May, 2020

Access to Justice for Victims of Conflict-related Sexual Violence

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Lessons Learned from the *Sepur Zarco* Case

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Abstract

Despite persistent impunity for conflict-related sexual violence, there have been a limited number of significant cases holding perpetrators accountable within national justice systems. One of these cases is the Sepur Zarco case, in which two former military members were accused of committing acts of sexual violence, sexual slavery and domestic slavery near a military outpost in Sepur Zarco during the civil war in Guatemala. In a landmark verdict issued in February 2016, a Guatemalan court convicted the two accused, marking the first time a Guatemalan court has convicted former military members for acts of sexual violence committed in the context of the country's civil war, and the first instance of a domestic court prosecuting sexual slavery as an international crime. In acknowledging that these acts 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 separate crime, equivalent to other crimes committed during the conflict, for which perpetrators could be held accountable. This chapter will highlight some of the critical developments prior to the case, as well as the 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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1. Introduction

Despite increasing evidence of sexual and gender-based violence committed during periods of conflict or repression (CRSV), 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, acts of sexual violence, sexual slavery and domestic slavery committed against Maya Q'eqchi' women near a military outpost in Sepur Zarco during the civil war in Guatemala.¹ This was the first conviction of former military members for acts of sexual violence committed in the context of the country's civil war and the first instance of a domestic court prosecuting sexual slavery as an international crime. A year later, Guatemala's High Risk Crimes Appellate Court upheld the historic *Sepur Zarco* judgment.²

Our involvement in the case began when *Mujeres Transformando el Mundo* (MTM), one of the organizations advocating for the Maya Q'eqchi' women who survived the violence, asked us to consider sharing our views with the trial court on several issues related to our areas of expertise. We submitted two *amici curiae* briefs to the court during the trial.³ After the landmark judgment was issued, the accused appealed the verdict on several grounds and MTM asked us to consider briefing the appeals court on several of the legal issues raised by the defendants, which we did.⁴ Our reflections in this chapter draw on our experience drafting those briefs, as well as a review of developments that took place before the *Sepur Zarco* case, relevant documents from the pre-

- 1 Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente, Guatemala, Case No. C-01076-2012-00021, Sentencia, 26 February 2016, at 1, 492–493, 507–508 (hereinafter Sentencia de *Sepur Zarco*).
- 2 See J.M. Burt and P. Estrada, 'Court Ratifies Historic Sepur Zarco Sexual Violence Judgment', International Justice Monitor, 21 July 2017, available online at <https://www.ijmonitor.org/2017/07/court-ratifies-historic-sepur-zarco-sexual-violence-judgment/> (visited 30 September 2019).
- 3 *Amicus Curiae* of the War Crimes Research Office and Academy of Human Rights and International Humanitarian Law, American University Washington College of Law, and International Experts on Sexual Violence under International Criminal Law and Human Rights Law, Tribunal de Mayor Riesgo 'Grupo A', Guatemala City, Guatemala (23 February 2016) (hereinafter 'WCRO and Academy Trial Court *Amicus* on Sexual Violence under International Criminal Law and Human Rights Law') (on file with authors); *Amicus Curiae* of Claudia Martin, Co-Director of the Academy of Human Rights and International Humanitarian Law, American University Washington College of Law, and Susana SáCouto, Director of the War Crimes Research Office on the Scope of the Right to Comprehensive and Adequate Reparations under International Human Rights Law and Its Application to the *Sepur Zarco* Case, Tribunal de Mayor Riesgo 'Grupo A', Guatemala City, Guatemala (1 March 2016) (hereinafter 'WCRO and Academy Trial Court *Amicus* on Reparations') (on file with authors).
- 4 *Amicus Curiae* of the War Crimes Research Office and Academy of Human Rights and International Humanitarian Law, American University Washington College of Law, and International Experts on International Criminal and Human Rights Law, Sala de la Corte de Apelaciones del Ramo Penal de Procesos de Mayor Riesgo y Extinción de Dominio, Guatemala (7 June 2017) (hereinafter 'WCRO and Academy Appeals Court *Amicus* on SOL, Amnesty and Evidentiary Issues') (on file with authors).

trial, trial, appeals and reparations phases of the case, and conversations with our MTM colleagues.

In acknowledging that acts of sexual violence 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. This chapter will highlight some of the critical developments prior to the case, as well as the 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.

2. Background: The *Sepur Zarco* Case

The offences alleged against the accused took place in the early 1980s, during the height of a 36-year conflict between the government of Guatemala and various leftist rebel groups supported primarily by ethnic Mayan indigenous people and Ladino peasants. The alleged acts took place at or near a military outpost in Sepur Zarco, located in the eastern region of Guatemala.⁵ In 1982, armed forces attacked the community of Sepur Zarco, killing or forcibly disappearing a number of male Maya Q'eqchi' leaders who had sought to obtain legal title to the land where they had lived and worked for years.⁶ Weeks later, the army attacked their families, burning down their houses, destroying their belongings and raping their spouses.⁷ While four women escaped and went into hiding in the mountains, the rest were forced to move into improvised huts right outside the military base.⁸ For months during 1982 and 1983, these women were forced to take turns every few days washing, cooking and cleaning for soldiers.⁹ During their 'shifts', women were repeatedly raped and/or subjected to various forms of sexual abuse.¹⁰ 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 the huts where

5 Juzgado de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente por Procesos de Mayor Riesgo, Guatemala, Case No. 01076-2012-00021, Intermediary Phase, First Part (Transcript, 3 October 2014) (statement of Public Prosecutor) (hereinafter 'Intermediary Phase Transcript').

6 S. Beaudoin, 'Guatemala Trials: Sepur Zarco Trial to Start in February', International Justice Monitor, 17 November 2015, available online at <http://www.ijmonitor.org/2015/11/sepur-zarco-trial-to-start-in-february/> (visited 1 October 2019); J.M. Burt, 'Victim Witnesses Tell of Atrocities at Sepur Zarco', International Justice Monitor, 9 February 2016, available online at <http://www.ijmonitor.org/2016/02/victim-witnesses-tell-of-atrocities-at-sepur-zarco/> (visited 1 October 2019).

7 Intermediary Phase Transcript, *supra* note 5.

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

they were forced to live or when they went to wash clothes in the river.¹¹ At least one woman, who was repeatedly raped in front of her two young daughters, was subsequently killed along with her daughters.¹²

On 30 September 2011, with the support of the *Alianza Rompiendo el Silencio y la Impunidad (La Alianza)*,¹³ 15 surviving female victims initiated a process to bring the case to trial by filing a formal complaint with a court in Puerto Barrios, Izabal.¹⁴ The case was assigned to the Human Rights Unit of the Attorney General's Office and eventually transferred to a High Risk Court in Guatemala City.¹⁵ On 14 June 2014, two suspects — commander of the military base and retired colonel lieutenant Esteelmer Francisco Reyes Girón and former military commissioner and commander of the civil patrols in the area Heriberto Valdez Asig — were arrested.¹⁶ Reyes Girón was charged with murder and crimes against the duties of humanity under Article 378 of the Guatemalan Criminal Code in the form of sexual violence, sexual slavery, domestic slavery and outrages upon personal dignity.¹⁷ Valdez Asig was charged with forced disappearances and crimes against the duties of humanity under Article 378 of the Guatemalan Criminal Code in the form of sexual violence.¹⁸ A number of challenges filed by the accused were subsequently dismissed¹⁹ and the trial began on 1 February 2016. The trial took less than four weeks, during which the court heard testimonies of the Q'eqchi' women survivors, eyewitnesses, other members of the community and numerous expert witnesses. On 26 February 2016, the court found the accused guilty and sentenced Reyes Girón to 120 years and Valdez Asig to 240 years.²⁰

11 *Ibid.* See also MTM, 'Sepur Zarco Fact Sheet', available online at <http://www.ghrc-usa.org/wp-content/uploads/2015/04/MTM-SepurZarco.pdf> (visited 3 December 2019), at 2.

12 Intermediary Phase Transcript, *supra* note 5; Grupo de Mujeres Ixchel, 'Nuestra Memoria Nuestra Verdad', 5 February 2016, available online at <https://nuestramemorianuestraverdad.wordpress.com/2016/02/05/nunca-habia-sentido-ese-miedo-antes-sepur-zarco/#comments> (visited 3 December 2019).

13 *La Alianza* is made up of three women's rights organizations in Guatemala, namely MTM, *Unión Nacional de Mujeres Guatemaltecas* (UNAMG) and *Equipo de Estudios Comunitarios y Acción Psicosocial* (ECAP).

14 J.M. Burt, 'Gender Justice in Guatemala: The Sepur Zarco Sexual Violence and Sexual Slavery Trial', 4 *Critical Studies* (2019) 63, at 76.

