



impunity  watch

VICTIMS FRONT AND CENTRE.
LESSONS ON MEANINGFUL VICTIM
PARTICIPATION FROM GUATEMALA
AND UGANDA



REDRESS

Ending torture, seeking justice for survivors

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PHOTO CREDITS

Cover photos: Elizabeth Adongo, a sexual violence survivor from Uganda, formed a survivors' support group and, against cultural dictates, dug graves in the Obalanga massacre sites, in search for justice (ESA/REDRESS). Maya Achí women survivors of sexual violence from Guatemala who are among the 36 claimants in an ongoing criminal proceeding (Cristina Chiquin/Impunity Watch).

Executive Summary: Decades have passed since the end of the internal armed conflict (1960-1996), yet this Guatemalan man refuses to abandon his pursuit for justice (Cristina Chiquin/Impunity Watch). Former child soldier Patrick Ocen has become a victim representative as part of the Uganda Victims and Survivors Network (REDRESS/IW).

Introduction: Kenya Luke Alana is a survivor of the Atiak massacre, during which the Lord's Resistance Army executed more than 200 civilians. He lost a son and a daughter and all his possessions (REDRESS/ESA).

Chapter 1: Survivors of the Abia Massacre in Uganda sit in a school whose walls have been painted to depict scenes of the conflict, in memory of their war experiences (ESA/REDRESS). Victims from war-affected regions in Northern Uganda came together in 2019 to form the Uganda Victims and Survivors Network (© ESA/REDRESS). A Guatemalan woman presents photos of her husband and sister-in-law who were forcibly disappeared during the internal armed conflict (Piet den Blanken/Impunity Watch).

Chapter 2: An altar displaying photographs of those killed or disappeared during the internal armed conflict in Guatemala during a commemoration ceremony held in Santa Lucía Cotzumalguapa in 2019 (Impunity Watch). From one generation to another, Guatemalans continue to fight for justice. Hundreds of victims and survivors of the internal armed conflict participate in the March for Truth and Justice on 25 February 2019 (Christina Chiquin/Impunity Watch).

Conclusion: Oyella Night was badly shot and lost five children during the armed conflict in Uganda. She struggles to meet the needs of her surviving children while still mourning the loss of her elder ones.

ICD Case Study, The Kwoyelo case: Justice and Reconciliation Project.

ICC Case Study, The Ongwen case: ICC-CPI.

Guatemala Case Study: The Maya Achí Sexual Violence Case: Cristina Chiquin/Impunity Watch.

Molina Theissen case: ESA/IW.

Sepur Zarco case: Héctor Valdez/Impunity Watch.

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BACKGROUND

ABOUT REDRESS

REDRESS is an international human rights organisation that represents victims of torture to obtain justice and reparations. We bring legal cases on behalf of individual survivors, and advocate for better laws to provide effective reparations. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with State responsibility. Through our victim-centred approach to strategic litigation we can have an impact beyond the individual case to address the root causes of torture and to challenge impunity. We apply our expertise in the law of torture, reparations, and the rights of victims, to conduct research and advocacy to identify the necessary changes in law, policy, and practice. A central tenet of our work in national contexts is collaborative engagement with local organisations and grassroots victims' groups to promote local ownership and effective implementation of relevant projects.

ABOUT IMPUNITY WATCH

Impunity Watch is an international non-profit human rights organisation seeking to promote accountability for past atrocities, notably in countries emerging from a violent past. Impunity Watch researches the root causes of impunity and obstacles to its reduction. We analyse, advocate, and partner to help local communities seek accountability for gross human rights abuses and for systemic injustice. In doing so, we focus on victims, survivors, and the most marginalised. We seek to strengthen their involvement in justice processes, and to put our skills, resources, and networks at the service of all those who fight impunity, working directly with local civil society and victim groups. In our work, we adopt a bottom-up, participatory, and context-specific approach, by which we support victims and survivors to exercise their rights. Impunity has many aspects, and so our work is legal, social, and political.

ABOUT THE PROJECT

This report is based on research and activities carried out by REDRESS and Impunity Watch, alongside our local partners in Uganda and Guatemala, between November 2017 and March 2020, under the project: *"Strengthening Victim Participation in the Fight against Impunity for International Crimes"*. Our Ugandan civil society implementing partners were Emerging Solutions Africa (ESA) and the Uganda Victims Foundation (UVF). For Guatemala, Impunity Watch implemented the project through its offices in Guatemala and The Netherlands and with many partners on the ground. The project aimed to support victims of international crimes in Guatemala and Uganda, and the local organisations assisting them, to participate meaningfully in local, national, and international transitional justice processes in order to reduce impunity for such crimes and contribute to the transformative impact of transitional justice in victims' groups and society. This project, funded by The Dutch Ministry of Foreign Affairs, was designed to comparatively assess victim participation in transitional justice processes in Uganda and Guatemala.

ACKNOWLEDGEMENTS

Impunity Watch and REDRESS wish to thank the many victims who engaged with us during –and beyond– the lifespan of this project. Without them our work would not be possible, as their views, needs and expectations are what has guided the project. We are grateful for the time they spared to speak with us, as well as for their participation in community dialogues, forums, and data collection activities. We are also appreciative of the special insights provided by those victims who had participated in formal and informal transitional justice processes.

