rights Convergence and its members – provided practical support on issues related to legal strategies, security and protective measures, and other issues.<sup>471</sup> Others provided funding.<sup>472</sup> Many survivors and organizations – both domestic and international – filled the courtroom during proceedings, providing invaluable moral support to the *Abuelas*, ensuring that the process remained transparent and fair, and drawing attention to the case.<sup>473</sup>

Later, as the case progressed towards trial, UNAMG intensified its efforts, accompanying the litigation inside the courtroom with a strategy of “litigating outside the courtroom,” meaning that the legal case was complemented by an extensive communications and advocacy strategy that brought information about the case and trial “into the streets, into the media, and to the people.”<sup>474</sup> This strategy, which built on UNAMG’s previous campaigns, sought to spark public discussion and debate on sexual violence.<sup>475</sup> UNAMG met personally with and were in constant contact with the directors of media companies throughout the country, held numerous press conferences, and wrote newsletters about the case and its progress, which were translated into English and French in order to share with the international community as well.<sup>476</sup> These efforts paid off significantly. For example, UNAMG convinced some radio stations to install recording equipment for the trial so that each day’s proceedings would be captured for transmission.<sup>477</sup> During trial, the civil society organizations also provided daily updates to human rights organizations, the diplomatic corps, and the international community to ensure that the trial would be the focus of substantial media coverage.<sup>478</sup> In addition, UNAMG showcased support for the case from high-profile individuals, including inviting Nobel Peace Prize laureate Jody Williams to participate in a press conference the day before trial and inviting members of the diplomatic

corps to observe the trial.<sup>479</sup> Nearly the entire diplomatic corps – including the U.S. Ambassador – were present at the start of the trial, as were Nobel laureates and UN officials, elevating the political profile of the case.<sup>480</sup> The NGOs also astutely used social media to highlight the trial, posting regularly to Facebook and Twitter, with the hashtags #WeAreAllSepurZarco, #SepurZarcoTrial, #IAmSepurZarco, #SepurZarcoWomen, and #SepurZarcoCase all trending during the trial.<sup>481</sup>

Although the incredible attention the case received was a testament to the work of UNAMG and the other members of the Alliance, it also required the organizations to carefully balance the needs of the *Abuelas* and those of the communications strategy. During the *Abuelas*’ pre-trial testimony, for example, the courtroom was packed with people and members of the media in order to draw attention to the case – attention that placed the *Abuelas* at risk when, on the first day, several of the *Abuelas* provided their names during their testimony, names that had not been public.<sup>482</sup> As the second day of testimony began, the court approved a request to allow the remaining *Abuelas* to testify without revealing their names.<sup>483</sup> But the civil claimants and the *Abuelas*, alongside the prosecutors, decided to keep the proceedings open to the public. As prosecutor Hilda Pineda explains:

*The decision was made to keep [the prueba anticipada hearings] public. First, because they are [about] events from the past and it’s necessary for the community, for society as a whole to learn about what happened. Because if we kept it private, which we could do, then we’d end up with no one knowing what happened, and that would make the issue of sexual violence completely invisible.*<sup>484</sup>

Protecting the *Abuelas* also meant sometimes foregoing opportunities despite the attention they could have drawn to the case. For instance, throughout the case, the *Abuelas* gave only a handful of interviews in order to minimize the risk of additional pain and re-traumatization that such interviews might provoke.<sup>485</sup> In some instances, spokeswomen were able to meet with the media instead, thereby garnering media coverage and raising the profile of the case without risking further harm to the *Abuelas*.<sup>486</sup>



The Abuelas [grandmothers] of Sepur Zarco. First row seated (from right-left): Antonia Choc (blue huipil); Felisa Cuc (orange huipil); Rosario Xo (blue huipil); Candelaria Maaz (pink huipil); Manuela Bá (light blue huipil); Demesia Yat (dark blue huipil); Seated behind Demesia Yat (left) (wearing white huipil with green embroidery): Margarita Chub. Standing, second row, (from right-left): Matilde Sub (pink); Catarina Caal (off-white); María Bá (purple huipil); Cecelia Xo (purple huipil); Carmen Xol (tan flowered huipil). Photo: UN Women/Ryan Brown

### 4.2.3

#### The Abuelas: Central Actors in the Case

Importantly, the civil society organizations that supported the *Abuelas* of *Sepur Zarco* considered them as the central actors of the case, and engaged the women extensively in the decision-making process, while giving them broad visibility during the proceedings.<sup>487</sup> Evidence of this strategy can be seen in the decision to constitute as civil claimants in the proceedings not only two of the organizations involved in the case (MTM and UNAMG), but also a third organization, named the Jalok U Collective (Colectiva Jalok U),<sup>488</sup> the members of which were the surviving

victims of *Sepur Zarco*.<sup>489</sup> This collective, which was formed before the case began, had been essential in providing the *Abuelas* with the emotional strength to proceed with the case. As one of the *Abuelas* explained,

*Before we were already close to seeking justice, we formed a group. If we hadn't formed that group, I assure you they would have never accepted us there in court. We formed it and through it we managed that ... Why did we form the group? I feel it strengthened us, going together to seek justice.*<sup>490</sup>

As described earlier, in 2014, the Jalok U Collective officially became a civil claimant in the case as well.<sup>491</sup> Giving the women “their own voice in the proceedings” ensured their active participation in the legal case and strengthened their role as “subjects of law” rather than as mere victims of the crimes.<sup>492</sup> This transformation of the women from “victims” in to “authors” of their own stories was also important in the women’s personal journeys to reclaim their dignity.<sup>493</sup>

Although the Jalok U Collective did not officially become a civil claimant until 2014, the civil society organizations supporting the *Abuelas* worked to ensure their active participation from the beginning of the case. As Jennifer Bravo, a former attorney with MTM, underscored, “the *Abuelas* were part of each step of the process, the *Abuelas* were prosecuting.”<sup>494</sup> For example, even before the case was filed, the women of *Sepur Zarco* decided together which of them would be included in the case,<sup>495</sup> much as the larger group of women had done earlier for the Tribunal of Conscience.<sup>496</sup> In these decisions, they were supported

by MTM, which had collected and analyzed testimonies from the women and had ideas about potential legal strategies, particularly given the similarities in the experiences of many of the women from *Sepur Zarco*.<sup>497</sup> Later, the women also decided which of them would testify before the court.<sup>498</sup>

Involving the *Abuelas* in the legal proceedings required new and creative approaches to victim participation, as the women spoke only Q’eqchi’ and were unfamiliar with legal proceedings. To help the women understand the process and their role in it, MTM held a meeting in which they described the phases of a criminal trial using animals as symbols.<sup>499</sup> The judge was a lion, the prosecutor was an owl, the civil claimant organizations were parrots, and the women were butterflies.<sup>500</sup> Then, using a blanket, they made a path and described what each of the animals did during the various phases of a criminal investigation and trial.<sup>501</sup> In addition, the presence of interpreters at proceedings was necessary so that the *Abuelas* could understand what was said, as well as participate.<sup>502</sup>

# ENDNOTES:

## Section 4.2

- 427 See supra Section II.B on the procedural history of the case.
- 428 See the next sub-section for more information about civil claimants under Guatemalan law. Interview with UNAMG Executive Director Ada Valenzuela; CHANGING THE FACE OF JUSTICE, at 14.
- 429 For more information on the roles of the three civil society organizations during the Tribunal of Conscience, see supra Section III.A.2.
- 430 Interview with UNAMG Executive Director Ada Valenzuela.
- 431 See supra Section II.B on the procedural history of the case.
- 432 See REDRESS & INSTITUTE FOR SECURITY STUDIES, VICTIM PARTICIPATION IN CRIMINAL LAW PROCEEDINGS: SURVEY OF DOMESTIC PRACTICE FOR APPLICATION TO INTERNATIONAL CRIMES PROSECUTIONS 30, 67 (2015) (listing jurisdictions in which victims can act as an “auxiliary or subsidiary prosecutor”), <https://redress.org/wp-content/uploads/2017/11/Englishvictim-rights-report.pdf>.
- 433 Guatemala Criminal Procedure Code, art. 116.
- 434 Interview with former MTM attorney Jennifer Bravo; see also VICTIM PARTICIPATION IN CRIMINAL LAW PROCEEDINGS: SURVEY OF DOMESTIC PRACTICE FOR APPLICATION TO INTERNATIONAL CRIMES PROSECUTIONS, at 43. However, filing a complaint directly requires an immense amount of work, since the complainant must provide sufficient proof of the allegations in the complaint to justify opening a case. Interview with former MTM attorney Jennifer Bravo. Regardless of the route selected, once recognized as civil claimants, victims and/or their representatives are empowered to collaborate with and assist the prosecutor in the investigation of the facts. Guatemala Criminal Procedure Code, art. 116; see also Interview with MTM attorney Esteban Celas Flores, at 14.
- 435 See supra Section II.B on the procedural history of the case.
- 436 See supra Section IV.A.
- 437 Interview with the *Sepur Zarco* prosecutors (statement of Blanca Castañedo).
- 438 See Interview with expert Dosa Calderon (remarking upon the very close working relationship between MTM and the prosecutors).
- 439 Interview with former MTM attorney Jennifer Bravo; Interview with the *Sepur Zarco* prosecutors, at 2 (statement of Blanca Castañedo); see also Section II.B on the procedural history of the case.
- 440 Interview with the *Sepur Zarco* prosecutors (statement of Blanca Castañedo).
- 441 Id. at 3 (statement of Blanca Castañedo).
- 442 Id. at 3-5 (statement of Blanca Castañedo).
- 443 Interview with former MTM attorney Jennifer Bravo. In Guatemala, the request for transfer to the High Risk Tribunal must be made by the Attorney General and approved by the Supreme Court. Law Establishing the High Risk Tribunals, art. 4; Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with pre-trial Judge Miguel Ángel Gálvez.
- 444 Interview with MTM attorney Esteban Celada Flores (noting they sometimes “sat down with the Public Prosecutor’s Office and told them ‘they are not doing things properly’”); Interview with former MTM attorney Jennifer Bravo (noting “there were disputes with the Public Prosecutor’s Office”).
- 445 For more information about the debate over the characterization of the charges, see supra Section IV.A.
- 446 Interview with pre-trial Judge Miguel Ángel Gálvez. 447 Interview with former MTM attorney Jennifer Bravo. 448 Id. (authors’ translation).
- 449 See Interview with MTM attorney Esteban Celada Flores (describing the civil claimants’ attempts to persuade the prosecutors to change the charges against the accused).
- 450 Id<sub>3</sub>.
- 451 Interview with former MTM attorney Jennifer Bravo; see also Section II.B on the procedural history of the case, including the arrest of the accused.
- 452 Interview with pre-trial Judge Miguel Ángel Gálvez.
- 453 Id.
- 454 Id. (authors’ translation).
- 455 Id. (authors’ translation); see also id. (“We were developing the workshops and Paula cared that we knew how to handle the expert opinions properly, in the workshops, although they were MTM experts, there was always the invitation for the Public Ministry to participate and they also took ownership of the expert opinion.”) (authors’ translation); Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda confirming that there were coordination workshops with the civil claimants).
- 456 Interview with MTM attorney Esteban Celada Flores.
- 457 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda) (authors’ translation).
- 458 Interview with UNAMG Executive Director Ada Valenzuela.
- 459 Id. at 13; see also Section III.A regarding efforts by the Alliance and others.
- 460 For more information about the Tribunal of Conscience, see supra Section III.A.2.
- 461 For more information about the stigmatization surrounding sexual violence, see supra Section III.A.1.
- 462 Interview with UNAMG Executive Director Ada Valenzuela.
- 463 CHANGING THE FACE OF JUSTICE, at 32 (quoting UNAMG Executive Director Ada Valenzuela).
- 464 Id. at 32; Interview with UNAMG Executive Director

- Ada Valenzuela. For more information about the stigmatization faced by the *Abuelas*, see supra Section III.A.1.
- 465 CHANGING THE FACE OF JUSTICE, at 32.
- 466 Interview with UNAMG Executive Director Ada Valenzuela; see also NI OLVIDO NI SILENCIO, at 14 & n.12, 81 (describing the concept of a “continuum” of violence). This had also been an important theme during the 2010 Tribunal of Conscience. See supra Section III.A.2.
- 467 Interview with UNAMG Executive Director Ada Valenzuela; Interview with UNAMG staff; see also NI OLVIDO NI SILENCIO, at 14 & n.12, 81.
- 468 CHANGING THE FACE OF JUSTICE, at 28 (quoting UNAMG Executive Director Ada Valenzuela).
- 469 *Id.* at 28.
- 470 See *id.* at 27-28.
- 471 *Id.* at 29-30.
- 472 *Id.* at 30.
- 473 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); CHANGING THE FACE OF JUSTICE, at 28-30.
- 474 Interview with UNAMG Executive Director Ada Valenzuela (authors’ translation).
- 475 *Id.* at 14, 16.
- 476 *Id.* at 19-20; CHANGING THE FACE OF JUSTICE, at 33.
- 477 Interview with UNAMG Executive Director Ada Valenzuela.
- 478 *Id.* at 19-20; CHANGING THE FACE OF JUSTICE, at 33.
- 479 Interview with UNAMG Executive Director Ada Valenzuela; CHANGING THE FACE OF JUSTICE, at 30.
- 480 Interview with UNAMG Executive Director Ada Valenzuela; CHANGING THE FACE OF JUSTICE, at 30-31 (noting the presence during trial of Nobel laureates Jody Williams and Rigoberta Menchú, as well as officials from UN Women, the Office of the High Commissioner of Human Rights and other UN agencies).
- 481 CHANGING THE FACE OF JUSTICE, at 33.
- 482 Interview with UNAMG Executive Director Ada Valenzuela; Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Prueba Anticipada Video, Day 1, Witness 1, Part 4, at 11:59-15:25 (repeatedly using the name of the witness); see also *infra* Section IV.C regarding the protective measures in the case, including the decision to keep confidential the identities of the *Abuelas*.
- 483 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda).
- 484 *Id.* (statement of Hilda Pineda) (authors’ translation).
- 485 CHANGING THE FACE OF JUSTICE, at 32.
- 486 *Id.* at 32.
- 487 See Interview with former MTM attorney Jennifer Bravo.
- 488 “Jalok U” means “transformation” or “change” in the Q’eqchi’ language. Gender Justice in Post-Conflict Guatemala, at 76; CHANGING THE FACE OF JUSTICE, at 7.
- 489 Interview with UNAMG Executive Director Ada Valenzuela; Interview with former MTM attorney Jennifer Bravo; see also *Caso Sepur Zarco, la lucha de las mujeres por la justicia*, at 2-3; CHANGING THE FACE OF JUSTICE, at 14.
- 490 Interview with the *Abuelas of Sepur Zarco* (statement of Demecia Yat) (authors’ translation).
- 491 *Sepur Zarco: El camino de las mujeres hacia la justicia*, at 5.
- 492 Interview with UNAMG Executive Director Ada Valenzuela; Interview with former MTM attorney Jennifer Bravo; see also CHANGING THE FACE OF JUSTICE, at 10.
- 493 Interview with UNAMG Executive Director Ada Valenzuela.
- 494 Interview with former MTM attorney Jennifer Bravo (authors’ translation); see also CHANGING THE FACE OF JUSTICE, at 13, 20.
- 495 Interview with psychosocial expert Mónica Esmeralda Pinzón González.
- 496 See supra Section III.A.2.a on the Tribunal of Conscience.
- 497 See Interview with former MTM attorney Jennifer Bravo; Interview with UNAMG Executive Director Ada Valenzuela.
- 498 Interview with the *Abuelas of Sepur Zarco*.
- 499 Interview with former MTM attorney Jennifer Bravo.
- 500 *Id.*
- 501 *Id.*
- 502 *Combatiendo el silencio e impunidad en delitos de violencia sexual a través de alianzas feministas*, at 138.

## 4.3

# EFFORTS TO PROTECT THE ABUELAS AND AVOID THEIR RE-TRAUMATIZATION

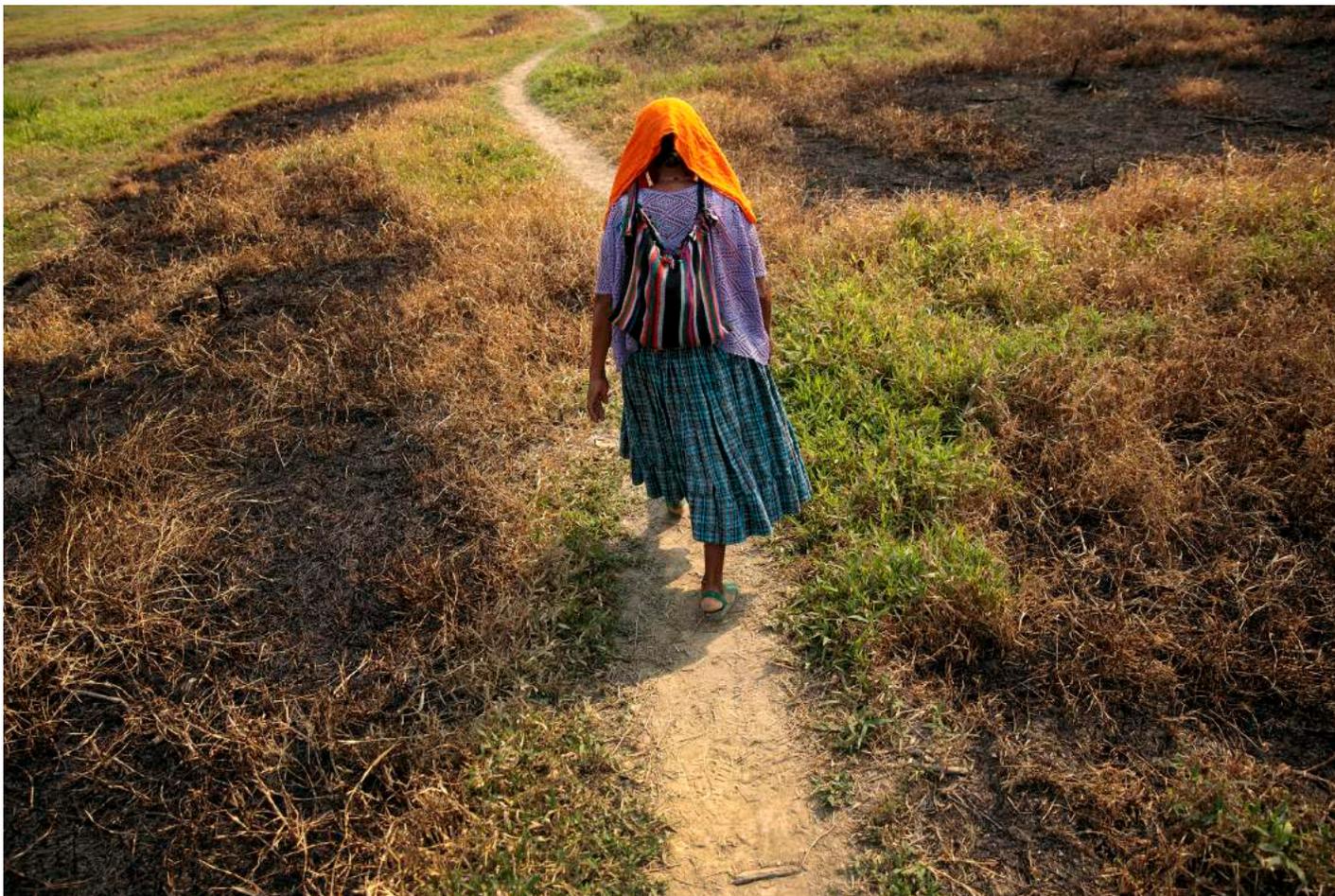
Throughout the investigation and prosecution of the *Sepur Zarco* case, the civil society organizations accompanying the *Abuelas* worked diligently to protect the women and minimize the risk of re-traumatization. One of the earliest measures to protect the *Abuelas* was the decision to keep information about the litigation confidential, even from family and community members.<sup>503</sup> Some of the individuals involved in the crimes – including accused Valdez Asig – continued to live in the area,<sup>504</sup> and the *Abuelas* were concerned about the risk of retaliation if they were to discover that the *Abuelas* were seeking accountability for those crimes.<sup>505</sup> Many of the *Abuelas* also worried that revealing the litigation would remind the community about the sexual violence they had suffered, thereby reviving and reinforcing the social stigmatization to which they had been subjected by the community.<sup>506</sup> To maintain confidentiality, the *Abuelas* pretended that their meetings to discuss the litigation were simply additional psychosocial support group meetings, or met with the civil society organizations supporting the litigation outside of the community.<sup>507</sup> As one of the *Abuelas* explained,

*Something very important that I want to raise and I want to say. Previously, we had agreed, we talked, we said that everything we were going to do was going to be in secret, it was going to be secret and they prepared us, we made drawings of soldiers, but we didn't do it here, we did it outside, we had to leave. The community, the children and the rest of the family, they knew that we were doing another activity, they were totally unaware of what we were doing. ... [W]e said that we weren't going to say anything because we didn't know if we were going to achieve what we were doing ..., so we kept it with a lot of secrecy.<sup>508</sup>*

Given the foregoing concerns about social stigmatization and the potential for retaliation, in 2012, MTM

asked the Public Prosecutor's Office to request the transfer of the case from Puerto Barrios, Izabal – where the complaint had originally been filed – to the High Risk Tribunal in Guatemala City, where enhanced security measures were available to better ensure the *Abuelas'* safety.<sup>509</sup> Around the same time, the Public Prosecutor's Office also petitioned the court to declare the investigation and related proceedings confidential.<sup>510</sup> Internally, the Public Prosecutor's Office further adopted a number of security measures to protect the *Abuelas*, including measures intended to prevent information leaks and the use of staff in vetted units that were considered more trustworthy.<sup>511</sup> For example, when the *Abuelas* and other witnesses were to be present at hearings or other proceedings, the Public Prosecutor's Office also oversaw their security, including by identifying secure routes and ensuring their accompaniment.<sup>512</sup>

In September 2012, after the case was transferred to the High Risk Tribunal and the investigation had commenced,<sup>513</sup> MTM and the prosecutors petitioned the court to hold pre-trial evidentiary hearings to record the testimony of the 15 *Abuelas*, as well as four male witnesses.<sup>514</sup> These hearings, known as *anticipo de prueba* or *prueba anticipada*, allow testimony to be recorded for use at a future trial where there is a risk that the witness might not later be available.<sup>515</sup> This was a particular concern for the *Abuelas*, given their advanced age and that some were not in good health.<sup>516</sup> Indeed, one of the *Abuelas*, Magdalena Pop, passed away just a few months after providing testimony.<sup>517</sup> To maintain the *Abuelas'* privacy during these public evidentiary hearings, the prosecutors petitioned the court to keep the women's identities confidential.<sup>518</sup> The court agreed, and assigned the women numbers by which to refer to them so as not to publicly reveal their names.<sup>519</sup> Staff from ECAP and the Attorney General's Office of Victim



Maria Ba Caal walks a path back towards Sepur Zarco. “I gave everything to get justice,” she said “I want to see the results before I die. I don’t know how much more time I have in this world.” Photo: UN Women/Ryan Brown

Support were also on hand to provide psychological support during the *Abuelas*’ testimony.<sup>520</sup>

Importantly, recording the testimony of the *Abuelas* was also a key protective measure to reduce the risk of re-traumatization.<sup>521</sup> By taking the *Abuelas*’ testimony in pre-trial hearings, the *Abuelas* were afforded a greater opportunity to tell their stories without significant interruption, such as constant interjections or objections by the defense.<sup>522</sup> Although defense attorneys who were present during the *preuba anticipada* were permitted to and did make objections and cross-examine the *Abuelas*,<sup>523</sup> divorcing these evidentiary hearings from the trial – and the grandstanding for the public that may accompany trial proceedings – appears to have led to a less confrontational and less aggressive atmosphere, thereby reducing the psychological risks to the *Abuelas*.<sup>524</sup> In addition, recording the testimonies

minimized the risk of re-traumatization by reducing the number of times the women were required to testify.<sup>525</sup> As one of the attorneys with MTM explained:

*We had to use the lessons we learned on the subject of sexual violence, precisely so as not to revictimize them. After the psycho-legal preparation they received, it wasn’t necessary for them to testify more than once, there’s no need to constantly expose the victim.*<sup>526</sup>

This was particularly important in the *Sepur Zarco* case given the explicitness of the *Abuelas*’ testimony, as well as the severe prejudice and stigma to which they had been subjected.<sup>527</sup>

The benefits of recording the *Abuelas*’ testimony so that they would not have to repeatedly re-testify applied throughout the investigation and proceedings. During

the preparation for trial, for instance, MTM provided certain experts – such as the forensic architect – with the *Abuelas'* prior testimony so that they would not have to question the women.<sup>528</sup> These experts also found creative ways to obtain critical information from other sources, thereby obviating the need to speak repeatedly with the *Abuelas*. For example, in order to create a 3-D model of the military camp where the *Abuelas* had been forced into domestic and sexual servitude, the forensic architect interviewed and conducted exercises with the men from *Sepur Zarco* who had been forced by the Guatemalan military to build the camp.<sup>529</sup>

By far the most important use of the *Abuelas'* pre-recorded testimony, however, was during the trial itself.<sup>530</sup> Although the *Abuelas* were physically present at trial, they did not wish to re-testify given the pain and trauma that repeated re-tellings of the crimes caused them.<sup>531</sup> As one of the *Abuelas* explained,

*Personally it was very difficult to make that decision, because every moment we spoke was so difficult, we talked, we cried, we talked, it was difficult, and that is why we made the decision not to repeat anymore. But we cannot say that this pain, we still have it. It is like a wound that every moment we injure again.*<sup>532</sup>

Thus, while the vast majority of witnesses at trial provided viva voce evidence to the court,<sup>533</sup> nineteen witnesses – including the fifteen *Abuelas* – requested that they be permitted to testify via pre-recorded testimony.<sup>534</sup> Drawing on both Guatemalan constitutional law and international human rights law, the *Abuelas'* representatives underscored the importance of protecting and upholding the rights of survivors of sexual violence,<sup>535</sup> and the negative impact that re-testifying could have on the *Abuelas'* physical and mental well-being.<sup>536</sup> Expert testimony presented at trial established that the victims were, in fact, suffering from post-traumatic stress disorder<sup>537</sup> and confirmed that re-traumatization could occur through repeated retelling of the abuses they had suffered.<sup>538</sup> Although the defense objected vigorously to the admission of the pre-recorded testimony on the basis that its consideration violated the due process rights of the defendants,<sup>539</sup> these objections were rejected by the trial court, which found that the pre-recorded testimony had been properly taken in compliance with the requirements of Guatemalan law,<sup>540</sup> including the appointment

of public defenders who cross-examined the victims during the taking of their pre-trial testimony.<sup>541</sup> Similar defense arguments<sup>542</sup> were later dismissed on appeal.<sup>543</sup>

The decision was significant because, in the context of a case brought to trial decades after the crimes were committed and where physical evidence of the crimes was limited, the victims' testimony was a critical – indeed central – part of the evidence against the accused.<sup>544</sup> Yet, without the trial court's decision allowing it to rely on the pre-recorded testimony, the effort to seek justice on behalf of the victims could have resulted in further harming those very same victims. Using the victims' pre-recorded testimony allowed the court to admit the evidence it needed in a manner that was consistent with both the rights of the accused and the obligation to ensure the well-being of the victims.

Challenges to the safety and security of the *Abuelas* and their representatives also arose in the midst of the proceedings, underscoring the critical importance of continued vigilance from both the court and civil society organizations representing the *Abuelas*. During pre-trial proceedings, for instance, one of the accused's sons took out his cell phone and started taking photographs of the *Abuelas* and their representatives, among others.<sup>545</sup> Recognizing that the unauthorized photographs violated the rights of the civil claimants, pre-trial Judge Miguel Angel promptly intervened, ordering the photos deleted.<sup>546</sup> Incidents like this one demonstrate the ability of the courts to act in ways that are protective of survivors in response to unanticipated threats, and the significant role they play in ensuring the protection of victims and civil claimants throughout the proceedings. In addition, it underscores the need for protective measures not only for survivors, but also for their legal representatives, interpreters and other support personnel, and often even the prosecutors. In the *Sepur Zarco* case, the civil society organizations explicitly requested security measures on behalf of this larger group of individuals.<sup>547</sup>

No doubt the most visible measure taken to protect the *Abuelas* was their decision to wear traditional shawls over their heads, partially obscuring their faces to the public, throughout the pre-trial and trial proceedings. Importantly, this decision was not motivated by “shame – as the shame was returned to the perpetrator” through the proceedings<sup>548</sup> – but instead out of

a concern about the risk of retaliation to the *Abuelas* if their identities were to become widely known, especially given that some of the individuals involved in the crimes, as well as their family members, continued to live in the area.<sup>549</sup> As one of the *abuelas* explained,

*Why do we cover our faces? Truthfully, it's out of fear. Because we weren't sure if we were going to get justice. In addition, the family of one of the convicted defendants lives near here in town. And also, as revenge too, because when they murdered our husbands they were not able to be identified because their faces were covered, so, like we were talking with our faces covered but telling the truth.<sup>550</sup>*

This concern was particularly pronounced given that the *Abuelas* could not be certain that their pursuit of

justice would be successful, and thus they feared not only retaliation by the perpetrators and their families, but also renewed stigmatization by the community, which might believe that the women were lying if the accused were found not guilty.<sup>551</sup>

Ensuring the protection and security of the *Abuelas* was thus a key issue throughout the preparation, investigation, and trial of the case. While the prosecutors and court both played important roles in this respect, it was the NGOs supporting the *Abuelas* – with the assistance of international partners – that were most involved in the *Abuelas*' protection,<sup>552</sup> showing yet again how critical civil society actors were in the success of the *Sepur Zarco* case.