15 *Ibid.* See also, generally, Guatemala Human Rights Commission, 'Sepur Zarco Sexual Slavery Case', available online at <http://www.ghrc-usa.org/our-work/important-cases/sepur-zarco/#sepurzarcohistory> (visited 3 December 2019) (hereinafter *Sepur Zarco Sexual Slavery Case*).

16 *Sepur Zarco Sexual Slavery Case*, *ibid.*

17 Juzgado Primero de Primera Instancia Penal, Narcoactividad y Delitos contra el Ambiente por Procesos de Mayor Riesgo, Guatemala, Case No. C-01076-2012-00021, Resolución de Fase Intermedia (14 October 2014).

18 *Ibid.*

19 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, Case No. 01016-2014-00064, Sentencia Referente a la Acción Constitucional de Amparo 607-2014 (26 February 2015).

20 Sentencia de *Sepur Zarco*, *supra* note 1, at 507–508.

3. Pre-Sepur Zarco Developments: Victim-centred Movement, International Engagement and Institutional Readiness

In reviewing the *Sepur Zarco* victims' 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 victims 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.

A. Role of Civil Society Organizations and the Impact of the 'Tribunal de Conciencia'

The journey started in 2001 when ECAP began providing psychosocial support to indigenous women affected by the conflict in the Polochic Valley area.²¹ Around 2003, women started to speak out about the sexual violence that they had suffered after their husbands were forcibly disappeared.²² That same year, UNAMG joined the ECAP-led project to support the women's efforts to break their silence and to empower them to pursue an accountability process.²³ Together, ECAP and UNAMG set up the *Consorcio Actoras de Cambio: Mujeres en Búsqueda de Justicia*,²⁴ a partnership created to ensure that the voices of Maya indigenous women who were victims of sexual violence were heard as part of the truth-telling and accountability process in Guatemala.²⁵ The strategy pursued by these organizations involved a holistic methodology that included psychosocial support, training in women's rights, recovery of historical memory, social sensitization and political advocacy in support of justice and reparations for the victims.²⁶ As a result, in 2007, the women expressed their interest in telling their stories, in particular, to dispel the narrative that they were responsible for the sexual violence that they suffered.²⁷

21 Network in Solidarity with the People of Guatemala (NISGUA), 'Entrevista con Maudi Tzay, ECAP', 3 October 2016, available online at <https://nisgua.org/entrevista-con-maudi-tzay-ecap/> (visited 29 September 2019) (citing interview with Maudi Tzay, community psychologist from ECAP) (hereinafter '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.*

22 *Ibid.*

23 *Ibid.* See also UNAMG, *Sepur Zarco, El camino de las mujeres hacia la justicia*, Separata Sepur Zarco 1, August 2016, available online at <https://unamg.org/publicaciones> (visited 3 October 2019), at 5 (hereinafter *Sepur Zarco, El camino de las mujeres hacia la justicia*).

24 This Consorcio eventually separated due to differences among the partners. See Interview with Maudi Tzay, *supra* note 21.

25 I. Mendia Azkue and G. Guzmán Orellana (eds), *Ni Olvido Ni Silencio: Tribunal de Conciencia contra la violencia sexual hacia las mujeres durante el conflicto armado en Guatemala* (Universidad del País Vasco & Hegoa, 2012) (hereinafter *Ni Olvido Ni Silencio*), at 13.

26 *Ibid.*, at 15.

27 *Ibid.*

In 2009, MTM joined in the efforts to advance the process of truth-telling and justice,²⁸ and together with ECAP and UNAMG, created the *Alianza Rompiendo el Silencio y la Impunidad*.²⁹ Identifying themselves as feminist organizations, they saw their role as addressing the issue of sexual violence through the voices of the women affected by that violence.³⁰ At the time, however, there was little hope that an actual case would be investigated by the judiciary. Instead, the victims and the civil society organizations that supported them explored alternative measures that would allow victims to recount the history of sexual violence perpetrated against them during the conflict and provide some form of redress, even if symbolic.³¹

Thus, in 2010, the three civil society organizations involved in the process held a ‘Tribunal of Conscience’ modelled on prior international efforts, such as the Tokyo Tribunal in 2000 that considered the claims of the so-called ‘comfort women’ who were subjected to rape and sexual slavery by Japanese soldiers in the Asia Pacific region during the Second World War.³² Although the initial work involved over 120 women victims of sexual violence from Chimaltenango, Huehuetenango and Alta Verapaz,³³ only a smaller group of women chosen by the group itself testified before the Tribunal.³⁴

The Tribunal of Conscience required the participating organizations to carry out a well-thought-out strategy before and during the proceedings. For instance, the organizations worked for a year with the women to prepare them to testify in public. This work involved a threefold approach: working with the women individually to strengthen their presentation and help them to overcome their fears; working with the women’s families and other women affected who would not testify; and working with the community to ensure the women’s safety.³⁵ In addition, the civil society organizations ensured the participation of domestic and international experts in the proceedings and invited representatives from the judiciary to observe the trial.³⁶ Participation of representatives of the judiciary was considered essential to sensitize key actors in the subsequent criminal process that was initiated in 2011.³⁷ Finally, the trial was held in public over the course of two days so that all members of the society could observe the proceedings and was coupled with an outreach campaign designed to inform society of the sexual crimes experienced by the women and the need to break the silence and combat impunity for those crimes.³⁸

28 Sepur Zarco, *El camino de las mujeres hacia la justicia*, *supra* note 23, at 5.

29 *Ibid.*

30 *Ibid.*

31 See Interview with Maudi Tzay, *supra* note 21.

32 Ni Olvido Ni Silencio, *supra* note 25, at 15.

33 *Ibid.*, at 13.

34 *Ibid.*, at 15–16.

35 *Ibid.*, at 16–17.

36 *Ibid.*, at 17.

37 *Ibid.*

38 *Ibid.*

The proceedings before the Tribunal of Conscience followed a similar structure to a criminal trial, with witnesses, expert witnesses, prosecutors and judges.³⁹ Eight women from different regions of Guatemala testified about the sexual violence perpetrated against them by state agents.⁴⁰ Other written and documentary evidence was submitted by the prosecutors, together with the testimony of seven expert witnesses who addressed key aspects of the evidence debated in the proceedings.⁴¹ Ultimately, the judges of the Tribunal concluded that crimes of sexual violence committed during the conflict in Guatemala were not subject to a statute of limitations, that crimes of this nature should be characterized as crimes against humanity, and that they had been perpetrated mostly by state agents.⁴² The proceedings were supplemented by a communications campaign that included live transmission through different media outlets and translation into the six Mayan languages.⁴³

Many advocates agree that the successful experience of the Tribunal of Conscience 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.⁴⁴ Indeed, the work of the Alliance was recognized as essential to the pursuit of the case and, ultimately, the conviction of the perpetrators of the sexual violence, sexual slavery and domestic slavery committed against those women. The civil society organizations involved in the Alliance articulated a three-prong strategy that represented each of their areas of expertise⁴⁵: UNAMG organized the communications campaign and the empowerment of the claimants; ECAP offered psychosocial support for the women to strengthen their capacities and leadership; and MTM lead the legal strategy and pressed the prosecutors and judges involved in the case to take action.⁴⁶

Importantly, the civil society organizations that supported the women of Sepur Zarco considered them to be the central actors of the case and engaged the women extensively in the decision-making process, while giving them broad visibility during the proceedings. Evidence of this strategy can be seen in the decision to constitute as civil claimants⁴⁷ in the proceedings not only two of the organizations involved in the case (MTM and UNAMG) but also a third organization, *Colectiva Jalok U*, the members of which were the surviving

39 *Ibid.*, at 17–18.

40 *Ibid.*, at 19.

41 *Ibid.*, at 20.

42 *Ibid.*, at 21.

43 *Ibid.*, at 19.

44 *Ibid.*, at 21.

45 See Movimiento por la Paz, *Caso Sepur Zarco, la lucha de las mujeres por la justicia*, available online at <https://www.mpdl.org/sites/default/files/160210-dossier-alianza-rompiendo-silencio.pdf> (visited 3 October 2019), at 2.