This research for and drafting of this report is the product of the collaborative efforts of REDRESS and Impunity Watch, as well as their local and implementing partners in Uganda and Guatemala, respectively. We are particularly thankful for the extensive research, drafting, and editorial support provided by Julie Bardèche, Ana Cutts Dougherty, Nicole Jocelyn, Ludivine Plenchette, and Safi van 't Land. We extend a special thanks to Camila Ruiz Segovia, who provided invaluable support in the final stages of the drafting process. Moreover, we are grateful to Alice Etam, Hon. Justice Elizabeth Ibanda Nahamya, Alejandro Rodríguez, Lorraine Smith van Lin, Marlies Stappers, Thomas Unger, and Alejandra Vicente for their internal reviews and their input at various stages of the drafting process. Design of the report was coordinated by Eva Sanchis and Manal Sarrouf.

This report is an output of a multi-year project entitled “*Strengthening Victim Participation in the Fight against Impunity for International Crimes*”, implemented by REDRESS, Impunity Watch, and local partners, with the financial support of the Dutch Ministry of Foreign Affairs. We will use this report as an advocacy tool with international policymakers to promote the meaningful participation of victims in transitional justice processes that can contribute to transformation.

ACRONYMS

CEH	Commission for Historical Clarification (<i>La Comisión para el Esclarecimiento Histórico</i>) (Guatemala)
CICIG	International Commission against Impunity in Guatemala (<i>Comisión Internacional contra la Impunidad en Guatemala</i>) (Guatemala)
ESA	Emerging Solutions Africa
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICC	International Criminal Court
ICD	International Crimes Division
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Persons
JLOS	Justice Law and Order Sector
LRA	Lord's Resistance Army
NGO	Non-Governmental Organisation
NTJP	National Transitional Justice Policy (Uganda)
OHCHR	UN Office of the High Commissioner for Human Rights
PNR	National Reparations Programme (<i>Programa Nacional de Resarcimiento</i>) (Guatemala)
REMHI	Recovery of Historical Memory Project (<i>Recuperación de la Memoria Histórica</i>) (Guatemala)
SEPAZ	Secretariat for Peace (<i>Secretaría de la Paz</i>) (Guatemala)
SGBV	Sexual and Gender-Based Violence
TJ	Transitional Justice
TJWG	Transitional Justice Working Group
UN	United Nations
UNRF	Uganda National Rescue Front
UPDF	Uganda People's Defence Force
UVF	Uganda Victims Foundation

EXECUTIVE SUMMARY

“ One day we will not be in this world anymore, but our granddaughters are growing up here. We want them and the people of our nation to realise what it was like from 1981 to 1984. ”

Paulina Ixtapa, survivor (Rabinal, Baja Verapaz, Guatemala).



Many speak and write about the need for transitional justice to be “victim-centred,” for victims’ needs to be “front and centre”. However, victims’ perspectives on what it means to be at the centre of transitional justice, a discipline that aims to address the legacy of a violent past in order to ensure a better future, have gotten lost as the field has become more professionalised and top-down; disjointed from grass-root movements for truth, justice, and reparations. Similarly, the meaning and value that victims give to their participation has often been overshadowed by legalistic approaches. For victims, participation is not merely a mechanical exercise, devoid of meaning. It is a unique opportunity to ensure that the State acknowledges the injustices inflicted upon them, which often have their roots in historical marginalisation, exclusion and discrimination, and takes action accordingly; a powerful tool to have their justice claims met and their rights and dignity upheld. It is part of a political process with the potential to transform victims’ lives and the lives of those in their communities.

This report is our attempt to recapitulate and explain what “victim-centred” *should* mean in the specific context of transitional justice. What is meaningful and can lead to change and what is merely ticking the box or promoting a mantra without providing the space for victims to shape their own future?

The report stems from extensive research and consultations that were carried out with victims of armed conflict in Guatemala and Uganda. Both countries have been the focus of international assistance for transitional justice for many years and, as such, they provide a long-term perspective on what has worked and what has not in terms of victim participation. Even though both countries have adopted transitional justice measures to deal with past atrocities, their experiences of victim participation differ markedly and thus offer a unique opportunity for comparison and for drawing key lessons.

Our research suggests that a combination of participation within formal mechanisms as well as outside of them is essential to ensuring that transitional justice processes adequately meet victims' needs and contribute to wider political change. Meaningful participation within transitional justice mechanisms, for example during criminal trials, is key to ensure that the interests of victims are adequately represented. Participation outside of these formal mechanisms, particularly through grassroots activism, is equally essential, as it provides more freedom to articulate demands and to push forward a political agenda that meets the specific needs of victims in a given context.

The key lesson of this report is that meaningful victim participation is truly political and grassroots-oriented. Its aim, if done right, should explicitly place victims' needs at the centre, and emphasise processes that contribute to tackling structures of impunity, violence, and inequality. It stands in contrast to an approach to victim participation that is top-down, overly legalistic and institution-focused in nature.

In both countries on which we focus our research, governments have adopted some form of transitional justice measures. Authorities have, however, lacked the political will to genuinely engage with victims and to accommodate their needs. Still, in Guatemala, victims' active involvement in the calls for truth, justice, and reparations translated into the early adoption of measures that more adequately responded to their needs and that contributed to uprooting the root causes of the conflict, especially the prevailing structures of impunity in the country. Yet, as soon these measures began effecting positive changes, victims and civil society faced a huge backlash from the elites in power, while observing a retreat of efforts by the international community to support initiatives in the fight against impunity. This ultimately translated into the undermining of the transitional justice process. Worryingly, it also put victims and their local allies at risk. In Uganda, transitional justice measures have predominantly been State-led and promoted by the international community. Local authorities have responded by adopting a transitional justice framework that looks extremely promising on paper. However, the adoption of this framework is yet to yield meaningful results. Moreover, as victims have been largely excluded from the design of these policies, their needs have not been successfully captured.