# ENDNOTES:

## Section 4.3

- 503 Interview with the *Abuelas* of *Sepur Zarco* (statement of Margarita Chuc Choc); Interview with former MTM attorney Jennifer Bravo; CLAMOR FOR JUSTICE, at 77.
- 504 E.g., Prueba Anticipada Video, Day 1, Witness 1, Part 2, at 0:00-3:32 (testimony of Catarina Caal Rax, noting that Valdez Asig, who was known as Don Canche, lives in the nearby town of Panzos); Prueba Anticipada Video, Day 2, Witness 1, Part 2, at 12:42-14:00 (testimony of Rosa Tiul, stating that the man who ordered her to work at the military base still lives in *Sepur Zarco*); Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 5:14-32:08 (testimony of Felisa Cuc, stating that the man who helped the military identify her home so that they could take her husband now lives in Estor); id. Part 2, at 0:00-32:26 (testimony of Felisa Cuc, stating that the man who ordered her to work at the military base still lives in *Sepur Zarco*); Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda that Asig was still living in the area); see also supra Section II.B (indicating in a footnote that Valdez Asig was known as Don Canche).
- 505 See CLAMOR FOR JUSTICE, at 61; see also CHANGING THE FACE OF JUSTICE, at 27 (discussing the *Abuelas'* security concerns with respect to those "with close ties to the perpetrators").
- 506 See CLAMOR FOR JUSTICE, at 61.
- 507 Interview with former MTM attorney Jennifer Bravo; Interview with the *Abuelas* of *Sepur Zarco* (statement of Margarita Chuc Choc); CHANGING THE FACE OF JUSTICE, at 27.
- 508 Interview with the *Abuelas* of *Sepur Zarco* (statement of Margarita Chuc Choc) (authors' translation).
- 509 See supra Section II.B on the procedural history of the *Sepur Zarco* case & Section III.B.2.b regarding the creation of the High Risk Tribunals; Interview with former MTM attorney Jennifer Bravo. In Guatemala, the request for transfer to the High Risk Tribunal must be made by the Attorney General and approved by the Supreme Court. Law Establishing the High Risk Tribunals, art. 4; Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with pre-trial Judge Miguel Ángel Gálvez (Oct. 28, 2021).
- 510 CHANGING THE FACE OF JUSTICE, at 26.
- 511 Id.
- 512 Id. at 27.
- 513 See supra Section II.B on the procedural history of the *Sepur Zarco* case; see also Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda).
- 514 See supra Section II.B on the procedural history of the *Sepur Zarco* case; see also Interview with former MTM attorney Jennifer Bravo; CHANGING THE FACE OF JUSTICE, at 11, 15; Gender Justice in Post-Conflict Guatemala, at 77.
- 515 See supra Section II.B on the procedural history of the *Sepur Zarco* case.
- 516 Interview with former MTM attorney Jennifer Bravo; Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Interview with pre-trial Judge Miguel Ángel Gálvez; see also CHANGING THE FACE OF JUSTICE, at 15.
- 517 *Sepur Zarco* Trial Judgment, at 260-64 (testimony of Magdalena Pop), 418 (death certificate); see also Gender Justice in Post-Conflict Guatemala, at 77, 78; CHANGING THE FACE OF JUSTICE, at 15.
- 518 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda). As noted earlier, CICIG was instrumental in promoting the reform that allowed such confidentiality. See supra Section III.B.2.
- 519 E.g., Prueba Anticipada Video, Day 2, Witness 2, Part 1, at 0:00-05:25 (discussion by judge prior to testimony of one of the *Abuelas*); Prueba Anticipada Video, Day 2, Witness 4, Part 1, at 0:00-08:40 (same); Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 0:00-05:14 (same); Prueba Anticipada Video, Day 3, Witness 2, Part 1, at 0:00-4:53 (same); Prueba Anticipada Video, Day 4, Witness 2, Part 1, at 0:00-5:00 (same); Prueba Anticipada Video, Day 4, Witness 4, Part 5, at 2:30-4:41 (discussion by judge). A few names were revealed before the request was made. Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda).
- 520 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); see also Prueba Anticipada Video, Day 1, Witness 2, Part 1, at 0:00-3:49; Prueba Anticipada Video, Day 1, Witness 4, Part 1, at 0:00-5:39; Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 0:00-5:14; Prueba Anticipada Video, Day 4 Witness 2, Part 1, at 0:00-5:00.
- 521 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); *Sepur Zarco* Trial Audio Recording, File 11, at 2:27:02-2:36:00 (discussing the importance of avoiding re-traumatization of survivors of sexual violence); see also Gender Justice in Post-Conflict Guatemala, at 64, 77; CHANGING THE FACE OF JUSTICE, at 15.
- 522 Interview with psychosocial expert Mónica Esmeralda Pinzón González.
- 523 E.g., Prueba Anticipada Video, Day 2, Witness 1, Part 3, at 13:07-14:58 (defense objection); Prueba Anticipada Video, Day 4, Witness 1, Part 1, at 5:39-12:29 (defense objection); see also Interview with the *Sepur Zarco* prosecutors (statements of Hilda Pineda, describing several defense attorneys and their sometimes aggressive questioning of the *Abuelas* during the pre-trial hearings).
- 524 See Interview with psychosocial expert Mónica Esmeralda Pinzón González.
- 525 Many of the *Abuelas* noted in their testimonies how painful it was for them to share the abuses they had suffered. E.g., Prueba Anticipada

- Video, Day 2, Witness 1, Part 1, at 14:50-15:34 (testimony of Rosa Tiul); Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 9:35-12:00, 29:43-31:03 (testimony of Margarita Chuc Choc); Prueba Anticipada Video, Day 4, Witness 2, Part 2, at 0:49-9:11 (testimony of Magdalena Pop).
- 526 Interview with MTM attorney Esteban Celada Flores (authors' translation).
- 527 *Id.*
- 528 Interview with forensic architecture expert Elis Gabriela Mendoza Mejía (Mar. 5, 2021).
- 529 *Id.* at 5-6. Many of the men also had been through significant abuses, and a social worker was present during these discussions in order to assist with any trauma that re-surfaced during the conversations. *Id.* at 6.
- 530 The use of pre-recorded testimony at trial is not uncommon, particularly in human rights cases where there is a risk to the witnesses. Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); see also Emi Maclean & Sophie Beaudoin, *More Than 30 Years Later, Guatemala's Deadly Spanish Embassy Siege is on Trial in a Guatemalan Courtroom*, INTERNATIONAL JUSTICE MONITOR (Nov. 25, 2014) (describing the use of pre-recorded testimony of Ambassador Máximo Cajal in a case against Pedro García Arredondo for crimes against humanity and murder during the 1980 siege of the Spanish embassy), <https://www.ijmonitor.org/2014/11/more-than-thirty-years-later-guatemalas-deadly-spanish-embassy-siege-is-on-trial-in-a-guatemalan-courtroom/>.
- 531 Interview with MTM attorney Esteban Celada Flores.
- 532 Interview with the *Abuelas of Sepur Zarco* (statement of Demecia Yat) (authors' translation).
- 533 See *Sepur Zarco* Trial Judgment, at 20-197, 275-370.
- 534 Gender Justice in Post-Conflict Guatemala, at 77.
- 535 Interview with MTM attorney Esteban Celada Flores.
- 536 Jo-Marie Burt, "Your Husband Isn't Coming Back:" More Stories of Abuse at the *Sepur Zarco* Trial, INTERNATIONAL JUSTICE MONITOR (Feb. 23, 2016), <https://www.ijmonitor.org/2016/02/your-husband-isnt-coming-back-more-stories-of-abuse-at-the-sepur-zarco-trial/>.
- 537 *Sepur Zarco* Trial Judgment, at 52 (testimony of expert Karen Denisse Peña Juárez); *id.* at 88 (testimony of expert Mónica Esmeralda Pinzón Gonazález).
- 538 *Id.* at 88 (testimony of expert Mónica Esmeralda Pinzón Gonazález); *id.* at 52-53 (testimony of expert Karen Denisse Peña Juárez).
- 539 Interview with MTM attorney Esteban Celada Flores; Interview with the *Sepur Zarco* prosecutors (statements of Hilda Pineda); see, e.g., *Sepur Zarco* Trial Audio Recording, File 5, at 5:51-20:33 & 3:12:03-3:18:54 (defense objections); *Sepur Zarco* Trial Audio Recording, File 11, at 1:11:20-1:21:32 & 2:27:02-2:36:00 (defense objections) 540 *Sepur Zarco* Trial Judgment, at 214, 217, 222, 228, 234, 263; see also Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda), explaining that the pre-recorded testimony met the requirements of the law and did not violate the defendants' due process rights); Guatemala Criminal Procedure Code, art. 317 (permitting pre-recorded testimony where certain requirements are met), 364 (permitting the admission of pre-recorded testimony where the witness has died or is unable to testify).
- 541 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda); Guatemala Criminal Procedure Code, art. 317 ("if there is no accused, a public defender will also be summoned ex officio, to guarantee the legality of the testimonial statement in this form") (authors' translation); "Your Husband Isn't Coming Back:" More Stories of Abuse at the *Sepur Zarco* Trial (describing appointment of public defender and cross-examination).
- 542 See *Asig* Appeal, at 3-5 (claiming that the admission of pre-recorded testimony was improper and a violation of due process); Galindo Appeal, at 21-25, 27-32; Reyes Appeal, at 22-26, 32.
- 543 Interview with MTM attorney Esteban Celada Flores (noting that these defense arguments were raised on appeal); Court Ratifies Historic *Sepur Zarco* Sexual Violence Judgment. Importantly, the court's rejection of the defense arguments was consistent with international law standards. See WCRO and the Academy of Human Rights and International Humanitarian Law, *Amicus Curiae Brief on the Inapplicability of Statutory Limitations and Amnesty to War Crimes & Crimes Against Humanity, and the Admissibility of Evidence from Preliminary Evidentiary Hearings ("Anticipos de Prueba")* (June 7, 2017); see also *Scheper v. The Netherlands*, App. No. 39209/02, Eur. Ct. H.R., Decision as to Admissibility (2005) (finding no violation of the defendant's rights where the accused was convicted of rape based, inter alia, on the victim's prior statement and the victim chose not to testify at trial or on appeal in order to avoid the mental distress of being confronted with the defendant), <http://hudoc.echr.coe.int/eng?i=001-68825;Aigner v. Austria>, App. No. 28328/03, Eur. Ct. H.R., Judgment, ¶¶ 37-46 (2012) (finding no violation of the defendant's rights where he was convicted of rape based, inter alia, on the victim's pre-recorded statement before an investigative judge, during which the accused's counsel was able to cross-examine her), <http://hudoc.echr.coe.int/eng?i=001-110804>.
- 544 *Sepur Zarco* Trial Judgment, at 197-275; *Sepur Zarco*: Q'eqchi' women set a precedent in Guatemala with first-ever conviction for sexual and domestic slavery, at 4 ("Central to the *Sepur Zarco* case's historical significance is its elevation of witness testimony. Unlike other types of crimes against humanity, such as massacres in which human remains can sometimes be identified through DNA, the prosecution relied largely on women's testimonies as evidence.").
- 545 *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 28-29; *Sepur Zarco* Pre-Trial Decision, at 48-49.
- 546 *Sepur Zarco* Pre-Trial Hearing Transcript of Oct. 3, 2014, at 28-29.
- 547 *Sepur Zarco* Pre-Trial Decision, at 51-52.

- 548 Interview with former MTM attorney Jennifer Bravo (“The women ... the act of covering their faces in the hearings was for safety, because there was no mechanism at that time, let’s say, at that time, to protect them there in Sepur. It wasn’t their shame, because the shame was returned to the rapist, not to them. But the problem was that there, they were wives, they were children of rapists, they were a mix. But before, it was for them to have security, and for them to have that sisterhood, and to know that if one’s finger hurt, it hurt all of them.”) (authors’ translation).
- 549 See discussion earlier in this section; CLAMOR FOR JUSTICE, at 61; see also CHANGING THE FACE OF JUSTICE, at 27 (discussing the Abuelas’ security concerns with respect to “those with close ties to the perpetrators”).
- 550 Interview with the *Abuelas* of *Sepur Zarco* (statement of Demecia Yat) (authors’ translation).
- 551 *Id.*; Interview with the *Abuelas* of *Sepur Zarco* (statement of Rosario Xo) (“We thought that the convicted defendant, the one that was in jail, had children close by here. So, if we weren’t going to get justice, then nobody knows who it is.”) (authors’ translation); Interview with UNAMG Executive Director Ada Valenzuela (“The fear that the women of Sepur had, for example, by not showing their face. It was to look like a liar in her community”) (author’s translation).
- 552 Interview with pre-trial Judge Miguel Ángel Gálvez.

## 4.4

# MAKING THE CASE: EVIDENTIARY AND LEGAL STRATEGIES

As discussed earlier, the *Sepur Zarco* trial was conducted over a period of less than four weeks in February 2016. During the trial, the Court considered several forms of evidence, all of which it evaluated according to the rules of *sana critica razonada*.<sup>553</sup> In addition to the live testimony of more than two dozen witnesses (including victims, victims' family members, and eyewitnesses)<sup>554</sup> and the videotaped prior recorded testimony of another nineteen witnesses (primarily the *Abuelas*),<sup>555</sup> oral testimony was provided by twenty-four expert witnesses,<sup>556</sup> including: a gender anthropologist,<sup>557</sup> an expert who conducted physical and psychological examinations of the victims,<sup>558</sup> an expert on Guatemala's military,<sup>559</sup> an expert on international standards for assessing credibility in cases of human rights violations,<sup>560</sup> an expert who conducted psychosocial analyses of the victims,<sup>561</sup> an expert on crimes committed during times of conflict in Guatemala,<sup>562</sup> an expert on cultural destruction in Guatemala,<sup>563</sup> a linguistic anthropologist,<sup>564</sup> an expert on the sociology of Guatemala's military between 1982 and 1983,<sup>565</sup> an expert from Guatemala's historical registry,<sup>566</sup> a forensic architect,<sup>567</sup> seven forensic anthropologists,<sup>568</sup> two ballistic experts,<sup>569</sup> an economist,<sup>570</sup> and three experts to authenticate photographic evidence presented at trial.<sup>571</sup> Many of these experts had previously provided expert reports in an earlier phase of the case, which were available to the Court.<sup>572</sup>

Critical to the success of the case was the innovative and bold decision to place the testimony of the *Abuelas* and the narrative of their lived experience at the center of the case. Historically women's testimony regarding sexual violence had been subject to doubt.<sup>573</sup> Yet in *Sepur Zarco*, their testimony provided the "core evidence" in the case.<sup>574</sup> While there were some challenges relating to the ability of the *Abuelas* to recall the precise dates and other details of the events, the Court found their testimony largely consistent and compelling.<sup>575</sup> Moreover, as described below, the victims' credibility was undeniably bolstered through the extensive use of additional fact witnesses and domestic and international experts. The selection and use of this evidence, particularly the many expert witnesses, was part of a careful and deliberate strategy on the part of MTM and the prosecutors to help the Court stitch the various pieces of the evidence together into a whole in which the experiences recounted

by the victims made sense.<sup>576</sup> Ultimately, this evidence – along with documentary evidence<sup>577</sup> – was indispensable in helping the court not only better understand the victims' testimony and give it its appropriate weight, but also appreciate how the crimes committed against them fit within the broader context of the armed conflict and the role the accused played in the commission of those crimes. Moreover, testimony of legal experts and amicus briefs submissions on the status of SGBV crimes under international law as well as on the practices of international tribunals related to the investigation and prosecution of such crimes helped the Court conclude that the specific SGBV charges against the accused were appropriate and that legal challenges in the prosecutions of such crimes could be overcome. The following sections explore in greater detail some of these evidentiary and legal strategies.

#### 4.4.1

### Centering the Case on the Testimony of the *Abuelas*

At the heart of the *Sepur Zarco* case was the testimony of the *Abuelas*. As MTM legal staff made clear, “the voices of the victims” were “the central axis of the case.”<sup>578</sup> The decision to center the case on the testimony of the *Abuelas* was groundbreaking, in particular because women’s testimony regarding sexual violence historically had been mistrusted. As Hilda Pineda, the prosecutor in the *Sepur Zarco* case, later explained:

*Historically, women’s testimonies about crimes of sexual violence have been doubted. It is the only crime in which the victim is questioned, even when it occurs in the context of war; that is, she is questioned even though it happens during massacres, forced displacement, and other mass crimes. The patriarchal popular consciousness of suspicion continues to dominate in the justice system and society. Women are blamed and accused of provoking or even enjoying such crimes.*<sup>579</sup>

Within that context, positioning women’s testimony at the core of the case was a bold strategy, and one that required immense courage by the *Abuelas*, who themselves had been shamed and stigmatized by their own community into silence for decades.<sup>580</sup> Ultimately, the strategy not only allowed the *Abuelas* to take center stage as the key actors in their own case, but was also successful. While the evidence discussed in the next section certainly buttressed their

credibility, the testimony of the *Abuelas* was viewed as sincere, credible and compelling, and fundamental to the success of the case.<sup>581</sup> As the presiding trial judge, Yassmin Barrios, noted “[t]he judges of this tribunal firmly believe the testimonies of the women who were sexually violated in *Sepur Zarco*.”<sup>582</sup>

Still, centering the case on the *Abuelas*’ testimony posed some evidentiary challenges. In particular, some of the *Abuelas* and other witnesses did not remember precise dates, locations, and/or names due to the passage of time,<sup>583</sup> which the prosecutors feared might violate the accused’s due process right to know the specific facts underlying the charges against them.<sup>584</sup> However, some of the *Abuelas* and other witnesses were able to date the crimes based on other events that were happening at the time. For example, some of the *Abuelas* remembered that the crimes happened during the harvest.<sup>585</sup> Another remembered that Rios Montt was the head of state at the time the crimes occurred.<sup>586</sup> Yet another witness recalled that during the events he was describing to the court a very important religious man was visiting Guatemala,<sup>587</sup> referring to a visit by the Catholic pope to the country in 1983. Through this and other testimony the prosecutors were able to clarify dates, locations and names, and to overcome some of the gaps in the testimony of the *Abuelas*.

#### 4.4.2

### Weaving an Evidentiary Web Through the Extensive Use of Additional Fact Witnesses and Experts

While the testimony of the *Abuelas* remained at the core of the case, their credibility was indisputably buttressed by the extensive use of additional fact and expert witnesses. Indeed, this additional evidence allowed the Court to weave the various pieces of the evidence together into a whole in which the testimony

recounted by the *Abuelas* could be more fully understood and credited. As the presiding trial judge Yassmin Barrios eloquently stated, “You have seen the women’s garments that have beautiful fabrics and colors, it is the same as the analysis of the evidence, it is a fabric that is woven until it is finished.”<sup>588</sup>

#### 4.4.2.1

### Corroborating the *Abuelas*' Testimony and Establishing the Context of and Motivation for the Abuses

Many of the critical facts recounted by the *Abuelas* were confirmed by a number of other witnesses, both lay and expert. For instance, their testimony regarding the disappearance and killing of the men in their community who were seeking title to their land was confirmed not only by other members of the community,<sup>589</sup> but also by expert forensic testimony.<sup>590</sup> Similarly, community members and other witnesses confirmed other parts of the *Abuelas*' testimony, including their testimony about the rapes they had been subjected to by the soldiers,<sup>591</sup> that some of them had fled to the mountains<sup>592</sup> where they spent years,<sup>593</sup> and that the abuses against some of them continued for six years.<sup>594</sup> Moreover, testimony of a forensic psychiatrist confirmed that the clinical symptoms experienced by the *Abuelas* were consistent with the systematic violations they experienced,<sup>595</sup> corroborating their testimony and helping the Court conclude that their "stories were congruent and credible," that the events they described "actually occurred"<sup>596</sup> and that "they were indeed the object of violent acts."<sup>597</sup>

Expert testimonies also were helpful in establishing the context of and motivation for the crimes against the *Abuelas* and their families. For example, expert testimony was crucial in corroborating the *Abuelas*' testimony that many of their families had been targeted because they had been attempting to reclaim land that had been stolen from them – claims that had threatened the financial position and political power of the land-owning elite. By combing through old government archives, historical registry expert Juan Carlos Peláez Villalobos not only located the land claims filed by the husbands of most of the *Abuelas*,<sup>598</sup> he confirmed that *Sepur Zarco* was part of the ancestral territory of the Q'eqchi' people<sup>599</sup> and that the victims were therefore legitimately and lawfully exercising their rights to reclaim their ancestral lands.<sup>600</sup> Moreover, by analyzing historical land registrations in *Sepur Zarco* dating back to the 1800s – and documenting the improprieties in those registrations – his testimony underscored the significant risk that the

land review process posed to the local elites.<sup>601</sup> As the expert explained, one of the root causes of the military violence against the indigenous population in the region, from the Panzos massacre to the domestic and sexual slavery of the *Abuelas*, was the need to protect the illegitimate and illegal land tenure system, and silence those who sought to challenge it.<sup>602</sup>

This testimony was supported by that of another expert, military sociologist Hector Roberto Rosada Granados, who explained the "relationship of convenience" between the military and the land-owning elite in the 1980s whereby landowners provided the military with material assistance in return for the military's aid in safeguarding their own interests.<sup>603</sup> As he explained, the landowning elite characterized these indigenous claims as a source of rebellion, suggesting that indigenous leaders were supporting the guerrillas and threatening the stability of the state, and therefore had to be repressed.<sup>604</sup> His testimony, therefore, helped the Court establish "that the violations of [the *Sepur Zarco*] women occur[ed] within a context of land claims."<sup>605</sup>

He and other experts also helped explain the broader context of the conflict and, in particular, the systematic use of SGBV as a tool of the military in its campaign against those targeted as enemies of the state. For instance, consistent with his testimony and that of the historical registry expert, military expert Prudencio Garcia Martinez de Murguía made clear that the exercise of abusive power deployed by the military in *Sepur Zarco* was not an isolated occurrence but the product of premeditated actions, consistent with instructions that were part of a strategy to spread terror among the indigenous population.<sup>606</sup> Further, both he and other experts explained that the sexual violence committed against the women of *Sepur Zarco* was a part of that tactical strategy used to repress this "internal enemy."<sup>607</sup> This testimony helped the Court conclude that the violence, including sexual violence, against indigenous communities was an intrinsic part of the military's plan to subdue and destroy those characterized as insurgents.<sup>608</sup>

#### 4.4.2.2

### Establishing the Knowledge and Legal Responsibility of the Accused

Other witnesses and experts helped the court link the accused to the crimes suffered by the victims,<sup>609</sup> often a challenge in cases such as this one, where the accused are prosecuted for having ordered or tolerated the commission of crimes or being complicit in their commission rather than for having physically perpetrated the crimes themselves. For example, the Court heard from Valeriano Tacaj Pop, who was forcibly recruited to serve in the military and testified not only that he recognized the accused Reyes Giron as the commander of *Sepur Zarco*, but also that he was the one who gave the orders.<sup>610</sup> In addition to this testimony, which the Court found credible,<sup>611</sup> the judges heard from other witnesses who made clear that the accused could be held criminally responsible even if they had not ordered the crimes or been present for their commission. For instance, military expert Prudencio Garcia Martinez de Murguia explained to the Court that given the persistent violations against the *Abuelas* by the troops – which occurred repeatedly in daylight over time – and the fact that many of these violations were committed within the *Sepur Zarco* outpost, it was impossible that the accused had no knowledge of the crimes committed by their subordinates.<sup>612</sup> This position was reinforced by the testimony of forensic architect Elis Gabriela Mendoza Mejia, who provided a three-dimensional map of the

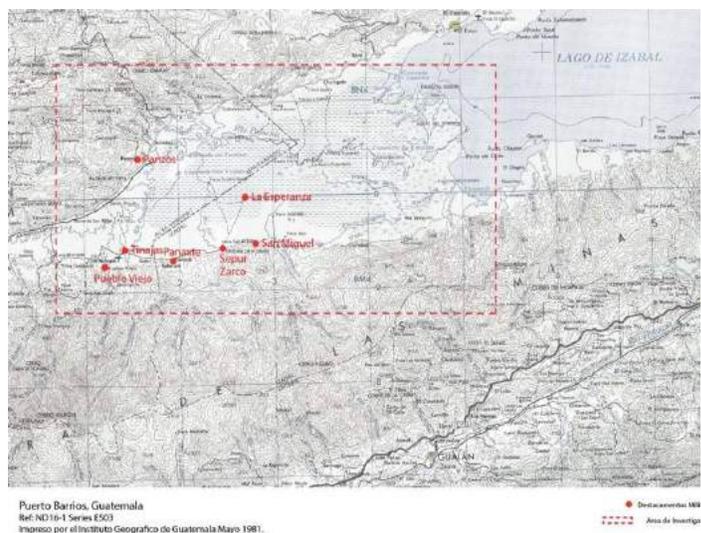
*Sepur Zarco* community that showed that the location of the military base was in the middle of *Sepur Zarco*, suggesting that “it was impossible for the officials in charge of the base not to know that the women being held there were being subjected to repeated acts of sexual violence.”<sup>613</sup> Given this knowledge and the fact that as commanders the accused had the effective duty and capacity to prevent and restrain their subordinates,<sup>614</sup> military expert Garcia Martinez de Murguia concluded that their failure “to exercise the necessary control over their subordinates” rendered them responsible for such crimes.<sup>615</sup> Significantly, the expert noted that the accused could not rely on the defense of following superior orders, as both domestic and international law reject blind obedience with orders that are manifestly criminal.<sup>616</sup> Thus, although the *Sepur Zarco* outpost had been created as “an area for rest, recuperation and even ‘soldier’s recreation,’” that could never justify following orders to commit “actions as serious as the systematic raping of women, reduced to a situation of sexual slavery.”<sup>617</sup> Given that the majority of the victims’ statements did not refer to the accused directly,<sup>618</sup> the testimony of these witnesses was critical to proving the accused’s responsibility for the sexual violence crimes with which they were charged.<sup>619</sup>

#### 4.4.2.3

### Enabling the Visualization of Crimes that Happened Decades Earlier

One of the most innovative features of the *Sepur Zarco* case was its use of advanced technology to assist the judges in visualizing the location and commission of crimes that had happened decades ago. The passage of time had erased most traces of the events in question – by the time of the investigation and trial, the *Sepur Zarco* military camp where the *Abuelas* had been forced to live for many months in domestic and sexual servitude no longer existed,<sup>620</sup> and the Roque Pur river, where Dominga Cuc and her daughters were murdered, had substantially dried up, leaving a much smaller river in its place.<sup>621</sup> Although contemporary photographs of

these locations were presented to the court,<sup>622</sup> they provided little clarity about what these locations had once looked like. The photographs of the military camp location, for instance, showed little more than a stone, some cement, and a metal structure that might have once been a train car.<sup>623</sup> These geographical and physical changes also affected the testimony of fact witnesses, who sometimes were unable to recognize the area, preventing them from providing precise information about where crimes had been committed.<sup>624</sup> Expert testimony was therefore crucial in confirming key aspects of the historical record, such as the exact location of the *Sepur*



Top: Visualization of the Testimony of Rosa Tiul: Forensic Architecture Expert Report of Elis Gabriela Mejía et al., Annex 8; Bottom left: Frame from the three-dimensional computer model: Elis Gabriela Mendoza Mejía; Bottom right: Source: Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 21

Zarco military camp and the position of specific areas of the camp where the women were forced to provide domestic and sexual services. Such information not only corroborated key elements of the *Abuelas'* testimony, but it also provided a technical and evidentiary foundation from which the trial court was able to conclude that all of the soldiers in the camp must have known of the crimes.

Three principal types of visual evidence – maps, satellite images, and a three-dimensional computer model of the camp – were introduced at trial by a forensic architecture expert. Forensic architecture is a

relatively new discipline that enables investigators and adjudicators to verify destroyed spaces and reconstruct historical crimes through the use of spatial and architectural evidence.<sup>625</sup> As part of this process, the expert provided the court with simple maps, such as the one to the right, which were useful in establishing the location of the *Sepur Zarco* military camp,<sup>626</sup> as well as annotated maps and satellite images that showed the specific locations of events in the *Abuelas'* testimony, including where their husbands disappeared and where they were raped.<sup>627</sup> An example is included below.

Most important, however, was the creation of a 3-D model that enabled the judges, in their own words, to visualize the *Sepur Zarco* military camp and the location of the crimes therein, confirming the *Abuelas'* testimony.<sup>628</sup> Using information provided by men who had been forced to build the military camp,<sup>629</sup> along with aerial photographs, satellite images, regional maps, GPS data, and traces of the camp observed during a site visit,<sup>630</sup> the forensic architecture experts were able to construct a three-dimensional computer model of the camp.<sup>631</sup> This immersive model, which allowed a user to virtually walk through the reconstructed space,<sup>632</sup> was presented as a video at trial, thus enabling the visualization of the structure and

location of each part of the camp, including the soldier's lodging, sentry posts, kitchen, dining area, and latrines.<sup>633</sup> In addition, the model indicated the specific places where the *Abuelas* had been forced to labor and provide sexual services, based on the testimony of the *Abuelas*.<sup>634</sup> Many of these structures, as the model showed, were close together, highly visible and frequently trafficked, and the construction materials used would have amplified any sounds in the area.<sup>635</sup> Based on this evidence, the trial court concluded that it was highly improbable that the systematic sexual abuse against the *Abuelas* was not publicly known by all who were in the camp.<sup>636</sup>

#### 4.4.2.4

#### Understanding the Impact of the Violence

Finally, psychosocial, cultural and gender experts helped the Court understand the impact of the violence both on the surviving women as well as their families and community. For instance, psychosocial expert Monica Esmeralda Pinzón González explained that the crimes suffered by the *Abuelas* not only affected their physical and reproductive health, but also their mental health, describing the psychological impact of the severe social stigmatization to which the *Abuelas* had been subjected by their own community following the crimes.<sup>637</sup> She also spoke of the broader damaging effects on their community, including the loss of cultural and ancestral tools such as grinding stones and ancient agricultural instruments, and the transgenerational effects on the surviving children of the community, who she found faced social adjustment problems because of

internalized fear and stigma stemming from the attacks on their community.<sup>638</sup> Additionally, cultural expert Irma Alicia Velásquez Nimatuj explained that the violence inflicted on the *Abuelas*, in addition to producing physical, psychological and emotional harms, led to the fragmentation of the Mayan Q'eqchi community, disrupting their authority systems, extended family networks, medical and spiritual practices, and the solidarity that existed among members of the community.<sup>639</sup> The testimony of these experts, along with that of gender anthropologist Rita Laura Segato, discussed in more detail below,<sup>640</sup> permitted the Court to conclude that the systematic raping and forced domestic labor of the women of *Sepur Zarco* resulted in profound and diverse harms both to the *Abuelas* and to their families and community.<sup>641</sup>

### 4.4.3

## Using Legal Experts and Amicus Briefs to Support the Characterization of Sexual and Gender-Based Violence as International Crimes and to Overcome Challenges in Prosecuting Such Crimes

As described earlier, several of the charges against the accused were brought under Article 378 of Guatemala's Criminal Code, regarding "crimes against the duties of humanity."<sup>642</sup> Although this provision plainly incorporates international crimes, particularly war crimes and crimes against humanity, into domestic law, it does not define the elements of these crimes,<sup>643</sup> nor was there any binding Guatemalan jurisprudence at the time clarifying their elements. To fill this gap, expert testimony was solicited on the elements of war crimes and crimes against humanity under international law,<sup>644</sup> which could then be applied to the facts of *Sepur Zarco* under Article 378.<sup>645</sup> This testimony confirmed that sexual violence and sexual and domestic slavery could constitute crimes against humanity and war crimes.<sup>646</sup> In addition, an amicus curiae brief was submitted to the Court asserting that conduct amounting to rape, sexual violence, sexual slavery, domestic slavery, and outrages upon personal dignity constituted war crimes and/or crimes against humanity under customary international law as of the early 1980s.<sup>647</sup> While it was unclear how the Court would use the amicus brief, the strategy of the MTM lawyers working on the case was to incorporate the arguments of the brief into their own submissions, thereby ensuring that the Court had before them the "content of the amicus."<sup>648</sup> Thus, both the testimony and the amicus brief reinforced the propriety of the charges against the defendants for "crimes against the duties of humanity" in the forms of sexual violence and sexual and domestic slavery, despite the absence of a specific list of specific acts, including these crimes, in Article 378.<sup>649</sup>

Importantly, expert testimony on international law also focused on addressing many of the issues that often impede prosecutions for sexual crimes, whether

at the domestic or international levels. For example, the absence of voluntary consent is a key element of certain sexual violence crimes,<sup>650</sup> and, indeed, the issue of consent was raised in the *Sepur Zarco* proceedings through questions about why the women kept returning to the base for their "turns" if they did not consent to the sexual acts.<sup>651</sup> Expert Paloma Soria Montañez explained that, under international law, the absence of consent is not limited to instances in which the accused uses physical force, but also encompasses coercive environments in which voluntary consent is often rendered impossible.<sup>652</sup> Moreover, as her testimony confirmed, international jurisprudence recognizes that such coercive environments are particularly prevalent during periods of armed conflict or widespread and systematic crimes, which are generally characterized by the use of violence and other strategies to instill terror in the population.<sup>653</sup> As a result, she stated, consent cannot be inferred even where a woman remains silent or does not physically resist the perpetrator.<sup>654</sup> With respect to *Sepur Zarco*, Ms. Soria Montañez observed that there was unquestionably a coercive environment due to the armed conflict and the fact that the women, before being subjected to sexual violence, witnessed the detention, torture, and disappearance of their husbands.<sup>655</sup> In these circumstances, she concluded, voluntary consent by the women was not possible.<sup>656</sup>

Ultimately, the Court agreed both with the specificity of the charges against the accused<sup>657</sup> and with Ms. Soria Montañez' interpretation of consent, crediting her testimony that the *Abuelas* "subjected themselves to the sexual violations to save their own lives."<sup>658</sup>