46 *Ibid.*

47 Under Guatemala law, victims and/or their representatives can become civil claimants ('*querellantes adhesivos*') in criminal cases, either by petitioning a court to initiate a criminal case or joining a criminal case initiated by the Public Prosecutor. See Guatemalan Criminal Procedural Code, Decreto No. 51-92, Art. 116 (1992).

victims of Sepur Zarco.⁴⁸ This step ensured the active participation of the women in the proceedings and strengthened their role as ‘subjects of law’ rather than as mere victims of the crimes.⁴⁹

In sum, the civil society organizations involved in the case played an essential role in supporting and preparing the women of Sepur Zarco to denounce publicly the sexual violence that they suffered and to seek justice against the perpetrators of those crimes. These organizations were led by women with a strong commitment to increasing recognition of rape and sexual violence as among the crimes committed extensively during the conflict in Guatemala. As we will explore later, the strategy that they articulated of combining psycho-social support, political empowerment, communications campaigns and a solid legal strategy that put the women at the centre of the trial proceedings was essential for the ultimate success of the case.

B. International Engagement and Institutional Readiness: The Impact of the Inter-American System of Human Rights and the International Commission Against Impunity in Guatemala

1. Impact of the Inter-American System of Human Rights

The Inter-American Human Rights System has played an essential role in fostering accountability for grave abuses committed in Guatemala. In addition to Inter-American Commission of Human Rights’ (IACHR) monitoring and documenting of the massive human rights violations that affected the civilian population during the conflict carried,⁵⁰ 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 that country.⁵¹

More specifically, the impact of the regional human rights bodies can be observed in three important findings of the IACtHR that had a direct relevance to the *Sepur Zarco* case, namely the recognition that: (1) during the conflict the state was involved in the perpetration of crimes against humanity against the civilian population; (2) those crimes were committed mostly against Mayan indigenous communities and involved not only extrajudicial executions, forced disappearances, torture, but also sexual violence against women and girls; and (3) the state’s ‘duty to investigate’ requires the punishment of the material and intellectual authors of those crimes, as well as the inapplicability of amnesty laws to those crimes.

48 Movimiento por la Paz, *Caso Sepur Zarco*, *supra* note 45, at 2–3.

49 *Ibid.*

50 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, Art. 41 ACHR, Art. 18 Statute of the IACHR, and Arts 53–57, 60 Regulations of the IACHR.

51 Overall, the IACtHR has adopted 17 judgments against Guatemala regarding human rights violations perpetrated during the conflict. See http://www.corteidh.or.cr/cf/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es (visited 3 December 2019).

For instance, the judgments of the IACtHR, particularly those regarding massacres perpetrated during the conflict, found that there was a practice of massive and systematic human rights violations perpetrated by state agents as part of a policy against the civilian population, mostly of Mayan descent.⁵² To support its findings, the Court cited the report of the Commission of Historical Clarification, which in turn relied on work done at the domestic level to document the crimes perpetrated during the conflict.⁵³ The *Sepur Zarco* judgment considered this report as evidence of the context of violence in Guatemala during the conflict, using it to help the Court assess allegations of victims and other witnesses regarding the human rights violations they experienced.⁵⁴

The judgments of the IACtHR were also crucial to documenting and highlighting the perpetration of a practice of sexual violence against women and girls by state agents as part of the policy to exterminate what they called the 'domestic enemy'.⁵⁵ As a result, those 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.⁵⁶

Finally, the Court's judgments interpreted the scope of the duty to investigate crimes against humanity in Guatemala to include (1) the obligation to investigate the facts as international crimes (and not simply as ordinary crimes under domestic law) in order to underscore the grave nature of the crimes⁵⁷; (2) the duty to investigate those involved in the planning and execution of the crimes, including material and intellectual authors⁵⁸; and (3) the duty to reject the application of any domestic norms that could constitute an obstacle to the investigation of the crimes, such as the application of amnesty laws.⁵⁹ This last aspect was considered by the High Risk Appellate Court, which upheld the judgment of the trial court in *Sepur Zarco*, in part, by rejecting the application of the 1996 National Reconciliation Law's amnesty provisions to the crimes charged against the accused on the basis that such crimes had been explicitly

52 See e.g. *Case of the Las Dos Erres Massacre v. Guatemala*, IACtHR, Preliminary Objection, Merits, Reparations and Costs, Judgment of 24 November 2009, Series C No. 211, §§ 73, 130, 152; *Case of the Río Negro Massacres v. Guatemala*, IACtHR, Preliminary Objection, Merits, Reparations, and Costs, Judgment of 4 September 2012, Series C No. 250, § 189.

53 See e.g. *Case of the Las Dos Erres Massacre v. Guatemala*, *ibid.*, §§ 70–73.

54 See *Sentencia de Sepur Zarco*, *supra* note 1, at 420–421.

55 See e.g. *Case of the Plan de Sánchez Massacre v. Guatemala*, Merits, IACtHR, Judgment of 29 April 2004, Series C No. 105, § 42 (18); *Case of the Las Dos Erres Massacre v. Guatemala*, *supra* note 52, §§ 78–82, 136, 139; *Case of the Río Negro Massacres v. Guatemala*, *supra* note 52, §§ 129–134, 226.

56 See e.g. *Case of the Las Dos Erres Massacre v. Guatemala*, *supra* note 52, §§ 139–141; *Case of the Río Negro Massacres v. Guatemala*, *supra* note 52, §§ 203, 227.

57 *Case of the Río Negro Massacres v. Guatemala*, *supra* note 52, §§ 199–203.

58 *Case of the Plan de Sánchez Massacre v. Guatemala*, Reparations, Judgment of 19 November 2004, Series C No. 116, § 98; *Case of the Las Dos Erres Massacre v. Guatemala*, *supra* note 52, §§ 231, 233; *Case of the Río Negro Massacres v. Guatemala*, *supra* note 52, §§ 205–206, 236, 257.

59 *Case of the Plan de Sánchez Massacre v. Guatemala*, Reparations, *ibid.*, § 99; *Case of the Las Dos Erres Massacre v. Guatemala*, *supra* note 52, §§ 129, 233; *Case of the Río Negro Massacres v. Guatemala*, *supra* note 52, § 257.

excluded from that law and that the State, therefore, had an obligation to investigate, prosecute and punish the perpetrators of the crimes committed against the women in the case.⁶⁰

Ultimately, the *Sepur Zarco* judgment relied on several international sources of law, including the American Convention on Human Rights (ACHR),⁶¹ to reach its conclusions. The reference to this treaty suggests that the practice and case law of the Inter-American System contributed to the legal framework underlying the judgment of this historic case. Also, as we will explore later, the structure of the reparations awarded to the Sepur Zarco women was framed based on the case law of the IACtHR on the subject.

2. Impact of International Commission Against Impunity in Guatemala

The United Nations also played a 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 the International Commission Against Impunity in Guatemala, known by its Spanish acronym CICIG (*Comisión Internacional contra la Impunidad en Guatemala*).⁶² After Congress ratified the agreement in 2007, CICIG was established as an independent, international body to assist the Attorney General's Office and other law enforcement institutions with the investigation of crimes by illegal security forces and clandestine security structures.⁶³ Significantly, its mandate extended beyond assisting with individual investigations to promoting judicial and institutional reforms necessary to prevent the resurgence of illegal security forces and clandestine security structures.⁶⁴ This mandate resulted in the strengthening of various legal institutions, which in turn bolstered Guatemala's ability to prosecute not only organized crime and corruption cases but also grave crimes committed during Guatemala's civil war.⁶⁵

60 Burt and Estrada, *supra* note 2.

61 See Sentencia de *Sepur Zarco*, *supra* note 1, at 507.

62 'Agreement Between the United Nations and the State of Guatemala on the Establishment of an International Commission Against Impunity in Guatemala', 11 December 2006, available online at http://cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf (visited 1 October 2019).

63 See CICIG, 'Mandato y Acuerdo CICIG', available online at <https://www.cicig.org/cicig/mandato-y-acuerdo-cicig/> (visited 1 October 2019).

64 *Ibid.*

65 Open Society Justice Initiative, 'Against the Odds: The CICIG in Guatemala', Open Society Foundations, 2016, available online at <https://www.justiceinitiative.org/publications/against-odds-cicig-guatemala> (visited 3 December 2019), at 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 Public Prosecutor would have greater capability to deal with the past as CICIG-assisted reforms improved the judicial sector as a whole').

Indeed, CICIG's work led to a number of institutional developments that improved the Guatemalan judicial system's ability to investigate complex criminal cases. For instance, CICIG played a critical 'role in ensuring the appointment of conscientious attorneys general',⁶⁶ who not only prioritized corruption cases but also encouraged collaboration with civil society organizations working with victims of grave crimes committed during the conflict.⁶⁷ It also boosted the capacity of the Attorney General's Office to conduct complex criminal investigations by training its staff in special investigative tools, helping to develop effective witness protection programmes,⁶⁸ and facilitating 'the creation of specialised units within the Attorney General's Office, including the Human Rights Violations Unit, the Analysis Unit for complex investigations, and a special police force for criminal investigations'.⁶⁹ In addition, CICIG significantly improved judicial independence by supporting both the investigation of judicial corruption and the creation of 'High Risk Courts' set up to ensure greater security for judges, lawyers and witnesses involved in sensitive cases.⁷⁰

Significantly, only three years after the creation of these High Risk Courts, an emboldened Attorney General's Office brought genocide charges 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 1983.⁷¹ The charges alleged that Ríos Montt was responsible for not only murders, torture and forcible displacement of the victims but also acts of sexual violence.⁷² Ríos Montt was convicted of genocide and crimes against humanity on the basis of these acts, including sexual violence.⁷³ In assessing the

66 Open Society Justice Initiative, *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes* (Open Society Foundations, 2018), at 388.