The report further shows that while the claims of victims have translated into the adoption of State-sanctioned measures, particularly accountability mechanisms and reparations, these measures have not succeeded at satisfying victims' broad claims for justice. Still, victims in both contexts have pursued justice through varied processes, including through traditional justice systems, ordinary and international justice, and civil society initiatives. When these processes have complemented each other, they have better accommodated victims' claims and needs. Thus, actively pursuing complementarity between different mechanisms can be useful and will increase opportunities to see justice done, not only for one group of victims in a particular case, but also for the broader communities.

The experiences of Uganda and Guatemala further illustrate that an official reparations policy does not necessarily ensure redress for the harms that victims have suffered. Both countries have yet to see the kind of holistic approach to reparations that could lead to transformative change.

In both countries, it is fair to say that many aspects of transitional justice have failed, or as yet have not succeeded in addressing the needs of victims or leading to any meaningful change. The reasons for this differ in each country. In Uganda, the top-down approach to transitional justice has meant that victims have had little room to influence the process and have their voices heard. Even if the formal transitional justice policy was clearly articulated and established victim participation as a priority, in practice, victims have been largely excluded from the process. In contrast, in Guatemala, the transitional justice framework has been more piecemeal. Nevertheless, victims have been able to shape transitional justice initiatives more extensively, thanks to their vibrant activism, the accompaniment of local civil society organisations, and the support of international allies. The gains are currently under threat, with a government campaign that seeks to uphold impunity in order to stay in power. The lack of stronger political support by the international community towards the victims, risks undermining early successes.

While efforts to promote victim participation in both Guatemala and Uganda need to be urgently bolstered, the experience of both countries underline the need to adopt a meaningful approach to victim participation, which places victims' needs at the centre and which promotes transformative change. Moreover, the report underscores the importance of adopting integrated approaches to justice, the essential role of victims' activism, and the urgency of working with State authorities to ensure they are receptive to the claims of victims.

The report is, therefore, an invitation for policymakers to challenge assumptions about victims as passive agents and to recognise them as actors who can exert significant influence. It is also a call for integrated approaches to justice, which recognise the essential role of victims' activism and the urgency to working on reforming State institutions to ensure that they pursue a culture that is receptive of victims' claims.

The concept of what constitutes meaningful victim participation needs to be rethought. Policymakers should strive to adopt a more nuanced understanding of victim participation so that policies will be more likely to address the needs of victims and contribute to meaningful changes in the contexts in which they will be implemented. This should be the benchmark for change if we take victim-centeredness seriously.

RECOMMENDATIONS

Building on these lessons, the report calls for the adoption of a meaningful approach to victim participation in transitional justice processes. The two cases of Guatemala and Uganda provide valuable ideas on the scope and components of such meaningful victim participation approach. They include, among others:

- Ensuring that transitional justice processes reflect victims' needs in a long-term and sustainable fashion.
- Taking an integrated and holistic approach to justice, which responds to victims' activism and visions for justice. Such an approach must also seek to change the culture in the State institutions responsible for addressing the claims of victims, which would increase the potential to deliver concrete, transformative outcomes for victims.
- Connecting victim participation to broader societal transformation processes that tackle the root causes of the conflict, namely persistent structures of impunity, inequality, and violence.

RECOMMENDATION FOR POLICY-MAKERS AND DONORS TO MAKE MEANINGFUL PARTICIPATION A REALITY:

- Adopt and promote an integrated approach to justice in order to adequately meet victims' broad justice claims and to enable meaningful victim participation. This approach should incorporate multiple channels of active participation, which might take place in State-sanctioned transitional justice mechanisms, traditional justice systems, international justice, civil society initiatives, and participation through social mobilisations and activism.
- Take victims' needs as the main guiding factor in developing and operationalising transitional justice processes. Justice initiatives, such as accountability and reparation processes, should be determined based on the specific needs of the victims and consider the root causes of violence in the context in which they are implemented.
- Take a horizontal approach to the inclusion of victims' voices in transitional justice processes and ensure that the efforts of victims, local civil society organisations, and international allies are coordinated and complement one another.
- Support victims' activism and political organising as it can play a fundamental role in shaping transitional justice processes that more adequately respond to victims' needs and contribute to transformative change. Such activism should be supported from the early stages, even if State-sanctioned transitional justice mechanisms are yet to be adopted. This support should be sustainable and resilient to political changes on the ground taking into account the long-term and changing needs of victims.