# ENDNOTES:

## Section 4.4

- 553 See *Sepur Zarco* Trial Judgment, at 20. Sana critica (i.e., sound judicial discretion) is the system the Inter-American Court of Human Rights and other Latin American courts use for evaluating the weight of evidence; courts are not constrained by evidentiary rules of legal proof, but must judge in accordance with the rules of logic and experience, and state the grounds for their evaluation. See A. Paúl, Sana Crítica: The System for Weighing Evidence Utilized by the Inter-American Court of Human Rights, 18 *BUFFALO HUMAN RIGHTS LAW REVIEW*, 193, 193 (2012). 554 See *Sepur Zarco* Trial Judgment, at 275-326, 348-352, 355-370.
- 555 Id. at 198-275, 330-348, 352-355.
- 556 Id. at 20-198.
- 557 Id. at 20-41.
- 558 Id. at 41-53.
- 559 Id. at 53-69.
- 560 Id. at 69-79.
- 561 Id. at 79-91.
- 562 Id. at 91-98.
- 563 Id. at 98-109.
- 564 Id. at 109-112.
- 565 Id. at 112-132.
- 566 Id. at 132-144.
- 567 Id. at 144-159.
- 568 Id. at 159-170, 171-193.
- 569 Id. at 170-171, 196-197.
- 570 Id. at 197-198.
- 571 Id. at 193-196.
- 572 Id. at 20, 91; see also, Informe Peritaje: Mujeres en *Sepur Zarco*: un análisis de los crímenes de género ocurridos durante el conflicto en Guatemala, Elaborado por Paloma Soria Montañez, at 6 (3 ago. 2012) [hereinafter Conflict-based Gender Crimes Expert Report of Paloma Soria Montañez].
- 573 CHANGING THE FACE OF JUSTICE, at 18.
- 574 Id.
- 575 See, e.g., *Sepur Zarco* Trial Judgment, at 485
- 576 Interview with MTM attorney Esteban Celada Flores (“The most interesting thing is that the expert reports had a connecting axis, they were all related, none of them were opposed. This was because we had a strategic construction of the expert opinions. In other words, we did not want to leave loose ends, we worked as a team with the expert[s]...”) (authors’ translation).
- 577 For instance, the Court used the official letters and certifications issued by the National Defense Ministry to help establish that the accused were officially assigned to the *Sepur Zarco* military base at the time the alleged crimes occurred. *Sepur Zarco* Trial Judgment, at 371, 375, 377. See also CHANGING THE FACE OF JUSTICE, at 40 (noting “military plans and manuals, certifications issued by the National Defense Ministry and the General Archives of Central America, excerpts from the truth commission reports” as among the documents considered by the Court in reaching its decision). Other documents were used to prove the identity of the accused as well as of the missing, deceased and surviving victims. *Sepur Zarco* Trial Judgment, at 373-375, 407-418. In addition, the Court used reports, such as the 1999 report by the Comisión para el Esclarecimiento Histórico, entitled Memoria del Silencio, to establish the “context of the violence that occurred in Guatemala during the armed conflict.” *Sepur Zarco* Trial Judgment, at 421 (authors’ translation).
- 578 Interview with MTM attorney Esteban Celada Flores (authors’ translation).
- 579 CHANGING THE FACE OF JUSTICE, at 18 (summarizing remarks of prosecutor Hilda Pineda).
- 580 See supra Section III.A.1.
- 581 Strategic Alliances as an Impact Litigation Model, at 209 (noting that “the judges’ reliance on the witnesses’ testimony as primary evidence” was “incredibly significant”).
- 582 Jo-Marie Burt, Military Officers Convicted in Landmark *Sepur Zarco* Sexual Violence Case, INTERNATIONAL JUSTICE MONITOR (Mar. 4, 2016), <https://www.ijmonitor.org/2016/03/military-officers-convicted-in-landmark-sepur-zarco-sexual-violence-case/>. The same judge later noted, “It was not necessary for me for [a credibility expert] to come and tell me that what [the *Abuelas* had to] say was true because I was seeing it, and because it did connect with everything else.” Interview with presiding trial Judge Yassmin Barrios Aguilar (authors’ translation). Judge Barrios was referring to an expert who testified on international credibility standards. See *Sepur Zarco* Trial Judgment, at 69-79 (expert testimony of Arsenio Garcia Cores).
- 583 Prueba Anticipada Video, Day 1, Witness 2, Part 1, at 0:00-3:49 & Part 3, at 9:07-10:00 (testimony of Rosario Xo); Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia Choc); Prueba Anticipada Video, Day 2, Witness 2, Part 1, at 9:50-12:30 (testimony of Candelaria Maas Sacul); Prueba Anticipada Video, Day 3, Witness 1, Part 1, at 5:14-32:08 & Part 3, at 1:37-32:16 (testimony of Felisa Cuc); Prueba Anticipada Video, Day 4, Witness 4, Part 1, at 5:01-32:02 (testimony of Demecia Yat); *Sepur Zarco* Trial Judgment, at 223 (testimony of Rosario Xo). See also Interview with the *Sepur Zarco* prosecutors.
- 584 See Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda) (noting “we submitted charges based on facts between 1982 and 1983. I have been in the Public Ministry for eleven years, I have never presented charges of that type. In other words, any lawyer from anywhere in this country would have said to me: ... How is the accused going to defend himself if you are not telling him the exact date or time?”) (authors’ translation).
- 585 Prueba Anticipada Video, Day 1, Witness 4, Part 2, at 0:00-20:34 (testimony of Antonia

- Choc); Prueba Anticipada Video, Day 2, Witness 2, Part 1, at 9:50-12:30 (testimony of Candelaria Maas Sacul).
- 586 Prueba Anticipada Video, Day 3, Witness 3, Part 4, at 17:38-18:34 (testimony of Margarita Chuc Choc).
- 587 See Interview with pre-trial Judge Miguel Angel Valdez (Oct. 28, 2021), at 14.
- 588 Interview with presiding trial Judge Yassmin Barrios Aguilar (authors' translation).
- 589 *Sepur Zarco* Trial Audio Recording, File 2, at 13:19-23:45, 51:35-52:21 (testimony of Juan Maquin Caal, explaining that his father was forcibly disappeared due to his attempts to obtain legal title to the land); *Sepur Zarco* Trial Audio Recording, File 7, at 2:47:33-2:56:59 (testimony of Domingo Tzub, describing how his father was killed because he had been requesting land).
- 590 See *Sepur Zarco* Trial Judgment, at 159-170, 171-193. See also Interview with the *Sepur Zarco* prosecutors (statement of Blanca Castañeda) (noting "Well, within the main investigative steps, I also remember that a man was located, that he indicated that there on a farm that was called Tinajas, at the time it had also functioned as a military detachment, and that there were skeletons of victims there. That people had been buried there. So, proceedings were carried out in coordination with the Forensic Anthropology Foundation, with the civil claimants, and we traveled to the region, right? And the excavations began, where the witness indicated... the search continued until they began to appear... approximately 50 victims' bones were recovered.") (authors' translation)
- 591 See, e.g., *Sepur Zarco* Trial Audio Recording, File 2, at 59:03-1:00:15 (testimony of Juan Maquin Caal); *Sepur Zarco* Trial Judgment, at 295, 302 (discussing video-testimony of Valeriano Tacaj Pop, who was forcibly recruited in Puerto Barrios, Izabal, to serve in the military and confirmed that the women of *Sepur Zarco* had been "raped in the military outpost and near the river") (authors' translation).
- 592 *Sepur Zarco* Trial Audio Recording, File 2, at 23:45-29:00 (testimony of Juan Maquin Caal).
- 593 *Id.*, at 29:00-31:20 (testimony of Juan Maquin Caal).
- 594 *Id.*, at 34:21-41:00 (testimony of Juan Maquin Caal) & 1:35:55-1:40:15 (testimony of Rogelio Guitz Chó).
- 595 See *Sepur Zarco* Trial Judgment, at 47 (expert testimony of Karen Denisse Peña Juez) (explaining that the *Abuelas'* clinical symptoms, including bone and muscle pains, cervical spasms, severe and chronic pelvic pain, and headaches, were consistent with the systematic physical and psychological violence to which they had been subject).
- 596 See *id.*, at 52 (expert testimony of Karen Denisse Peña Juez) (authors' translation).
- 597 See *id.*, at 51 (expert testimony of Karen Denisse Peña Juez) (authors' translation).
- 598 *Id.*, at 140, 143 (the expert established that the majority of victims had land claims pending with INTA); Historical Registry Expert Report of Juan Carlos Peláez Villalobos, p 74-75 (nearly all of the *Abuelas* were connected to land claims filed before the INTA). INTA, or the Instituto de Transformación Agraria, was the governmental body designated to receive such land claims during the relevant time period.
- 599 *Sepur Zarco* Trial Judgment, at 143 (the expert established that *Sepur Zarco* was part of the ancestral territory of the Q'eqchi'); Historical Registry Expert Report p 6, 24.
- 600 *Sepur Zarco* Trial Judgment, at 140; Historical Registry Expert Report, p 9, 29.
- 601 *Sepur Zarco* Trial Judgment, at 137-38, 140, 143; Historical Registry Expert Report, p 23 (noting that in the 1870s, much of the lands in the Polochic Valley belonging to indigenous peoples was illegally titled and registered in the name of certain mestizo families, thus stealing it from indigenous people who had owned it for centuries), p 58-72 (analyzing historical records to show specific registration anomalies in the area); *Sepur Zarco* Trial Audio Recording, File 13, at 0:35:20-0:36:57 (expert testimony of Juan Carlos Peláez Villalobos).
- 602 Historical Registry Expert Report, at 3, 29, 33, 34; *Sepur Zarco* Trial Audio Recording, File 13, at 35:20-36:57 (testimony of historical registry expert Juan Carlos Peláez Villalobos).
- 603 *Sepur Zarco* Trial Audio Recording, File 20 at 1:40:53-1:42:24 and 1:42:26-1:45:36 (expert testimony of Hector Roberto Rosada Granados). This is consistent with the testimony of the *Abuelas*, who testified that the military targeted men in the community of *Sepur Zarco* using lists provided by the landowners, and sometimes accompanied by them or using their tractors and other modes of transport. See *infra* Section II.A.
- 604 *Sepur Zarco* Trial Audio Recording, File 20 at 1:40:53-1:42:24 and 1:42:26-1:45:36 (expert testimony of Hector Roberto Rosada Granados).
- 605 *Sepur Zarco* Trial Judgment, at 128 (authors' translation). See also *id.*, at 474 (citing testimony of expert Hector Roberto Rosada Granados who indicated that the motive for the violence was "the fear of the landed elite who felt threatened by the request for land") (authors' translation).
- 606 See, e.g., Military Expert Report of Prudencio Garcia Martinez de Murguía, at 7; *Sepur Zarco* Trial Audio Recording, File 30 at 4:11:13-4:17:48 & 4:46:17-4:48:33 (expert testimony of Prudencio Garcia Martinez de Murguía) (noting that through their attacks, the military ensured the disintegration of families and their community); *Sepur Zarco* Trial Judgment, at 57-61 (expert testimony of Prudencio Garcia Martinez de Murguía).
- 607 Military Expert Report of Prudencio Garcia Martinez de Murguía, at 6-7; *Sepur Zarco* Trial Audio Recording, File 30 at 4:11:13-4:17:48 and 4:46:17-4:48:33 (expert testimony of Prudencio Garcia Martinez de Murguía); *Sepur Zarco* Trial Audio Recording, File 20 at 1:52:59-1:58:00 and 2:09:05-2:12:34 (expert testimony of Hector Roberto Rosada Granados); *Sepur Zarco* Trial Audio Recording, File 31 at 2:20:00-2:22:00 (expert testimony of Irma Alicia Velasquez).

- 608 See, e.g., *Sepur Zarco* Trial Judgment, at 491 (citing as significant the expert testimony of Prudencio García Martínez de Murguía, “who indicated that rape is an instrument or weapon of war, it is a way of attacking the country, killing women or raping them, so that the society is harmed...[and] that the woman was seen as a military objective, defining her as part of the social sector that supports the guerrilla”) (authors’ translation); *id.*, at 476 (noting that an essential part of the testimony of cultural expert Irma Alicia Velasquez was her assessment that “by sexually violating women in a systematic manner, [the military was seeking] the human and cultural destruction” of the community) (authors’ translation); *id.*, at 475 (citing the expert testimony of military sociologist Hector Roberto Rosada Granados, which made clear that “women were humiliated, to destroy the context of the community and produce social breakdown”) (authors’ translation).
- 609 See, e.g., *id.*, at 5 (allegations against Reyes Girón); *id.* at 11 (allegations against Valdez Asig).
- 610 *Id.*, at 301-302.
- 611 *Id.*, at 302 (finding his statement “credible, since the witness describes what the detachment was like, the procedures used and the orders they were given, easily answering the many questions they were asked.”) (authors’ translation).
- 612 *Sepur Zarco* Trial Audio Recording, File 30 at 4:46:17-4:48:33 and 4:48:45-4:49:17; *Sepur Zarco* Trial Judgment, at 55 (expert testimony of Prudencio García Martínez de Murguía).
- 613 Burt, Gender Justice in Post-Conflict Guatemala, at 84. See *infra* Section IV.D.2.b. (discussing the expert testimony of Elis Gabriela Mendoza Mejía and its significance for the Court).
- 614 Military Expert Report of Prudencio García Martínez de Murguía, at 19.
- 615 *Sepur Zarco* Trial Judgment, at 55 (expert testimony of Prudencio García Martínez de Murguía) (authors’ translation).
- 616 *Sepur Zarco* Trial Audio Recording, File 30 at 2:53:39-3:27:10 (expert testimony of Prudencio García Martínez de Murguía).
- 617 *Sepur Zarco* Trial Judgment, at 54 (expert testimony of Prudencio García Martínez de Murguía) (authors’ translation).
- 618 See, e.g., *id.*, at 206-208 (Manuela Bá), 209-213 (Rosa Tiul), 214-217 (Candelaria Maas Sacul), 218-221 (Vicenta Col Pop), 234-237 (María Bá Caal), 243-251 (Demacia Yat), 260-264 (Magdalena Pop), 264-267 (Antonia Choc), 272-275 (Matilde Sub).
- 619 See, e.g., *id.*, at 491-92.
- 620 See *Sepur Zarco* Pre-Trial Decision, at 19; *Sepur Zarco* Trial Audio Recording, File 35, at 1:17:45-1:18:14 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía that the post was dismantled in 1988); *Sepur Zarco* Trial Judgment, at 151-152 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 621 *Sepur Zarco* Pre-Trial Decision, at 20.
- 622 *Sepur Zarco* Trial Audio Recording, File 35, at 10:50-35:28 (testimony of photography experts Luis Renato Mauricio Figueroa and Oskar Eduardo Aragón de Paz); *Sepur Zarco* Trial Judgment, at 193-196 (describing photographs presented to the trial court).
- 623 *Sepur Zarco* Pre-Trial Decision, at 19-20.
- 624 During the pre-trial proceedings, for instance, some witnesses had difficulty using contemporary photographs of the Roque Pur river to describe where the bodies of Dominga Cuc and her daughters had been buried, given that the river had dried considerably in the intervening years. *Sepur Zarco* Pre-Trial Decision, at 20.
- 625 Megan Elizabeth Eardley, Elis Gabriela Mendoza Mejía & Daniele Profeta, La violación de Sepur: Violencia de género en tres escalas arquitecturales, at 9, 21 (feb. 2016) [hereinafter Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al.]; *Sepur Zarco* Trial Audio Recording, File 35, at 58:18-1:04:00 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía); *Sepur Zarco* Trial Judgment, at 146 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 626 Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 6; *Sepur Zarco* Trial Audio Recording, File 35, at 1:11:08-01:11:53 & 1:22:48-1:23:24 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía); *Sepur Zarco* Trial Judgment, at 159, 475.
- 627 Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., annexes 2-10; *Sepur Zarco* Trial Audio Recording, File 35, at 1:20:20-1:20:37 & 1:26:38-1:28:07 & 1:35:15-1:35:40 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 628 *Sepur Zarco* Trial Judgment, at 158; see also *Sepur Zarco* Trial Audio Recording, File 35, at 1:04:56-1:08:05 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 629 Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 24; Interview with forensic architecture expert Elis Gabriela Mendoza Mejía; see also *Sepur Zarco* Trial Audio Recording, File 3, at 36:41- 52:07 (testimony of witness Arturo Choc Chub); *id.* at 3:30:33-4:00:18 (testimony of witness Manuel Ical); *Sepur Zarco* Trial Judgment, at 318 (testimony of witnesses Manuel Ical and Arturo Choc Chub describing how they were forced to construct the base). Other witnesses to the camp also provided information. Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 24; see also *Sepur Zarco* Trial Judgment, at 147-148 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía); *Sepur Zarco* Trial Audio Recording, File 35 at 1:17:45- 1:18:14, 1:25:48-1:26:22 & 1:32:11-1:35:15 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 630 Interview with forensic architecture expert Elis Gabriela Mendoza Mejía; Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 23, 26-29; *Sepur Zarco* Trial Audio Recording, File 35 at 1:10:30-1:11:07, 1:20:20-1:21:11 & 1:34:32-1:35:15 (testimony of forensic architecture expert

- Elis Gabriela Mendoza Mejía); *Sepur Zarco* Trial Judgment, at 154 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 631 Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 24, 31; *Sepur Zarco* Trial Judgment, at 475. Once the model was available, many of the *Abuelas* also reviewed the model. Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 31; *Sepur Zarco* Trial Judgment, at 475; *Sepur Zarco* Trial Audio Recording, File 35 at 1:10:30-1:11:07, 1:25:48-1:26:22 & 1:36:40-1:37:35 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 632 Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 31; *Sepur Zarco* Trial Audio Recording, File 35 at 1:10:30-1:11:07 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía); *Sepur Zarco* Trial Judgment, at 147 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 633 *Sepur Zarco* Trial Judgment, at 157, 158, 475; Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 5; *Sepur Zarco* Trial Audio Recording, File 35 at 1:32:11-1:34:19 & 1:39:00-1:41:36.
- 634 Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 29 & annex 8; *Sepur Zarco* Trial Judgment, at 158; *Sepur Zarco* Trial Audio Recording, File 35 at 1:35:15-1:35:40 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 635 *Sepur Zarco* Trial Judgment, at 157-158. Some structures, such as the dining area, were open, making it easy to see everything that happened. See Forensic Architecture Expert Report of Elis Gabriela Mendoza Mejía et al., at 26; *Sepur Zarco* Trial Audio Recording, File 35 at 1:39:00-1:41:36, 1:43:44-1:44:39 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 636 *Sepur Zarco* Trial Judgment, at 156-159, 475; *Sepur Zarco* Trial Audio Recording, File 35 at 1:47:22-1:47:51 (testimony of forensic architecture expert Elis Gabriela Mendoza Mejía).
- 637 *Sepur Zarco* Trial Audio Recording, File 18 at 22:41 - 55:58 (expert testimony of Monica Esmeralda Pinzón González). See also *Sepur Zarco* Trial Judgment, at 41-53 (expert testimony of Karen Denisse Peña Juez, who conducted a physical and mental evaluation of the victims and some community members, detailing the extensive physical and psychological harm they experienced).
- 638 *Sepur Zarco* Trial Audio Recording, File 18 at 1:03:58-1:05:22 (expert testimony of Monica Esmeralda Pinzón González).
- 639 *Sepur Zarco* Trial Audio Recording, File 31 at 13:36-18:53 (expert testimony of Irma Alicia Velasquez).
- 640 See *infra* Section IV. E discussing the expert testimony of gender anthropologist Rita Laura Segato.
- 641 See, e.g., *Sepur Zarco* Trial Judgment, at 476 (“Cultural ruptures occurred in the communities, this means that the rapes and submission to servitude harmed the victims themselves [and] their family unit, which was destroyed, but also affected the entire community, which prevented them from recovering their culture and having a normal life.”) (authors’ translation).
- 642 See *supra* Section II.B on the procedural history of the case.
- 643 See Guatemala Criminal Code, art. 378.
- 644 Interview with conflict-based gender crimes expert Paloma Soria Montañez (June 23, 2021) (noting that she was asked to testify on the elements of sexual and gender-based violence as international crimes); *Sepur Zarco* Trial Audio Recording, File 32, at 2:46:00-2:47:49 (expert testimony of Paloma Soria Montañez on the elements of crimes against humanity); see also *Sepur Zarco* Trial Judgment, at 94-95 (expert testimony of Paloma Soria Montañez).
- 645 *Sepur Zarco* Trial Judgment, at 94-95 (expert testimony of Paloma Soria Montañez); Conflict-based Gender Crimes Expert Report of Paloma Soria Montañez, at 6.
- 646 *Sepur Zarco* Trial Audio Recording, File 32, at 2:46:00-2:50:25 (expert testimony of Paloma Soria Montañez confirming that sexual violence, sexual and domestic slavery, forced marriage, forced abortions, forced prostitution, forced pregnancy, and forced sterilization, among other crimes, may constitute crimes against humanity); *id.* at 2:51:45-2:52:15 (expert testimony of Paloma Soria Montañez that rape and other forms of sexual violence may constitute war crimes); *Sepur Zarco* Trial Judgment, at 91-92, 94 (expert testimony of Paloma Soria Montañez). Significant expert testimony also was provided on the international crime of genocide and how the acts in the case satisfied the elements of genocide. See, e.g., *Sepur Zarco* Trial Judgment, at 95 (expert testimony of Paloma Soria Montañez); *Sepur Zarco* Trial Audio Recording, File 32, at 2:49:21-2:51:45 (expert testimony of Paloma Soria Montañez); Conflict-based Gender Crimes Expert Report of Paloma Soria Montañez, at 22.
- 647 WCRO & the Academy of Human Rights and International Humanitarian Law, Amicus Brief on Rape, Sexual Violence, Sexual Slavery, Domestic Slavery, and Outrages Upon Personal Dignity as War Crimes and Crimes Against Humanity Under International Law (Feb. 23, 2016). Significantly, the amicus brief, which was shared with MTM lawyers working on the case, was also used for their own “training, to improve [their] understanding of crimes, to have greater knowledge of crimes, to equip [them]selves with legal technical tools, and even to speak adequately about the legal issues.” Interview with MTM attorney Esteban Celada Flores (authors’ translation).
- 648 Interview with MTM attorney Esteban Celada Flores. This strategy was particularly important because although amicus briefs are used by litigants in cases before Guatemalan courts, there is no clear procedure for their submission and, according to one of the MTM lawyers working on the case, “there are few judges who really understand what an amicus is and what it is for.” *Id.*, at 18-19 (authors’ translation).
- 649 It is not uncommon to use expert testimony to establish key points of international

- law. In the Spanish Embassy siege case, for example, Guatemala's Deputy Human Rights Ombudsman provided an expert report on the application of international humanitarian law to the 1980 siege. Sophie Beaudoin, *Never Before Heard Testimony Describes Dramatic Rescue of the One Survivor of Guatemala's Notorious 1980 Embassy Fire*, INTERNATIONAL JUSTICE MONITOR (Dec. 1, 2014), <https://www.ijmonitor.org/2014/12/never-before-heard-testimony-describes-dramatic-rescue-of-the-one-survivor-of-guatemalas-notorious-1980-embassy-fire/>.
- 650 *Sepur Zarco* Trial Judgment, at 91 (expert testimony of Paloma Soria Montañez).
- 651 Interview with the *Sepur Zarco* prosecutors (statement of Hilda Pineda).
- 652 Interview with conflict-based gender crimes expert Paloma Soria Montañez; *Sepur Zarco* Trial Audio Recording, File 32, at 2:45:00-2:46:17 & 2:52:15-2:53:45 (expert testimony of Paloma Soria Montañez).
- 653 *Sepur Zarco* Trial Audio Recording, File 32, at 2:46:00-2:46:17 & at 2:52:15-2:53:45 (expert testimony of Paloma Soria Montañez); *Sepur Zarco* Trial Judgment, at 91 (expert testimony of Paloma Soria Montañez).
- 654 *Sepur Zarco* Trial Audio Recording, File 32, at 2:45:00-2:46:00 (expert testimony of Paloma Soria Montañez); *Sepur Zarco* Trial Judgment, at 91 (expert testimony of Paloma Soria Montañez).
- 655 *Sepur Zarco* Trial Judgment, at 93 (expert testimony of Paloma Soria Montañez).
- 656 *Id.* at 93.
- 657 *Id.*, at 492-93 (finding both accused guilty of sexual violence and humiliating and degrading treatment as crimes against the duties of humanity and the accused Reyes Giron of the additional charges of sexual and domestic slavery as crimes against the duties of humanity).
- 658 *Id.*, at 97 (authors' translation). See also Interview with conflict-based gender crimes expert Paloma Soria Montañez (noting that the judgment takes into account her testimony about coercive circumstances).

## 4.5

# THE ABUELAS' DEMAND FOR BROAD AND TRANSFORMATIVE REPARATIONS

The *Sepur Zarco* case is celebrated for its comprehensive and transformative reparations, particularly those ordered against the Guatemalan State, but at the time of trial there were many questions about the capacity of Guatemalan courts to impose such reparations. As part of the legal strategy and with the goal of ensuring that the crimes in *Sepur Zarco* not be repeated, the civil claimants in the case demanded that the trial court grant a set of what they defined as “transformative” reparations. Transformative reparations extend beyond traditional measures of restitution (*restitutio in integrum*)<sup>659</sup> and compensation<sup>660</sup> and seek to address structural causes and consequences underlying violence against women, including deep-seated gender discrimination.<sup>661</sup> These reparations aim at preventing victims from being “restored” to the same situation that preceded the initial violence, where they risk being exposed to similar or additional human rights violations.<sup>662</sup> Transformative reparations are rooted in the guarantee of non- repetition, understood as those measures needed to prevent the reoccurrence of similar situations that exposed women to violence and human rights violations in the first place.<sup>663</sup> There is agreement among experts that to be transformative, reparations must be awarded at three levels: individual, institutional and structural.<sup>664</sup>

Following this approach, the measures requested by the civil claimants in *Sepur Zarco* included not only individual reparations such as monetary compensation, but also other measures to ensure that the damages caused to the *Abuelas* and their communities were fully redressed. In particular, the request included measures of restitution, rehabilitation, satisfaction, and guarantees of non- repetition. Ultimately, the goal was to ensure access to an “integral reparation” that would transform the situation in which the victims and their next of kin found themselves at the time the crimes were committed and enable them and their community to significantly improve their lives.

As was true throughout the judicial process, the *Abuelas* of *Sepur Zarco* played a central role in the reparations phase of the case, particularly in determining the scope of appropriate reparations to request from the court.<sup>665</sup> Indeed, ensuring their participation in the reparations discussions and processes was an essential element of seeking transformative reparations, as “[w]ithout such participation, an opportunity is missed for victims to gain a sense of agency that may in itself be an important form of rehabilitation, especially when victims come to perceive themselves as actors of social change. Such empowerment is important for women and society in general, to draw the links between the past and present forms of violence and to seize the

opportunity provided by reparations discussions to press for more structural reforms.”<sup>666</sup>

The request for reparations in the *Sepur Zarco* case was based on Article 124 of the Criminal Procedure Code that enshrines the notion of “dignified reparations.”<sup>667</sup> Dignified reparations include restitution in integrum, if possible, and the payment of monetary compensation to redress the damage caused as a result of the perpetration of a crime.<sup>668</sup> Since the victims of crimes can participate in the criminal proceedings as civil claimants,<sup>669</sup> they are authorized to claim the reparations within such proceedings, once the accused has been convicted.<sup>670</sup> Procedurally, the claimants may file their request for reparations and the evidence of the damage in a hearing held three days after the judgment convicting the accused is issued.<sup>671</sup> The trial court decides on reparations through a resolution that becomes part of the final judgment.<sup>672</sup>

One of the key questions that had to be addressed was whether reparations could be ordered against the State. Although the right to reparation for serious violations of international human rights and humanitarian law is well established in international law,<sup>673</sup> implementing this right within the context of the domestic criminal proceedings presented some challenges. First, the relevant provision in Guatemala’s Criminal Procedure Code contains no explicit language regarding the availability of reparations from the State.<sup>674</sup> Second, before the judgment in *Sepur Zarco* there was no definitive precedent that such reparations were permissible, given that the most notable case ordering reparations against the State – that against former head of state Ríos Montt<sup>675</sup> – was annulled by Guatemala’s Constitutional Court on other grounds, leaving the prospect of reparations against the State in doubt.<sup>676</sup>

As a general matter, reparation claims against the State in domestic proceedings have been pursued on the bases of international human rights law and several provisions of Guatemala’s domestic law. First, human rights victims have claimed that under the “duty to ensure” enshrined in international human rights treaties, the State has an obligation to redress victims for the damage caused as a result of human rights violations perpetrated by state agents or those under their authority.<sup>677</sup> Second, claimants have argued that the State’s duty to redress such harm in criminal proceedings stems from an

interpretation of substantive domestic constitutional and civil provisions, as well as procedural rules. In this regard, Article 155 of Guatemala’s Constitution provides for joint civil liability of a state agency for the damages caused by its employees against a private party.<sup>678</sup> Likewise, Article 1665 of the Civil Code makes the State and local municipalities liable on a subsidiary basis for damages caused by their employees within the scope of their employment, when the person who perpetrated the harm does not have the means to redress the injured claimant.<sup>679</sup> Finally, the Criminal Procedure Code allows claimants to seek reparation for civil damages from a third party considered jointly liable with the accused in the same criminal proceedings.<sup>680</sup> These rules have enabled victims and their next of kin to claim reparations from the State in criminal proceedings for gross violations of human rights perpetrated by State agents or those acting under their authority during the conflict in Guatemala. Although Guatemalan courts and experts appear to share this approach, what remains unclear is when the State must be provided notice of the existence of the reparations claims. Some judgments have concluded that the applicable rule is found in Article 131 of the Criminal Procedure Code, which states that the third party jointly liable must be served notice before the prosecutor requests that the pre-trial judge commit the case for trial,<sup>681</sup> even though this rule was repealed by a subsequent reform to the Code.<sup>682</sup> In contrast, other experts and judges contend that Article 124 of the same Code, which as mentioned earlier, regulates access to “dignified reparations,” has replaced this provision.<sup>683</sup> According to this interpretation, claimants may request that all “procedural subjects” who are jointly liable for damages, including third parties such as the State, be notified of the claims and the reparation hearing after the accused is convicted.<sup>684</sup>

In addition, because Guatemala’s reparations provision refers only to compensation and restitution,<sup>685</sup> questions remained as to whether other forms of reparations, namely satisfaction, rehabilitation, and guarantees of non-repetition, as established under international human rights law,<sup>686</sup> could be claimed in domestic courts under the notion of “dignified reparations”. For all of these reasons, the civil claimants solicited expert testimony to establish the propriety and scope of reparations against the State for the crimes against the *Abuelas*.