67 Burt, *supra* note 14, at 75.

68 Open Society Justice Initiative, *supra* note 66, at 386.

69 *Ibid.*, at 393.

70 *Ibid.* The High Risk Courts have jurisdiction over genocide, torture, crimes against humanity and crimes related to organized crime such as money laundering, drug trafficking and the financing of terrorism. The Center for Justice and Accountability, 'Guatemalan Court for High Risk Crimes', available online at <https://cja.org/where-we-work/guatemala/related-resources/general-rios-montt-trial-in-guatemala-2/guatemalan-court-for-high-risk-crimes-2/> (visited 1 October 2019). Since their creation, nearly all cases involving grave crimes have been tried in these courts. J.M. Burt and P. Estrada, 'The Anti-CICIG Campaign in Guatemala: Implications for Grave Crimes Cases (Part II)', International Justice Monitor, 4 October 2017, available online at <https://www.ijmonitor.org/2017/10/the-anti-cicig-campaign-in-guatemala-implications-for-grave-crimes-cases-part-ii/> (visited 30 September 2019); Burt, *supra* note 14, at 75.

71 See Open Society Justice Initiative, *supra* note 66, at 380, 389; Open Society Justice Initiative, 'Judging a Dictator: The Trial of Guatemala's Ríos Montt', November 2013, available online at <https://www.justiceinitiative.org/uploads/bbdf1b25-f6c4-4370-8a54-f310bbe552f9/judging-dictator-trial-guatemala-rios-montt-11072013.pdf> (visited 30 September 2019).

72 Open Society Justice Initiative, *supra* note 66, at 389.

73 Open Society Justice Initiative, *Judging a Dictator*, *supra* note 71, at 12 (noting 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

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.’⁷⁴ 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. Although Guatemala’s Constitutional Court later annulled his conviction on procedural grounds,⁷⁵ the case paved the way for additional grave crimes trials and, more specifically, for the prosecution of sexual violence as a grave crime.

4. Pre-trial and Trial Advocacy and Legal Strategies: Innovative Approaches to Victim-centred Advocacy

Another set of critical lessons learned relate to the innovative pre-trial and trial advocacy and legal strategies employed by the actors involved in the case, including the groundbreaking strategy to charge sexual violence as an international crime under the Guatemalan Criminal Code, efforts taken to avoid re-traumatization of victims during the trial, the extensive use of domestic and international experts at trial, and the victims’ demand for broad and transformative reparations, which we will discuss in turn below.

A. Groundbreaking Strategy to Charge Sexual Violence as an International Crime under the Guatemalan Criminal Code

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’. While the Public Prosecutor could have requested that the accused be charged with rape or other forms of sexual violence as ordinary crimes, prosecuting them as individual, isolated acts would have missed the context in which they were committed — namely, that they were a part of the military’s

of civilian non-combatant villages, burning of houses, and forcible displacement in subhuman conditions, or forcible relocation of surviving populations into militarised “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, 113–114, 130, 137, 138, 140, 141–143, 683–684, 688–689, 699); Open Society Justice Initiative, *supra* note 66, at 389.

⁷⁴ Open Society Justice Initiative, *Judging a Dictator*, *supra* note 71, at 14 (citing *Ríos Montt* Trial Judgment of May 2013, at 689, 691).

⁷⁵ *State v. Ríos Montt and Rodríguez Sánchez*, Judgment of Constitutional Court of Guatemala, Case No. 1904-2013, Decision of 20 May 2013; Open Society Justice Initiative, *Judging a Dictator*, *supra* note 71, at 17; Open Society Justice Initiative, *supra* note 66, at 389.

strategic plan to punish the men of Sepur Zarco for their attempt to protect their lands and to instil fear in their community,⁷⁶ which in turn was part of a broader military plan to defeat those perceived as insurgents.⁷⁷ The victims and their representatives were clear that they wanted to make this context visible and pushed for the characterization of the CRSV crimes as crimes against the duties of humanity.⁷⁸

The problem was that while Article 378 makes reference to violations of international humanitarian law and certain acts committed against the 'civilian population', it does not list the specific CRSV crimes with which the accused were charged. Nevertheless, First Instance Judge Miguel Ángel Gálvez, responsible for characterizing and confirming the charges against the accused, permitted the case to go to trial against the accused on the basis of Article 378, reasoning, in part, that Article 378 is an open or 'blank penal law',⁷⁹ meaning that although it does not describe in detail the conduct proscribed, it makes reference to other sources of law and allows a court to define the proscribed conduct by reference to those other sources.⁸⁰ As Judge Gálvez explained, Article 378 refers 'to international conventions and especially the

76 See Sentencia de *Sepur Zarco*, *supra* note 1, at 38–39, 41 (testimony of Rita Laura Segato).

77 See Sentencia de *Sepur Zarco*, *supra* note 1, at 68–69 (testimony of Prudencio García Martínez de Murguía).

78 L. Cools and B. Caxaj, 'Guatemala: How the *Sepur Zarco* Women Lifted Impunity for Sexual Violence', Justiceinfo.net, 21 June 2017, available online at <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> (visited 1 October 2019). It is worth noting that the argument that CRSV 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 *Tribunal de Conciencia* in 2010 noted that '*los casos de violación sexual ocurridos en el conflicto armado de Guatemala no deben interpretarse como hechos aislados o ser vistos como crímenes del orden común, sino como parte de aquellos delitos que ofenden la conciencia de la humanidad y que son parte del derecho penal internacional*'. Mendiá Azkue and Guzmán Orellana, *supra* note 25 (expert opinion of Fernando López Antillón), at 127–147. As indicated earlier, the argument was also raised in the *Ríos Montt* trial. See Open Society Justice Initiative, *Judging a Dictator*, *supra* note 71, at 14 (citing *Ríos Montt* Trial Judgment of May 2013, at 689, 691).

79 Juzgado Primero de Primera Instancia Penal, Resolución de Fase Intermedia, *supra* note 17.

80 See F. Muñoz Conde and M. García Arán, *Derecho Penal*, Parte General (4^a edn., np, 2000), at 39, cited in F.A. López Antillón and M. Martín Quintana, *Violencia de Género en Conflictos Armados Estrategias para la Persecución Penal* (Instituto de Estudios Comparados en Ciencias Penales de Guatemala, 2007), at 51 ('*nos encontramos ante una ley penal en blanco cuando parte de esta estructura (generalmente, la parte de la definición del supuesto de hecho) no se contiene en la propia ley penal sino que ésta se remite a una norma distinta*'). 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 '*aquellas leyes incompletas, que se limitan a fijar una determinada sanción, dejando a otra norma jurídica la misión de completarla con la determinación del precepto, o sea, la descripción específica de la conducta punible*'. See Impunity Watch, 'Monitoreo de la Justicia Transicional en Guatemala, Tomo II: Derecho a la justicia para las víctimas del Conflicto Armado Interno', 2014, available online at http://www.impunitywatch.org/docs/Research_report_informe_monitoreo_IW_JUSTICIA_Dec_2014.pdf (visited 2 October 2019) (internal citations omitted), at 16.

[1949] Geneva Conventions’ ratified by Guatemala in 1952,⁸¹ as well as other sources of international law binding on Guatemala, which he noted included crimes against humanity.⁸² 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. This, in turn, 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.⁸³

The characterization of CRSV as crimes against the duties of humanity had a number of 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. Secondly, it made plain that the circumstances in which the acts occurred were coercive and, 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’⁸⁴ — to shift the blame from themselves to the perpetrators, helping them to heal from the stigma and isolation they experienced and to regain their dignity within their community.⁸⁵ Finally, in characterizing acts of CRSV 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 and was not the

81 Juzgado Primero de Primera Instancia Penal, Resolución de Fase Intermedia, *supra* note 17.

82 *Ibid.* Notably, this position is consistent with that of other experts. See e.g. Impunity Watch, *supra* note 80 (internal citations omitted) (*‘En efecto, los crímenes de guerra, los crímenes de lesa humanidad, y el genocidio, que están categorizados como delitos internacionales, se encuentran previstos en el CP guatemalteco (lex scripta). Por razones técnicas se afirma que los crímenes de guerra y de lesa humanidad están amparados en el artículo 378, puesto que los elementos y sub-conductas tipo de tales delitos permiten su integración en una sola disposición legal, ya que para identificarlos necesariamente hay que recurrir a los tratados internacionales pertinentes ratificados por Guatemala. Además, tanto los delitos contra los deberes de humanidad como el genocidio forman parte del Capítulo IV (De los delitos de trascendencia internacional) que incluye los tipos penales que ofenden al mundo entero y responde a obligaciones internacionales adquiridas por el Estado.’*).