- Support research looking into the factors that promote strong political victim activism and those that stand in the way of the emergence of such activism. This will provide insights on the most effective ways to support movement building, as well as on modalities currently employed that negatively impact such activism.
- Support women, and specifically indigenous women, to increase their ability to engage in activism and justice efforts more broadly. This can ensure that their specific justice claims are addressed in transitional justice processes. Intersectional approaches should be taken into account in order to tackle context specific challenges of marginalisation, exclusion and vulnerabilities. In this regard, it is essential that support to victims' movements also seek to contribute to challenging gender hierarchies and discrimination within these movements, to ensure that obstacles to their participation are tackled and strong inclusive movements are promoted.
- Redouble efforts to actively work with State authorities to ensure that they genuinely engage with victims, are receptive to their needs and justice claims, and take effective action to reform State institutions. These efforts should include diplomacy initiatives to strengthen political will to engage with victims and promote measures to fight impunity, as well as financial support to increase the technical capacity of the State to accommodate victim participation and ensure respect for the rights of victims. Efforts need to be made both in bilateral engagements as well as in multilateral fora, both at the regional and international level. Support and assistance to transitional justice initiatives should be conditional on ensuring meaningful victim participation at the design, implementation and monitoring phases.
- Increase efforts to provide an environment that is conducive to meaningful victim participation and prevent pushback from State authorities against victims and civil society, such as reprisals.
- Conceive of transitional justice as a long-term process that requires long-term investment, solidarity, and accompaniment in order to achieve transformative change and be sustainable.
- While conducting evaluations of transitional justice processes, take into account meaningful victim participation that supports victims' needs and contributes to change as part. Develop evaluation frameworks in a context-specific manner and in close cooperation with victims.

INTRODUCTION

“ My wife was raped and my 13-year-old daughter was defiled as I watched. There was not consideration for victims. The victims still see amnesty as the root cause of their dissatisfaction. How can there be reconciliation if the perpetrators cannot say sorry? ”

Survivor speaking during a victims' forum (Yumbe, Uganda).

1. BACKGROUND

For victims of human rights violations, meaningful participation in transitional justice processes is an essential tool to ensure that their claims to justice are met. It is about ensuring that the State acknowledges them, recognises the injustices inflicted upon them, takes action to repair them, and commits to non-repetition. Rather than a technical and formal exercise, for victims, participation is a political process that opens up the possibility to speak out against injustice, to affirm their rights and dignity, to break with cycles of impunity and violence, to meaningfully transform their lives and communities, and to bring about long-lasting peace and stability.

However, as the field of transitional justice has become more professionalised, top-down, legalistic, and technical, victims' perspectives on the fundamental value of participation has gotten lost along the way. Over the past few decades, policy-makers and civil society have dedicated much attention to thinking about how to operationalise the term of victim participation, specifically within the margins of transitional justice mechanisms. Yet, in doing so, they have tended to overlook the fact that victims' engagement with transitional justice goes well *beyond* their mere participation in these formal spaces. Moreover, this strategic thinking has frequently taken place at international arenas and policy circles to which victims do not have access, with a heavy focus on developing legal frameworks that do not necessarily take into account specific contexts



or needs. This has led to a de-contextualised and mechanical approach to victim participation, which has worryingly limited the ability of transitional justice to effectively respond to victims' claims for justice and to be a tool for societal transformation.¹

The present report is an effort to bring the perspective of victims back to the centre of transitional justice. It seeks to contribute to the understanding of "victim-centred" approaches and "victim participation" by seeing victim participation in transitional justice not as a box to tick but as a driver for change. The report recognises that victims should play a key role in defining what it means to be at the centre of transitional justice processes and fundamentally, in establishing *why* this matters for them. Similarly, it considers that victims' views on the meaning and value of participation are essential for operationalising this term. Providing space for victims to share their views on the most suitable mechanisms and approaches to address the harm done to them in a transformative way is key, as it contributes to transitional justice mechanisms that better respond to victims' needs and in a direct way can help to counter the structural exclusion and marginalisation they have traditionally experienced.

2. REPORT'S GUIDING QUESTION AND CONTRIBUTIONS

This report explores the core question of whether existing avenues of victim participation in transitional justice have resulted in processes that are effectively shaped by victims and that contribute to transformative change. As such, we understand that transitional justice is victim-centric when it adequately addresses in a sustainable fashion victims' needs and claims for justice, and when it contributes to transforming the root causes of violence –including structures of impunity, and economic, gender and racial inequalities.² This, in turn, enables victims who were previously marginalised to take ownership of transitional justice processes and to claim their rights.

Empirical data on victim participation in transitional justice processes is low. Analysis is often one-sided, looking at nominal participation in criminal justice processes or in other transitional justice processes, such as truth commissions. The report seeks to address this gap and goes about exploring the question of meaningful victim participation by presenting a comparative study of the experiences of Guatemala and Uganda, two cases that have been at the centre of transitional justice analysis and interventions over the last two decades. In order to assess the experiences of victim participation in these two countries, the report provides an analysis of some of their existing transitional processes –including formal State-sponsored mechanisms and informal civil society initiatives– and discusses the role of victims in their development. The report further zooms in on specific justice efforts in these countries that have been traditionally prioritised in assistance, specifically accountability and reparations, and discusses whether they effectively addressed the claims to justice of the victims; whether they adequately met their needs; and whether they contributed to transformative change.

¹ See, Impunity Watch, *Transitional Justice Practice: Looking Back, Moving Forward*, May 2016.

² *Ibid*, p. 32.

Guatemala and Uganda offer an interesting comparison for various reasons. Both have experienced violent conflicts that were rooted in systemic inequalities and that resulted in grave and widespread human rights violations. The extent of the violence suffered in these countries has deeply impacted society, breaking the social fabric and creating long-lasting ruptures in local communities. In response to the conflicts, transitional justice processes were allegedly initiated to address the rights of victims. In both cases, victims expressed a firm desire to participate, to voice their needs and to interact directly with those making decisions that affected their future and that of their communities.