Importantly, expert testimony and reports affirmed that the *Abuelas* were entitled to reparations not only from the individual defendants in the case, but also from the State of Guatemala. Although criminal cases typically focus on the responsibility of, and reparations due from, individual perpetrators,<sup>687</sup> under international law, State responsibility may be triggered by the same conduct that gives rise to individual criminal responsibility in certain circumstances, such as where the perpetrator acted as a State agent or de facto State agent, as expert Dosis Calderón Maydon explained.<sup>688</sup> The fact that individual State agents are investigated, prosecuted, and punished for those crimes does not relieve the State of its own responsibility, nor of its obligation to repair the damage done.<sup>689</sup> To the contrary, an order for reparations against the State is particularly important where the crimes were committed pursuant to a State policy and in order to obtain specific military and political objectives<sup>690</sup> – a condition that was unquestionably met in *Sepur Zarco*, given that the crimes were committed by a military commander and commissioner.<sup>691</sup> Although the expert testimony was based on international human rights law and principles, the underlying rationale she laid out was similar to the approach followed by domestic courts and experts pursuant to Guatemalan domestic laws, namely that in cases where crimes are committed by State agents, there is joint liability of the State and the individual perpetrators for the harms caused by the human rights violations against the victims.<sup>692</sup>

Having established the *Abuelas'* right to reparation from both the individual defendants and the State, expert testimony also was essential in describing and quantifying the harms experienced by the *Abuelas*, their families, and their communities that required repair.<sup>693</sup> Although some of these harms were evident from the *Abuelas'* testimony – such as the disappearances of husbands and children; the destruction of homes, livestock, and clothing; and the loss of land<sup>694</sup> – expert testimony elucidated a range of additional harms that otherwise might not have been evident to the court, such as the psychological damage to the *Abuelas'* children who had witnessed the sexual violence, the ongoing psychological and health issues of the *Abuelas*, and the severe social stigmatization to which they had been subjected following the crimes.<sup>695</sup>

In this regard, expert testimony was particularly important in providing insight into how the Mayan culture of the women and their communities intersected with the crimes to cause radical and unique harms.<sup>696</sup> For example, expert testimony was vital in explaining that the gendered domestic labor that the victims were forced to perform, in the form of cooking and clothes washing for the soldiers – which might otherwise have been viewed as less serious than the crime of sexual slavery – had in fact caused equally grave consequences to the women's marriages, families, and communities as a result of a number of cultural factors.<sup>697</sup> As gender anthropology expert Rita Laura Segato explained, for Mayan women, marriage is understood as a reciprocal sharing of domestic tasks essential to the well-being of the family unit, and thus the redirection of the women's labor away from their husbands and families was perceived by the women as having "broken" their marriages.<sup>698</sup> In addition, being forced to abandon their children and use their own corn to cook for the soldiers even as their own children went hungry<sup>699</sup> caused the victims intense shame and guilt. As the social psychologist Mónica Esmeralda Pinzón González noted in her expert testimony,

*....the concept of motherhood was severely damaged in each of the women victims of this case, given the sense of helplessness, guilt, unresolved grief and intense episodes of sadness for not having managed to keep alive their sons and daughters, and in the case of those who survived, by the suffering generated by the conditions in which their children were left.*<sup>700</sup>

Ms. Segato similarly observed in her expert testimony that "[t]he impossibility of guaranteeing the survival of the offspring [was] a blow to her humanity[,]... her value and contribution to the continuity of her people."<sup>701</sup> Indeed, such was the harm that when "women report[ed] their sexual subjugation and their domestic subjugation, they [did] it with the same pain, manifesting similar hardship, referring to access to their body [in the same way as] access to their work and their products."<sup>702</sup> This inability of the women to provide for their families and guarantee the survival of their children – because the food they farmed and the labor they had were redirected to the military – was a fatal blow to their role within their families and the wider indigenous community.<sup>703</sup>

Ms. Segato's testimony also elucidated the crimes' destructive impacts on the wider *Sepur Zarco* community. Prior to the war, as she explained, the community and its households had been peaceful, well ordered, and respectful.<sup>704</sup> Although gender inequality and domestic violence had not been unknown to the indigenous community, the introduction by the military of the crime of forced sexual relations led to greater violence within the community, increased machismo and a corresponding negative change in the position of women.<sup>705</sup> Moreover, by attacking women, who, as mothers or potential mothers were powerful symbols of the future of the Mayan community, the crimes constituted an attack against the entire community, ultimately damaging the interpersonal relationships, family structures, and trust between families and neighbors throughout *Sepur Zarco*.<sup>706</sup> In addition, the broader context of the attack, in which the military occupied more and more of the community's land, impoverished the farming community, further contributing to the fragilization of the community.<sup>707</sup>

Given these extensive and wide-ranging impacts, expert testimony was important in supporting the civil claimants' arguments that adequate and effective reparations, as required by international law, meant ordering reparations measures that addressed the harms not only to the *Abuelas*, but also to their children and their communities. Amicus curiae submissions, including one the authors submitted,<sup>708</sup> reinforced the proposition that such reparations were not only consistent with international law but that Guatemala had an obligation to effectively implement victims' right to such reparations. Further, expert testimony underscored that the reparations should be transformative. As noted earlier, this meant that while reparations typically seek to return victims to the position they were in before the violations, where the victims were subject to pre-existing conditions of inequality and discrimination, such as in *Sepur Zarco*, reparations should not return victims to that earlier situation of vulnerability, but rather should transform society in order to prevent the recurrence of such violations.<sup>709</sup>

Drawing on examples of reparations ordered by the Inter-American Court of Human Rights in cases of sexual violence,<sup>710</sup> the reparations expert therefore recommended specific measures both to address the *Abuelas'* individual needs and to reform the structural

conditions of inequality and discrimination in their communities and in Guatemalan society at large, including:

- the establishment of a clinic near the *Abuelas* capable of providing specialized physical, mental, and psychosocial care to survivors of sexual violence;
- the restitution of decent housing, food, and access to land for the *Abuelas*;
- a serious search for their disappeared spouses and children;
- compensation for the *Abuelas*, both for the crimes against them and for the deaths of their husbands and corresponding loss of income;
- access to scholarships for the women and their children, and adequate education in the communities;
- a public apology from the state;
- serious investigations into the causes of the conflict, its impact on women, and the individuals responsible in order to prevent the repetition of the past; and
- implementation of programs to address social stigmatization of sexual violence survivors, discrimination against indigenous peoples, and violence against women, and to support the construction of a multicultural, multilingual, and multiethnic democracy, in the *Abuelas'* communities and more broadly in Guatemalan society.<sup>711</sup>

Following an innovative interpretation of what constitutes dignified reparations, based on Guatemala's international human rights obligations and domestic laws, the trial court in *Sepur Zarco* accepted the arguments of the claimants and granted extensive reparations that included monetary compensation, measures of restitution, satisfaction, rehabilitation and non-repetition. In particular, the transformative reparations encompassed sixteen measures which included, inter alia:

- the duty to investigate the location of the remains of the persons forcibly disappeared; the installation of a comprehensive health center in *Sepur Zarco*;
- the improvement of the primary schools in the communities to which the claimants belonged;
- the establishment of a bilingual high school to ensure the right to education of girls, teenagers and

women; the granting of scholarships for the three levels of education for the members of the *Sepur Zarco* community;

- the development of cultural projects for the women of *Sepur Zarco*; the incorporation of the *Sepur Zarco* case in books and materials used in the education of children;
- the translation of the judgment into the 24 Mayan languages; and
- the provision of housing and basic services in the communities of the victims.<sup>712</sup>

Additionally, the trial court ordered that the proceedings that had been initiated by the husbands of the victims seeking title to their land continue to be processed by the appropriate state agency.<sup>713</sup> This last measure remains one of the most important for the victims, since the forced disappearance of their husbands was triggered by their attempt to seek title to that land and because access to land is central to the survival of their community and their culture.<sup>714</sup>

With the exception of the monetary compensation, all reparations measures were ordered against state agencies, including the Ministry of Health, the Ministry of Education and Culture, and the Ministry of Defense.<sup>715</sup> Significantly, although, as mentioned earlier, Article 124 of the Criminal Procedure Code seems

to limit reparations to the perpetrators of a crime, the Court appeared to have accepted the claimants' argument that granting measures against state agencies was justified in this case based on the international human rights obligations binding upon Guatemala and Guatemalan domestic laws<sup>716</sup> The trial court also seemed to have agreed with the claimants and accepted the interpretation that under Article 124 the correct time to notify the State of the existence of the reparation claims is after the conviction of the accused.<sup>717</sup>

*Sepur Zarco* is not the first Guatemalan case in which measures of this nature were ordered,<sup>718</sup> but this is the first time that such measures are actually being implemented.<sup>719</sup> Indeed, after the judgment, the Public Prosecutor's Office set up a process to monitor and facilitate compliance with the measures of reparations, in which all the institutions affected are represented.<sup>720</sup> MTM leads the coordination of the inter-institutional dialogue ("working tables") among the different state agencies to ensure compliance with the reparation measures.<sup>721</sup> The women of *Sepur Zarco* participate in the process through the Jalok U Association, initially created for the victims to participate as civil claimants in the criminal proceedings.<sup>722</sup> More information about the current status of the implementation of the reparations in the case can be found in Section V.

# ENDNOTES:

## Section 4.5

- 659 Restitution requires restoring “the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred.” See, United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, ¶ 19. (Dec. 16, 2005) [hereinafter UN Basic Principles on Reparations], <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.
- 660 Compensation involves redressing “any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law.” See, UN Basic Principles on Reparations, ¶ 23. 661 Impunity Watch, Guidelines on Transformative Reparations for Survivors of Sexual Violence, at 11-12 (2019), [https://www.impunitywatch.nl/docs/ResearchReport\\_Guidelines-Transformative\\_Reparations\\_2019\\_eng.pdf](https://www.impunitywatch.nl/docs/ResearchReport_Guidelines-Transformative_Reparations_2019_eng.pdf). This approach was followed by the IACtHR in the Case of González et al. (“Cotton Field”), where the Court noted that given the structural discrimination in which the death of young women transpired, the reparations must pursue a transformational approach, “so that their effect is not only of restitution, but also of rectification. In this regard, reestablishment of the same structural context of violence and discrimination is not acceptable.” See Case of González et al. (“Cotton Field”) v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R., Judgment, (ser. C) No. 205, ¶ 450 (Nov. 16, 2009).
- 662 Rashida Manjoo, Introduction: reflections on the concept and implementation of transformative reparations, 21 THE INTERNATIONAL JOURNAL OF HUMAN RIGHTS 1193, at 1195 (2017).
- 663 Guidelines on Transformative Reparations for Survivors of Sexual Violence, at 12 (2019). For more on guarantees on non-repetition see UN Basic Principles on Reparations, ¶ 20.
- 664 Introduction: reflections on the concept and implementation of transformative reparations, at 1197-1199. See also Committee on the Elimination of Discrimination against Women (“CEDAW Committee”), General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, ¶ 47 (July 26, 2017), where the CEDAW Committee follows this three-prong approach in its recommendations on States’ obligation to make effective reparations to victims of gender-based violence.
- 665 Interview with UNAMG Executive Director Ada Valenzuela; Interview with expert Dosia Calderón.
- 666 Introduction: reflections on the concept and implementation of transformative reparations, at 1200.
- 667 Decree Number 7-2011, amending Decree Number 51-92, (May 24, 2011), [hereinafter Guatemala Criminal Procedure Code (2011)], [https://www.mnp-opt.gob.gt/img/kcfinder/files/o2\\_CodigoProcesalPenal.pdf](https://www.mnp-opt.gob.gt/img/kcfinder/files/o2_CodigoProcesalPenal.pdf). Dignified reparations “includes the restoration of the right affected by the crime, which begins from acknowledging the victim as a person with all of his or her circumstances as a subject of rights against which the criminal action was perpetrated, to the available alternatives for his or her social reinsertion, with the goal of enjoying or using as soon as possible the affected right, to the extent that such reparation is humanly possible and, given the case, the compensation for damages caused by the crime.” See Impunity Watch, Policy Brief: Transformative Reparations for survivors of sexual violence in post-conflicts societies 6-7 (Nov. 2018), [https://static.wixstatic.com/ugd/f3f989\\_b38a45ad679d4f4786d-d484e7b7a9679.pdf](https://static.wixstatic.com/ugd/f3f989_b38a45ad679d4f4786d-d484e7b7a9679.pdf).
- 668 Guatemala Criminal Procedure Code (2011), art. 124.
- 669 Id., art. 116.
- 670 Id., art. 124 (1).
- 671 Id., art. 124 (1) and (2).
- 672 Id., art. 124 (3).
- 673 Informe Peritaje de “Reparaciones con perspectiva de género,” Elaborado por la Abogada y Maestra en Derecho Internacional de los Derechos Humanos Dosia Calderón Maydon, at 6-7, 14-15, 18 [hereinafter Reparations Expert Report of Dosia Calderón Maydon]; see also UN Basic Principles on Reparations, ¶¶ 2(c), 3(d), 11.
- 674 Indeed, article 124 of Guatemala’s Criminal Procedure Code could be read to limit reparations orders to those against individual defendants, since it only permits an order of reparations after an individual accused has been convicted. Guatemala Criminal Procedure Code (2011), art. 124(1) (“A claim for reparation may be exercised in the same criminal proceeding once a sentence of conviction has been handed down. The judge or court that issues the conviction, when there is a specific victim, shall convene the procedural subjects and the victim or aggrieved party for a reparation hearing, which will take place on the third day.”) (authors’ translation); see also Interview with expert Dosia Calderón (discussing this “curious” provision).
- 675 Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01076-2011- 000215, Acta de Audiencia de Reparación Digna, at 4-6 (May 13, 2013); Raquel Aldana, Court Orders Reparations Following

- Ríos Montt Conviction on Genocide and Crimes Against Humanity Charges, International Justice Monitor (May 14, 2013), <https://www.ijmonitor.org/2013/05/court-orders-reparations-following-rios-montt-conviction-on-genocide-and-crimes-against-humanity-charges/>.
- 676 Although the case was retried, Ríos Montt died before the conclusion of the second trial and the other defendant was acquitted. As a result, no reparations were ordered in the second trial. Denis Martínez & Luisa Gómez, A PROMISE TO BE FULFILLED: REPARATIONS FOR VICTIMS OF THE ARMED CONFLICT IN GUATEMALA, at 33-34 (2019), <https://reparations.qub.ac.uk/assets/uploads/Guatemalan-Report-ENG-LR.pdf>. Since the *Sepur Zarco* judgment, Guatemalan courts have granted broad reparations against the State in other cases of sexual and gender violence, including the case of Emma Molina Theissen, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01077-1998-00002, Sentencia, at 1063-1065, (May 23, 2018), and the case of the Maya Achi Women, Tribunal Primero de Sentencia Penal, Narcotividad y Delitos contra el Ambiente, Sentencia C-15002-2014-00315, Sentencia, at 409-412 (Jan. 22, 2022).
- 677 See *Mujeres Transformando el Mundo*, Presentación audiencia de reparación digna (Mar. 2, 2016) at 8-9, 14-18 (on file with author).
- 678 Guatemala Constitution, art. 155 (“When a dignitary, official or worker of the State, in the exercise of his position, breaks the law to the detriment of individuals, the State or the state institution he serves, will be jointly and severally liable for the damages caused..”) (authors’ translation).
- 679 Guatemala, Código Civil, Decreto-Ley Número 106, art 1665 (as amended through 2010) (“The State and the municipalities are responsible for damages or losses caused by their officials or employees in the exercise of their duties. This responsibility is subsidiary and may only be effective when the directly responsible official or employee does not have assets, or those that he has are not sufficient to address the damage or loss caused.”) (author’s translation).
- 680 Guatemala Criminal Procedure Code (2011), art 135 (“Whoever brings the reparations claim may request the summons of the person who, by direct provision of the law, is responsible for the damage that the accused has caused through the crime committed, so that he may intervene in the procedure as a defendant.”) (authors’ translation).
- 681 See the judgment in the proceedings known as the Spanish Embassy case, where the trial court denied the request because the State had not been part of the proceedings. Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01071-1980-00547, Acta de Reparación Digna, at 7-8 (Jan. 22, 2015) (ordering monetary compensation against the accused, but denying the requested reparations against the State); Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01071-1980-00547, Sentencia, at 369-371, 381 (Jan. 19, 2015) (same). This interpretation was also followed in the case of Emma Molina Theissen, decided after the *Sepur Zarco* Case. See Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01077-1998-00002, Sentencia, at 1063-1065. See also Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez (Oct. 28, 2020), at 8-9.
- 682 Guatemala Criminal Procedure Code (2011), art 131 (“The civil action must be brought before the Public Ministry mandates the opening of the trial or the dismissal of the case. Once this opportunity has expired, the judge will reject it without anything further.”) (authors’ translation). This provision was subsequently repealed by Decree 7-2011 reforming the Criminal Procedure Code. See Decree Number 7-2011, reforming Decree Number 51-92, art. 15.
- 683 As stated above, this new provision was adopted as part of the same reform that repealed Article 131. See Decree Number 7-2011, reforming Decree Number 51-92, art. 7. See Separate Opinion Judge Irma Jeannette Valdes Rodas, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, Sentencia C-01071-1980-0054 (Jan. 19, 2015). See also Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez.
- 684 See Separate Opinion Judge Irma Jeannette Valdes Rodas, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01071-1980-0054. See also Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez.
- 685 See Guatemala Criminal Procedure Code (2011), art. 124(2).
- 686 For more information about the five forms of reparations, see UN Basic Principles on Reparations, ¶¶ 18-23; WAR CRIMES RESEARCH OFFICE, CASE-BASED REPARATIONS AT THE CENTRAL AFRICAN REPUBLIC’S SPECIAL CRIMINAL COURT, at 18-25 (2019). Notably, the IACtHR has a practice of structuring its reparations under article 63(1) of the ACHR using these five forms of reparations. See, inter alia, Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs, I/A Court H.R. Judgment, (ser C) No. 250 (Sep. 4, 2012), ¶¶ 254-311.
- 687 Reparations Expert Report of Dosa Calderón Maydon, at 4; see also, e.g., Rome Statute of the ICC, art. 75 (permitting reparations orders only against a convicted person).
- 688 Reparations Expert Report of Dosa Calderón Maydon, at 4.
- 689 *Id.*, at 4; see also *id.* at 6, 15 (concerning State responsibility for violations of international human rights norms and serious violations of international humanitarian law).
- 690 *Id.*, at 4; see also *supra* Section IV.D.2.b.
- 691 See *supra* Section II.B. on the procedural history of the case.
- 692 The reparations expert did not refer to the procedural issue

- concerning the time when the State should be notified of the reparation claims.
- 693 See *Sepur Zarco* Trial Judgment, at 418-19 (indicating that the expert report on reparations by Dosia Calderón Maydon was useful in explaining that material and moral harms that needed repair, as well as the psychosocial harms caused by the crimes); see also Reparations Expert Report of Dosia Calderón Maydon, at 41-66. In addition to expert testimony, fact witnesses testified that many victims had not previously received reparations, or adequate reparations, and that the Guatemalan government's process of registering and recording victims of the conflict in *Sepur Zarco* has resulted in the exclusion of many families from payment. *Sepur Zarco* Trial Audio Recording, File 34, at 33:35-35:40 (testimony of Mariano Mez Choc, explaining challenges that victims have had in accessing reparations through the National Compensation Program); see also *id.* at 1:15:08-1:16:44 (testimony of Mariano Mez Choc, listing requirements for families to receive reparations from the National Compensation Program); *Sepur Zarco* Trial Judgment, at 329. Families that were victims have also not been paid because the National Program on Reparations does not recognize the government of Guatemala's responsibility for some of the war crimes. Trial audio file 34 at 51:40-53:30 (testimony of Mariano Mez Choc).
- 694 See *supra* Section II.A; Reparations Expert Report of Dosia Calderón Maydon, at 41-66; Peritaje Antropológico de Género: Causa del Caso *Sepur Zarco*, municipio de El Estor, departamento de Izabal, elaborado por Rita Laura Segato, doctora en Antropología Social, at 18 [hereinafter Expert Report of Rita Laura Segato].
- 695 Reparations Expert Report of Dosia Calderón Maydon, at 41-66; Expert Report of Rita Laura Segato, at 9-10, 18, 20.
- 696 Trial audio file 32 at 0:56:38-0:58:00 (expert testimony of Rita Laura Segato); Peritaje Antropológico de Género: Causa del Caso *Sepur Zarco*, municipio de El Estor, departamento de Izabal, elaborado por Rita Laura Segato, doctora en Antropología Social, at 17 [hereinafter Expert Report of Rita Laura Segato].
- 697 Interview with expert Rita Laura Segato (Apr. 12, 2021); Trial audio file 32 at 0:59:27-1:04:13 (expert testimony of Rita Laura Segato); *Sepur Zarco* Trial Judgment, at 22.
- 698 Trial audio file 32 at 0:59:27-1:04:13 (expert testimony of Rita Laura Segato); Expert Report of Rita Laura Segato, at 18-19.
- 699 See, e.g., *Sepur Zarco* Trial Judgment, at 211, 477 (testimony of Rosa Tiul), 220 (testimony of Vicenta Col Pop), and 482 (testimony of Magdalena Pop).
- 700 See, e.g., *id.*, at 80 (authors' translation).
- 701 *Id.* at 24 (authors' translation).
- 702 *Id.* at 22 (expert testimony of Rita Laura Segato) (authors' translation).
- 703 Trial audio file 32 at 0:59:27-1:04:13, 1:05:22-1:06:03 (expert testimony of Rita Laura Segato); Expert Report of Rita Laura Segato, at 19-20.
- 704 Trial audio file 32 at 1:04:31-1:05:22 (expert testimony of Rita Laura Segato); Expert Report of Rita Laura Segato, at 20.
- 705 Trial audio file 32 at 1:04:31-1:05:22 (expert testimony of Rita Laura Segato); Expert Report of Rita Laura Segato, at 20.
- 706 Trial audio file 32 at 0:56:38-0:58:00, 1:14:32-1:15:18 (expert testimony of Rita Laura Segato); Expert Report of Rita Laura Segato, at 23.
- 707 Trial audio file 32 at 0:56:38-0:58:00 (expert testimony of Rita Laura Segato); Expert Report of Rita Laura Segato at 17.
- 708 See WCRO and the Academy of Human Rights and International Humanitarian Law, Amicus Curiae Brief on the Scope of the Right to Integral and Adequate Reparations in International Human Rights Law and its Application to the *Sepur Zarco* Case (March 1, 2016).
- 709 Reparations Expert Report of Dosia Calderón Maydon, at 9-10; Interview with expert Dosia Calderón.
- 710 Reparations Expert Report of Dosia Calderón Maydon, at 25.
- 711 *Id.*, at 41-66.
- 712 See *Sepur Zarco* Trial Judgment, at 508-511.
- 713 *Ibid.*
- 714 Interview with expert Dosia Calderón; Impunity Watch, Policy Brief: Transformative Reparations for survivors of sexual violence in post-conflicts societies, at 13-14.
- 715 The Court appeared to find that the State could not be held jointly liable for monetary damages because it was not a party in the proceedings, but still granted other reparations measures against the State. See Interview with presiding trial Judge Yassmin Barrios Aguilar. In contrast, the judgment in the recent Case of the Maya Achi Women found the State as a third party jointly liable for monetary damages, given that the State participated in the proceedings before the case was committed to trial. See Tribunal Primero de Sentencia Penal, Narcotividad y Delitos contra el Ambiente, Sentencia C-15002-2014-00315, at 414 (22 en. 2022). See also Interview with Haydee Valey, (Nov. 30, 2020).
- 716 *Mujeres Transformando el Mundo*, Presentación audiencia de reparación digna, at 8-18. See also *Sepur Zarco* Trial Judgment, at 505-511.
- 717 *Mujeres Transformando el Mundo*, Presentación audiencia de reparación digna, at 13. See also *Sepur Zarco* Trial Judgment, at 505-511.
- 718 The Ríos Montt case against the Mayan Ixil People included 11 reparations measures involving measures of satisfaction and guarantees of non-repetition. However, the judgment was annulled by the Constitutional Court and the trial was ordered to be repeated. Additionally, the judgement in the Case of Emma Molina Theissen included measures of satisfaction, rehabilitation and guarantees of non-repetition. The implementation of these measures are still pending because the judgment has been appealed. See D. Martinez and L. Gomez, A Promise to be Fulfilled: Reparations for Victims of the Armed Conflict in Guatemala, at 33-41 (Aug. 5, 2019), <https://reparations.qub.ac.uk/report-a-promise-to-be-fulfilled-reparations-for-victims->

of-the-armed-conflict-in-guatemala/. More recently, the judgment in the Case of the Maya Achi Women also included measures of satisfaction, rehabilitation and guarantees of non-repetition, but the measures have not yet been implemented. See, Tribunal Primero de Sentencia Penal, Narcotividad y Delitos contra el Ambiente, Sentencia C-15002-2014-00315, at 409-411 (Jan. 22, 2022).

- 719 Notably, the judgment in the *Sepur Zarco* case became res judicata in November 2018, when the Constitutional Court rejected the amparo remedies filed by those convicted for the crimes, thus allowing for the victims to advocate for the implementation of the reparations ordered in the case. *Sepur Zarco: la sentencia por esclavitud sexual queda firme y debe cumplirse*, PRENSA COMUNITARIA (29 nov. 2018), <https://www.prensacomunitaria.org/sepur-zarco-la-sentencia-por-esclavitud-sexual-queda-firme-y-debe-cumplirse/>.
- 720 *Sepur Zarco: In pursuit of truth, justice and now reparations*, UN WOMEN (Oct. 22, 2017), <https://www.unwomen.org/en/news/stories/2017/10/feature-guatemala-sepur-zarco-in-pursuit-of-truth-justice-and-now-reparations>.
- 721 Por el cumplimiento de las medidas de reparación Caso *Sepur Zarco*, MUJERES TRANSFORMANDO EL MUNDO (Sept. 6, 2017).
- 722 *Sepur Zarco* In pursuit of truth, justice and now reparations.

The image features a solid blue background in the upper half and a solid yellow background in the lower half. A large, stylized, light blue 'S' shape is centered vertically, spanning both color fields. The text 'POST-SEPUR ZARCO' is written in white, uppercase, sans-serif font, underlined, and positioned in the upper blue section. Below it, the word 'LANDSCAPE' is also written in white, uppercase, sans-serif font, underlined, and positioned in the upper blue section.

POST-SEPUR ZARCO  
LANDSCAPE

## 5.1

# IMPACT OF THE CASE: SURFACING AND CHANGING THE NARRATIVE ABOUT SGBV IN CONFLICT

As suggested earlier, the *Sepur Zarco* case changed the narrative about SGBV committed during Guatemala's internal armed conflict. Prior to the *Sepur Zarco* judgment, "nobody [spoke] about sexual violence. Survivors [were] stigmatized and [could not] easily find treatment in Guatemala."<sup>723</sup> Indeed, before the case, conflict-based sexual violence had been recognized, if at all, only as part of a series of other crimes committed during the conflict.<sup>724</sup> In *Sepur Zarco*, SGBV was the primary and central focus of the case; it was recognized as a distinct crime, equivalent to other crimes committed during the conflict. As Jo-Marie Burt, an observer of the trial, has noted, the judgment made visible that "gender-based violence [was embedded] into a broader strategy of military persecution against indigenous populations."<sup>725</sup> In laying bare both the extensive use and the devastating harm caused by systematic acts of sexual and domestic slavery, the judgment challenged both the invisibility and the societal normalization of sexual and gender-based violence during the conflict. Moreover, the recognition of the extent and impact of SGBV during the conflict had a tremendous impact, among other things, on the *Abuelas*, their community, other survivors of sexual violence and their cases, as the following sections describe in detail.

### 5.1.1

#### Impact on the Survivors

The public trial and successful judgment in the *Sepur Zarco* case had an empowering and liberating effect on the women themselves, who came to be seen as heroines in Guatemala and abroad. After years of being stigmatized by their communities and blamed for the abuses they had endured,<sup>726</sup> the women drew strength from the act of collectively telling their truth and demanding justice and redress.<sup>727</sup> As one *abuela* said, "After giving our testimony, it's as if we have wings. We are no longer afraid."<sup>728</sup> The women were additionally strengthened by the court's respect of their voices during the proceedings: "We felt happy to see that the

court allowed us in, listened to us, especially us women, because we never thought that they would grant us that right or give us that space."<sup>729</sup> The women also viewed the process of seeking justice and sharing their stories as an opportunity to redirect the shame to which they had been subjected back on to the perpetrators<sup>730</sup> and to "reclaim[] their rights as citizens" and full members of their community and of society.<sup>731</sup> Ultimately, the women experienced their participation in the case and trial as a positive and restorative process, one that helped to repair some of the damage that had been

done not only by the crimes themselves, but also by the decades of stigma they had endured.<sup>732</sup>

The historic judgment itself also was deeply restorative for the *Abuelas*. The Court's judgment elevated the women's voices and testimony, affirming that they were worthy of belief and respect: "The judges of this tribunal firmly believe the testimonies of the women who were sexually violated in *Sepur Zarco*," presiding trial Judge Yassmin Barrios stated as she read the verdict aloud.<sup>733</sup>

The judgment underscored the women's innocence and squarely placed the blame for the violence committed against them on the two accused. After decades of social exclusion and stigmatization, the women experienced this official declaration of their innocence as a moment of liberation, of equal importance to them as the reparations that were subsequently ordered.<sup>734</sup> When the reading of the verdict concluded, the *Abuelas* raised their arms "to signal their view that that justice had, at last, been served."<sup>735</sup> In a workshop held afterward, the women explained the profound impact of the case in their lives:

*We no longer feel shame. We have the right to participate and tell the world about what happened to us and to ask for justice.*

*Before I was afraid and ashamed to say what happened to me. But it's the men who did this to us who should feel the shame. Now I feel like a*

*leader because I'm no longer afraid and I have the strength to continue fighting.*<sup>736</sup>

This transformation is visible to those who know them and worked with them in the case. As Prosecutor Pineda described: "The State restored something of what it took away. It's like restoring a part of the injury that was done to them."<sup>737</sup>

Since the verdict was issued, the *Abuelas* have become leaders within the *Sepur Zarco* community, a reflection not only of the community's embrace of the verdict but also of their gratitude for the women's request for reparations benefitting the community as a whole.<sup>738</sup> The women now form part of committees established to help with the implementation of the reparations measures, and speak without reservation in committee meetings about the problems they see.<sup>739</sup> Men in the community who used to avoid and speak ill of the *Abuelas* also attend those meetings, where they now address the same women with respect.<sup>740</sup> Indeed, the *Abuelas* have become "a community, national and international reference on gender justice. In order to respect and recognize their leadership, they are currently known as 'Naxjolomi,' which means: the one that goes in front, the leader."<sup>741</sup> These changes in the women's social position within the community have led to important transformations in the community itself, as discussed in the next section.

## 5.1.2

### Impact on the Community of *Sepur Zarco*

The *Sepur Zarco* case had a similarly transformative effect on the larger community, including on many others who were also survivors of serious human rights violations during Guatemala's armed conflict. Indeed, although the case focused on the crimes committed against the *Abuelas* and their families, it also provided other community members an opportunity to tell their own stories of the abuses they suffered – testimony that helped to establish the contextual elements of the international crimes with which the defendants were charged.<sup>742</sup> Many of those who testified described a deep need, not unlike that of the

*Abuelas*, to unburden themselves of the pain that they continued to carry from the war:

*What I experienced during the internal armed conflict was that they killed my wife, my sons, my daughters. When I left home they were there, but when I returned I could no longer find her. That is a very strong pain for me. I want to share with people what I experienced, even if it is very painful, but I tell it.*<sup>743</sup>

Other community members stated that they finally achieved a sense of peace after giving their testimony. For instance, Doña Julia Coc de Choc, who testified about the murder of her daughter and two

granddaughters by soldiers,<sup>744</sup> “felt a great tranquility in her heart” after she spoke about what had happened.<sup>745</sup>

Particularly notable has been the impact on other women in the community who were also survivors of sexual violence during the armed conflict. For some who testified at trial, the opportunity to break the silence about the abuses they themselves suffered was “a great relief” that finally enabled them to achieve a sense of calm.<sup>746</sup> Even those who did not personally speak at trial have expressed gratitude that the *Abuelas* led the way in breaking the silence about what had happened, remarking upon the difference that the *Abuelas* had made in their own lives:

*Thank you to the Abuelas because they were able to break the silence that bound all this... I was also*

*one of them; I was also raped in the military detachment. For this reason, keeping silent causes us many illnesses inside. But when we say everything we have lived, everything we have felt, well I think it is like, it is like flying like a dove. It is to feel free.*<sup>747</sup>

Finally, many community members described the court-ordered reparations as “very important,” despite their frustration with the slow pace of implementation.<sup>748</sup> Many also spoke about how important the *Abuelas*’ insistence on land reform has been.<sup>749</sup> Although the government has yet to follow through on the order to address the land claims initiated by the *Abuelas*’ husbands, their demand helped to clarify the land’s current ownership and put an end to attempts by those who claimed to own the land to trick the community into “paying” them for the land back.<sup>750</sup>

### 5.1.3

## Impact on Other Cases of Sexual Violence

The impact of *Sepur Zarco* reaches far beyond the women and community involved in the case. The case “open[ed] spaces to show that justice can be done, to achieve access to justice for women.”<sup>751</sup> Indeed, the women of *Sepur Zarco* have motivated other survivors of sexual and other forms of gender-based violence to seek justice for the harms they suffered. Additionally, advocates have adopted the strategies of providing

psychosocial support and creating solidarity networks used in *Sepur Zarco* to support survivors in other cases. Furthermore, the case has shaped litigation strategies as well as the approach courts have taken in similar cases.<sup>752</sup> Among other things, by holding that sexual violence is a crime against humanity, it has encouraged prosecutors and judicial officers to take survivors’ claims seriously.

#### 5.1.3.1

### Inspiring Other Survivors of Sexual Violence to Seek Justice

The *Abuelas* inspired other survivors of sexual violence to come forward and pursue justice for the crimes committed against them.<sup>753</sup> By breaking the silence about their treatment during the armed conflict and overcoming the societal pressures that kept them silent, the *Abuelas* became an example for other women.<sup>754</sup> Indeed, the *Sepur Zarco* case demonstrated to other survivors that sexual violence is not acceptable and should be punished,<sup>755</sup> encouraging them to come forward and/or consider bringing their own case.<sup>756</sup> Many survivors cited the *Abuelas* and the *Sepur Zarco*

case as pivotal in their decisions to speak up and seek justice for the harms they suffered.