83 Sentencia de *Sepur Zarco*, *supra* note 1, at 91–98 (testimony of Paloma Soria Montañez). See also WCRO and Academy *Amicus* on Sexual Violence under International Criminal Law and Human Rights Law, *supra* note 3.

84 Cools and Caxaj, *supra* note 78.

85 NISGUA, ‘*Sepur Zarco: Q’eqchi’ Women Set a Precedent in Guatemala with First-ever Conviction for Sexual and Domestic Slavery*’, March 2016, available online at <https://nisgua.org/wp-content/uploads/J-11-Sepur-Zarco-NISGUA-Report-March-2016.pdf> (visited 3 October 2019) (‘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 ...”’).

primary focus of the case.⁸⁶ By contrast, sexual violence and sexual and domestic slavery remained at the centre 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.

B. Efforts to Avoid Re-traumatization of Victims During the Trial

During the trial, the court heard from over 70 witnesses, including victims, eyewitnesses and defence witnesses, as well as a plethora of experts. While the vast majority of these witnesses provided *viva voce* evidence to the court, all 15 of the victims of sexual violence and sexual and domestic slavery testified via pre-recorded testimony that had been taken during the preliminary investigation (*anticipos de prueba*).⁸⁷ Although the victims were physically present at trial, their representatives indicated to the court that requiring them to testify again in court would negatively affect their physical and mental well-being. Expert testimony presented at trial established that the victims were, in fact, suffering from post-traumatic stress disorder⁸⁸ and that re-traumatization could occur through repeated retelling of the abuses they had suffered.⁸⁹ Although the defence objected vigorously to the admission of the pre-recorded evidence on the basis that its consideration violated the due process rights of the defendants, these objections were rejected by the trial court on the basis that the pre-recorded testimony had been properly taken in compliance with the requirements of Guatemalan law,⁹⁰ including the appointment of a public defender who cross-examined the victims during the taking of their pre-trial testimony.⁹¹ Similar defence arguments were later dismissed on appeal.⁹²

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 part of the

86 See *supra* notes 73 and 74 and accompanying text.

87 Burt, *supra* note 14, at 77 (noting that 'the prosecutor's office had petitioned Judge Gálvez to video-record the women's testimonies during the evidentiary phase so that they could be broadcast during the trial phase', thus preserving the possibility that the women would not have to testify again in open court).

88 Sentencia de *Sepur Zarco*, *supra* note 1, at 52 (testimony of expert Karen Denisse Peña Juárez); *ibid.*, at 88 (testimony of expert Mónica Esmeralda Pinzón González).

89 *Ibid.*, at 88 (testimony of expert Mónica Esmeralda Pinzón González). *Ibid.*, at 52–53 (testimony of expert Karen Denisse Peña Juárez).

90 Sentencia de *Sepur Zarco*, *supra* note 1, at 214, 217, 222, 228, 234, 263.

91 J.M. Burt, "'Your Husband Isn't Coming Back': More Stories of Abuse at the *Sepur Zarco* Trial", International Justice Monitor, 23 February 2016, available online at <https://www.ijmonitor.org/2016/02/your-husband-isnt-coming-back-more-stories-of-abuse-at-the-sepur-zarco-trial/> (visited 30 September 2019) (describing appointment of public defender and cross-examination).

92 Burt and Estrada, *supra* note 2. Importantly, the courts' rejection of the defence arguments was consistent with international law standards. See WCRO and Academy Appeals Court *Amicus* on SOL, Amnesty and Evidentiary Issues, *supra* note 4.

evidence against the accused. Indeed, it was a central part of the case.⁹³ 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 may 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.

C. The Extensive Use of Domestic and International Experts

As discussed above, 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*.⁹⁴ In addition to the live testimony of more than two dozen witnesses (including victims, victims' family members and eyewitnesses)⁹⁵ and the videotaped prior recorded testimony of another 19 witnesses (primarily the victims of sexual violence and sexual and domestic slavery),⁹⁶ oral testimony was provided by 18 expert witnesses, including a gender anthropologist,⁹⁷ an expert who conducted physical and psychological examinations of the victims,⁹⁸ an expert on Guatemala's military,⁹⁹ an expert on international standards for assessing credibility in cases of human rights violations,¹⁰⁰ an expert who conducted psychosocial analyses of the victims,¹⁰¹ an expert on crimes committed during times of conflict in Guatemala,¹⁰² an expert on cultural destruction in Guatemala,¹⁰³ a linguistic anthropologist,¹⁰⁴ an expert on the sociology of Guatemala's military between 1982 and 1983,¹⁰⁵ an expert from Guatemala's historical registry,¹⁰⁶ a forensic

93 NISGUA, *supra* note 85 ('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.').

94 See Sentencia de *Sepur Zarco*, *supra* note 1, at 20. *Sana critica* (i.e. sound judicial discretion) is the system that the IACtHR 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* (2012) 193, at 193.

95 See Sentencia de *Sepur Zarco*, *supra* note 1, at 275–326, 348–352, 355–370.

96 *Ibid.*, at 198–275, 330–348, 352–355.

97 *Ibid.*, at 20–41.

98 *Ibid.*, at 41–53.

99 *Ibid.*, at 53–69.

100 *Ibid.*, at 69–79.

101 *Ibid.*, at 79–91.

102 *Ibid.*, at 91–98.

103 *Ibid.*, at 98–109.

104 *Ibid.*, at 109–112.

105 *Ibid.*, at 112–132.

106 *Ibid.*, at 132–144.

architect,¹⁰⁷ seven forensic anthropologists,¹⁰⁸ two ballistic experts,¹⁰⁹ an economist¹¹⁰ and three experts to authenticate photographic evidence presented at trial.¹¹¹

The comprehensive nature of the expert testimony in the case undeniably bolstered the credibility of the victims. Indeed, the expert testimony allowed the court to stitch the various pieces of the evidence together into a whole in which the experiences recounted by the victims made sense. Gender and cultural experts helped the court to understand the impact of the violence not just on the surviving women but also their families and the communities. Military and historical experts helped explain the broader context in which the crimes took place, making clear that the violence, including sexual violence, against indigenous communities during that time was an intrinsic part of the military's plan to defeat those perceived as insurgents. Other experts helped the court to link the accused to the crimes suffered by the victims, 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 been the physical perpetrators of the crimes themselves.¹¹² For instance, the forensic architect Elis Gabriela Mendonza García 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'.¹¹³ Given that the majority of the victims' statements did not refer to the accused,¹¹⁴ that testimony was an unusual but critical means of proving the accused's knowledge of the sexual violence crimes charged. Ultimately, the expert testimony was indispensable in helping the court not only better understand the victim's testimony and give it its appropriate weight but also appreciate how the crimes committed against them fit within the

107 *Ibid.*, at 144–159.

108 *Ibid.*, at 159–170, 171–193.

109 *Ibid.*, at 170–171, 196–197.

110 *Ibid.*, at 197–198.

111 *Ibid.*, at 193–196.

112 See e.g. *ibid.*, at 5 (allegations against Reyes Girón) ('... al haber autorizado y consentido los hechos anteriormente descritos, realizó actos inhumanos, crueles y humillantes de forma indiscriminadamente en contra la población civil desarmada e indefensa, porque una sola orden suya hubiera sido suficiente para prevenir o detener su comisión, pues era de su conocimiento que esos actos infringían normas del Derecho Internacional Humanitario'); *ibid.*, at 11 (allegations against Valdez Asig) ('... al guiar a los soldados del Ejército de Guatemala hacia la comunidad la Esperanza del municipio de Panzos del departamento de Alta Verapaz, y estar presente en el cumplimiento del operativo militar[,] apoy[ó] la detención ilegal y privación de libertad de los señores ...').

113 Burt, *supra* note 14, at 84.

114 See e.g. Sentencia de Sepur Zarco, *supra* note 1, 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) and 272–275 (Matilde Sub).

broader context of the armed conflict and the role the accused played in the commission of those crimes.