Notwithstanding these similarities, the experiences of victim participation in Guatemala and Uganda also bear striking differences. The involvement of victims in the design and implementation of transitional justice policies and processes differed markedly, as the report will show. The diversity of these experiences thus offers useful insights on how victim participation might look differently on the ground depending on an array of factors, including the presence and degree of organisation of victims' movements and local civil society organisations, the influence of international actors, the political will and capacity of State officials, and the continuation of violence.

The transitional justice processes in Uganda and Guatemala, and the participation of victims within them, have been on-going for several years and have evolved over time. Yet, they have received relatively little international attention when it comes to evaluating whether they have been effective in addressing victims' needs and in contributing to some concrete societal change that can work against recurrence. Taking stock on the long-term perspectives provided by Guatemala and Uganda, this report draws key lessons on what has worked and what has not in terms of victim participation. It further highlights some of the key obstacles and challenges faced by victims and those working with them to fully engage with these processes; and brings attention to the approaches that have been crucial to ensure that the needs of victims are met.

For international policy-makers, the lessons and recommendations flowing out of these experiences provide an opportunity to critically rethink the concept of victim participation, which we consider essential to ensure that future policies effectively address the needs of victims and contribute to transformative change in transitional justice processes worldwide. It is only then that these policies will be able to make a difference.

3. METHODOLOGY

The report draws primarily on the views of victims, leaders of grassroots organisations, civil society organisations and mid-level policymakers solicited through activities and research carried out by REDRESS, Impunity Watch, and our Ugandan and Guatemalan partners between November 2017 and March 2020, in the context of our joint two-and-a-half joint project in these countries. The perspectives of victims were shared during victims' forums, meetings, policy dialogues, and in exchanges regarding transitional justice in Uganda (in Kampala, Teso, Lango, West Nile and Acholi regions) and Guatemala (in Guatemala City, Santa Lucía Cotzumalguapa, Chimaltenango, Baja Verapaz, and Alta Verapaz). In Uganda, the analysis is based on the experiences of victims of the most recent conflict – roughly from 1987 to 2006, in the regions listed above. It does not purport to reflect the views or experiences of victims of other conflicts in Uganda.

In Uganda, victims' forums were organised in the North and North-western regions which had suffered several armed insurgencies, including by the Lord's Resistance Army (LRA), Uganda National Rescue Front (UNRF) I, West Nile Bank Front (WNBF) and the UNRF II. These regions also experienced the greatest influx of displaced persons from Northern Uganda, Southern Sudan and the Democratic Republic of the Congo. Further, a team led by Denis Ojok Ayaki from the Uganda Victims Foundation (UVF) conducted Key Informant Interviews and Focused Group Discussions with victims in 80 villages throughout the four sub-regions of Acholi, Lango, Teso and West Nile. The data analysis was carried out by Opio Hilton.

In Guatemala, hundreds of victims and other key stakeholders participated in forums and seminars, including victims from Alta Verapaz, Baja Verapaz, Chimaltenango, Santa Lucía Cotzumalguapa and other regions of the country. In addition, legal advice was offered together with accompaniment in judicial hearings to victims in six prioritised cases, including direct representation of some of the women in the Achí women sexual violence case. At the same time, lawyers, criminal prosecutors, and personnel at the Office of the Human Rights Ombudsman in Guatemala participated in working groups organised within the framework of the project, so as to develop a litigation strategy for judicial cases and reparation before national agencies.

REDRESS and Impunity Watch also organised a two-day meeting in The Hague in October 2019 to facilitate exchanges between several Guatemalan and Ugandan victims. With a focus on sharing experiences and expertise, the meeting brought together nine victims from Guatemala and Uganda, as well as local staff and partners. Participants were able to identify and address specific issues of concern regarding victim participation in their respective contexts and discuss possible advocacy tools, including how to engage with international policymakers.

A high-level conference took place in The Hague on 17 October 2019, with the participation of victims, international policy-makers, donors and experts, which focused on how to engage victims and ensure their meaningful participation in transitional justice processes.

Additional information was obtained through desk-based research, consultations with relevant stakeholders and participation in policy-related meetings. In relation to the legal cases included in this report, information was obtained from the legal representatives of victims in each case as well as through open-source information. The report draws extensively from findings and conclusions included in the REDRESS/ESA/UVF report entitled "Not Without Us: Strengthening Victim Participation in Transitional Justice Processes in Uganda", published in July 2020,³ as well as Impunity Watch's reports "Reparations for Gross Human Rights Violations in Guatemala"⁴ and "Impact on the CEH Report on Victims of the Armed Conflict",⁵ published in February 2019 and April 2020 respectively.

3 Hereinafter: REDRESS National Report.

4 Impunity Watch, Policy Brief: Reparations for Gross Human Rights Violations in Guatemala, December 2018 (hereinafter: Reparations in Guatemala).

5 Impunity Watch, Policy Brief: Impact of the CEH Report on Victims of the Armed Conflict in Guatemala, April 2020 (hereinafter: Impact of the CEH Report).

4. REPORT'S BREAKDOWN

The report is organised as follows: Chapter 1 explores the transitional justice architecture developed in Uganda and Guatemala in the aftermath of their internal armed conflicts, examining the extent to which the participation of victims was foreseen formally and the way it took place in practice. Chapter 2 analyses how both countries dealt with efforts to seek justice, including criminal accountability and reparations for gross human rights violations and violations of humanitarian law, and the role that victims played in such processes. It closely examines the extent to which these initiatives met victims' claims for justice, addressed their needs, and led to transformative change in their lives. In the conclusion, we reflect on the core lessons that can be drawn from these experiences and provide recommendations for international stakeholders.