For example, after the *Abuelas* gave their pre-trial testimony in 2012, they attended the Ixil genocide trial in 2013 in support of Ixil women who had also been subjected to sexual violence.<sup>757</sup> The Ixil case was brought by the Maya Ixil population, who accused José Mauricio Rodríguez Sánchez, the former chief of military intelligence, and Ríos Montt, former President of Guatemala, of genocide and crimes against humanity during the internal armed conflict.<sup>758</sup> During



*The Abuelas speaking with Emma Guadalupe Molina-Theissen during her trial: Una luz en el camino: La sentencia histórica para la familia Molina Theissen, PRENSA COMUNITARIA (May 21, 2020), <https://www.prensacomunitaria.org/2020/05/una-luz-en-el-camino-la-sentencia-historica-para-la-familia-molina-theissen/>.*

the targeted destruction of about fifty Ixil villages, the military forcibly displaced about 29,000 people and used sexual violence against the women.<sup>759</sup> The Ixil community brought charges for the killings, forced displacement, and sexual violence.<sup>760</sup> During the case, the *Abuelas* met with the Ixil women and shared their experience of what it was like to give “testimony before a judge.”<sup>761</sup> While the Ixil women had already decided to participate in the case, the ability to discuss this with other indigenous women who had gone through the experience helped dispel uncertainties the Ixil women had about the process of testifying at trial and motivated them to continue to engage in that process.<sup>762</sup>

In a similar example, after witnessing the courage and strength of the *Abuelas*, thirty-six indigenous Maya Achi women decided to persevere in their fight for justice for

the sexual violence they had endured during the internal armed conflict. The Maya Achi survivors were raped during the Guatemalan internal armed conflict while detained at a military base in the Rabinal region of Baja Verapaz, which was targeted by state forces seeking to eradicate leftist revolutionary groups.<sup>763</sup> As a result of the violence directed at the region, twenty percent of the Maya Achi population was killed during dozens of massacres.<sup>764</sup> Amid this violence, civil defense patrols, acting under orders from the Guatemalan military, committed sexual violence.<sup>765</sup> In light of the challenges of prosecuting these kinds of cases within Guatemala in the early 2000s and the belief that victims of such crimes could not obtain justice at the domestic level, their legal representatives filed a complaint on their behalf before the IACHR.<sup>766</sup> While they eventually also filed a complaint before a domestic prosecutor’s office,

the “assistant prosecutors ...questioned the credibility of the survivors, asking why they only dared to talk about what had happened after so much time had lapsed.”<sup>767</sup> The Maya Achi women were hesitant: they had been willing to provide statements to the prosecutors but were fearful about testifying in court.<sup>768</sup> However, their fear was lessened after several of the Maya Achi women attended hearings in the *Sepur Zarco* case.<sup>769</sup> As one of the attorneys representing the Maya Achi women noted, the *Sepur Zarco* case motivated the Achi women to persist in their fight for justice.<sup>770</sup> Indeed, “when they saw the survivors of the *Sepur Zarco* case before the Criminal Court presenting their case, going to the hearings, this had an important and significant effect for the women, many said: ‘When are we going to have a similar case? We want our case to go to trial.’”<sup>771</sup>

In yet another example, the *Abuelas* inspired Emma Guadalupe Molina Theissen to seek justice for the sexual violence crimes committed against her. Emma was stopped at a checkpoint and subsequently detained, tortured and raped at a military base during the Guatemalan conflict.<sup>772</sup> She managed to escape, but when the military later arrived at her home, they took her brother, Marco Antonio, and forcibly disappeared him.<sup>773</sup> His body was never recovered.<sup>774</sup> Over the next thirty years, Emma and her family sought justice for her brother’s disappearance, but not for the sexual violence committed against her while she was detained by the military.<sup>775</sup> The Molina Theissen family initially brought their case before the Inter-American system, seeking justice from Guatemala for the disappearance of Emma’s brother, Marco Antonio.<sup>776</sup> After finding the Guatemalan government responsible for the forced disappearance of Marco Antonio, the IACTHR ordered the state of Guatemala to investigate, prosecute, and punish the perpetrators.<sup>777</sup> While a case was initiated domestically, originally it did not include the crimes committed against Emma.<sup>778</sup> In addition to a deep distrust of the justice system,<sup>779</sup> Emma struggled with feelings of shame about what had happened to her,<sup>780</sup> and her family was concerned about the potential for revictimization that her testifying at trial might occasion.<sup>781</sup> However, the *Sepur Zarco* case showed Emma that she could “blame those who are really to blame, that is the perpetrators, and no longer be ashamed of having been a victim.”<sup>782</sup> In doing so, the *Sepur Zarco*

case transformed Emma’s view of herself from victim to survivor and gave her the strength and courage to seek justice for the sexual violence committed against her.<sup>783</sup> Indeed, after meeting with the *Abuelas* and attending the *Sepur Zarco* hearings, Emma began not only “to consider herself a victim, but also to consider herself empowered to demand justice.”<sup>784</sup> After realizing that bringing the case had been empowering for the women of *Sepur Zarco*,<sup>785</sup> she decided to make the sexual violence she had suffered a central part of her case.<sup>786</sup> As she explained, “[l]earning about the *Sepur Zarco* case changed my heart, because they suffered the same thing I did . . . and they had the courage and strength to testify in court. . . . I thought, if they could do it, so could I, and that changed me completely.”<sup>787</sup> Moreover, while she had considered relying on her prerecorded testimony during the trial,<sup>788</sup> as the *Abuelas* had in their case, the *Abuelas* inspired Emma to testify openly in court.<sup>789</sup> Ultimately, Emma chose to give her testimony and face the accused without protective measures.<sup>790</sup>

The example set by the *Abuelas* influenced survivors not only of sexual violence committed during the armed conflict but also of sexual violence committed in the context of more recent events. For instance, after seeing the *Abuelas* receive a favorable judgment in the *Sepur Zarco* case, eleven Q’eqchí women from the community of Lote Ocho who endured sexual violence in 2007 in the context of a land dispute between indigenous communities and a Canadian mining company in the department of Izabal<sup>791</sup> decided to file a criminal complaint in Guatemala. The Q’eqchí people claim the disputed territory as part of their land.<sup>792</sup> The women have alleged that they were raped and sexually assaulted by private security guards hired by the mining company during forced evictions from the land.<sup>793</sup> For many years, the women kept the sexual violence secret from their husbands because they feared they would be blamed for the violence.<sup>794</sup> After they finally broke their silence, the Lote Ocho women brought a civil case in Canadian courts in 2012 to hold the mining company liable, believing their case would not be taken seriously in Guatemalan courts.<sup>795</sup> However, the success of the *Abuelas* in the *Sepur Zarco* case convinced the women of Lote Ocho that the Guatemalan judiciary was capable of handling sexual violence cases, giving the women of Lote Ocho the “strength to say ‘we are going to submit

the lawsuit here in Guatemala.”<sup>796</sup> Significantly, the women of Lote Ocho have had several exchanges with the *Abuelas*, where the *Abuelas* have shared both “good experiences” and “fears that they...suffered on their way to the path of justice,” giving the women of Lote Ocho a feeling of solidarity and encouraging them to pursue their case.<sup>797</sup> After these exchanges, the Lote Ocho brought a second, criminal case in Guatemala,<sup>798</sup> and the *Abuelas* have continued to support the women of Lote Ocho by accompanying them during their trial.<sup>799</sup>

Significantly, the *Abuelas* also have had an impact on younger survivors of sexual violence. Along with survivors from the Maya Achi and Lote Ocho cases, for instance, the *Abuelas* have met with young Guatemalan women who have experienced sexual violence in the context of their everyday lives.<sup>800</sup> These intergenerational meetings have been important for the younger generation, as they have allowed the young women not only to share their experiences with those who have shown that it is possible to hold perpetrators of sexual violence accountable, but also to understand and make connections between past and present manifestations of SGBV.<sup>801</sup> Through these exchanges the *Abuelas* have encouraged the young



*Women of Lote Ocho: Luz Méndez Gutiérrez & Amanda Carrera Guerra, Clamor for Justice: Sexual Violence, Armed Conflict, and Violent Land Dispossession, ECAP (2015), at 98.*

women to seek accountability for the crimes committed against them. As one them poignantly noted: “I am passing the baton to you, I am not leaving you alone, I am just telling you that you have to assume the leadership.”<sup>802</sup>

### 5.1.3.2

#### Supporting Survivors through Psychosocial Support and Solidarity Networks

Civil society organizations, including those that were involved in the *Sepur Zarco* case, have applied several of the strategies used in *Sepur Zarco* to support survivors in other cases of sexual violence. Specifically,

civil society organizations have provided psychosocial support for survivors and strengthened networks of solidarity to assist survivors in bringing their cases and prepare them for the rigors of trial.

### 5.1.3.2.1

#### Providing Psychosocial Support

As in the *Sepur Zarco* case, civil society organizations have provided psychosocial support to other SGBV survivors, empowering them to speak about their experiences and fight for justice.<sup>803</sup> For instance, ECAP, which helped prepare the women of *Sepur Zarco* to pursue justice by providing a space for them to process their trauma long before the case was filed,<sup>804</sup> applied this same approach in support of the women of Lote Ocho.<sup>805</sup> Like the *Abuelas*, the women of Lote Ocho received no support after having been subjected to sexual violence.<sup>806</sup> Yet after significant psychosocial

support and education in human rights, the women felt strengthened to seek justice.<sup>807</sup>

In addition to supporting survivors’ healing process in advance of litigation, civil society organizations have provided survivors with psychosocial support during their legal proceedings. For instance, ECAP provided the Achi women with accompaniment throughout their legal process.<sup>808</sup>

Similarly, in the Molina Theissen case, ECAP provided Emma and her family psycho- social support,<sup>809</sup>



*Achí Women Focus Group held in Rabinal, Baja Verapaz, Guatemala: Andrea Bolaños-Vargas, in Proyecto PBF-IRF 145 1325: Empoderando a mujeres sobrevivientes de violencia sexual y de género relacionada con el conflicto y postconflicto en Guatemala: Evaluación Independiente Final (July 7, 2019), at 1.*



*Women from other regions supporting the women of Sepur Zarco during their trial: Jo-Marie Burt, Gender Justice in Post-Conflict Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery Trial 4 Critical Studies 63, 68 (2019).*

empowering them to participate in the case and ensure their voices were heard by the court.<sup>810</sup> In sum, the importance of providing survivors with psychosocial support both before and during legal proceedings was

### 5.1.3.2.2 Creating Networks of Solidarity and Support

Another practice that was critical to the success of the *Sepur Zarco* case and replicated in subsequent cases was the creation of survivor support networks. Notably, survivors have themselves created networks of solidarity in support of one another. For instance, like the women who participated in the *Sepur Zarco* trial, who formed strong bonds with each other long before the case began,<sup>812</sup> the women of Lote Ocho formed a women’s group, through which they developed trust to speak about the sexual violence that occurred when they were evicted from their land.<sup>813</sup> The women felt comfortable sharing their stories in this group, which eventually helped them prepare for trial.<sup>814</sup> In addition, as in *Sepur*

reinforced by the *Sepur Zarco* case and similar approaches have been adopted in support of survivors of SGBV in other cases.<sup>811</sup>

*Zarco*, organizations like ECAP have brought together survivors and other women to demonstrate and solidify communal support for survivors in these cases.<sup>815</sup>

Interestingly, these networks of solidarity have extended beyond Guatemala. For example, the women of *Sepur Zarco* met with survivors of the armed conflict in Colombia to discuss the challenges of implementing reparations.<sup>816</sup> During the armed conflict in Colombia, military groups used sexual and physical violence to target women as a strategy of war.<sup>817</sup> This meeting with the women of *Sepur Zarco* helped the Colombian women realize that they were not alone, engendering in them a “sense of collectivity” and solidarity.<sup>818</sup>

### 5.1.3.3

## Shaping Litigation Strategies in Subsequent SGBV Cases

The *Sepur Zarco* case has also influenced the strategies utilized by advocates in subsequent cases of conflict-related SGBV.<sup>819</sup> As a former MTM attorney has noted, *Sepur Zarco* was a “watershed” case, which “opened up space” for “more cases [to] be prosecuted.”<sup>820</sup> Indeed, “standards were implemented” during the litigation of the case “that today [can be used] as jurisprudence and

cited in other cases.”<sup>821</sup> This section will discuss these strategies, paying particular attention to the impact of *Sepur Zarco* on (1) ensuring adequate protective measures for survivors and listening to their voices, (2) framing sexual violence as a military strategy and a crime under international law, (3) using expert testimony, and (4) requesting transformative reparations.

### 5.1.3.3.1

## Centering the Case on Survivors: Ensuring Adequate Protective Measures and Listening to their Voices

Subsequent cases of sexual violence have modeled protective measures on those used in *Sepur Zarco*, in particular those used to prevent the revictimization of survivors. For example, prerecorded testimony of survivors – which was a key protective measure used in the *Sepur Zarco* case – has been used in several subsequent cases to avoid the unnecessary re-traumatization that can occur from testifying multiple times about traumatic events. In the Maya Achi case, for instance, the testimony of the Achi women was prerecorded during the preliminary investigation phase to mitigate re-traumatization and to preserve testimony that might not have been available at trial because of the women’s ages and health conditions.<sup>822</sup>

In other cases, civil society organizations have applied the lessons of *Sepur Zarco* regarding the importance of centering the case on survivors, elevating their

voices and giving them agency over their cases.<sup>823</sup> For example, in *Lote Ocho*, MTM considered survivor testimony “as in the *Sepur Zarco* case . . . the central axis of [the] case”<sup>824</sup> and worked to ensure that survivors were prepared to participate and give their testimony in the case.<sup>825</sup> Significantly, advocates and litigants have taken these lessons to heart in other cases in the region. For instance, advocates in the El Mozote case, arising from one of the worst massacres committed during the civil war in El Salvador, have identified several strategies from the *Sepur Zarco* case that they have implemented in their own work, including actively listening to and centering the case on the victims.<sup>826</sup> Doing so has helped them surface sexual violence committed in the context of that massacre and succeed in having “18 high-ranking former military officers [charged] for the crime of rape,” among other crimes.<sup>827</sup>

### 5.1.3.3.2

## Framing Sexual Violence as a Military Strategy and Characterizing it as a Crime Under International Law

### Framing Sexual Violence as a Military Strategy

The *Sepur Zarco* case also “laid the groundwork for future prosecutions by providing a broader understanding of the conflict that includes the experiences of women.”<sup>828</sup> In fact, advocates in other Guatemalan cases involving sexual violence during the armed conflicts have used the *Sepur Zarco* judgment in support of their argument that the government used sexual violence as part of its counter-insurgency military plan.<sup>829</sup> For instance, the

attorneys in the Molina Theissen case relied on *Sepur Zarco* to argue that the sexual violence committed against Emma was part of a pattern of violence used across Guatemala by the military to suppress those deemed as opponents by the state.<sup>830</sup> Similarly, Lucia Xiloj, one of the victims’ legal representatives in the Maya Achi case stressed that *Sepur Zarco* was an “extremely important precedent [for us]...because it showed sexualized violence was a part of the State’s counter-insurgent strategy.”<sup>831</sup> In addition to using *Sepur Zarco* to show the systematic use of sexual

violence by the military, the Maya Achi attorneys also relied on the case to illustrate how the military systematically conducted forced disappearances of the husbands of the targeted women.<sup>832</sup>

*Sepur Zarco's* findings regarding the use of sexual violence as a military strategy has also been used in cases outside of Guatemala. In the Manta y Vilca case brought by women who were raped at a military base during the internal armed conflict in Peru, for instance, parallels have been drawn to *Sepur Zarco* to demonstrate that sexual violence was part of the Peruvian government's strategy and to attribute responsibility to the military officers.<sup>833</sup> As in *Sepur Zarco*, both the prosecutor and the victims' representatives in the case argued that the sexual violence was generalized and systemically carried out by the Peruvian government.<sup>834</sup>

### **Characterizing Sexual Violence as a Crime Under International Law**

In recognizing the systemic nature of sexual violence during armed conflict, the *Sepur Zarco* case had "important implications for human rights litigation worldwide, demonstrating that such cases focusing primarily on sexual violence against women in the context of armed conflict [could] be brought and won under international humanitarian law."<sup>835</sup> As a former MTM attorney noted, *Sepur Zarco's* legal creativity in using international law "is the value of the case."<sup>836</sup>

Interestingly, while the *Sepur Zarco* judgment refers to sources of international humanitarian law,<sup>837</sup> it does not elaborate at length on the specific legal elements of sexual violence as a war crime or crime against humanity. In part, this was a strategic choice on the part of the judges

#### **5.1.3.3**

### **Use of Expert Reports and Testimony**

The *Sepur Zarco* case marked a shift in how SGBV crimes – particularly those committed years earlier – were established. As former MTM attorney noted, the case "did not adhere to established medical standards for verifying sexual violence."<sup>844</sup> Rather than the forensic medical evidence traditionally used in sexual assault cases, *Sepur Zarco* relied on other evidence, such as survivor and witness testimony as well as expert

to make the judgment accessible to a wide audience. As presiding trial judge Yassmin Barrios explained, "When we resolve a case, we are also making known what we think and we tell the entire community, not only the lawyers and the victims, but we send a message to the entire society."<sup>838</sup> At the same time, the absence of a detailed legal analysis of the elements of the crimes is a function of how cases are heard and decided in the Guatemalan system. As the gender and international law expert in the case Paloma Soria Montañez noted, the trial judges "have to write the judgment as they listen" to the evidence.<sup>839</sup> Moreover, the incorporation of international law into domestic cases is relatively new and judges are not entirely familiar with an element by element analysis of international crimes.<sup>840</sup>

Nevertheless, the judgment shows a sophisticated understanding of the context in which the sexual violence occurred and the harms that ensued from it. Further, it discusses and credits the expert testimony of gender and international law expert Paloma Soria Montañez, who situated and analyzed the violence under both international humanitarian law and international criminal law.<sup>841</sup> Moreover, advocates in subsequent domestic cases have relied on the *Sepur Zarco* judgment to argue that sexual violence constitutes a crime against humanity under international law. For instance, the *Sepur Zarco* holding that sexual slavery is a crime against humanity "is an important precedent" that Maya Achi attorneys have used in their arguments at different stages of the case.<sup>842</sup> Similarly, the attorneys in the Manta y Vilca case have referenced *Sepur Zarco* in arguing that the sexual violence committed during the armed conflict in Peru constitutes a crime against humanity.<sup>843</sup>

testimony. As discussed earlier, the expert testimony in the case was critical to its success.<sup>845</sup> The extensive and successful use of expert reports and testimony in *Sepur Zarco* prompted other advocates to rely on experts to similarly corroborate victims' testimony and help build their cases. For instance, even while the *Sepur Zarco* case was ongoing, attorneys in the Maya Achi attorneys consulted with the *Sepur Zarco* attorneys to discuss

what experts might be helpful in the Maya Achi case.<sup>846</sup> According to one of the Maya Achi attorneys:

*I asked them what they were doing, what expert reports they were going to present, how they were going to raise the case . . . because when we started working on the Achi case [we] had only theorized about these processes . . . there were proposals of the type of expert reports that had to be presented, but there was no case with such an advanced process, to know if in practice it worked or not.<sup>847</sup>*

Advocates in other cases have deployed a similar strategy. For instance, as in *Sepur Zarco*, attorneys in the Molina Thiessen case used experts to demonstrate that the tactics used against the Molina-Theissen family, such as torture, sexual violence, and the forced disappearance

of Emma's brother Marco Antonio, were systematically used by the military as "weapons of war" against those viewed as insurgents<sup>848</sup> Other experts, like military sociologist Hector Roberto Rosada Granados,<sup>849</sup> who had also testified in the *Sepur Zarco* case, were called to discuss military doctrine and practices, including the doctrine of command responsibility, helping to establish the link between the defendants and the crimes with which they were charged.<sup>850</sup> Further, similar to the psychosocial experts who testified in *Sepur Zarco*,<sup>851</sup> a psychologist was called to testify in the Molina Thiessen case about the severe psychological harm that the crimes, including the disappearance of Emma's brother and the failure of the state to tell the family the truth concerning his whereabouts, had on the family.<sup>852</sup>

#### 5.1.3.3.4

#### Demand for Reparations

The reparations sought and granted in the *Sepur Zarco* case have served as a model to other litigants, inspiring them with examples of specific reparations to request or upon which to build, as well as providing a precedent for demanding comprehensive and transformative reparations. For instance, attorneys for the Molina Thiessen family drew inspiration from the reparations ordered in *Sepur Zarco* to request reparations for Emma and her family, including reparations designed to acknowledge the harm and restore dignity to the family and to ensure that the crimes committed during the internal conflict would not be forgotten or repeated.<sup>853</sup>

In addition to providing advocates with a framework to request specific types of reparations, advocates in cases of sexual violence have specifically looked to the transformative reparations granted in *Sepur Zarco* to demand similar reparations in other cases. Indeed, due to the success of the transformative reparations in *Sepur Zarco*, MTM attorneys have continued to request transformative reparations in subsequent cases of SGBV.<sup>854</sup> Other attorneys have similarly requested

transformative reparations to address and dismantle structures of inequality. As one of the attorneys in the Lote Ocho case stated when reflecting on the importance of *Sepur Zarco*'s transformative reparations:

*[I] think that cases... such as Sepur Zarco... encourage us to want to take those steps of justice and to be able to help establish the structural pillars, so that this reality is transformed and that is why we talk about a transformative reparation and not a dignified or economic reparation, but a transformative reparation so that pillars are effectively established that will allow that impunity and corruption to change and that also will allow those prejudices and stereotypes that surround the justice system [and emanate] from the patriarchal point of view to change [into one] that can be sensitive to gender...<sup>855</sup>*

Similarly, one of the attorneys in the Maya Achi case stated that she considered the transformative reparations used in *Sepur Zarco* as an "important precedent" and as a starting point for the reparations they intended to request in that case.<sup>856</sup>

### 5.1.3.4

#### *Sepur Zarco's Impact on Judges and Judgments*

In addition to its influence on litigation strategies, the *Sepur Zarco* case had an impact both on individual judges as well as the approach courts have taken in similar cases. For instance, pre-trial judge in the *Sepur Zarco* case, Miguel Ángel Gálvez, mentioned how his understanding of the conflict was significantly altered after he heard the evidence in the case, in particular the testimonies of the *Abuelas*.<sup>857</sup> Reflecting on their testimony, judge Gálvez remarked:

*this case for me broke ... the traditional [understanding] of the armed conflict. Even when studying at the university, the understanding that one has of the conflict is a little different. When I [started with this case] and studying this issue of war crimes, especially the women's issue, the gender issue, I was very struck by the systematic abuses that were committed against women.*<sup>858</sup>

The testimonies about these abuses – including the use of forced contraception, a practice he thought dated back to World War II – fundamentally changed and expanded his understanding of the armed conflict.<sup>859</sup> As Judge Galvez, who later sat as first instance judge in the Maya Achi case, concluded,<sup>860</sup> the *Sepur Zarco* case “sort of paved the way, opened a path” for these “women[’s] issue[s] to be seen.”<sup>861</sup>

Moreover, judgments in subsequent cases – both in Guatemala and beyond – reflect the influence of the *Sepur Zarco* case. For instance, the court in the Molina Theissen case specifically cited *Sepur Zarco* among the legal authorities it relied on to convict the perpetrators of crimes against humanity, including in the forms of illegal detention, torture, and sexual violence.<sup>862</sup> As in *Sepur Zarco*, the judgment “acknowledges that the practice of sexual violence, torture, and enforced disappearance were part of the military’s counter-insurgency strategy during the Guatemalan internal conflict.”<sup>863</sup> In another example, in January of 2022, forty years after the events took place, a trial court convicted five former paramilitary patrolmen of crimes against the duties of humanity for the rape of five Maya Achi women.<sup>864</sup> As recognized in media reports about the verdict, the *Sepur Zarco* case “helped Achi survivors advance their own” cause for justice.<sup>865</sup>

Further, *Sepur Zarco's* approach to reparations has been followed by Guatemalan courts in other cases. For example, the Molina Theissen court ordered the University of San Carlos to make a documentary about the case,<sup>866</sup> a measure similar to the education measures ordered in *Sepur Zarco* to educate children about the circumstances surrounding the case.<sup>867</sup> The court additionally ordered a search for Marco Antonio,<sup>868</sup> mirroring the order to investigate the remains of persons the government forcibly disappeared in *Sepur Zarco*.<sup>869</sup> The Molina Theissen court also ordered the translation of the judgment into two predominant Maya languages,<sup>870</sup> similar to the *Sepur Zarco* judgment, which required translation of the judgment into twenty-four Mayan languages.<sup>871</sup> More recently, in the Maya Achi case, the court ordered a number of reparations similar to the ones ordered in *Sepur Zarco*, including access to new health centers for the community, the production of a documentary about the case, and education grants for the survivors’ children and grandchildren.<sup>872</sup>

Significantly, *Sepur Zarco* has also been cited in cases and decisions beyond Guatemala. As MTM attorney Esteban Celada Flores noted:

*This case sets a precedent and no one can deny that. I just went to Bogotá and one of the magistrates [of] the specialized justice [mechanism for Peace] told me about how she used the sentence of the Sepur Zarco case for an issue of armed conflict in Colombia... [S]o we see that this case is contributing to the judicial decisions of other similar cases, they see the Sepur Zarco case as a precedent and are using it as a legal instrument for other judicial resolutions.*<sup>873</sup>

In yet another example, the International Criminal Court (ICC) cited the *Sepur Zarco* case in its discussion of harm stemming from rape and sexual slavery in the case against Germain Katanga, who stood trial for his role as the Brigadier General of the Armed Forces of the Democratic Republic of the Congo (DRC) in an attack on a village in the DRC, resulting in, among other crimes, the rape and sexual slavery of women in the village.<sup>874</sup> In its Order on Reparations in the case, the Court referenced *Sepur Zarco* as having recently affirmed “the gravity of the crimes of rape and sexual slavery

and their use as a ‘weapon of war.’”<sup>875</sup> Moreover, while Katanga was not found guilty of the sexual violence resulting from the attack, the ICC nevertheless used the *Sepur Zarco* case in its examination of reparations for survivors of the other crimes for which he was convicted.<sup>876</sup> The ICC referred to the *Sepur Zarco* reparations as “a comprehensive set of measures with an individual, community and institutional

impact to benefit the survivors of sexual violence and forced disappearance” and cited these measures in support of the proposition that collective reparations may be ordered in addition to, rather than instead of, individual reparations.<sup>877</sup> The court subsequently ordered both individual and collective reparations for survivors from the attack on the village.<sup>878</sup>

#### 5.1.4

### Other Impacts: Developing Policy, Training and Guidance on Reparations

Notably, the *Sepur Zarco* has had an impact beyond individual cases, particularly in the area of reparations.<sup>879</sup> For instance, in November 2019, the Supreme Court of Guatemala, under the leadership of Magistrate Delia Marina Dávila Salazar, adopted a public policy on dignified and transformative reparations intended to raise awareness and train members of the Guatemalan judiciary on the application of these concepts in criminal proceedings.<sup>880</sup> The public policy was adopted after research done by the Supreme Court and complemented by data provided by civil society organizations showed that victims of crimes were neither asking for nor being provided with an opportunity to request dignified reparations under Article 124 of the Criminal Procedure Code.<sup>881</sup> The policy was designed by a specialized group of experts, with representatives from the State and civil society organizations who met regularly as part of what was described as a “technical working table.”<sup>882</sup> MTM participated actively in this process, contributing their expertise to help articulate the policy framework.<sup>883</sup> The policy was organized according to four pillars in pursuit of the following goals: 1) training of judges; 2) an approach that focuses on victims and their needs; 3) adoption and implementation of dignified reparations in criminal cases; and 4) intra-institutional and inter-institutional coordination.<sup>884</sup> As the Supreme Court adopted the policy, it must be applied by both the ordinary and specialized courts in Guatemala.<sup>885</sup> Recent assessments show that training judges and other officials<sup>886</sup> as well as sharing best practices on the adoption of dignified reparations have contributed to an increased application of the policy and expanded the role that criminal courts play in ensuring access to these measures by victims of crimes.<sup>887</sup> Additionally, although the policy is not

applicable to non-criminal cases, other courts with jurisdiction to protect the rights of children, for instance, have also granted dignified reparations against the state in cases where minors’ human rights were violated.<sup>888</sup> However, as experienced by the civil claimants in the case of *Sepur Zarco*, the absence of a clear authority with the power to monitor and enforce compliance with reparations orders continues to pose a significant challenge to full implementation of reparations.<sup>889</sup>

Moreover, the *Sepur Zarco* case was used by MTM to advocate for a new “Public Policy of Dignified and Transformative Reparations in Cases of Sexual Violence, Forced Pregnancy and Forced Motherhood in Girls and Adolescents.”<sup>890</sup> The policy was presented by MTM together with Congress representative Sandra Moran to the Presidential Secretary of Women Affairs, and had the support of other institutions and civil society organizations and institutions that participated in a “technical working table” to develop the proposal.<sup>891</sup> The goal of the policy is to create and promote the social, cultural, political, economic, and legal conditions to ensure that girls and adolescents who are survivors of the crimes of sexual violence, forced pregnancy and forced maternity are granted dignified and transformative reparations, which would allow them to recover their “life project.”<sup>892</sup> The policy is addressed to the three branches of government, depending on their roles, and provides that the Presidential Secretary of Women Affairs would be responsible for monitoring and overseeing compliance with this policy.<sup>893</sup> In addition, the document proposes a plan of action to guide State agencies in the implementation of the policy.<sup>894</sup> Subsequently, and based on the proposed policy, MTM and other civil society organizations advocated

for the Congress of Guatemala to enact it into law.<sup>895</sup> Although the policy and law initiative have not been adopted, MTM and the other civil society organizations involved in the proposals continue to press the State of Guatemala to address the need for reparations of girls and adolescents who are exposed to these forms of violence.<sup>896</sup> The *Sepur Zarco* case, and the work of the *Abuelas* to implement the reparations judgment, has also been cited as an example of a survivor-centered approach in UN documents, including a report by the Secretary-General to the Security Council on Women,

Peace and Security in 2021,<sup>897</sup> and a report of the High Commissioner for Human Rights to the Human Rights Council on Human Rights and Transitional Justice.<sup>898</sup>

Finally, the case is helping to shape guidance in this area at the international level. For example, one of the experts from the *Sepur Zarco* case has been working with the United Nations Population Fund to incorporate the concept of restorative and transformative reparations as an essential part of its work on preventing violence against women in Latin America.<sup>899</sup>

# ENDNOTES:

## Section 5.1

- 723 Giulia Prior, Weaponisation of Female Bodies: the case of Guatemala as a representative for Latin America, SECURITY DISTILLERY (Jan. 13, 2021), <https://thesecuritydistillery.org/all-articles/weaponisation-of-female-bodies-the-case-of-guatemala-as-representative-for-latin-america> [hereinafter Weaponisation of Female Bodies].
- 724 See supra Section IV.A.
- 725 Gender Justice in Post-Conflict Guatemala, at 93-94. See also Interview with former MTM attorney Jennifer Bravo (noting that the case “allowed the clarification of events that occurred during the armed conflict, and brought to light what was not said, which was, that yes there were rapes of women” during the conflict) (authors’ translation).
- 726 See supra.
- 727 Interview with the *Abuelas* of *Sepur Zarco*; CHANGING THE FACE OF JUSTICE, at 46.
- 728 Gender Justice in Post-Conflict Guatemala, at 94 (quoting one of the *Abuelas* about the importance of testifying for her).
- 729 CHANGING THE FACE OF JUSTICE, at 46 (statement by Demecia Yat). Moreover, the *Abuelas* felt empowered when, during the trial, women in the audience applauded their testimony. Impunity Watch, Cambiando el rostro de la justicia with English subtitles, YOUTUBE (May 13, 2017), <https://www.youtube.com/watch?v=Ky5MoUSoiGs> (03:05-03:18).
- 730 Interview with ECAP staff (statement of Director Susana Navarro).
- 731 Gender Justice in Post-Conflict Guatemala, at 92.
- 732 Interview with ECAP staff (statement of Director Susana Navarro). See also UNAMG, Documental Caso *Sepur Zarco* “Mi Corazón está Contento,” <https://www.youtube.com/watch?v=r-pkgG6kFA8&t=467s>.
- 733 Jo-Marie Burt, Military Officers Convicted in Landmark *Sepur Zarco* Sexual Violence Case, INTERNATIONAL JUSTICE MONITOR (Mar. 4, 2016), <https://www.ijmonitor.org/2016/03/military-officers-convicted-in-landmark-sepur-zarco-sexual-violence-case/>. See also *Sepur Zarco* Trial Judgment, at 493; id., at 495 (Today through this verdict, we record the value and respect that the women of *Sepur Zarco* deserve, who, overcoming obstacles and overcoming the stigmatization exerted on them, have made public the violations to which they were subjected.”) (authors’ translation).
- 734 Interview with expert Rita Laura Segato.
- 735 Military Officers Convicted in Landmark *Sepur Zarco* Sexual Violence Case; see also CHANGING THE FACE OF JUSTICE, at 46.
- 736 Gender Justice in Post-Conflict Guatemala, at 94 (citing statements of *Sepur Zarco* women at a workshop she attended just after the judgment was issued); see also CHANGING THE FACE OF JUSTICE, at 46 (statement of Demecia Yat: “When we rejoiced the most is when the judge issued the ruling, because we fulfilled our struggle and I felt calmer ... I felt calmer knowing that they will pay for what they did to us.”).
- 737 CHANGING THE FACE OF JUSTICE, at 46.
- 738 Id., at 20, 46.
- 739 Interview with the *Abuelas* of *Sepur Zarco*; see also CHANGING THE FACE OF JUSTICE, at 52.
- 740 Interview with the *Abuelas* of *Sepur Zarco*.
- 741 UN Fact Sheet on Proyecto *Sepur Zarco* (2020), [https://onu.org.gt/wp-content/uploads/2020/01/fact-sheet-Sepur-Zarco\\_compressed.pdf](https://onu.org.gt/wp-content/uploads/2020/01/fact-sheet-Sepur-Zarco_compressed.pdf) (authors’ translation).
- 742 See, e.g., *Sepur Zarco* Trial Judgment, at 490 (crediting, within their discussion of the charge of crimes against the duties of humanity, the testimony of Manuel Cu and Marcos Tut “[w]ho explained how people lived in the military detachment, the control exercised over people, how the checkpoints worked, and the constant fear experienced by the residents of *Sepur Zarco* and the surrounding communities, where persons were constantly being disappeared”) (authors’ translation).
- 743 Interview with *Sepur Zarco* community members (statement of Santiago Seb Ical); see also id. at 8 (statement of Petrona Choc Cuz: “When the war started, they sent us to the mountains. Because they scared us and told us that they were going to burn down my house, so we went to hide together with my husband and it was there that they killed him; and after that, I was called to the military detachment to serve the soldiers. They put me to grind the rice. While I was working, the soldiers kicked me, beat me. That is a pain that will never leave my heart. And that was what I went to testify.”); (authors’ translation); *Sepur Zarco* Trial Judgment, at 348-352 (testimony of witness Santiago Seb Ical).
- 744 *Sepur Zarco* Trial Judgment, at 283-84. Her daughter was Dominga Coc, and the granddaughters were Anita Seb Coc and Hermelinda Coc.
- 745 Interview with *Sepur Zarco* community members (statement of Julia Coc de Choc) (authors’ translation).
- 746 Id. (statement of Petrona Choc Cuz:) (authors’ translation). Like the *abuelas*, Petrona Choc Cuz was forced to provide domestic and sexual services to soldiers after they killed her husband. *Sepur Zarco* Trial Judgment, at 323-324.
- 747 Interview with *Sepur Zarco* community members (statement of Maria Ical Rax) (authors’ translation).
- 748 Id. As one member of the community stated, “I want to first thank the 14 *Abuelas* for the effort of going to secure justice. For me, that which they did was very beneficial for the community... For us, that which the *Abuelas* did is extremely important.” Id. (authors’ translation).