D. Victims' Demand for Broad and Transformative 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. The measures requested included not only individual reparations such as monetary compensation but also other measures to ensure that the damages caused to the victims and their communities were fully addressed. 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 were at the time the crimes were committed and enable them and their community to significantly improve their lives.

The request for reparations in the *Sepur Zarco* case was based on Article 124 of the Criminal Procedural Code that enshrines the notion of 'dignified reparations'.¹¹⁵ 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.¹¹⁶ Since the victims of crimes can participate in the criminal proceedings as civil claimants,¹¹⁷ they are authorized to claim the reparations within such proceedings once the accused has been convicted.¹¹⁸ Procedurally, the claimants may file their request for reparations and evidence of damages in a hearing held three days after the judgment convicting the accused is issued.¹¹⁹ The trial court decides on reparations through a resolution that becomes part of the final judgment.¹²⁰

Following an innovative interpretation of what constitutes dignified reparations, the trial court in *Sepur Zarco* accepted the arguments of the claimants

115 Decree Number 7-2011, reforming Decree Number 51-92, 24 May 2011, available online at <http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2011/pdfs/decretos/D07-2011.pdf> (visited 1 October 2019). 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', November 2018, available online at https://static.wixstatic.com/ugd/f3f989_b38a45ad679d4f4786dd484e7b7a9679.pdf (visited 3 October 2019), at 6–7.

116 Decree Number 7-2011, reforming Decree Number 51-92, *ibid*.

117 See *supra* note 47.

118 Decree Number 7-2011, reforming Decree Number 51-92, *supra* note 115.

119 *Ibid*.

120 *Ibid*.

and granted extensive reparations that included monetary compensation and measures of restitution, satisfaction, rehabilitation and non-repetition. In particular, the transformative reparations encompassed 16 measures, which included, inter alia, the duty to investigate the location of the remains of persons forcibly disappeared; the installation of a comprehensive health centre 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 into 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.¹²¹ 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.¹²² 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.¹²³

Interestingly, with the exception of monetary compensation, reparations measures were ordered against state agencies, including the Ministry of Health, the Ministry of Education and Culture, and the Ministry of Defence. Although Article 124 of the Code of Criminal Procedure seems to limit reparations to the perpetrators of a crime, the claimants argued that the granting of the measures against the state agencies was justified because they concerned constitutional rights owed to the victims that could only be protected and ensured by the state.¹²⁴

Sepur Zarco is not the first case in which measures of this nature were adopted,¹²⁵ but this is the first time that such measures are actually being implemented, given that the judgment in the case became *res judicata* in

121 See Sentencia de *Sepur Zarco*, *supra* note 1, at 508–511.

122 *Ibid.*

123 Impunity Watch, *supra* note 115, at 13–14.

124 MTM, 'Por el cumplimiento de las Medidas de Reparación caso *Sepur Zarco*', 12 May 2017, available online at <http://www.mujerestransformandoelmundo.org/es/articulo/por-el-cumplimiento-de-las-medidas-de-reparacion-caso-sepur-zarco> (visited 1 October 2019). Significantly, none of the Ministries mentioned participated in the proceedings.

125 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 judgment in the *Case of Emma Molina Theissen* included measures of satisfaction, rehabilitation and guarantees of non-repetition. The implementation of these measures is still pending because the judgment has been appealed. See D. Martínez and L. Gómez, *A Promise to Be Fulfilled: Reparations for Victims of the Armed Conflict in Guatemala*, Reparations, Responsibility & Victimhood in Transitional Societies, 5 August 2019, available online at <https://reparations.qub.ac.uk/report-a-promise-to-be-fulfilled-reparations-for-victims-of-the-armed-conflict-in-guatemala/> (visited 3 October 2019), at 33–41.

November 2018 when the Constitutional Court rejected the *amparo* remedies filed by those convicted for the crimes.¹²⁶ Indeed, after the judgment, the Public Prosecutor's Office set up a process to facilitate compliance with the reparation measures, in which all the institutions affected are represented.¹²⁷ MTM leads the coordination of the inter-institutional dialogue ('working tables') among the different state agencies to ensure compliance with the reparation measures.¹²⁸ 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.¹²⁹ In March 2017, a mobile health clinic was opened to provide services to the members of the community.¹³⁰ Additionally, the Ministry of Culture assigned a cultural promoter to Sepur Zarco to organize activities for the women of the community.¹³¹

5. Post-Sepur Zarco Landscape

A. Impact of the Case

As suggested earlier, the *Sepur Zarco* case changed the narrative about CRSV in Guatemala's conflict. Before the case, sexual violence had been recognized, if at all, only as part of a series of other crimes committed during the conflict.¹³² In *Sepur Zarco*, CRSV was the primary and central focus of the case; sexual and gender-based violence was recognized as a distinct crime, equivalent to other crimes committed during the conflict. As an observer of the trial, Jo-Marie Burt, has noted, the judgment made visible that 'gender-based violence [was embedded] into a broader strategy of military persecution against indigenous populations'.¹³³

Significantly, the case highlighted not only the sexual violence but also the gendered domestic labour that the victims were forced to perform in the form of cooking and washing for the soldiers. For the victims, this caused significant harm. Being forced to abandon their children and use their own corn to cook for the soldiers, even as their own children went hungry,¹³⁴ caused the victims

126 Prensa Comunitaria, 'Sepur Zarco: la sentencia por esclavitud sexual queda firme y debe cumplirse', 29 November 2018, available online at <https://www.prensacomunitaria.org/sepur-zarco-la-sentencia-por-esclavitud-sexual-queda-firme-y-debe-cumplirse/> (visited 2 October 2019).

127 UN Women, 'Sepur Zarco: In Pursuit of Truth, Justice and now reparations', 22 October 2017, available online at <https://www.unwomen.org/en/news/stories/2017/10/feature-guatemala-sepur-zarco-in-pursuit-of-truth-justice-and-now-reparations> (visited 3 October 2019).

128 MTM, 'Por el cumplimiento de las medidas de reparación Caso Sepur Zarco', 6 September 2017, available online at <http://www.mujerestransformandoelmundo.org/es/articulo/por-el-cumplimiento-de-las-medidas-de-reparacion-caso-sepur-zarco-0> (visited 2 October 2019).

129 UN Women, *supra* note 127.

130 MTM, *supra* note 128.

131 *Ibid.*

132 See *supra* notes 72–74 and accompanying text.

133 Burt, *supra* note 14, at 93–94.

134 See e.g. Sentencia de *Sepur Zarco*, *supra* note 1, at 211, 477 (testimony of Rosa Tiul), 220 (testimony of Vicenta Col Pop) and 482 (testimony of Magdalena Pop).

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.¹³⁵

As noted in the testimony of gender anthropologist Rita Laura Segato, '[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.'¹³⁶ 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'.¹³⁷ In laying bare both the extensive use and the devastating harm caused by systemic acts of sexual and domestic slavery, the judgment challenged the societal normalization of both sexual and gender-based violence during the conflict.

The recognition of the extent and impact of CRSV on the victims and their community, in turn, had a tremendous impact on the women of Sepur Zarco. Although many of them had been stigmatized by their communities and even blamed for the abuses they endured, the judgment helped them to shed this stigma and, as Burt notes, 'reclaim[] their rights as citizens'.¹³⁸ Their statements at a workshop after the judgment attest to this:

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.¹³⁹

Moreover, the judgment had an impact on other victims of similar crimes. Indeed, the case has inspired other victims of sexual violence to come forward and seek justice for the crimes they suffered. For instance, in the *Case of Emma Molina Theissen*, where senior military officials were charged with the disappearance of a 14-year-old boy and the rape and torture of his sister in 1981, the sister moved to join her brother's case and seek justice for the CRSV harms she suffered after witnessing the strength and courage of the women who testified in the *Sepur Zarco* case.¹⁴⁰

135 *Ibid.*, at 80 (authors' translation).

136 *Ibid.*, at 24 (authors' translation).

137 *Ibid.*, at 22 (expert testimony of Rita Laura Segato) (authors' translation).

138 Burt, *supra* note 14, at 92.

139 *Ibid.*, at 94 (citing statements of Sepur Zarco women at a workshop she attended just after the judgment was issued).