CHAPTER 1

VICTIM PARTICIPATION AND TRANSITIONAL JUSTICE IN UGANDA AND GUATEMALA

“ There is a gap in communications between the government, victim communities, political leaders and cultural leaders. Whenever victims raise their concerns, it is very hard for their pleas to be heard. This makes it very hard for the victim community to get reparations and access to justice. ”

Patrick Ocen, former child soldier and victim representative of the Uganda Victims and Survivors Network (Achoi, Uganda).

 Watch Patrick Ocen's story here



INTRODUCTION

This chapter seeks to present a brief overview of transitional justice developments in Uganda and Guatemala. Through a comparative analysis, it discusses the role that victims and other actors –namely local civil society and the international community— had in shaping the transitional justice architectures of these countries. Our findings suggest that when victims actively participate in activism, advocacy, and consultation efforts for the establishment of transitional justice measures, these are better suited to respond to victims’ needs and to contribute to political and societal change. In contrast, when victims are excluded from these efforts, transitional justice measures and initiatives less adequately respond to their needs and are less likely to engage with root causes of injustice and impunity, which is key in order to promote political transformation. At the same time, our analysis also shows that, when transitional justice processes do effectively contribute to challenging structures of impunity, they are more likely to face backlash from those in power, particularly in countries that did not experience a political transition. This backlash can undermine transitional justice processes and put victims and allies at risk.

The chapter includes sections for Uganda and Guatemala. Each section provides a brief background to the conflict that led to the implementation of transitional justice measures, a general overview of the transitional justice architectures in place, and a section that addresses the role of victims, civil society, and international actors in shaping these architectures. Thereafter, the chapter moves on to an analysis that compares and contrasts the transitional justice developments in these countries and their ability to respond to victims’ needs and to contribute to transforming structures of impunity and to tackling root causes of violence.

UGANDA

1. CASE BACKGROUND

Since 1884, Uganda has experienced cycles of conflicts that have led to its current socio-political challenges.⁶ The era of British colonialism has been described as ‘a conflict in its own right [and] the root cause of post-Independence conflicts. The war in the North between the LRA and the Ugandan government forces – subsequently known as the Uganda People’s Defence Force (UPDF)– has been the longest and most brutal of the conflicts in Uganda, since its independence from British colonial power in 1962.⁷ It is estimated that between 1986 and 2006, the LRA abducted approximately 54,000 to 75,000 people, including 25,000 to 38,000 children. While the LRA were primarily responsible for the abductions, use of children as child soldiers, and widespread use of sexual slavery and other forms of sexual and gender-based violence (SGBV), the UPDF also committed many grave human rights violations.



Women and girls were disproportionately affected by the conflict, with a quarter of those abducted being given to LRA fighters and commanders as forced “wives”, with some commanders having five or more.⁸ The resulting psychological trauma and medical impacts remain an unaddressed and chronic problem for these victims. As a result of forced pregnancies, thousands of so-called “bush children” or “children born of war” who returned with their mothers struggle with social re-integration, identity issues, stigma as well as lack of economic and psychosocial support.⁹ Sexual violence also affected male victims, who often suffer in silence due to shame and stigma.¹⁰ The conflicts have devastated entire families and communities and left a generational legacy of deprivation, physical and psychological trauma, and economic displacement.

Uganda has not seen a transition involving political change.¹¹ In 2006, a series of negotiations commenced in Juba, South Sudan, between the government and the LRA over the terms of a ceasefire and possible peace agreement. Though the LRA failed to sign the final agreement, a range of accountability and reconciliation measures were agreed upon over the course of the Juba Peace Process (2006-2008).¹² The Principal Agreements and Implementation Protocols on Comprehensive Solutions to the Conflict, and on Accountability and Reconciliation (AAR) set forth the framework upon which future reparations programmes and policy were to be developed and implemented in Uganda.¹³

The peace process was heavily influenced by the arrest warrants that the International Criminal Court (ICC) had issued against LRA members. In a nutshell, LRA leaders wanted the warrants dropped before entering into a peace agreement, while, under pressure from the international community, the Ugandan government would not sign an accord which did not encompass a strong accountability element.¹⁴ In the midst of this, a 2007 survey showed that when asked if they favoured peace with amnesty or peace with trials, a majority of Ugandans in the North chose peace with amnesty, reflecting fear that trials could hinder the peace process.¹⁵ Persons surveyed also stressed the importance of truth-seeking mechanisms, traditional ceremonies in particular for the reintegration of returning LRA soldiers into the local communities, and reparations.¹⁶