- 749 Id.
- 750 Id.
- 751 Interview with presiding trial Judge Yassmin Barrios Aguilar (authors' translation).
- 752 Jo-Marie Burt, Strategic Litigation in Cases of Gross Human Rights Violations in Guatemala, Impunity Watch, Policy Brief (May 2021), at 17, [https://www.impunitywatch.org/\\_files/ugd/f3f989\\_3f956a2e3ecc40e96999f71c6ebb5af.pdf](https://www.impunitywatch.org/_files/ugd/f3f989_3f956a2e3ecc40e96999f71c6ebb5af.pdf).
- 753 See Strategic Alliance as an Impact Litigation Model, at 209-10.
- 754 Interview with former MTM attorney Jennifer Bravo.
- 755 Strategic Alliance as an Impact Litigation Model, at 209.
- 756 Amy Bracken, This interpreter is helping get justice for Indigenous women raped and tortured in Guatemala's civil war, THE WORLD (Dec. 12, 2016), <https://www.pri.org/stories/2016-12-12/interpreter-helping-get-justice-indigenous-women-raped-and-tortured-guatemala-s>.
- 757 CHANGING THE FACE OF JUSTICE, at 28.
- 758 Jo-Marie Burt & Paulo Estrada, Court Finds Guatemalan Army Committed Genocide, but Acquits Military Intelligence Chief, INTERNATIONAL JUSTICE MONITOR (Sept. 28, 2018), <https://www.ijmonitor.org/2018/09/court-finds-guatemalan-army-committed-genocide-but-acquits-military-intelligence-chief/> [hereinafter Court Finds Guatemalan Army Committed Genocide]; This interpreter is helping get justice for Indigenous women raped and tortured in Guatemala's civil war; Efrain Rios Montt & Mauricio Rodriguez Sanchez: Before the National Courts of Guatemala, INTERNATIONAL JUSTICE MONITOR, <https://www.ijmonitor.org/efrain-rios-montt-and-mauricio-rodriguez-sanchez-background/> (last updated Sept. 28, 2018) [hereinafter Rios Montt Background].
- 759 Court Finds Guatemalan Army Committed Genocide; Rios Montt Background.
- 760 Rios Montt Background.
- 761 CHANGING THE FACE OF JUSTICE, at 28.
- 762 Id., at 28.
- 763 Aisling Walsh, Maya Achi Women Demand Justice for Wartime Sexualized Violence in Guatemala, WOMEN'S MEDIA CENTER (Jun. 18, 2019), <http://www.womensmediacenter.com/women-under-siege/maya-achi-women-demand-justice-for-wartime-sexualized-violence-in-guatemala> [hereinafter Maya Achi Women Demand Justice].
- 764 Maya Achi Women Demand Justice.
- 765 Id.
- 766 Jo-Marie Burt and Paulo Estrada, In Guatemala, Ex-Paramilitaries Face Trial for Wartime Rape of Indigenous Women, The North American Congress on Latin America (nacla) (Jan. 11, 2022), <https://nacla.org/news/2022/01/11/guatemala-maya-achi-rape>.
- 767 Id.
- 768 Interview with Haydee Valey of Impunity Watch Guatemala.
- 769 Id.
- 770 Maya Achi Women Speak about Fight for Justice to NISGUA, BTS Networks, NISGUA (May 16, 2019), <https://nigua.org/maya-achi-women-speak-about-fight-for-justice/> [hereinafter Maya Achi Women Speak about Fight for Justice].
- 771 Interview with Haydee Valey of Impunity Watch Guatemala (authors' translation). Id. (explaining that though there is still fear, "that fear has been channeled, it has been transformed") (authors' translation). See also Andrea Bolaños-Vargas, Proyecto PBF-IRF 145 1325: Empoderando a mujeres sobrevivientes de violencia sexual y de género relacionada con el conflicto y postconflicto en Guatemala: Evaluación independiente final (July 7, 2019), at 20-21 (noting that the women of *Sepur Zarco* motivated the Achi women to seek justice) [hereinafter Empoderando a mujeres sobrevivientes].
- 772 The Justice We Deserve, at 214, 214.
- 773 Id., at 215.
- 774 Id.
- 775 See Case of Molina-Theissen v. Guatemala, Merits, Judgment of May 4, 2004 Inter-Am. Ct. H.R. (Ser. C), No. 106, ¶ 2 (stating that the case relates to the "forced disappearance of Marco Antonio"); ¶ 40(9)(iv) (stating that Emma was raped by members of the military in a discussion of Marco Antonio's "next of kin" but not as a violation in the case); see generally Case of Molina-Theissen v. Guatemala, Reparations and Costs, Judgment of July 3, 2004, Inter-Am. Ct. H.R. (Ser. C), No. 108 (excluding Emma's rape in the discussion of reparations) [hereinafter Molina Theissen Reparations Judgment].
- 776 Gender Justice in Guatemala, at 95.
- 777 Molina Theissen Reparations Judgment, ¶ 80.
- 778 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez.
- 779 Id.; The Justice We Deserve, at 217 (stating that Emma believed that due to the "entrenched nature of impunity in Guatemala, justice was not possible.>").
- 780 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez; see also Gender Justice in Guatemala, at 93-94; see also The Justice We Deserve, at 217.
- 781 The Justice We Deserve, at 217.
- 782 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez (authors' translation).
- 783 Id. (explaining that she not only was inspired by the survivors' testimony but also the respect with which the court treated the women of *Sepur Zarco*); see also INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, ON SOLID GROUND: BUILDING SUSTAINABLE PEACE AND DEVELOPMENT AFTER MASSIVE HUMAN RIGHTS VIOLATIONS 14 (May 2019), [https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_WG-TJ-SDG16+\\_2019\\_Web.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_WG-TJ-SDG16+_2019_Web.pdf) (noting the "the verdict has helped empower other women victims of sexual violence, most recently illustrated in the testimonies of victims in the Molina-Theissen case, related to the disappearance of a 14-year old boy and the rape and torture of his sister by the military in 1981, and the subsequent guilty verdict").
- 784 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez (authors' translation).
- 785 The Justice We Deserve, at 217.
- 786 Interview with UNAMG Executive Director Ada Valenzuela.
- 787 The Justice We Deserve, at 217.

- 788 Jo-Marie Burt & Paulo Estrada, “I Choose to Live:” Emma Molina Theissen Testifies in High-Stakes Guatemala Trial, INTERNATIONAL JUSTICE MONITOR (Apr. 9, 2018), <https://www.ijmonitor.org/2018/04/i-choose-to-live-emma-molina-theissen-testifies-in-high-stakes-guatemala-trial/>.
- 789 The Justice We Deserve, at 217.
- 790 Emma Theissen Álvarez, Ana Lucrecia, María Eugenia & Emma Molina Theissen, Una luz en el camino: La sentencia histórica para la familia Molina Theissen, PRENSA COMUNITARIA (May 21, 2020), <https://www.prensacomunitaria.org/2020/05/una-luz-en-el-camino-la-sentencia-historica-para-la-familia-molina-theissen/>.
- 791 Andrea Bolaños Vargas & Andrea Suárez Trueba, The Case of “Lote Ocho”: Indigenous women hold corporations accountable for violence, OPEN GLOBAL RIGHTS (Jul. 8, 2020), <https://www.openglobalrights.org/lote-ocho-indigenous-women-corporate-accountability-guatemala-canada/> [hereinafter The Case of “Lote Ocho”].
- 792 CLAMOR FOR JUSTICE, at 87.
- 793 The Case of “Lote Ocho”; CLAMOR FOR JUSTICE, at 86-88.
- 794 CLAMOR FOR JUSTICE, at 89-90.
- 795 The Case of “Lote Ocho” (explaining that the women of Lote Ocho believed the courts would not seriously investigate the crimes against them due to the economic interests of the mining companies); see also CLAMOR FOR JUSTICE, at 97-98 (explaining another reason the women of Lote Ocho did not bring their case in Guatemala was that there was no mechanism in Guatemala that would provide “moral reparations” to the women for the sexual violence that accompanied the evictions).
- 796 The Case of “Lote Ocho”.
- 797 Interview with MTM attorney Esteban Celada Flores (authors’ translation).
- 798 The Case of “Lote Ocho”.
- 799 Interview with MTM attorney Esteban Celada Flores.
- 800 Empoderando a mujeres sobrevivientes, at 23.
- 801 Id., at 23-24. See also Leonor Arteaga, De *Sepur Zarco* a El Mozote: en búsqueda de la justicia con sentido de mujer, El Faro (Jun. 20, 2018), <https://elfaro.net/es/201806/columnas/22095/De-Sepur-Zarco-a-El-Mozote-en-b%C3%BAqueda-de-la-justicia-con-sentido-de-mujer.htm> (noting that “the case also contributed to fueling the debate on the causes of the continuation of gender-based violence to this day, based on the ideas of domination and control”) (authors’ translation).
- 802 Empoderando a mujeres sobrevivientes, at 24 (authors’ translation).
- 803 UNITED NATIONS DEVELOPMENT PROGRAMME, TRANSITIONAL JUSTICE ACCOMPANIMENT PROGRAMME II REPORT 2015-2019, at 32 (2020), [https://www.gt.undp.org/content/dam/guatemala/docs/publications/undp\\_gt\\_Transitional%20Justice%20Accompaniment%20Programme%20II%20REPORT\\_2021.pdf](https://www.gt.undp.org/content/dam/guatemala/docs/publications/undp_gt_Transitional%20Justice%20Accompaniment%20Programme%20II%20REPORT_2021.pdf) [hereinafter TRANSITIONAL JUSTICE ACCOMPANIMENT PROGRAMME].
- 804 See supra Section III.A (describing ECAP’s programs that provided psychosocial support before the women of *Sepur Zarco* brought their case).
- 805 Rebecca Alexandra Patterson-Markowitz, Choreographies of Repair: Defining Justice Through Psychosocial Accompaniment in Post-Conflict Guatemala 61, 123 (2018) (Master’s thesis, The University of Arizona) [hereinafter *Choreographies of Repair*].
- 806 CLAMOR FOR JUSTICE, at 89, 96-97.
- 807 Id., at 96-97; Interview with MTM attorney Esteban Celada (noting that ECAP provided psychosocial support to the women of Lote Ocho in an effort to prepare them to testify at trial and mitigate any potential for retraumatization).
- 808 TRANSITIONAL JUSTICE ACCOMPANIMENT PROGRAMME, at 32, 39.
- 809 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez.
- 810 Id.
- 811 *Choreographies of Repair*, at 61.
- 812 CLAMOR FOR JUSTICE, at 76.
- 813 Id., at 97.
- 814 Id., at 97.
- 815 CHANGING THE FACE OF JUSTICE, at 23-24.
- 816 Women from Colombia and Guatemala Share Their Experiences in the Search for Justice and Peace Building, UN WOMEN (Feb. 20, 2021), <https://lac.unwomen.org/en/noticias-y-eventos/articulos/2021/02/mujeres-de-colombia-y-gua-temala-construccion-de-paz> [hereinafter Women from Colombia and Guatemala Share Their Experiences].
- 817 Violence and Discrimination Against Women in the Armed Conflict in Colombia Violence and Discrimination Against Women in the Armed Conflict in Colombia Executive Summary ¶ 5, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (Oct. 18, 2006), <http://www.cidh.oas.org/women/colombiao6eng/exesummaryco.htm>.
- 818 Women from Colombia and Guatemala Share Their Experiences,
- 819 Interview with former MTM lawyer Jennifer Bravo.
- 820 Id. (authors’ translation).
- 821 Id. (authors’ translation).
- 822 Interview with Haydee Valey of Impunity Watch Guatemala; see also UNITED NATIONS HUMAN RIGHTS OFFICER OF THE HIGH COMMISSIONER, WORKSHOP REPORT: STRATEGIC LITIGATION FOR GENDER-BASED VIOLENCE: EXPERIENCES IN LATIN AMERICAN 17 (2021), <https://www.ohchr.org/Documents/Issues/Women/WRGS/SL-LatinAmerica-EN.pdf>.
- 823 The Case of “Lote Ocho,”
- 824 Interview with MTM attorney Esteban Celada Flores (authors’ translation).
- 825 Id.
- 826 Leonor Arteaga, De *Sepur Zarco* a El Mozote: en búsqueda de la justicia con sentido de mujer, El Faro (Jun. 20, 2018), <https://elfaro.net/es/201806/columnas/22095/De-Sepur-Zarco-a-El-Mozote-en-b%C3%BAqueda-de-la-justicia-con-sentido-de-mujer.htm>.

- 827 Id.
- 828 Strategic Alliance as an Impact Litigation Model, at 208; see also CHANGING THE FACE OF JUSTICE, at 5 (“This verdict set an important national and international precedent in demonstrating how the State of Guatemala used slavery and sexual violence as weapons of war against women during the internal armed conflict.”)
- 829 Interview with MTM attorney Esteban Celada Flores.
- 830 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez.
- 831 Maya Achi Women Demand Justice.
- 832 Interview with Haydee Valey of Impunity Watch Guatemala (explaining the similar pattern in the Maya Achi case of men being forcibly disappeared and killed, and the being asked about their husbands and raped). As indicated earlier, in January of 2022, forty years after the events took place, a trial court convicted five former paramilitary patrolmen of crimes against the duties of humanity for the rape of five the Maya Achi women. Sandra Cuffe, Victory in court for indigenous women raped during Guatemala’s civil war (Jan. 24, 2022), THE GUARDIAN, <https://www.theguardian.com/world/2022/jan/25/guatemala-victory-in-court-for-indigenous-women-raped-during-civil-war>.
- 833 Caso Manta y Vilca: la fiscal acusa, INSTITUTO DE DEFENSA LEGAL (Aug. 1, 2019), <https://www.idl.org.pe/caso-manta-y-vilca-la-fiscal-acusa/>.
- 834 Jerónimo Ríos & Roberto Brocate, Violencia sexual como crimen de lesa humanidad: los casos de Guatemala y Perú, 117 Revista CIDOB d’Afers Internacionals 79, 95 (Dec. 2017). Note that the Manta y Vilca case is still ongoing. Nevertheless, as a member of the Truth and Reconciliation Commission of Peru noted, “if you have reviewed *Sepur Zarco*, you realize there is a lot of similarity in the modus operandi” of both the Guatemalan and Peruvian governments during their respective conflicts. Id. at 95 (authors’ translation). Comparing the use of military bases and the treatment of women in both, she concluded that Peruvian government officials – like the accused in *Sepur Zarco* – could be held accountable. Id. For a brief discussion of the impact of *Sepur Zarco* on the prosecution of sexual violence committed during the conflict in El Salvador, see Leonor Arteaga, De *Sepur Zarco* a El Mozote: en búsqueda de la justicia con sentido de mujer, elfaro (Jun. 20, 2018), <https://elfaro.net/es/201806/columnas/22095/De-Sepur-Zarco-a-El-Mozote-en-b%C3%BAsqueda-de-la-justicia-con-sentido-de-mujer.htm> (arguing that one of the lessons learned from the *Sepur Zarco* case is that the Prosecutor’s Office in El Salvador “must build a criminal prosecution strategy with a gender approach that understands the structural and individual dimensions of the cases of the armed conflict and assigns them due priority”) (authors’ translation).
- 835 Strategic Alliance as an Impact Litigation Model, at 211.
- 836 Interview with Jennifer Bravo, former lawyer with MTM (authors’ translation).
- 837 See *Sepur Zarco* Trial Judgment, at 91-98 (discussing and crediting expert testimony of conflict-based gender crimes expert Paloma Soria Montañez); id. at 493; id., at 507 (citing the Geneva Conventions and human rights treaties among the sources of authority relied upon by the Court).
- 838 Interview with presiding trial Judge Yassmin Barrios Aguilar (“Nosotros cuando resolvemos un caso, también estamos dando a conocer lo que pensamos y se lo decimos a toda la colectividad, no solo a los abogados y a las víctimas sino que va un mensaje para toda la sociedad.”)
- 839 Interview with conflict-based gender crimes expert Paloma Soria Montañez.
- 840 Id. (noting that the issue of international crimes is “a very foreign topic for them, it is something very unknown and they don’t have the time to digest it”); id., at 7 (“they are not used to this idea of element[s] of crime”). (authors’ translation).
- 841 See *Sepur Zarco* Trial Judgment, at 91-98.
- 842 Interview with Haydee Valey of Impunity Watch Guatemala (authors’ translation). In fact, the lawyers in the Maya Achi case cited *Sepur Zarco* at the intermediate stage to convince the judge that the case needed to go to trial. Id.
- 843 40 años sin ser escuchadas: la verdad de las mujeres de Manta, CARETAS (Mar. 13, 2021), <https://www.caretas.pe/nacional/40-anos-sin-ser-escuchadas-la-verdad-de-las-mujeres-de-manta/>.
- 844 Interview with former MTM attorney Jennifer Bravo, at 29 (authors’ translation).
- 845 See supra Section IV.D.2.
- 846 Interview with Haydee Valey of Impunity Watch Guatemala.
- 847 Id. (authors’ translation).
- 848 Guatemala, Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente de Mayor Riesgo Grupo “C”, C-01077-1998-00002, Sentencia, at 402 (23 May 2018) (expert testimony of historian Marc Drouin) [hereinafter Molina Theissen Trial Judgment]; The Justice We Deserve, at 224-25 (discussing expert testimony of historian Marc Drouin). See also Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez (discussing use of experts); Jo-Marie Burt & Paulo Estrada, The Molina Theissen Trial: Witness Illustrates the Impact of Argentine Military Training in Guatemala, INTERNATIONAL JUSTICE MONITOR (Mar. 28, 2018), <https://www.ijmonitor.org/2018/03/the-molina-theissen-trial-witness-illustrates-the-impact-of-argentine-military-training-in-guatemala/> (explaining that experts from Fundación de Antropología Forense de Guatemala (FAFG), an organization that provided forensic anthropology reports in *Sepur Zarco*, testified about the search process for victims of forced disappearance in the Molina -Theissen case to prove the existence and pattern of forced disappearances in Guatemala during the conflict).
- 849 Molina Theissen Trial Judgment, at at 307-310.
- 850 Id., at at 250-255; The Justice We Deserve, at 225; Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez. Notably, the expert cited and discussed *Sepur Zarco* in his testimony. Molina

- Theissen Trial Judgment, at at 290.
- 851 See supra Section IV.D.2.d.
- 852 Molina Theissen Trial Judgment, at at 454, 459-464 (expert testimony of psychologist Carlos Martin Beristain); *The Justice We Deserve*, at 225 (discussing expert testimony of psychologist Carlos Martin Beristain).
- 853 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez.
- 854 Interview with MTM attorney Esteban Celada Flores.
- 855 Interview with MTM attorney Esteban Celada Flores, at 5 (authors' translation).
- 856 Interview with Haydee Valey of Impunity Watch Guatemala.
- 857 Interview with pre-trial Judge Miguel Ángel Gálvez.
- 858 *Id.* (authors' translation).
- 859 *Id.* (highlighting the testimony from the women about forcibly being given injections and pills to prevent pregnancies, a practice he thought dated back to WWII).
- 860 The case was turned over to Judge Gálvez after the legal representatives of the victims requested that the original pre-trial judge in the case, Claudette Domínguez, be recused for lack of impartiality. Jo-Marie Burt and Paulo Estrada, *Former Paramilitary Indicted in Guatemala in Maya Achi Sexual Violence Case*, International Justice Monitor, Feb. 14, 2020, <https://www.ijmonitor.org/2020/02/former-paramilitary-indicted-in-guatemala-in-maya-achi-sexual-violence-case/>.
- 861 Interview with pre-trial Judge Miguel Ángel Gálvez (authors' translation).
- 862 Molina Theissen Trial Judgment, at at 1014, 1022, 1067; see also "Milestone judgement" in Guatemala – UN Human Rights Chief, OHCHR (May 24, 2018), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23125&LangID=E>.
- 863 Jo-Marie Burt & Paulo Estrada, *The Molina Theissen Judgment, Part I: Overview of the Court's Findings*, INTERNATIONAL JUSTICE MONITOR (Aug. 3, 2018), <https://www.ijmonitor.org/2018/08/the-molina-theissen-judgment-part-i-overview-of-the-courts-findings/> [hereinafter *The Molina Theissen Judgment, Overview of the Court's Findings*]; Gretel Alexandra Mejía Bonifazi, *The Molina Theissen Case. An Example of Perseverance for Victims of Enforced Disappearance Worldwide*, NÜRNBERGER MENSCHENRECHTSZENTRUM 4-5 (Aug. 6, 2018) [https://www.menschenrechte.org/wp-content/uploads/2018/08/The-Molina-Theissen-Case\\_Gretel-Mej%C3%ADa\\_Article-English.pdf](https://www.menschenrechte.org/wp-content/uploads/2018/08/The-Molina-Theissen-Case_Gretel-Mej%C3%ADa_Article-English.pdf) [hereinafter *An Example of Perseverance for Victims of Enforced Disappearance*].
- 864 Sandra Cuffe, *Victory in court for indigenous women raped during Guatemala's civil war*, (Jan. 24, 2022), THE GUARDIAN, <https://www.theguardian.com/world/2022/jan/25/guatemala-victory-in-court-for-indigenous-women-raped-during-civil-war>.
- 865 *Id.*
- 866 Interview with attorney for Emma Molina Theissen, Alejandro Rodríguez; Molina Theissen Trial Judgment, at at 1063-64.
- 867 *Sepur Zarco* Trial Judgment, at 508-511.
- 868 Molina Theissen Trial Judgment, at at 1063-64.
- 869 *Sepur Zarco* Trial Judgment, at 508-511.
- 870 *An Example of Perseverance for Victims of Enforced Disappearance*, at 4.
- 871 *Sepur Zarco* Trial Judgment, at 508-511.
- 872 Guatemala, Tribunal Primero de Sentencia Penal, *Narcotividad y Delitos contra el Ambiente*, Sentencia C-15002-2014-00315, at at 409-412 (24 Jan. 2022) [hereinafter *Maya Achi Trial Judgment*].
- 873 Interview with MTM attorney Esteban Celada Flores (authors' translation).
- 874 *Prosecutor v. Katanga*, ICC-01/04-01/07, Judgment pursuant to article 74 of the Statute, ¶¶ 1, 6, 10 (Mar. 7, 2014); Case Information Sheet, *Situation in the Democratic Republic of the Congo, The Prosecutor v. Germain Katanga*, INTERNATIONAL CRIMINAL COURT (July 2021), <https://www.icc-cpi.int/CaseInformationSheets/katangaEng.pdf>.
- 875 *Prosecutor v. Katanga*, ICC-01/04-01/07, Order for Reparations pursuant to Article 75 of the Statute, ¶ 148 n.231 (Mar. 24, 2017).
- 876 *Id.*, ¶¶ 150, 284 n.409.
- 877 *Id.*, ¶ 284 n.409.
- 878 *Id.*, ¶¶ 152-33, 293.
- 879 Ensuring access to reparations in criminal proceedings is essential for most of victims of a crime in Guatemala, as few who have the resources to hire a lawyer to initiate a separate claim in a civil court. As a result, if these measures are not awarded in the criminal proceedings, there is almost no chance that reparations will ever be sought or obtained from those convicted thereafter. María del Carmen Estrada Rivera, *La reparación digna en el procedimiento penal*, Tesis de Postgrado (Mar. 2016), at 46-49, <http://recursosbiblio.url.edu.gt/tesisjcem/2016/07/06/Estrada-Maria.pdf>. This is also important for cases where the victims are represented by civil society organizations who join the criminal proceeding as civil claimants, such as in the *Sepur Zarco* case, because these lawyers have the knowledge and expertise to seek reparations within the criminal process. See Presentation of Magistrate Dávila Salazar, *Justicia y Reparación Transformadora: Caso de Sepur Zarco*, organized by Alianza de mujeres y mujeres indígenas por el acceso a la justicia (Mar. 23, 2022), <https://www.facebook.com/100009478706539/videos/494353655490530/>.
- 880 Organismo Judicial de Guatemala, *Política de reparación digna y transformadora y su plan de implementación 2020-2025* (2019) (hereinafter *Política de reparación digna y transformadora*), *Objetivo general*, at 41. See also *Presentan política de reparación digna*, Diario de Centro América (Dec. 23, 2019), <https://dca.gob.gt/noticias-guatemala-diario-centro-america-presentan-politica-de-reparacion-digna/>. Magistrate Delia Marina Dávila Salazar is a justice of the Supreme Court ("IV Vocal") and the Chair of the Commission on Women.
- 881 *Política de reparación digna y transformadora*, at 3,

- 17-26. See also Presentation of Magistrate Dávila Salazar, Justicia y Reparación Transformadora: Caso de *Sepur Zarco*.
- 882 Política de reparación digna y transformadora, at 1.
- 883 Id. See also Interview with former MTM staffer Ana Medina (Sept. 29, 2020).
- 884 Presentan política de reparación digna.
- 885 Política de reparación digna y transformadora, at 53-59. See also Presentation of Magistrate Dávila Salazar, Justicia y Reparación Transformadora: Caso de *Sepur Zarco*. The Supreme Court of Guatemala established specialized courts to prosecute the crime of femicide and other forms of gender violence in light of the Law against Femicide and Other Forms of Violence against Women. This law states that the court will grant reparations to the victim and/or next of kin, with due proportionality to the harm caused and the responsibility of the perpetrator. The State is considered jointly and severally liable for the actions and omissions of its agents. See Law against Femicide and Other Forms of Violence against Women (Apr. 9, 2008), arts. 11-12, <http://www.oj.gob.gt/index.php/publicaciones-oj/leyes-y-resoluciones>
- 886 The case also prompted the Public Prosecutor's Office to participate in trainings and discussions on what constitutes dignified and transformative reparations so that it is ready to request such reparations in appropriate cases. Interview with expert Rita Laura Segato.
- 887 See Presentation of Magistrate Dávila Salazar, Justicia y Reparación Transformadora: Caso de *Sepur Zarco*. Before the policy was adopted, only 9% of criminal cases ending in convictions were followed by reparations hearings, while in the past year reparations hearings were held in 42% of criminal cases ending in convictions. On the other hand, 100% of the convictions in cases of human trafficking were granted reparation measures because the law requires that a reparation hearing be held in regard to these crimes regardless of whether the victim has made a request for reparations. See Interview with Magistrate Delia Dávila Salazar (Apr. 22, 2022).
- 888 See La Alianza: Litigio estratégico por niña de Hogar Seguro busca institucionalizar procesos, La Hora.Gt (Nov. 23, 2018), <https://lahora.gt/nacionales/diario-la-hora/2018/11/13/la-alianza-litigio-estrategico-por-nina-de-hogar-seguro-busca-institucionalizar-procesos/>. See also Interview with Magistrate Delia Dávila Salazar. Likewise, a judge with jurisdiction to oversee the implementation of measures against children who violated criminal laws but could not be prosecuted as adults adopted measures of dignified reparations against the state after finding that the institutions where the minors were held violated their basic human rights. See Judgment of October 25, 2016, Juzgado de Ejecución de Medidas para Adolescentes en Conflicto con la Ley Penal, Judge Verónica del Rosario Galicia Marroquín (Caso 'Centro de Privación de Libertad para Varones, CEJUPLIV, Etapa 2). See also Interview with Magistrate Delia Dávila Salazar.
- 889 According to the law creating the Institute of the Victim, this state organ must defend and protect the victim's right to obtain dignified reparations in criminal proceedings. See Organic Law of the Institute of the Victim ('Ley Orgánica del Instituto de la Víctima'), Decree Number 21-2016, April 5, 2016, Art. 29. It is expected that the Institute of the Victim will also play an increasing role in monitoring the implementation of the measures of reparations adopted by the trial judges in those proceedings. See Interview with Magistrate Delia Dávila Salazar.
- 890 MTM, Propuesta de Política Pública de Reparación Digna y Transformadora para Casos de Violencia Sexual, Embarazo Forzado y Maternidad Forzada en Niñas y Adolescentes y su Plan de Acción 2016-2026, entregada a Diputada Sandra Morán, Nov. 23, 2016, [https://nomada.gt/wp-content/uploads/files/Propuesta%20de%20Politica%20Publica%20de%20Reparacion%20MTM.pdf?utm\\_content=bufferd8201&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://nomada.gt/wp-content/uploads/files/Propuesta%20de%20Politica%20Publica%20de%20Reparacion%20MTM.pdf?utm_content=bufferd8201&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer).
- 891 Entrega Oficial de Propuesta de Política Pública a favor de las niñas y adolescentes víctimas de violencia sexual, Mujeres Transformando el Mundo (Nov. 24, 2016), <https://mujerestransformandoelmundo.org/entrega-oficial-de-propuesta-de-politica-publica-a-favor-de-las-ninas-y-adolescentes-victimas-de-violencia-sexual/>
- 892 See Propuesta de Política Pública de Reparación Digna y Transformadora para Casos de Violencia Sexual, Embarazo Forzado y Maternidad Forzada en Niñas y Adolescentes, at 10.
- 893 Id., at 7.
- 894 Entrega Oficial de Propuesta de Política Pública a favor de las niñas y adolescentes víctimas de violencia sexual.
- 895 Mesas Técnicas para la Propuesta de Política Pública "Reparación Digna y Transformadora para casos de Violencia Sexual, Embarazo Forzado y Maternidad Forzada en Niñas y Adolescentes y su Plan de Acción," <https://latinno.net/es/case/10120/>. For a text of the draft initiative, please see Iniciativa 5848, Las Niñas de Guatemala, presented by Mujeres Transformando el Mundo, Diputada de la Republica Merana Oliva, and Asociacion de Mujeres Alas de Mariposas por el Derecho a la Alegria, <https://mujerestransformandoelmundo.org/documentos/>
- 896 Interview with MTM staffer Meeylin Mejia.
- 897 UNGA, Report of the Secretary-General to the Security Council on Women, Peace and Security, S/2021/827 (2021), [https://www.security-councilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2021\\_827.pdf](https://www.security-councilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2021_827.pdf), para. 64.
- 898 UNGA, Report of the Office of the United Nations High Commissioner for Human Rights to the Human Rights Council on Human Rights and Transitional Justice, A/HRC/49/39 (Jan. 12, 2022), [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_49\\_39\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_49_39_E.pdf), para 25.
- 899 Interview with expert Rita Laura Segato.

## 5.2

# CHALLENGES IN IMPLEMENTATION OF REPARATIONS

The adoption of broad transformative reparations in the *Sepur Zarco* judgment has been celebrated as one of the most important achievements and outcomes of the litigation. However, as with other reparation measures ordered by international tribunals against Guatemala, in particular the IACtHR, the implementation of the reparation measures in *Sepur Zarco* has been plagued with legal and political obstacles. First, there is no procedure for implementing reparations for human rights violations against the State under Guatemala’s domestic law.<sup>900</sup> Although this lack of procedure affects the implementation of both international and domestic reparations, the IACtHR has set up a monitoring process that requires Guatemala to report periodically on compliance with the orders granted in its judgments.<sup>901</sup> In contrast, in the case of domestic judgments where reparations are ordered under the Criminal Procedure Code,<sup>902</sup> domestic law provides neither a proceeding for their implementation nor an authority to oversee their compliance.<sup>903</sup> Article 51 of the Criminal Procedure Code states that an “execution judge” will oversee compliance of the punishment once a trial court convicts a perpetrator of a crime.<sup>904</sup> This provision also states that the judge will supervise “all aspects” related to such compliance without defining the scope of a judge’s authority in this respect.<sup>905</sup> Furthermore, the Code establishes that once a judgment in a criminal case becomes *res judicata*, the proceedings will be referred to the execution judge who is then tasked with ordering the detention of the perpetrator if required and identifying the facilities where the person will serve the sentence.<sup>906</sup> The execution judge must also ensure that the other orders in the judgment, such as notifications or confiscation, are carried out.<sup>907</sup> None of these provisions make reference to the role of the execution judge in regard to the implementation of the reparations contemplated in the same Code.