140 See Working Group on Transitional Justice and SDG16+, 'On Solid Ground: Building Sustainable Peace and Development after Massive Human Rights Violations', ICTJ, May 2019, available online at [https://www.ictj.org/sites/default/files/ICTJ_Report_WG-TJ-SDG16%](https://www.ictj.org/sites/default/files/ICTJ_Report_WG-TJ-SDG16%20)

Finally, the case has set important legal precedents that have been used in other prosecutions of similar crimes. For instance, in another case being pursued by Maya Achi women from the Rabinal region of Baja Verapaz who were subject to multiple rapes while detained at a local military detachment, one of the victims' legal representatives, Lucia Xiloj, stressed that the *Sepur Zarco* case was an 'extremely important precedent[] for the current case because it showed sexualized violence was a part of the State's counter-insurgent strategy'.¹⁴¹

B. Challenges in Implementation of Reparations

Despite the success of the case and its impact on the victims and other similar cases, the implementation of the dignified reparations awarded in the *Sepur Zarco* case faces a number of challenges. First, there is no clear procedure to supervise the implementation process. The Code of Criminal Procedure provides for a proceeding to execute the judgment in a criminal trial, but the powers of the so-called 'execution judge' are limited to monitoring compliance with the prison sentence and any issues related to the deprivation of liberty¹⁴² and do not include monitoring of the reparations ordered.¹⁴³ Additionally, the execution of the judgment starts when the verdict becomes *res judicata*.¹⁴⁴ As stated earlier, the *Sepur Zarco* case only became final in November 2018,¹⁴⁵ which means that the process of execution of the judgment has only recently started. It will be interesting to observe whether in this case, the first one where a court awarded extensive transformative reparations, the execution judge will assume any responsibility for monitoring the implementation of these measures.

Additionally, it is not clear that the Code of Criminal Procedure allows a court to grant dignified reparations against state agencies when they have not participated in the proceedings. In the *Case of the Embassy of Spain*, for

2B_2019_Web.pdf (visited 1 October 2019) at 14 (noting that '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'); Burt, *supra* note 14, at 95.

141 A. Walsh, 'Maya Achi Women Demand Justice for Wartime Sexualized Violence in Guatemala', Women's Media Center, 18 June 2019, available online at <http://www.womenmediacenter.com/women-under-siege/maya-achi-women-demand-justice-for-wartime-sexualized-violence-in-guatemala> (visited 1 October 2019).

142 See Art. 463, Code of Criminal Procedure of Guatemala, available online at <http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2004/PDFs/Codigos/CODIGO%20PROCESAL%20PENAL.pdf> (visited 2 October 2019).

143 *Ibid.*

144 *Ibid.*

145 See MTM, 'Sentencia por el caso Sepur Zarco queda en firme', 28 November 2018, available online at <http://www.mujerestransformandoelmundo.org/es/articulo/sentencia-por-el-caso-sepur-zarco-queda-en-firme> (visited 2 October 2019).

example, the trial court rejected the adoption of measures of satisfaction and guarantees of non-repetition, indicating that this reparation should be sought through civil remedies.¹⁴⁶ Interestingly, the state agencies against which the measures of reparations in the *Sepur Zarco* case were granted did not appeal the judgment¹⁴⁷ and began participating in the inter-institutional dialogue promoted by the victims and their representatives even before the verdict became *res judicata*.¹⁴⁸

Furthermore, the implementation of the measures of reparation has been slow and faces substantial resource obstacles. The central measure of reparation for the victims and their communities is obtaining title to their lands.¹⁴⁹ The importance of this measure to the victims stems from the history of the victims themselves whose husbands were forcibly disappeared for seeking title to those lands.¹⁵⁰ Since the lands claimed by the *Sepur Zarco* community belong to private individuals who own them in large swaths, compliance with this measure of reparation will require the state to buy those lands from those private owners and transfer them to the community.¹⁵¹ Thus far, negotiations have started with some state agencies in an effort to implement this reparation measure.¹⁵²

Ultimately, another obstacle is that 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 and sexual and domestic slavery that the victims suffered during the conflict.¹⁵³

The successful implementation of the *Sepur Zarco* transformative measures of reparation will be essential to ensuring that similar measures awarded in subsequent cases, such as the *Case of Emma Molina Theissen*, stand a chance of being implemented once the judgment in those cases becomes final.

C. 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.

146 See Martínez and Gómez, *supra* note 125, at 35.

147 The judgment was appealed only by the accused. See J.M. Burt and P. Estrada, 'Sala ratifica sentencia en caso *Sepur Zarco*', International Justice Monitor, 22 July 2017, available online at <https://www.plazapublica.com.gt/content/sala-ratifica-sentencia-en-caso-sepur-zarco> (visited 1 October 2019).

148 MTM, *supra* note 128.

149 MTM, '*Sepur Zarco*: la vida después de una sentencia que se incumple', 13 November 2017, available online at <http://www.mujestransformandoelmundo.org/es/articulo/sepur-zarco-la-vida-despues-de-una-sentencia-que-se-incumple> (visited 1 October 2019).

150 Impunity Watch, *supra* note 115. The land is important to the victims because it strengthens their financial independence and that of their communities. *Ibid.*

151 *Ibid.*, at 13–14.

152 *Ibid.*, at 14.

153 MTM, *supra* note 128; UN Women, '*Sepur Zarco* Case: The Guatemalan Women Who Rose for Justice in a War-torn Nation', 19 October 2018, available online at <https://www.unwomen.org/en/news/stories/2018/10/feature-sepur-zarco-case> (visited 2 October 2019).

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 current Morales administration, its adoption gained substantial support in Congress.¹⁵⁴ 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 from its application genocide, torture, forced disappearances, war crimes and crimes against humanity.¹⁵⁵ In particular, the draft law removed the amnesty exception for international crimes and replaced it with a blanket amnesty for anyone who committed crimes during the conflict,¹⁵⁶ 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.¹⁵⁷

This draft law drew extensive opposition from within and outside Guatemala.¹⁵⁸ On 12 March 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, the IACtHR ordered Guatemala to stay the legislative process required to adopt the amnesty law.¹⁵⁹ 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.¹⁶⁰ Subsequently, on 18 July 2019, the Constitutional Court of Guatemala granted a provisional *amparo* filed by human rights victims of the

154 J.M. Burt and P. Estrada, 'Corte de Constitucionalidad Ordena al Congreso Suspender Debate sobre Propuesta de Ley de Amnistía', Centro de Medios Independientes, 26 July 2019, available online at <https://cmiguate.org/corte-de-constitucionalidad-ordena-al-congreso-suspender-debate-sobre-propuesta-de-ley-de-amnistia/> (visited 2 October 2019).

155 J.M. Burt and P. Estrada, 'Legislator Proposes Blanket Amnesty for Grave Human Rights Violations in Guatemala', International Justice Monitor, 14 November 2017, available online at <https://www.ijmonitor.org/2017/11/legislator-proposes-blanket-amnesty-for-grave-human-rights-violations-in-guatemala/> (visited 2 October 2019).

156 Art. 5, Iniciativa 5377, Ley de Reconciliación Nacional, available online at <http://derechos.org/nizkor/guatemala/doc/leyamnistia5377.html> (visited 2 October 2019).

157 *Ibid.*

158 See e.g. UN Office of High Commissioner for Human Rights, 'Guatemala Congress Must Not Pass "Amnesty" Bill for Rights Violations, Say UN Experts', 11 March 2019, available online at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24300&LangID=E> (visited 2 October 2019); UN News, 'Amending Guatemala "Reconciliation Law" Would Lead to Unjust Amnesty, Warns Bachelet', 22 January 2019, available online at <https://news.un.org/en/story/2019/01/1031012> (visited 2 October 2019); 20 Minutos, 'Guatemala: mujeres piden detener debate de ley de amnistía', 2 February 2019, available online at <https://www.20minutos.com/noticia/142714/0/guatemala-mujeres-piden-detener-debate-de-ley-de-amnistia/> (visited 2 October 2019).

159 *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 12 March 2019, Resolutive § 2.

160 *Ibid.*

conflict and ordered the immediate suspension of the draft law.¹⁶¹ Although the law was not adopted as a result, it has not been completely withdrawn from consideration.¹⁶² Given the current political climate in Guatemala, there is no guarantee that the issue will not resurface again, even in the short term.¹⁶³

Another challenge for those pressing for accountability in Guatemala relates to the recent departure of CICIG. CICIG completed its mandate on 3 September 2019, after the current 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.¹⁶⁴ Many have expressed concern that shutting down CICIG would lead to setbacks in the investigation of corruption cases and the accountability process regarding crimes perpetrated during the conflict.¹⁶⁵ Most pressing is the fear that judges and other justice actors 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 — will become the object of threats and persecution.¹⁶⁶ The IACHR has already issued precautionary measures to protect some of these judges against threats and intimidations.¹⁶⁷ One instance in which these concerns may be realized is through the election of Supreme Court and appellate court judges in Guatemala.¹⁶⁸ Some have argued that the selection of the judges presents an opportunity for politicians, public officials and businessmen who are under investigation or prosecution by the Attorney's General Office to seek to influence the elections for their own benefit.¹⁶⁹ Additionally, a parliamentary commission was recently created to

161 Burt and Estrada, *supra* note 154.

162 J.M. Burt and P. Estrada, 'In Defiance of Court Rulings, Guatemalan Congressional Leaders Push Amnesty Bill', International Justice Monitor, 5 September 2019, available online at <https://www.ijmonitor.org/2019/09/in-defiance-of-court-rulings-guatemalan-congressional-leaders-push-amnesty-bill/> (visited 2 October 2019).