- 6 S. Oola and L. Moffett, *Cul Pi Bal: Reparations for the Northern Ugandan Conflict*, June 2020, Section 2 (hereinafter: *Cul Pi Bal*).
- 7 J. Sarkin, *Providing reparations in Uganda: Substantive recommendations for implementing reparations in the aftermath of the conflicts that occurred over the last few decades*, 2014, *14 African Human Rights Law Journal*, 526-552, p. 531.
- 8 *Survey of War Affected Youth, A Way Forward for Assisting Women and Girls in Northern Uganda*, February 2008, p. 4.
- 9 S. Soydas, “Go Back to the Bush!” *Integration Difficulties of Children Born in Captivity*, Wageningen University, Department of Social Studies, June 2017.
- 10 Justice and Reconciliation Project, *Gender Equality For All: Towards A More Comprehensive Approach to Prevention and Response to Sexual and Gender-based Violence*, Consultative Dialogue Report, March 2017.
- 11 M. Otim and S.K. Kasande, *On the Path to Victims’ Rights in Uganda*, 2015, p. 4; A. MacDonald, “Somehow This Whole Process Became so Artificial”: Exploring the Transitional Justice Implementation Gap in Uganda, *International Journal of Transitional Justice*, 26 April 2019 (hereinafter: *Exploring the TJ Implementation Gap in Uganda*).
- 12 REDRESS National Report, 2020, Section 4.4.
- 13 REDRESS National Report, 2020, Section 4.4; See also *Agreement on Accountability and Reconciliation*, 29 June 2007 (AAR); *Implementation Protocol to the Agreement on Comprehensive Solutions*, 28 February 2008; and *Annexure to the Agreement on Accountability and Reconciliation*, 19 February 2008.
- 14 A. MacDonald, *Exploring the TJ Implementation Gap in Uganda*, 2019.
- 15 ICTJ, *When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda*, December 2007, p. 4 (hereinafter: *When the War Ends*).
- 16 ICTJ, *When the War Ends*, 2007, pp. 4-5.

The Ugandan government had initially appeared to embrace transitional justice in the context of the Juba Peace Talks. However, some have argued that it has only paid lip service to transitional justice efforts, with ‘no genuine intention to succeed’.¹⁷ Then, ‘[o]nce the capacity of the LRA to affect stability had been reduced, the government’s enthusiasm to implement [transitional justice] receded’.¹⁸ Today, Uganda continues to live under an authoritarian government, where certain rights and liberties are curtailed, and violence continues in parts of the country. Without any real sense of transition, one party to the conflict has remained in power, with very limited accountability for that party’s crimes.¹⁹ This has reduced the effectiveness of the transitional justice measures that have been put in place.

2. TRANSITIONAL JUSTICE ARCHITECTURE

The existing transitional justice architecture of Uganda includes the International Crimes Division (ICD), the National Transitional Justice Policy (NTJP), and the Amnesty Act. The ICD is a criminal accountability mechanism, the NTJP a set of varied transitional justice measures and the Amnesty Act, a mechanism to provide amnesty from prosecution to rebels who renounced to the conflict. The ICD in the High Court of Uganda was established as a result of the AAR in 2008. It is tasked with the investigation and prosecution of those most responsible for serious crimes under international law. No guidelines were made on victim participation to the proceeding. Only one case has been brought before the ICD so far, with limited participation by victims. The proceedings in this case are still on-going. The ICD’s ability to meet victims’ need and to serve as a platform for transformative change will be discussed in Chapter 2.

The AAR also led to the establishment of the Transitional Justice Working Group (TJWG) under the Justice Law and Order Sector (JLOS).²⁰ In June 2019, after a protracted drafting period of 10 years, the NTJP, prepared by the TJWG, was approved.²¹ The NTJP presents an integrated and complementary approach where multiple transitional justice measures are included in one policy framework. The NTJP will be implemented by the Amnesty Commission, within the Ministry of Internal Affairs, in coordination with other Ministries and authorities.²² A Transitional Justice Act will be drafted to outline the integration and complementarity of the proposed transitional justice mechanisms.²³ The five priority mechanisms include: formal justice processes, traditional justice mechanisms, nation building and reconciliation, amnesty, and reparations.²⁴

17 A. Thomson and S. K. Kasande, *Victims Fighting Impunity: Transitional Justice in the African Great Lakes Region*, ICTJ, 2017, p. 8; S. K. Kasande, *The Bumpy Road to Peace and Accountability: Transitional Justice in the African Great Lakes Region*, ICTJ, 2017. See also, A. MacDonald, *Exploring the TJ Implementation Gap in Uganda*, 2019.

18 M. Otim and S.K. Kasande, *On the Path to Victims’ Rights in Uganda*, 2015, p. 4.

19 Ibid.

20 REDRESS National Report, 2020, Section 4.4. JLOS is made up of 18 member institutions, including the Ministry of Justice and Constitutional Affairs, the judiciary, the Uganda police force, the Office of the Director of Public Prosecutions, the Uganda prisons service, the Uganda Human Rights Commission, the Uganda Law Society, and other governmental bodies.

21 The TJWG does not appear to have convened since approximately 2015.

22 Implementation will be led by the Ministry of Internal Affairs and the Ministry of Justice and Constitutional Affairs. Other government ministries including health, education and sports, gender, labour and social development will participate in the part of the TJ interventions which aligns with their mandate.

23 REDRESS National Report, 2020, Section 9.1.

24 JLOS, *The National Transitional Justice Policy*, 2019, p. v.

The NTJP acknowledges that ‘truth-seeking processes are one of those justice processes that needs both communal and political acceptance due to [their] sensitive nature’.²⁵ While it foresees the possibility of a truth commission to be established, it does not propose a modality or outlines the terms of reference.²⁶ The NTJP was approved three months after the adoption by regional heads of State of the African Union Transitional Justice Policy (AUTJP).²⁷ It reflects standards at the international and regional level, including those set out in the AUTJP.²⁸

Victim-centredness is listed among the foundational principles of the NTJP and is defined as ‘participation in the design, implementation and oversight of transitional justice which will ensure that interventions are timely, meaningful and have impact’.²⁹ It also includes victim-specific outcomes, such as enhanced victim participation and witness protection, socio-economic empowerment of war victims and communities and enhanced rehabilitation and reintegration of affected persons.³⁰

Further, the Ugandan government adopted an Amnesty Act in 2000 to provide rebels who renounced the rebellion with amnesties from prosecution. Thousands of rebels, including LRA fighters, benefitted from this amnesty law.³¹ While the NTJP (adopted in 2019) provides that there should be no blanket amnesties, it also encourages those already amnestied to participate in traditional justice processes.³² The Amnesty Commission did not include victims, nor did it engage in consultations with them.