Second, these legal challenges are compounded by political obstacles that create additional hurdles for making progress in the implementation of the *Sepur Zarco* reparations, including a lack of sustained political will by State agencies<sup>908</sup> and the pushback from powerful organizations of former members of the military and their allies in Congress who have opposed measures of truth and justice for the victims.<sup>909</sup> Additionally, the complex and contentious nature of some of the issues addressed in the reparation

orders, especially transfer of title and ownership of the territories where the affected communities are located, adds another layer of difficulties to the process.<sup>910</sup>

Finally, the general nature of the language used by the Court in its reparations orders, together with a lack of clarity as to the State agency with the power to implement them, pose further challenges to the successful compliance of those orders.<sup>911</sup> As stated before, *Sepur Zarco* is only the second judgment where measures of “dignified” reparations (as opposed to

merely compensation) have been ordered in cases arising out of the conflict, but it is the first decision that has become *res judicata*.<sup>912</sup> Neither the civil claimants nor the trial court had experience implementing reparations when these measures were adopted, which is reflected in the Court's lack of precision in how it articulated the reparation orders.<sup>913</sup> Moreover, the absence of an authority with power to oversee compliance and interpret the scope of the measures, together with the inaction of some State agencies, have

in practice delayed the decision making process and required additional efforts from the civil claimants and the *Abuelas* themselves to push the implementation negotiations forward while keeping all the relevant parties engaged.<sup>914</sup>

The next sections will describe how the civil claimants have overcome some of the challenges just described and review the status of the measures ordered in the *Sepur Zarco* judgment.

## 5.2.1

### Implementing the Reparations in *Sepur Zarco*: a Pragmatic Approach

Faced with the challenge of no clear procedure or authority to order the implementation of the dignified and transformative reparations, the organizations that participated as civil claimants developed an ad hoc process to engage with the State agencies charged with implementing the measures awarded by the judgment.<sup>915</sup> The first step was to initiate a process with all the responsible agencies and institutions to explain and discuss the scope of the reparation measures; this was called the “socialization” process.<sup>916</sup> Next, the civil claimants set up a series of convening spaces whereby the representatives of the different agencies and institutions would meet to identify the steps and actions required to implement the reparations. As part of this process, an inter-institutional mechanism was set up where all the State agencies charged with the implementation of the reparation measures were represented.<sup>917</sup> The overall goal of this mechanism, which remains active today, is to follow up and assess compliance of all measures ordered in the judgment.<sup>918</sup> This mechanism was first convened by the Women's Secretariat of the Public Prosecutors Office<sup>919</sup> together with MTM, the organization that led the coordination of the legal strategy of the *Sepur Zarco* case.<sup>920</sup> The representatives of the State agencies meet with the civil claimants, departmental authorities and the representatives of the communities affected every three months, though extraordinary meetings can be convened as needed.<sup>921</sup> At each meeting, the State agency representatives provide an update on the progress they have been able to make, in light of the annual operative plans they have established to comply

with the reparations.<sup>922</sup> The agreements and progress made are memorialized in the meeting minutes and that information is communicated in Maya Q'eqchi to the *Abuelas* and other members of the affected communities in working meetings at the community level.<sup>923</sup>

Second, ad hoc “technical working tables” were established, organized according to the thematic aspects covered by the sixteen measures of dignified reparations awarded in the judgment.<sup>924</sup> In particular, the technical working tables cover the following four themes: education and culture, health, land, and victims.<sup>925</sup> These working tables are convened by MTM and engage representatives of each agency overseeing the specific theme, who meet with the civil claimants to facilitate the implementation of each measure.<sup>926</sup> Designated representatives of the *Abuelas* participate in the meeting on behalf of the other victims in the case as well as of their communities.<sup>927</sup> The working tables are expected to meet once a month and the outcome of these gatherings are reported to the inter-institutional mechanism.<sup>928</sup>

To ensure the effectiveness of policies and plans adopted by the State agencies at the community level, MTM promoted the establishment of “departmental working tables,” with participation of the governors of the two departments where the affected communities are located, as well as the officials of Guatemalan State agencies sitting in those departments and the civil claimants.<sup>929</sup> The role of this space was to discuss the implementation of the measures at the community level and report to the inter-institutional table any

progress made at those meetings.<sup>930</sup> Although these “departmental working tables” met for two years, after the Giammattei administration took power in 2020,<sup>931</sup> the convening organizations have not been successful in maintaining engagement from the political authorities at the departmental level.<sup>932</sup>

Finally, MTM has supported the setup of thematic community working tables to serve as “social auditors,”<sup>933</sup> whereby the *Abuelas*, the community authorities and lay representatives of each affected community meet to monitor compliance of the reparation measures at the community level.<sup>934</sup> The community working tables are organized according to the four themes identified in the reparation’s measures and each of these thematic tables has a committee that serves as a liaison with the national inter-institutional mechanism, the ad hoc technical working tables, and the departmental working tables, when these were operational.<sup>935</sup>

After the first meeting of the inter-institutional table, the civil claimants became aware of the absence of a census or other basic information about the communities identified as beneficiaries of the reparation measures.<sup>936</sup> Therefore, MTM produced a “base line report” on the affected communities of *Sepur Zarco*, *Pombaac*, *La Esperanza* and *San Marcos*, determining the number of people living in each of them as well as identifying the social needs and living conditions of each community.<sup>937</sup> The outcome of this comprehensive report showed that, in addition to *Sepur Zarco*, 44 other surrounding communities would benefit from the implementation of the reparation measures, impacting the lives of approximately 15,000 people.<sup>938</sup>

Given that representatives of State agencies involved in the different implementation mechanisms could leave their positions or be replaced, the civil claimants adopted a “master plan” establishing the needs and claims of each of the affected communities, setting the

goals for each measure and establishing strategies to achieve them.<sup>939</sup> This plan, approved and adopted by the national inter-institutional mechanism,<sup>940</sup> guides the implementation of the reparation measures, ensuring that all the steps taken toward compliance are adopted with a gender and human rights perspective and with the overarching objective of transforming the victims’ realities.<sup>941</sup> Once approved, the goals and strategies identified in the plan are to be incorporated into the annual planning of each participating State agency to ensure that the resources needed for the implementation of the measures are guaranteed in those agencies’ budgets.<sup>942</sup> Finally, the master plan was endorsed by the State agencies and the civil claimants through a letter of compromise signed by both sides.<sup>943</sup>

There are two other important aspects of the strategy developed by the civil claimants to ensure compliance with the reparation measures that must be underlined. First, civil claimants have consistently placed upon the State institutions the responsibility and initiative to carry out and fund their implementation, thereby restricting themselves to encouraging these agencies to take the central role in the process.<sup>944</sup> Although the civil claimants have accepted private donations to address immediate and pressing needs of the victims or their communities,<sup>945</sup> the overarching goal has been to ensure that the measures adopted to transform and improve their lives are institutionalized in the budgets and action plans of the State agencies so as to guarantee that they not depend on ad hoc funding or political decisions that may not withstand the test of time.<sup>946</sup> Second, as with the process of designing the reparation measures, the *Abuelas* have played a leading role in their implementation and compliance.<sup>947</sup> In this regard, the *Abuelas* have been called “*Naxjolomi*,” which in Q’eqchi’ means “the person who takes the lead, the head” serving “as ambassadors or leaders of each of the reparation measures, participating in the incidence and monitoring of the actions planned or taken” to ensure their implementation.<sup>948</sup>

## 5.2.2

### Assessing Compliance with the Reparation Measures

Despite the challenges identified above, the process has moved forward and some of the reparation measures have been implemented by the State.

As stated before, the judgment granted measures of reparation that included monetary compensation against the perpetrators and other measures of restitution, satisfaction, rehabilitation, and non-repetition ordered against specific State agencies. Enforcement of the compensatory reparations has followed a separate process,<sup>949</sup> though the two perpetrators have declared themselves insolvent, thereby preventing the victims in the case from obtaining any material compensation from the judgment thus far.<sup>950</sup> Implementation of the remaining sixteen measures of dignified and transformative reparations, which benefit both the victims and their communities, has been pursued according to the political process of engagement described above, and in cooperation with the State agencies that oversee the four themes covered by those measures, including: culture and education, health, land, and victims.<sup>951</sup> Most of the measures that have been implemented so far fall within the field of culture and education. In particular, the Ministry of Culture has hired a cultural promotor to design and implement cultural activities for the *Sepur Zarco* community and developed other recreational and sport related activities for the members of the four communities from which the *Abuelas* come.<sup>952</sup> Likewise, the Ministry of Education and the Ministry of Culture have translated a synthesized version of the *Sepur Zarco* judgment into most of the Mayan, Xinca and Garifuna languages ordered in the decision,<sup>953</sup> with one remaining to be completed in 2022.<sup>954</sup> Also, the Ministry of Education has developed educational materials on the *Sepur Zarco* case.<sup>955</sup> Moreover, in 2020-2021 the Ministry of Education awarded 800 scholarships to elementary, middle and high school students from the *Sepur Zarco* community.<sup>956</sup> Furthermore, it has provided some funds to improve the infrastructure of the existing schools in three of the affected communities.<sup>957</sup> Finally,

the Ministry of Education and the Ministry of Culture have collaborated in the production of documentaries reflecting the struggles for justice of the *Abuelas* from *Sepur Zarco* and the other affected communities.<sup>958</sup> However, for political reasons the documentaries have not yet been made public in Guatemala, thereby preventing the most important aspect of the educational reparations measures, which is to inform and raise awareness in Guatemala and beyond of the human rights violations experienced by the *Abuelas* during the conflict.<sup>959</sup>

Additionally, pending the construction of a permanent health facility, the Ministry of Health established a mobile clinic to provide urgent medical services and appointed two nurses to serve the members of the affected communities.<sup>960</sup> The mobile clinic also provides basic medications.<sup>961</sup>

Furthermore, the remains of 112 victims disappeared and murdered during the conflict were handed over for burial to their next of kin in *Sepur Zarco* and other affected communities.<sup>962</sup> The remains were buried in a special place built for this purpose and named "Site of Memory."<sup>963</sup> These remains were identified during the exhumations carried out in December 2011, in the former military barrack of Las Tinajas, before the *Sepur Zarco* case was initiated.<sup>964</sup> After the exhumation work, which was carried out by the Forensic Anthropological Foundation of Guatemala, the remains of the husbands of two of the *Abuelas* were identified among the victims.<sup>965</sup> Some of these remains were presented as evidence during the case trial.<sup>966</sup> Yet, more work needs to be carried out to comply with the measure requiring that the fate of all the *Abuelas'* husbands disappeared during the conflict be established. The Public Prosecutor's Office oversees implementation of this measure.<sup>967</sup> Finally, the civil claimants have been negotiating with the municipality of El Estor, in the Izabal Department, to build a monument representing the search for justice by the women of the *Sepur Zarco* case, but the project has not been completed yet.<sup>968</sup>

### 5.2.2.1

#### Land Titling

One of the most complex aspects of the reparations measures is ensuring the transfer of title and ownership of the land to the communities where the women of the *Sepur Zarco* case are based.<sup>969</sup> Access to land in Guatemala by indigenous communities has historically been problematic and in many instances, claims of this nature have triggered violence and repression, especially during the internal armed conflict.<sup>970</sup> In fact, as documented before in this report, it was the very attempt by Q'eqchi leaders of the affected communities to seek land rights that triggered retaliation from the military in the *Sepur Zarco* military base, which led to the forced disappearances, torture and murder of the *Abuelas'* husbands and sexual and domestic slavery against the *Abuelas* themselves.<sup>971</sup> As a result, one of the reparations that the *Abuelas* have prioritized is restitution of the land where their communities are based, to complete the titling process initiated by their husbands and ensure that their descendants have a more prosperous future.<sup>972</sup> The judgment in the *Sepur Zarco* case ordered the State to reopen and pursue the land claims initiated by the *Abuelas'* husbands with a view to granting the communities affected ownership of those territories.<sup>973</sup> After the judgment was issued, the then Guatemalan Secretariat of Agrarian Affairs took charge of overseeing the implementation of this reparation.<sup>974</sup> The central challenge to compliance with this measure is that the land claimed by the communities is in private hands.<sup>975</sup> Notwithstanding this, negotiations headed by Secretariat of Agrarian Affairs appeared to be successful and the private owners showed an interest in selling the land to the State.<sup>976</sup> Additionally, the civil claimants established that the land is free of liens and debts, thereby facilitating the purchase.<sup>977</sup> After the Giammattei administration took power, however, the Secretariat of Agrarian Affairs was eliminated and its

functions absorbed by the Presidential Commission for Peace and Human Rights (known by its Spanish acronym Copadeh) the powers of which include adopting human rights policies and dealing with social conflict, including agrarian conflicts.<sup>978</sup> Although the Land Fund – a State agency created after the Peace Accords were signed to facilitate the transfer of lands to landless communities<sup>979</sup> – was initially involved in the negotiations regarding the acquisition of the land, its role is limited to the purchase of property for the purpose of selling it to private parties through mortgages and other loans.<sup>980</sup> In the *Sepur Zarco* case, the purchase of the land where the communities are located was to be done by the State, free of charge to those communities.<sup>981</sup> To overcome this impasse, the civil claimants have requested again that the Land Fund and other State agencies, including the agency that represents the interests of the State (the Attorney General's Office) and Copadeh, participate in an ad hoc technical working table on land to continue negotiations to address the implementation of this measure.<sup>982</sup> Although the Vice President of Guatemala has participated in the inter-institutional table with the civil claimants and convened meetings of the ad hoc working table on land with the above mentioned institutions, the resolution of this issue remains stalled.<sup>983</sup>

Restoring the land to the communities is also essential to implement other core reparations ordered by the judgment, in particular the construction of a permanent health facility and of the National Institute of Bilingual and Intercultural Education.<sup>984</sup> Domestic law provides that the State cannot build infrastructure on privately held land or land the legal title of which is not established.<sup>985</sup> Thus, while the land titling and ownership remains unresolved, the State will not take any steps to advance the implementation of these two measures of reparations.<sup>986</sup>

### 5.2.2.2

#### Other Pending Measures of Reparation

Out of the sixteen measures of dignified and transformative reparations ordered in the judgment, there are some measures regarding which the State has completely failed to take action, or make any significant progress toward compliance. The underlying reasons for this lack of implementation are multi-prong, but reflect similar challenges that prevent full compliance of the measures described above, namely lack of political will from the State authorities and the opposition of sectors of former military members with political connections.<sup>987</sup> In particular, the State has not made significant efforts to pass a law on enforced disappearances to improve the search for the victims and the investigation of the perpetrators.<sup>988</sup> In addition, Congress has failed to designate February 26 as a day of commemoration of the victims of sexual violence and sexual and domestic slavery.<sup>989</sup> Furthermore, the Ministry of Defense has resisted the incorporation of human rights courses on women rights and the prevention of violence against women into the training of the members of the military.<sup>990</sup> Likewise, the State has not adopted steps to comply with the measure requiring that basic services be provided to the communities of Zepur Zarco, San Marcos, Pombaac, and La Esperanza through community authorities.<sup>991</sup> In addition, while the State has provided limited protection to the *Abuelas* in their communities, it still needs to develop and carry out a full security plan to protect all the claimants and other members of the communities.<sup>992</sup> As with the other measures that have yet to be fully implemented, the civil claimants continue to engage with the State institutions and press for compliance with these reparations, maintaining that only full compliance with what was ordered in the judgment will transform the social conditions faced by the women in the *Sepur Zarco* case and their communities.<sup>993</sup>

Nevertheless, the slow pace of implementation is a significant problem – the women of *Sepur Zarco* are aging and if the measures are not adopted promptly they will not be effective to achieve the goal for which

they were granted, namely redressing the harms caused by the sexual violence, sexual slavery and domestic slavery that the victims suffered during the conflict.<sup>994</sup> The *Abuelas* have consistently raised this concern in interviews<sup>995</sup> and other public appearances.<sup>996</sup> For this reason, some of the civil claimants have used other resources to address the immediate needs of the affected communities while the negotiations to obtain full implementation of the reparations ordered against the State continue. For example, UNAMG signed an agreement with the Ministry of Health under which UNAMG temporarily paid the cost of providing a doctor three days per week at the mobile clinic, which the State has only staffed with nurses, to ensure that the women's medical needs were properly addressed.<sup>997</sup> UNAMG also installed solar panels on the homes of the women to provide them with electricity,<sup>998</sup> in partial fulfilment of the Court's order to provide basic services to the victims and their communities.<sup>999</sup> Moreover, UNAMG has been working with the women to document their ancestral knowledge<sup>1000</sup> – cultural knowledge they were unable to transmit to their children during the crimes – which falls within the Court's order to the Ministry of Culture to undertake cultural projects for the women's benefit.<sup>1001</sup> Although these measures plainly fall within the responsibility of the State, it is unclear whether the State will ever reimburse UNAMG, meaning they have had to seek out funding to cover these expenses.<sup>1002</sup> International donors, such as UN Women, also have assisted in developing national policies and standards on reparations, as well as provided funding to help respond to the more immediate needs of the *Abuelas*.<sup>1003</sup>

The successful implementation of the *Sepur Zarco* transformative measures of reparation is essential not only for the *Abuelas* and the affected communities, but also to ensure that subsequent cases where similar measures are awarded, such as the Case of Emma Molina Theissen and the Case of the Maya Achi Women, stand a chance to be implemented once the judgement in those cases becomes final.

# ENDNOTES:

## Section 5.2

- 900 Interview Lic. Paula Barrios, Dan seguimiento a medidas de reparación digna por sentencia en caso *Sepur Zarco*, Canal Antigua (Sept. 8, 2021), <https://www.youtube.com/watch?v=Es1YuQowNps>.
- 901 Regarding the power of the Court to supervise compliance, see Case of Baena Ricardo et al. v. Panama, Competence, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 104 (Nov. 28, 2003). For supervision of judgments against Guatemala, see inter alia Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala, Monitoring Compliance with Judgment, Order, Inter-Am. Ct. H.R. (Nov. 17, 2021); Case of the Río Negro Massacres v. Guatemala, Monitoring Compliance with Judgment, Order, Inter-Am. Ct. H.R. (Feb. 16, 2021).
- 902 Guatemala Criminal Procedure Code, Art. 124.
- 903 Plan Maestro para la implementación y cumplimiento de las medidas de reparación digna y transformadora de la sentencia del caso *Sepur Zarco*, Oficina de la Alta Comisionada de Derechos Humanos en Guatemala y Mujeres Transformando el Mundo [hereinafter Plan Maestro], at 5.
- 904 Guatemala Criminal Procedure Code, Art. 51 (The execution judges will be in charge of the execution of sentences and everything related to them, as established in this Code.") (authors' translation).
- 905 Id.
- 906 Id., Art. 493, paras. (1) and (2) ("Criminal sentences will not be executed before they are final. To this end, the day they become final, the corresponding communications and registrations will be ordered and the orders will be sent to the execution judge. If the convicted must serve a custodial sentence, the execution judge will send the executed ruling to the establishment where the sentence must be served, so that it can proceed as appropriate. If the convicted person has been released, the execution judge will immediately order his arrest and once he is apprehended, the execution judge will proceed according to this rule.") (authors' translation).
- 907 Id., Art. 493, para. (3) ("It will also order the copies necessary to carry out the measures to comply with the ancillary effects of the judgment: communications, registrations, confiscation, destruction and return of things and documents.") (authors' translation).
- 908 This lack of sustained political will from state agencies is reflected, for example, in the handling of the reparations measure to transfer title and ownership of land to the communities affected in the case. In 2019, after the Secretariat of Agrarian Affairs received a proposal from the private owners to sell the land to the State, it later denied the existence of information on that matter and suggested that the resolution of this issue did not fall within the purview of agency. See Summary of the *Sepur Zarco* case, presented by MTM to the transitional team of the Giammattei administration after his election in 2020 (on file with the author) [hereinafter Summary of the *Sepur Zarco* case]. Subsequently, as discussed in the next section, the Secretariat itself was eliminated in 2020 by the current administration of President Giammattei. See Interview with former MTM staffer Ana Medina. These changes have delayed the process and created additional hurdles for the effective implementation of the measure.
- 909 The effect of this pushback can be seen in efforts by civil claimants to engage legislative authorities to pass a law that would improve the investigation of forced disappearances and designate February 26 as the National Day of the Victims of Sexual Violence, Sexual and Domestic Slavery, which remains stalled in Congress. See Interview with former MTM staffer Ana Medina; MTM, A 6 Años de la Sentencia de *Sepur Zarco*, Feb. 26, 2022, at <https://www.facebook.com/MujeresTransformandoElMundoGT/photos/a.556875197799136/2272878059532166/> Also, these groups have exercised their influence to prevent that a documentary on the *Sepur Zarco* case produced by the Ministry of Education to comply with one of the measures of reparation has not been authorized for public distribution. See Interview with MTM staffer Meeylyn Mejía López (Mar. 23, 2022).
- 910 See *infra* Section V.B.2.
- 911 See Interview with MTM staffer Meeylyn Mejía López.
- 912 Id.
- 913 Id.
- 914 Id.
- 915 This process began after the trial court issued the judgment on February 26, 2016, years before the case became res judicata in November 2018. Por el cumplimiento de las medidas de reparación Caso *Sepur Zarco*, MUJERES TRANSFORMANDO EL MUNDO (Sept. 6, 2017), <https://mujerestransformandoelmundo.org/por-el-cumplimiento-de-las-medidas-de-reparacion-caso-sepur-zarco/>.
- 916 Summary of the *Sepur Zarco* case, at 1. See also Plan Maestro, at 14-15.
- 917 Summary of the *Sepur Zarco* case, at 1. See also Plan Maestro, at 222, 26. The Plan Maestro also proposes that other relevant institutions participate as observes to accompany the process, including: the National Human Rights Ombudsman ("Procurador Nacional de Derechos Humanos"), the Defender's Office of Indigenous Women ("Defensoría de la Mujer Indígena"), and the Presidential Secretariat of Women Issues ("Secretaría General de la Mujer").
- 918 Plan Maestro, at 26.

- 919 Since there was no other institution established to oversee compliance with the reparations measures and the then Attorney General Thelma Aldana supported prosecution of this case and implementation of the reparations, she decided to take the lead in convening the inter-institutional mechanism. In addition, there was no political will by the Executive Branch and/or specific State agencies to lead the implementation process. See Interview with former Attorney General Thelma Aldana (Mar. 28, 2022).
- 920 Plan Maestro, at 22. The Plan Maestro proposes that in the future a new institution take the lead, replacing the Attorney General's Office, to strengthen the implementation of the measures. Such an institution could be a "National Table of Transformative Reparations for the *Sepur Zarco* Case" ("Mesa Nacional de Reparación Transformadora del caso *Sepur Zarco*"), created as part of the plan itself. See Plan Maestro, at 22.
- 921 *Id.*, at 26.
- 922 *Id.*
- 923 *Id.*
- 924 Summary of the *Sepur Zarco* case, at 1. See also Plan Maestro, at 27.
- 925 Plan Maestro, at 15, 27.
- 926 *Id.*, at 27.
- 927 *Id.*
- 928 *Id.*
- 929 Summary of the *Sepur Zarco* case, at 1. See also Plan Maestro, at 24, 28.
- 930 Plan Maestro, at p. 28.
- 931 See Sandra Cuffe, Guatemala elects right-wing president amid dismal turnout, Washington Post, August 12, 2019, [https://www.washingtonpost.com/world/guatemala-awaits-presidential-election-results/2019/08/11/f8d70034-bc3a-11e9-a8bo-7ed8a0d5dc5d\\_story.html](https://www.washingtonpost.com/world/guatemala-awaits-presidential-election-results/2019/08/11/f8d70034-bc3a-11e9-a8bo-7ed8a0d5dc5d_story.html).
- 932 Summary of the *Sepur Zarco* case, at 1. See also Interview with MTM staffer Meeylyn Mejía López.
- 933 This term refers to those who participate in social audits, a Guatemalan practice involving public participation designed to ensure that state funds are used in the service of the common good. See, in general, Guía de Auditoría Social (Dec. 2015), <https://www.scep.gob.gt/infopub/Guia%20de%20Auditoria%20Social.pdf>
- 934 Summary of the *Sepur Zarco* case, at 1. See also Plan Maestro, at 24, 29.
- 935 Plan Maestro, at 29.
- 936 Summary of the *Sepur Zarco* case, at 1.
- 937 Plan Maestro, at 15-16.
- 938 *Id.* See also Interview Lic. Paula Barrios, Dan seguimiento a medidas de reparación digna por sentencia en caso *Sepur Zarco*.
- 939 Plan Maestro, at 11-14. The Plan also states the need to take into account other discriminatory grounds victims might face during its implementation, including discrimination based on ethnicity. In addition, it underlines that its implementation must be guided by the principles of equality, non-discrimination and full participation. *Id.*
- 940 *Id.*, at 31.
- 941 *Id.*, at 11-13.
- 942 *Id.*, at 31.
- 943 *Id.*, at 32.
- 944 See Interview with former MTM staffer Ana Medina.
- 945 For more detail on this, see infra Section V.B.3.b.
- 946 Plan Maestro, at 17-19.
- 947 Plan Maestro, at 16. Indeed, this methodology follows the UN Secretary General Guidance Note on Reparations for Conflict-Related Sexual Violence, which in Principle 6 advocates and supports the meaningful participation and consultation of victims in the mapping, design, implementation, monitoring and evaluation of reparations. See UN Guidance Note of the Secretary General on Reparations for Conflict-Related Sexual Violence (Jun. 2014), at <https://digitallibrary.un.org/record/814902?ln=en>
- 948 Plan Maestro, at 16.
- 949 *Id.*, at 11. Civil claimants have resorted to filing separate civil claims to enforce the monetary compensation against the perpetrators, basing their claims on Article 506 of the Criminal Procedure Code. See Guatemala Criminal Procedure Code, Art. 506 ("The civil sentence will be executed at the request of whoever has the right before the competent courts in this matter and in accordance with the provisions of the Code of Civil and Commercial Procedure, except the restitutions ordered in the judgment.") (authors' translation).
- 950 See Interview with MTM staffer Meeylyn Mejía López.
- 951 Interview Lic. Paula Barrios, Dan seguimiento a medidas de reparación digna por sentencia en caso *Sepur Zarco*.
- 952 Summary of the *Sepur Zarco* case, at 2-3.
- 953 The summary was prepared by MTM. See Summary of the *Sepur Zarco* case, at 2-3.
- 954 See Interview with MTM staffer Meeylyn Mejía López.
- 955 *Sepur Zarco*: In pursuit of truth, justice and now reparations, UN WOMEN (Oct. 22, 2017), <https://www.unwomen.org/en/news/stories/2017/10/feature-guatemala-sepur-zarco-in-pursuit-of-truth-justice-and-now-reparations>.
- 956 See Interview Lic. Paula Barrios, Dan seguimiento a medidas de reparación digna por sentencia en caso *Sepur Zarco*. The problem that remains, however, is that the scholarships have benefitted only students in the *Sepur Zarco* community, but not those from the other three communities where some of the *Abuelas* reside. Interview with MTM staffer Meeylyn Mejía López.
- 957 Due to administrative obstacles, one of the four communities where the *Abuelas* come from did not benefit with the school improvements. Interview with MTM staffer Meeylyn Mejía López.
- 958 José David López Vicente, Caso Mujeres Achi, Planes de salud, becas y una petición del Ejército como reparación para las mujeres achies, Agencia Ocote (Jan. 27, 2022), <https://www.agenciaocote.com/blog/2022/01/27/planes-de-salud-becas-y-una-peticion-de-disculpa-del-ejercito-como-reparacion-para-las-mujeres-achies/>
- 959 Interview with MTM staffer Meeylyn Mejía López. As discussed in the next section, the creation and establishment of a bilingual high school in

- the community to enable the youth to continue with their studies depends on the land titling process.
- 960 Summary of the *Sepur Zarco* case, at 2.
- 961 *Id.*
- 962 Peace Brigades International, Monthly Informational Package, Guatemala, Number 219 (Dec. 2021), at 1.
- 963 See [https://www.facebook.com/watch/?ref=search&v=3099403920314158&external\\_log\\_id=ad15a7fa-4c1a-4e23-b0dc-a7f8ed8018of&q=%23sitiodelamemoria%20sepur%20zarco](https://www.facebook.com/watch/?ref=search&v=3099403920314158&external_log_id=ad15a7fa-4c1a-4e23-b0dc-a7f8ed8018of&q=%23sitiodelamemoria%20sepur%20zarco)
- 964 Peace Brigades International, Monthly Informational Package, Guatemala, at 1.
- 965 Interview with MTM staffer Meeylyn Mejía López.
- 966 Peace Brigades International, Monthly Informational Package, Guatemala, at 1.
- 967 Summary of the *Sepur Zarco* case, at 4.
- 968 Interview with MTM staffer Meeylyn Mejía López.
- 969 *Sepur Zarco* case: The Guatemalan women who rose for justice in a war-torn nation, UN Women (Oct. 19, 2018), <https://www.unwomen.org/en/news/stories/2018/10/feature-sepur-zarco-case#:~:text=News%20and%20Events-,Sepur%20Zarco%20case%3A%20The%20Guatemalan%20women%20who%20rose%20for%20justice,near%20the%20Sepur%20Zarco%20outpost.>
- 970 See Interview with former MTM staffer Ana Medina.
- 971 For a detailed description of the facts and background of the case, see Section II of this report.
- 972 Interview with expert Dosia Calderón.
- 973 See *Sepur Zarco* Trial Judgment, at 510.
- 974 Summary of the *Sepur Zarco* case, at 3. See also Interview with former MTM staffer Ana Medina.
- 975 Summary of the *Sepur Zarco* case, at 3.
- 976 *Id.*
- 977 Interview with former MTM staffer Ana Medina.
- 978 *Id.* Along with the Secretariat of Agrarian Affairs, other relevant agencies that were eliminated included the Peace Secretariat (“Secretaría de la Paz, Sepaz”) and the Presidential Commission Coordinating the Human Rights Policy of the Executive Power (“Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos, Copredek”). They were replaced by the Presidential Commission for Peace and Human Rights (“Comisión Presidencial por la Paz y Derechos Humanos, Copadeh”). See Margarita Girón, Ejecutivo elimina la Sepaz, SAA y Copredek; serán sustituidas por la Copadeh, *La Hora*.gt, (Jul. 31, 2020), <https://lahora.gt/ejecutivo-elimina-la-sepaz-saa-y-copredek-seran-sustituidas-por-la-copadeh/>
- 979 Salena Tramel, *The Tenure Guidelines in Policy and Practice: Democratizing Land Control in Guatemala*, 8 *Land* 168 (2019), <https://doi.org/10.3390/land8110168>.
- 980 Interview with former MTM staffer Ana Medina. See also Interview with MTM staffer Meeylyn Mejía López.
- 981 *Id.*
- 982 Interview with MTM staffer Meeylyn Mejía López.
- 983 Interview with Vice President Guillermo Castillo, Dan seguimiento a medidas de reparación digna por sentencia en caso *Sepur Zarco*, Canal Antigua (Sept. 8, 2021), at <https://www.youtube.com/watch?v=Es1YuQowNps>. See also Interview with MTM staffer Meeylyn Mejía López.
- 984 Interview with former MTM staffer Ana Medina.
- 985 *Id.*
- 986 *Id.*
- 987 *Id.*
- 988 *Id.* See also MTM, A 6 Años de la Sentencia de *Sepur Zarco*, Feb. 26, 2022, at <https://www.facebook.com/MujeresTransformandoElMundoGT/photos/a.556875197799136/2272878059532166/> 989 *Id.*
- 990 Interview with former MTM staffer Ana Medina.
- 991 See MTM, A 6 Años de la Sentencia de *Sepur Zarco*, Feb. 26, 2022, at <https://www.facebook.com/MujeresTransformandoElMundoGT/photo/a.556875197799136/2272878059532166/> 992 Interview with MTM staffer Meeylyn Mejía López.
- 993 See MTM, A 6 Años de la Sentencia de *Sepur Zarco*.
- 994 Interview with UNAMG Executive Director Ada Valenzuela; Por el cumplimiento de las Medidas de Reparación caso *Sepur Zarco*; *Sepur Zarco* case: The Guatemalan women who rose for justice in a war-torn nation, UN WOMEN (Oct. 19, 2018), <https://www.unwomen.org/en/news/stories/2018/10/feature-sepur-zarco-case>.
- 995 Interview with the *Abuelas of Sepur Zarco*.
- 996 See Presentation of Demetia Yat, Justicia y Reparación Transformadora: Caso de *Sepur Zarco*, organized by Alianza de mujeres y mujeres indígenas por el acceso a la justicia (Mar. 23, 2022), <https://www.facebook.com/100009478706539/videos/494353655490530/>
- 997 Interview with UNAMG Executive Director Ada Valenzuela.
- 998 *Id.*
- 999 *Sepur Zarco* Trial Judgment, at 510.
- 1000 Interview with UNAMG Executive Director Ada Valenzuela.
- 1001 *Sepur Zarco* Trial Judgment, at 510.
- 1002 Interview with UNAMG Executive Director Ada Valenzuela.
- 1003 Interview with expert Dosia Calderón; *Sepur Zarco*: In pursuit of truth, justice, and now reparations, UN WOMEN (Oct. 22, 2017), <https://www.unwomen.org/en/news/stories/2017/10/feature-guatemala-sepur-zarco-in-pursuit-of-truth-justice-and-now-reparations.>

## 5.3

# POLITICAL CHALLENGES TO HOLDING PERPETRATORS ACCOUNTABLE FOR ATROCITY CRIMES MORE GENERALLY

In addition to challenges related to reparations, Guatemala is facing broader political challenges to holding perpetrators accountable for atrocity crimes. Over the years, powerful political forces have pushed back efforts by victims, civil society organizations and courageous judges to prosecute and convict perpetrators of genocide, war crimes and crimes against humanity perpetrated during the Guatemalan conflict. For instance, Congress has considered the adoption of a blanket amnesty for state agents accused of international crimes during the conflict. The draft law was introduced in 2017, but it emerged as a real challenge at the beginning of 2019 when, with the support of the then Morales administration, its adoption gained substantial support in Congress.<sup>1004</sup> Draft law 5377 proposed modifications to the Law of National Reconciliation, adopted in 1996 as part of the peace agreement, which granted amnesty for political crimes and participation in the conflict, but excluded its application to genocide, torture, forced disappearances, war crimes and crimes against humanity.<sup>1005</sup> In particular, the draft law removed the exclusion of the amnesty for international crimes, replacing it with a blanket amnesty for anyone who committed crimes during the conflict,<sup>1006</sup> and requiring that judges apply the amnesty immediately to those already serving time for a conviction and order their release within 24 hours, under penalty of being charged with crimes related to the denial of justice.<sup>1007</sup>

This draft law drew extensive opposition from within and outside Guatemala.<sup>1008</sup> On March 12, 2019, as part of a resolution on provisional measures for victims whose life and personal integrity would be at risk if the law were adopted and on monitoring compliance with the Molina Theissen judgment and 12 other Guatemalan cases, the IACTHR ordered Guatemala to stay the legislative process required to adopt the amnesty law.<sup>1009</sup> The IACTHR justified its decision on the basis of Guatemala's duty to investigate the gross human

rights violations that transpired during the conflict and ensure the victims' right to access to justice.<sup>1010</sup> Subsequently, on July 18, 2019, the Constitutional Court of Guatemala granted a provisional amparo filed by human rights victims of the conflict and ordered the immediate suspension of the draft law.<sup>1011</sup> Although the law was not adopted at that time, it was not completely withdrawn from consideration.<sup>1012</sup> In 2021, a new initiative was presented in Congress by Valor, the political party that supported the nomination of

Zury Rios for President.<sup>1013</sup> This proposal resembled the prior draft bill, which authorized a blank amnesty and ordered the immediate release of those charged or convicted for crimes perpetrated during the conflict.<sup>1014</sup> Given the current political climate in Guatemala, there is no guarantee that the issue will not resurface again, even in the short term.<sup>1015</sup>

Another challenge for those pressing for accountability in Guatemala relates to the departure of CICIG. CICIG completed its mandate on September 3, 2019, after the administration of President Jimmy Morales decided in January 2019 that he would not renew CICIG's mandate, arguing that the commission was unconstitutional and a risk to national security.<sup>1016</sup> Concerns expressed at the time that shutting down CICIG would lead to setbacks in the investigation of corruption cases and the accountability process regarding crimes perpetrated during the conflict have become a reality in recent months.<sup>1017</sup> The deterioration of the rule of law and the attacks on the judicial independence of courts represent the most significant challenges to the accountability process today.