163 See, in general, 'Guatemala: Obstáculos a DDHH', hearing before the IACHR, 23 September 2019, available online at <https://www.youtube.com/watch?v=zqdg5SPE6eA> (visited 2 October 2019).

164 Washington Office on Latin America (WOLA), 'Fact Sheet: the CICIG's Legacy in Fighting Corruption in Guatemala', 27 August 2019, available online at <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/> (visited 2 October 2019).

165 *Ibid.*

166 *Ibid.* See, in general, *supra* note 163, where representatives of civil society denounced the ongoing threats and persecutions suffered by judges involved in the High Risk Tribunals.

167 Canal Antigua, 'CIDH dicta medidas a favor de magistrada Gloria Porras', 31 August 2017, available online at <https://www.canalantigua.tv/cidh-dicta-medidas-a-favor-de-magistrada-gloria-porras/> (visited 2 October 2019).

168 J. Ramírez-Franco, 'High Stakes in Guatemala's Judicial Elections', International Justice Monitor, 19 August 2019, available online at <https://www.ijmonitor.org/2019/08/high-stakes-in-guatemalas-judicial-elections/> (visited 3 October 2019). The selection of the judges has now been stopped by a judgment of the Constitutional Court ordering that the nomination of the candidates be repeated. See 'CC revoca elección de Comisionados para la CSJ', El Periódico, 16 September 2019, available online at <https://elperiodico.com.gt/nacion/2019/09/16/cc-revoca-eleccion-de-comisionados-para-la-csj/> (visited 3 October 2019).

169 *Ibid.*

investigate the activities carried out by CICIG during the 12 years it was present in Guatemala and the public officials who worked in that institution,¹⁷⁰ which many perceive as a measure of intimidation against those who were committed to the fight against corruption and impunity, including judges and prosecutors.¹⁷¹

6. Conclusion: Lessons Learned for Pending and Future Litigation of CSGV Cases

One of the most important lessons learned from the *Sepur Zarco* litigation was that it recognized sexual violence as an international crime perpetrated as part of the counter-insurgency policy implemented by the state of Guatemala. As stated earlier, the strategic use of sexual violence in the conflict had been largely invisible in Guatemala until this case was decided.¹⁷² Focusing on sexual violence as the central crime in a case not only empowers victims to break the silence but also contributes to the development of gender-competent standards for the prosecution of these crimes, particularly in regard to evidentiary issues, such as avoiding re-traumatization and designing reparations measures that redress the needs of victims holistically.

The Guatemalan experience is not unique; similar crimes have been committed in other countries that have gone through a transitional justice process. 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 1992.¹⁷³ As a result, a few criminal investigations have been opened by domestic courts to address these crimes and identify and punish the perpetrators.¹⁷⁴ One of the most notable cases is the *El Mozote Massacre Case*, which involved the extrajudicial execution of about 1,000 victims, half of

170 I. Escobar and D. Rivera, 'Congreso crea comisión para investigar a la CICIG', *Prensa Libre*, 24 September 2019, available online at <https://www.prensalibre.com/guatemala/politica/congreso-crea-comision-para-investigar-a-la-cicig/> (visited 3 October 2019).

171 'Iván Velásquez y Thelma Aldana reaccionan por comisión para investigar a CICIG', *Prensa Libre*, 25 September 2019, available online at <https://www.prensalibre.com/guatemala/politica/ivan-velasquez-y-thelma-aldana-reaccionan-por-comision-que-investigaria-a-cicig/> (visited 3 October 2019).

172 See Section 4.A.

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

174 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 February 2018, available online at <https://www.laprensagrafica.com/revistas/El-Calabozo-El-retorno-de-una-denuncia-26-anos-despues-20180203-0061.html> (visited 3 October 2019); 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 December 2018, available online at <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/> (visited 3 October 2019).

which were children.¹⁷⁵ Evidence shows that women and girls were raped before they were murdered.¹⁷⁶ 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 sexual violence.¹⁷⁷ As in Guatemala, in El Salvador sexual violence was systematically perpetrated; however, no transitional justice case has yet addressed this crime beyond the ongoing investigations in *El Mozote*.¹⁷⁸ The lesson from *Sepur Zarco* is that without a sustained commitment to investigate and prosecute sexual violence — in addition to 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.¹⁷⁹ 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 conflict¹⁸⁰ and concluded that there was a systematic perpetration of this crime during the military incursions and in prisons where alleged terrorists were deprived of liberty.¹⁸¹ One of the cases identified by the TRC is the *Case of Manta y*

175 See, inter alia, Cristosal, 'El Mozote', available online at <https://www.cristosal.org/el-mozote#el-mozote-latest-news> (visited 3 October 2019); IACtHR, *Case of the Massacres of El Mozote and Surrounding Areas v. El Salvador*, Merits, Reparations and Costs, Judgment of 25 October 2012, Series C No. 252, §§ 73–121.

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

177 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 C. Martin and S. SáCouto, *Amicus Curiae*, Causa Penal 238/90, conocida como 'Masacre El Mozote y lugares aledaños', filed on 24 August 2018, available online at <https://www.wcl.american.edu/im-pact/initiatives-programs/hracademy/documents/amicus-causa-penal-238-90/> (visited 3 October 2019).

178 L. Arteaga, 'De Sepur Zarco a El Mozote: en búsqueda de la justicia con sentido de mujer', *El Faro*, 20 June 2018, available online at <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> (visited 3 October 2019).

179 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', available online at 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 (visited 3 October 2019). 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).

180 Comisión de la Verdad y Reconciliación, *Informe Final*, Volume VI, Chapter 1, section 1.5, 27 August 2003, available online at <http://cverdad.org.pe/ifinal/> (visited 3 October 2019).

181 *Ibid.*, at 303–337.

Vilca, which, like *Sepur Zarco*, focuses exclusively on sexual violence perpetrated against members of an indigenous community in Peru during the internal conflict.¹⁸² 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,¹⁸³ 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.¹⁸⁴ Again, one of the lessons from *Sepur Zarco* is that without sustained support targeted at moving this case forward, the case may linger indefinitely.

Furthermore, lessons from the *Sepur Zarco* litigation can also be applied to other countries currently undergoing gross and systematic violations of human rights in the region, including rape and other forms of sexual violence.¹⁸⁵ One of the clear lessons from *Sepur Zarco* is the need to ensure that sexual violence cases do not become invisible, particularly when there is still time to gather the evidence and to interview the victims and provide them the psychological and political support needed to break the silence and ensure that impunity does not prevail. 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 more generally not become ‘normalized’ once the conflict or situation of violence subsides.

182 *Ibid.*, at 312.

183 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 February 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).

184 For an updated status on the criminal proceedings in this case, see Estudio para la Defensa de los Derechos de la Mujer (DEMUS), ‘Sala Penal permite que se politice juicio Manta y Vilca y revictimiza a denunciantes’, 29 July 2019, available online at <https://www.demus.org.pe/noticias/sala-penal-permite-que-se-politice-juicio-manta-y-vilca-y-revictimiza-a-denunciantes/> (visited 3 October 2019).

185 Organization of American States (OAS), Interdisciplinary Group of Independent Experts (GIEI), ‘Nicaragua: Report on the Violent Events That Took Place Between April 18th and May 30th, 2018’, April 2019, available online at https://gieinicaragua.org/giei-content/uploads/2019/05/GIEI_REPORT_ENGLISH_simplepage.pdf (visited 3 October 2019), at 231; UN Office of the High Commissioner for Human Rights, ‘Human Rights in the Bolivarian Republic of Venezuela’, 5 July 2019, available online at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24788&LangID=E> (visited 3 October 2019), at 9; Oficina del Alto Comisionado de Derechos Humanos, América del Sur, Oficina Regional, ‘Equipo ONU Derechos Humanos finalizó su visita a Chile’, 22 November 2019, available online at <https://acnudh.org/equipo-onu-derechos-humanos-finalizo-su-visita-a-chile/> (visited 3 December 2019). Indeed, our goal is that the symbolic and legal successes that stem from *Sepur Zarco* be used to promote accountability for CRSV in other countries in the region, beyond Guatemala. Two additional legal aspects where the judgment can have an impact in supporting sexual violence litigation in these other countries include the use of international standards to inform domestic criminal law and of transformative reparations to strengthen and ensure appropriate forms of redress for the victims of those crimes.