In recent months, judges and other justice actors have become the object of threats and persecution if involved in cases that affect those in power, including the members of the military who continue to exercise a great deal of influence in Guatemala's political landscape.<sup>1018</sup> Some of the most renowned judges and prosecutors recognized for their independence and convictions have been forced to leave the country,<sup>1019</sup> and others might follow. Moreover, the head of the Human Rights Prosecutor's Office, Hilda Pineda, who oversaw the investigation and prosecution of the *Sepur Zarco* case and other groundbreaking transitional justice cases was transferred to another position to head a unit to investigate crimes against tourists.<sup>1020</sup> Efforts to reinstate her in the specialized human rights unit have been unsuccessful thus far.<sup>1021</sup> Ultimately, as stated by Jo-Marie Burton who has closely followed the political process in Guatemala in the last decade, "[a]ttacks aimed at threatening the security of and undermining the work of justice operators currently in office ...demonstrate that such actions are part of a calculated strategy to rid Guatemala of officials who uphold the rule of law in order to guarantee impunity for corrupt actors as well as human rights violators."<sup>1022</sup>

As a response, the international community, including the IACHR<sup>1023</sup> and the UN Special Rapporteur on the Independence of Judges and Lawyers,<sup>1024</sup> have expressed their concern for the situation in Guatemala and urged the State to protect the integrity and independence of the judges under threat and persecution. The US government<sup>1025</sup> and the European Union have also made public their concerns for the deterioration of the rule of Law in Guatemala.<sup>1026</sup> However, the situation has not relented. The international community must step up its efforts to press the Guatemalan Government and other national institutions to stop the criminalization and persecution of judges and ensure that ongoing processes of accountability in corruption and human rights violations are not endangered.<sup>1027</sup> One instance of concern at the time of writing is the election of the Attorney General of Guatemala.<sup>1028</sup> Guaranteeing a fair, independent and transparent process could constitute a signal from the State of Guatemala that it is responding to the concerns of international and domestic actors.<sup>1029</sup> However, there is little hope that these concerns will be adequately addressed, given the increase in persecution and hostility faced by independent judges and prosecutors at the moment.<sup>1030</sup>

Despite this very concerning situation, some recent developments may help to keep the hopes of the victims of human rights violations alive regarding the future of transitional justice cases in Guatemala. First, on January 24, 2022, the High-Risk Trial Court A convicted five former members of the civil defense patrols, who operated with the military, of crimes against the duties of humanity in the forms of sexual violence perpetrated against Maya Achi women in Rabinal, Baja Verapaz.<sup>1031</sup> The judgment also granted extensive dignified and transformative reparations.<sup>1032</sup> In addition, there are twelve other criminal cases proceeding in Guatemalan courts regarding grave human rights violations perpetrated during the conflict.<sup>1033</sup> As with earlier cases, the success or failure of these proceedings will depend heavily on the persistence and resilience of the victims and civil society organizations that have represented them, as well as on the courage of independent and committed judges who will continue to press for the completion of the ongoing trials.<sup>1034</sup> The support of the international community of all those engaged in these cases will be a key factor to counterbalance the powerful elites and former members of the military who resist truth and justice at all cost.

# ENDNOTES:

## Section 5.3

- 1004 J.M. Burt and P. Estrada, Corte de Constitucionalidad Ordena al Congreso Suspende Debate sobre Propuesta de Ley de Amnistía, Centro de Medios Independientes (Jul. 26, 2019), <https://cmiguate.org/corte-de-constitucionalidad-ordena-al-congreso-suspende-debate-sobre-propuesta-de-ley-de-amnistia/>.
- 1005 J. M. Burt and P. Estrada, Legislator Proposes Blanket Amnesty for Grave Human Rights Violations in Guatemala, International Justice Monitor (Nov. 14, 2017), <https://www.ijmonitor.org/2017/11/legislator-proposes-blanket-amnesty-for-grave-human-rights-violations-in-guatemala>.
- 1006 Art. 5, Iniciativa 5377, Ley de Reconciliación Nacional, <http://derechos.org/nizkor/guatemala/doc/leyamnistias5377.html>.
- 1007 Id.
- 1008 See UN Office of High Commissioner for Human Rights, Guatemala Congress must not pass ‘amnesty’ bill for rights violations, say UN experts (Mar. 11, 2019), [https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24300&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24300&LangID=E;); UN News, Amending Guatemala ‘reconciliation law’ would lead to unjust amnesty, warns Bachelet, (Jan. 22, 2019), <https://news.un.org/en/story/2019/01/1031012>; 20 Minutos, Guatemala: mujeres piden de tener debate de ley de amnistía, (Feb. 2, 2019), <https://www.20minutos.com/noticia/142714/0/guatemala-mujeres-piden-detener-debate-de-ley-de-amnistia/>.
- 1009 Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal, Case of Molina Theissen and 12 other Guatemalan’s Cases v. Guatemala, IACtHR, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of March 12, 2019, Resolutive §. See also Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal, Case of Molina Theissen and 12 other Guatemalan’s Cases v. Guatemala, IACtHR, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of October 14, 2019, ¶¶ 15-17.
- 1010 Ibid.
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# CONCLUSION: LESSONS LEARNED FOR PENDING AND FUTURE LITIGATION OF SGBV CASES

The Guatemalan experience is not unique. Although the prevalence of sexual violence differs significantly across countries and conflicts,<sup>1035</sup> evidence of SGBV crimes can be found in most, if not all, countries that have experienced conflict, periods of mass violence or repression. A number of critical lessons can be drawn from the *Sepur Zarco* case that may be applicable in these other settings. Mindful that, as discussed in Section III above, a number of unique factors converged to make possible the success in *Sepur Zarco*, this section will discuss some of the practices and strategies adopted prior, during and after the case that could be useful even in contexts where those particular circumstances are not present.

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## 6.1

# PREPARING THE VICTIMS: HEALING, BREAKING THE SILENCE, AND SEEKING JUSTICE

The civil society organizations involved in the *Sepur Zarco* case played an essential role in supporting and preparing the *Abuelas* to denounce publicly the sexual violence they had suffered and to seek justice against the perpetrators of those crimes. These organizations were led by women with a strong commitment to increasing the recognition of rape and sexual violence as among the crimes committed extensively during the conflict in Guatemala.

A number of key takeaways and lessons learned can be drawn from the assistance and support that civil society organizations provided to the *Abuelas* of *Sepur Zarco* before the complaint was filed in 2011. In particular, the pre-*Sepur Zarco* experience demonstrates the vital importance of:

- Psychosocial support. Given the deeply rooted societal beliefs that blamed and stigmatized survivors of sexual violence – beliefs that many survivors had internalized – and the decades of silence that had passed since the crimes, extensive psychosocial support was critical for the women of *Sepur Zarco* to feel comfortable enough to break their silence publicly and file a case. The psychosocial support and the later organization of the Tribunal of Conscience<sup>1036</sup> helped build deep bonds of trust between the *Abuelas* and the consortium of organizations<sup>1037</sup> assisting them, trust that would be critical in pursuing justice in the legal system.
- Creating a network of solidarity and support. The provision of psychosocial support through self-help groups had the important secondary effect of creating a network of survivors that were able to provide essential emotional support to the *Sepur*

*Zarco Abuelas*. Processing their shared experiences helped the women establish strong relationships of trust, while the process of organizing the Tribunal of Conscience developed critical practices of joint decision making and solidarity – all of which would be called upon throughout the *Sepur Zarco* case. The time working together meant that the women had already established patterns of representation and inclusion, in which some members of the group pursued truth-telling while others took on important supportive roles – patterns that would be important in ensuring that the other members of the group continued to feel included and represented in the *Sepur Zarco* litigation even though the facts did not encompass the crimes against them.

- Listening to and empowering the survivors. The organizations supporting the *Abuelas* in the pre-litigation phase not only listened to the women, but also included them in decision making throughout the organization and presentation of the Tribunal of Conscience. Key decisions, such as who would speak at the Tribunal, were made by the women themselves, ensuring that they had agency over how they shared their stories and that the women were in agreement about, and invested in, the

process. Recognizing the women’s agency – through their involved decision making, their informed consent, and the organizations’ careful attention to not unduly raise expectations – was not only critical to the success of the Tribunal of Conscience, but also to the women’s healing process.

- Using creative approaches. Recognizing that the Guatemalan justice system was not yet ready to take on cases of conflict-related SGBV, the organizations assisting the *Abuelas* looked for new and creative means to raise consciousness about the crimes that had been committed and how they could, and should, be prosecuted in the courts. This included the creation of the Tribunal of Conscience, a public mock trial designed to reveal the abuses suffered by indigenous women, position them as protagonists in the quest to attain truth and justice, and spur the judiciary to take on cases of sexual violence. Importantly, the Tribunal enabled the organizations to test out creative legal strategies – from the incorporation of international law to the extensive use of experts – before bringing the *Sepur Zarco* case. By engaging in these creative approaches, the consortium of organizations

working with the *Abuelas* was able simultaneously to prepare for litigation, while also increasing the interest and capacity of the justice system to hear these cases.

- Ensuring adequate protective measures. Litigating cases of sexual violence presents a risk of causing significant additional harms, from re-traumatization of survivors to the possibility of reprisals or social rejection. It is therefore essential when representing survivors of sexual violence to take adequate measures to protect their dignity, identity, and security. The Tribunal of Conscience brought to the fore many of these issues and allowed the organizations assisting the women to think through with them the kinds of measures that would be necessary during litigation.

In sum, as one of the experts who testified in the *Sepur Zarco* case later noted, “For me, the case of *Sepur* and how the organizations [were] structured and all the work that [was done] with the victims, I have not seen it anywhere else.”<sup>1038</sup> This kind of painstaking preparation not only helped the *Abuelas* begin to heal from the harms they experienced, but also encouraged and empowered them to seek justice.

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<sup>1036</sup> See supra Section III.A.2 (discussing creation of Actors for Changes Consortium: Women in Search of Justice)

<sup>1037</sup> See supra Section III.A.1.

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<sup>1038</sup> Interview with conflict-based gender crimes expert Paloma Soria Montañez (authors’ translation).

## 6.2

# PURSUING JUSTICE: THE IMPORTANCE OF STRATEGIC ALLIANCES

*Sepur Zarco* benefitted from a number of different alliances: 1) the alliance between the civil society organizations supporting and representing the victims; 2) the alliance between MTM and the prosecutors in the case; and 3) the strategic support of international actors. This next section will explore these alliances and how each was instrumental to the outcome of the case.

- Alliances and coordination between civil society organizations. As this report has explored, the strategy of combining psychosocial support, political empowerment, communication campaigns and a solid legal strategy that put the women at the center of the trial proceedings was essential for the ultimate success of the case. Indeed, the *Sepur Zarco* case makes clear that the strategic alliance between organizations with different mandates and strengths was one of the lynchpins of success. At the same time, coordination between organizations with different mandates required not only a willingness by the organizations to engage and defer to each other's strengths, but also the resources to ensure strong and cohesive coordination. As one of the legal experts who testified in the case noted, "That is one of the conclusions...in everything [that was done] there were at least three [aspects:] psychological support, the communications strategy and the legal part. [This] is seen from the beginning, the alliance... comes with those three parts, but resources are necessary for that."<sup>1039</sup>
- Building alliances with the prosecutors while advocating on behalf of victims. As this report has documented, the case required extensive and systematic planning, preparation and strategizing. In addition to the alliance between the organizations supporting the *Abuelas*, one of the key aspects of the case was the relationship between MTM and the prosecutors assigned to the case. While early on, the prosecutors were hesitant to prosecute the charges against the accused as international crimes, and then later to explicitly charge them with SGBV crimes, the continued engagement and strengthening of the relationship between MTM and the prosecutors ultimately resulted in charges that both characterized the SGBV crimes as international crimes and highlighted their gendered nature.
- Strategic support of international actors. The support of external actors has also been significant not only prior to and during the litigation of the case, but also with respect to the implementation of the groundbreaking reparations granted in the case. For instance, as detailed in this report, a number of international experts participated both in the Tribunal of Conscience and later in the *Sepur Zarco* trial. Moreover, several international law experts submitted amicus curiae briefs during the trial, reparations and appeals phases of the case, which MTM incorporated and referenced in their legal arguments in support of the *Abuelas*.<sup>1040</sup> Finally, the United Nations supported the *Abuelas'* process of seeking accountability from its early stages. For instance, from 2014 to 2020, UN Women led implementation of three successive projects focused on the *Sepur Zarco* case and implementation of the reparations judgment, funded by the UN Peacebuilding Fund, in partnership with the United Nations Development Programme (UNDP), the United Nations Population

Fund (UNFPA), the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the Food and Agriculture Organization of the United Nations (FAO).<sup>1041</sup> The United Nations understood and reinforced the importance of foregrounding the *Abuelas* in this process from the start, and have partnered with them, the civil society organizations supporting them, national authorities, and international women's organizations in efforts

to raise visibility of their case, support the implementation of the reparations measures ordered by the Court, and capture the lessons learned from the case.<sup>1042</sup> However, one of the lessons learned is the importance of coordinating and collaborating closely with victims and the organizations that represent them in the design and implementation of these initiatives.<sup>1043</sup>

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1039 Id. (authors' translation).

1040 See supra Section V.D.3.

1041 See Thematic Review: PBF-Supported Projects on Transitional Justice (New York: Secretary-General's Peacebuilding Fund, 2020), [https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/thematic\\_review.pdf](https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/thematic_review.pdf).

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1043 Interview with MTM Director Paula Barrios (April 22, 2022).

## 6.3

# CENTERING THE STORIES OF THE SURVIVORS AT TRIAL WHILE CORROBORATING THEM THROUGH A WEB OF EVIDENCE AND ENSURING SURVIVOR SAFETY

Consistent with their approach during the Tribunal of Conscience, the civil society organizations that supported the *Abuelas* considered them as the central actors of the case, and engaged them extensively in the decision making process, while giving them broad visibility during the proceedings. One of the key lessons of the trial was the bold decision to place the testimony of the *Abuelas* and the narrative of their lived experience at the center of the case, while at the same time ensuring their safety, particularly from re-traumatization, and bolstering their credibility through the extensive use of additional fact witnesses and domestic and international experts. Following are some of the lessons learned from the litigation of the case.

- The indispensable role and leadership of the *Abuelas*. As described in the report, one of the most innovative ways survivors remained central to decision making in the case was to organize themselves into an organization, Colectiva Jalok U, which then sought and was granted status as a “civil claimant” in the criminal case, giving the women their own voice and ensuring their active participation in the proceedings.
- The importance of recording and preserving the experience of survivors of SGBV in advance of trial. As discussed in the report, MTM and the prosecutors petitioned the pre-trial judge to hold pre-trial evidentiary hearings to hear and record the testimony of the *Abuelas*, as well as four male witnesses. This not only preserved the evidence of one of the *Abuelas*, who died shortly after providing the testimony, but was also a key protective measure that reduced the risk of re-traumatizing the other *Abuelas*. This was extremely significant because, in the context of a case brought to trial decades after the crimes were committed and where physical evidence of the crimes was limited, the victims’ testimony was a critical part of the evidence against the accused.
- Ensuring quality and cohesion of the corroborating evidence. The selection and use of corroborating evidence, particularly the many expert witnesses, was part of a careful and deliberate strategy on the part of MTM and the prosecutors to help the Court weave the

various pieces of the evidence together into a whole in which the experiences recounted by the victims made sense. As presiding trial judge Yassmin Barrios noted, “the evidence that was presented was of such high quality, [including] experts in the field...that [it] made our job easier.”<sup>1044</sup> This careful stitching of evidence helped the court not only better understand the victims’ testimony and give it its appropriate weight, but also appreciate how the crimes committed against them fit within the broader context of the armed conflict and the role the accused played in the commission of those crimes.

- The importance of contextualizing the SGBV. Another important lesson from the *Sepur Zarco* case was centering the case on the SGBV crimes without fragmenting those from the other grave crimes (like murder and enforced disappearance) that were committed against the *Sepur Zarco* community. As

former MTM Attorney Jennifer Bravo explained, “The priority was sexual violence and what the women endured, but including everything that happened in the region; the women never leave that out. They would always say, ‘Where’s my husband?’ as one of their most important petitions for justice. So we would talk about... the counterinsurgency strategy in the region, we would talk about all of the disappeared victims, the women, the crimes in the wilderness, the crimes at the base. We went for the broader view, and for that reason we weren’t just confining the evidence [to sexual violence] because that would have meant decontextualizing it.”<sup>1045</sup> Importantly, contextualizing the sexual violence in this way demonstrated how multiple offenses can be prosecuted together to more comprehensively address the range of abuses to which a community has been subjected while still making SGBV the focus of the case.

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<sup>1044</sup> Interview with presiding trial Judge Yassmin Barrios Aguilar.

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<sup>1045</sup> See CHANGING THE FACE OF JUSTICE, at 18 (citing interview, Paula Barrios and Jennifer Bravo, 2016).

## 6.4

# THE ADOPTION OF REPARATIONS MEASURES DESIGNED TO HOLISTICALLY REDRESS THE NEEDS OF VICTIMS

One of the most celebrated achievements of the judgment in the *Sepur Zarco* case was the adoption of dignified and transformative reparations. The reparations were awarded in the criminal proceedings pursuant to Article 124 of the Criminal Procedure Code, which acknowledges the right of a victim of a crime to claim reparations that go beyond monetary compensation to include, inter alia, measures of restitution. By relying on international principles and case law, the trial Court in *Sepur Zarco* interpreted the notion of “dignified reparations” to include measures of restitution, rehabilitation, satisfaction and non-repetition. When crafting the measures, the trial Court adopted the approach that these reparations should have a transformative effect, in other words, that they should not only redress the harm but also seek to change the structural causes underlying the violence experienced by the victims.

Despite the award of these transformative reparation measures, their implementation has been plagued with legal and political obstacles. The lack of specific procedures for their implementation and the absence of a clear authority to oversee their compliance have presented significant obstacles. Faced with these challenges, the civil claimants have resorted to the creation of ad hoc mechanisms involving the different State agencies charged with the compliance of the measures, the victims and representatives of the affected communities, as well as departmental authorities to implement the measures. Although these mechanisms allow the civil claimants to meet with the different actors involved in the process and negotiate steps toward compliance, the institutional response is always dependent on the political will and disposition of those in power. Changes in the technical

teams of the State agencies, the transfer of power to new administrations and shifting agendas have delayed the compliance process in the *Sepur Zarco* case. This is compounded by the fact that some of the reparations measures deal with contentious issues in the history of Guatemala, such as the transfer of land title and ownership. Notwithstanding these obstacles, the civil claimants have been successful in achieving compliance with some of the measures or in pressing State institutions to take steps toward compliance.

A number of critical lessons related to reparations can be drawn from the *Sepur Zarco* case, including the vital importance of:

- Transformative reparations. The reparation measures ordered in the *Sepur Zarco* case provide an important model for subsequent cases regarding

sexual violence. The incorporation of the notion of transformative reparations, which requires that the context of the victims be assessed to determine the scope of the measures needed to fully redress the harm caused, is groundbreaking and should inform how courts issue reparations awards in these types of cases going forward. Significantly, this approach may be useful in other types of cases. In fact, the impact of the *Sepur Zarco* case has not been limited to cases of transitional justice; it has also triggered a debate on the need to expand the application of the provision on dignified reparations in the Criminal Procedure Code to victims of other types of crimes.

- Clear and precise language in the order for reparations. The lack of precision in the language of the reparations orders has delayed the implementation process; this problem is compounded by the absence of an entity with the authority and power to provide a final interpretation as to the scope of the measures and ensure their enforcement. Thus, the *Sepur Zarco* case demonstrates the need for clarity and specificity regarding the reparations orders.
- A mechanism with clear authority to monitor and enforce implementation. The challenges faced by the victims in the *Sepur Zarco* case described above clearly underscore the need to establish a

mechanism with clear authority to ensure that reparations are monitored and properly enforced through legal means.

- Creativity, persistence and support. Finally, in the absence of such a mechanism, the *Sepur Zarco* experience shows the need for creativity and persistence by the civil claimants and for support from both domestic and international organizations. The creation of ad hoc mechanisms for implementation, while imperfect, have resulted in compliance with some of the measures and in steps toward compliance with others. At the same time, these efforts have made visible the legal gaps in the system that have thus far prevented full implementation of the reparations.

Ultimately, as in *Sepur Zarco*, the passage of time and the ageing of the women who were victims of the violence without full implementation of these reparations may diminish the significance of the case and undermine the use of strategic litigation as a vehicle to redress human rights violations and produce long-term social changes. Moreover, full compliance with the reparation measures in *Sepur Zarco* will be essential to ensure that subsequent cases where similar measures are awarded, such as the cases of Emma Molina Theissen and the Maya Achi women, stand a chance of being implemented once the judgement in those cases becomes final.

## 6.5

# THE NEED FOR SUSTAINED FOCUS AND SUPPORT OF EFFORTS TO LITIGATE SGBV CRIMES AS CORE CRIMES

The *Sepur Zarco* case recognized sexual violence as an international crime perpetrated as part of the counter-insurgency policy implemented by the state of Guatemala. The strategic use of sexual violence in the conflict had been largely invisible in Guatemala until this case was decided.<sup>1046</sup> A sustained focus on the sexual violence crimes as core crimes in the case not only recognized them as grave crimes, but also contributed to an increased understanding of the use of SGBV by the military during the Guatemalan conflict, changing the narrative about the conflict for the affected communities, the prosecutors and judges involved in the case, and the broader Guatemalan public.

The kind of continued and sustained engagement seen in the *Sepur Zarco* case is particularly relevant for other countries that are going, or have gone, through a conflict or period of mass violence in which widespread or systemic sexual violence may have been committed but has yet to be fully surfaced and/or redressed.<sup>1047</sup> For example, El Salvador has recently started a process of accountability for the war crimes and crimes against humanity perpetrated during their armed conflict, after the Supreme Court declared unconstitutional a blanket amnesty that had been adopted in 1992.<sup>1048</sup> As a result, a few criminal investigations have been opened by domestic courts to address these crimes and identify and punish the perpetrators.<sup>1049</sup> One of the most notable cases is the El Mozote Massacre Case, which involved the extrajudicial execution of about 1,000 victims, half of which were children.<sup>1050</sup> Evidence shows that women and girls were raped before they were murdered.<sup>1051</sup> Although the domestic indictment includes aggravated rape as one of the crimes charged against the accused, the focus of the investigation has been more on the extrajudicial executions than on the sexual violence.<sup>1052</sup> As in Guatemala, in El Salvador the sexual violence was systematically perpetrated; however, no transitional justice case yet has addressed

this crime beyond the ongoing investigations in El Mozote.<sup>1053</sup> The lesson from *Sepur Zarco* is that without a sustained commitment to investigate and prosecute the sexual violence – in addition to the other crimes – this aspect of the violence, including how it was used in the conflict by the parties, is likely to remain invisible.

Another country where there has been insufficient prosecution of conflict-related sexual violence at the domestic level is Peru.<sup>1054</sup> A report issued by the Truth and Reconciliation Commission (TRC), established to investigate the human rights abuses committed during the conflict in the 1980s and 1990s included a section on sexual violence perpetrated during the conflict<sup>1055</sup> and concluded that this crime was systematically perpetrated during the military incursions and in prisons where alleged terrorists were deprived of liberty.<sup>1056</sup> One of the cases identified by the TRC is the Case of Manta y Vilca, which, like *Sepur Zarco*, focuses exclusively on sexual violence perpetrated against members of an indigenous community in Peru during the internal conflict.<sup>1057</sup> However, unlike other cases arising out of the conflict, like the La Cantuta case, where the accused were successfully prosecuted for other crimes against humanity,<sup>1058</sup> victims of sexual

violence in this case have pressed for years to establish the criminal responsibility of the perpetrators and face substantial challenges in reaching a successful outcome.<sup>1059</sup> Again, one of lessons from *Sepur Zarco* is that without sustained support targeted at moving this case forward, the case may linger indefinitely.

Ultimately, addressing sexual violence perpetrated by state agents as part of a transitional justice process is a step forward in ensuring not only that this type of violence does not remain unpunished but also that sexual violence does not become “normalized” once the conflict or situation of violence subsides.

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1046 See supra § IV.A.

1047 See, e.g., OAS, GIEI, Nicaragua, Report on the violent events that took place between April 18th and May 30th, 2018, at 231 (Apr. 2019), [https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI\\_REPORT\\_ENGLISH\\_simplepage.pdf](https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf); UN Office of the High Commissioner for Human Rights, ‘Human rights in the Bolivarian Republic of Venezuela, at 9 (July 5, 2019), [https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=E; Oficina del Alto Comisionado de Derechos Humanos, América del Sur, Oficina Regional, Equipo ONU Derechos Humanos finalizó su visita a Chile \(22 nov. 2019\), https://acnudh.org/equipo-onu-derechos-humanos-finalizo-su-visita-a-chile/](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=E; Oficina del Alto Comisionado de Derechos Humanos, América del Sur, Oficina Regional, Equipo ONU Derechos Humanos finalizó su visita a Chile (22 nov. 2019), https://acnudh.org/equipo-onu-derechos-humanos-finalizo-su-visita-a-chile/).

1048 Sala Constitucional Corte Suprema de Justicia de El Salvador, Sentencia del proceso de inconstitucionalidad No. 44-2013/145-2013 Ac, 13 July 2016.

1049 This includes the Massacre of El Calabozo case, see V. Guzmán, El Calabozo: El retorno de una denuncia 26 años después, LA PRENSA GRÁFICA (4 feb. 2018), <https://www.laprensagrafica.com/revistas/El-Calabozo-El-retorno-de-una-denuncia-26-anos-despues-20180203-0061.html>; L. Arteaga, El caso de El Calabozo: cuerpos calcinados que reclaman justicia a dos años de la reapertura del proceso penal, JUSTICIA EN LAS AMÉRICAS (6 dic. 2018), <https://dplfblog.com/2018/12/06/el-caso-de-el-calabozo-cuerpos-calcinados-que-reclaman-justicia-a-dos-anos-de-la-reapertura-del-proceso-penal/>.

1050 See, inter alia, El Mozote, CRISTOSAL, <https://www.cristosal.org/el-mozote#el-mozote-latest-news>; IACtHR, Case of the Massacres of El Mozote and surrounding areas v. El Salvador, Merits, Reparations and Costs, Judgment of October 25, 2012, Series C No. 252, §§ 73-121.

1051 IACtHR, Case of the Massacres of El Mozote and surrounding areas v. El Salvador, §§ 93, 163.

1052 We filed an amicus brief in the case in support of the argument that the sexual violence perpetrated in El Mozote was a war crime and crime against humanity. See Claudia Martin and Susana SáCouto, Amicus Curiae, Causa Penal 238/90, conocida como ‘Masacre El Mozote y lugares aledaños’ (filed on 24 August 2018), <https://www.wcl.american.edu/impact/initiatives-programs/hracademy/documents/amicus-causa-penal-238-90/>.

1053 Leonor Arteaga, De *Sepur Zarco* a El Mozote: en búsqueda de la justicia con sentido de mujer, EL FARO, (20 jun. 2018), <https://elfaro.net/es/201806/columnas/22095/De-Sepur-Zarco-a-El-Mozote-en-b%C3%BAsqueda-de-la-justicia-con-sentido-de-mujer.htm>.

1054 In spite of the widespread and systematic practice of sexual and gender violence in Peru during the conflict, so far only two cases have been successfully completed. The first was the MMMB Case concerning a student who was raped while in detention in a military base in 1992. The sexual violence was considered a crime against humanity. See Corte Suprema eleva penas a militares por violación y secuestro de estudiante bajo contexto de lesa humanidad, [https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s\\_cortes\\_suprema\\_home/as\\_inicio/as\\_enlaces\\_destacados/as\\_imagen\\_prensa/as\\_notas\\_noticias/2018/cs\\_n-corte-suprema-eleva-penas-a-militares-por-violacion-y-secuestro-de-estudiante](https://www.pj.gob.pe/wps/wcm/connect/cortesuprema/s_cortes_suprema_home/as_inicio/as_enlaces_destacados/as_imagen_prensa/as_notas_noticias/2018/cs_n-corte-suprema-eleva-penas-a-militares-por-violacion-y-secuestro-de-estudiante). The second was the Case of Apurímac, where women in campesino communities were raped by members of a military patrol. The sexual violence was characterized as a crime against humanity. See Corte Suprema de Justicia, Sala Penal, Recurso de Nulidad 2184/2017, 2 May 2018 (on file with the author).

1055 Comisión de la Verdad y Reconciliación, Informe Final, Volume VI, Chapter 1, section 1.5 (27 August 2003), <http://cverdad.org.pe/ifinal/>.

1056 Id., at 303-337.

1057 Id., at 312.

1058 See Supreme Court of Peru, Special Criminal Chamber, Exp. No. 00006-2001-4-5001-SU-PE-01, Control de convencionalidad Alberto Fujimori Fujimori o Kenya Fujimori (13 Feb. 2019) (invalidating presidential pardon granted to former president and dictator Alberto Fujimori, who had been convicted and imprisoned for crimes against humanity for his role in killings and kidnappings by security forces during his government’s battle against leftist guerrillas in the 1990s).

1059 For an updated status on the criminal proceedings in this case, see DEMUS, Manta y Vilca: Justicia que Tarda, <https://www.demus.org.pe/yo-no-soy-esa/manta-y-vilca-justicia-que-tarda/>; DEMUS, Mujeres víctimas de violación sexual por militares exigen celeridad al Poder Judicial (13 Mar. 2020), <https://www.demus.org.pe/noticias/mujeres-victimas-de-violacion-sexual-por-militares-exigen-celeridad-al-poder-judicial/>.

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