In spite of victims’ demand for the establishment of a truth-seeking mechanism, none has been established so far in the context of the conflict with the LRA.³³

25 JLOS, *The National Transitional Justice Policy*, 2019, p. 12.

26 REDRESS National Report, pp. 45-46.

27 S. K. Kasande, *Beyond Symbolism: Translating Uganda’s Transitional Justice Policy into Real Changes in the Lives of Victims*, 12 July 2019: “The AUTJP [offers] a continental approach to deal with the legacies of massive human rights violations, promote healing, and prevent the recurrence of violent conflict and repression [...]”

28 JLOS, *The National Transitional Justice Policy*, June 2019, Foreword; REDRESS National Report, 2020, Section 4.5.

29 JLOS, *The National Transitional Justice Policy*, 2019, p. 16.

30 Ibid. p. 18.

31 REDRESS National Report, 2020, Section 6.2. This amnesty law is not evenly applied. For instance, Kwoyelo applied for it and was denied amnesty. The African Commission on Human and People’s Rights considered it a violation of his right to equal treatment, but in an *obiter dictum* specified that there should be no blanket immunities for grave international crimes.

32 REDRESS National Report, 2020, Section 6.2; See also: JLOS, *The National Transitional Justice Policy*, 2019. According to the NTJP, traditional justice “refers to localized cultural practices by communities to attain justice and reconciliation; it encompasses all community driven cultural practices developed and utilized in resolving localized disputes to attain safety and access to justice by all”, p. viii.

33 B. Afako, *Between Revulsion and Realism: Policies and Dilemmas Responding to the LRA*, IFIT, September 2020.

3. ROLE OF VICTIMS, CIVIL SOCIETY AND INTERNATIONAL ACTORS IN SHAPING TRANSITIONAL JUSTICE

A. VICTIMS

In practice, victims have had little opportunity to shape and influence transitional justice processes in Uganda thus far.³⁴ After initial consultations with civil society organisations on the NTJP, further activities took the form of plenary sessions where only government actors were consulted, whereby civil society was effectively pushed aside.³⁵ The majority of victims consulted by REDRESS within the scope of this project reported feeling excluded from the on-going transitional justice processes, most notably from the decision-making discussions concerning the NTJP, where decisions are being made on their behalf.³⁶

For instance, some victims in the West Nile area reported feeling excluded from the process as the primary focus has been on victims of the conflict in the North.³⁷ They decried the silence of the State concerning their demands and the lack of feedback on transitional justice processes. Although victims value the supportive role played by civil society organisations, they expressed their wish to also speak for themselves. They want assurance that their stories are not being exploited. It is important for them to know that what they say resonates with those with decision-making powers and influences their decisions.³⁸ Though the approval of the NTJP has paved the way for further action, including through the passage of a Transitional Justice Act, victims are concerned that this stage will be as slow as the draft phase, with no interim measures implemented to address victims' urgent needs.³⁹

Despite (mainly) civil society-led victim activism,⁴⁰ the priorities of victims, particularly for reparations and inclusion in transitional justice processes, have been largely ignored. To date, the NTJP's conceptual notions of victim participation have not yet been matched in practice. Instead, the process has been mostly centralised by JLOS with limited contributions from other stakeholders including critical line ministries such as Health, Gender and Education, civil society and local communities. The result has been a prioritisation of formal punitive justice processes, which to date have had limited impact on promoting peace and reconciliation amongst communities.⁴¹

Moreover, the Amnesty Act (2000) has proven divisive among the victim community. While numerous victims consider that it has contributed to restoring peace in the country, it has also widened the impunity gap.⁴² The Amnesty Commission's failure to include and consult with victims to determine the impact of the reintegration process on them and on the wider community has resulted in an exercise that has been more perpetrator-focused than victim-centric.⁴³ Insufficient support for the reintegration process by the Amnesty Commission exacerbated tensions and undermined meaningful, community-supported reintegration.⁴⁴ Some community leaders in the North criticised the reintegration process for "failing to promote truth-telling, healing and reconciliation of communities by reducing such a complex process to the handing over of a certificate".⁴⁵

In the absence of State-led mechanisms for truth and memory, victims and civil society groups have been key in collecting victims' testimonies and promoting local memorialisation efforts.⁴⁶ Some victims have noted the need for such community documentation projects to be pursued alongside commemoration ceremonies and mediation and reconciliation processes currently being conducted by some community structures like the District Reconciliation Peace Teams. They would like these efforts linked to a national truth-telling process so their suffering would also be acknowledged at the national level.⁴⁷

In terms of the ICD, lack of information, participation, protection measures and procedural delays have led victims to feel frustrated and fatigued, as is explored further in Chapter 2.

B. CIVIL SOCIETY

Civil society in Uganda, including various NGOs and religious organisations, such as the Acholi Religious Leaders Peace Initiative (ARLPI), has helped communities deal with the lasting consequences of a difficult past.⁴⁸ They have done so, among others, through efforts to participate in the drafting of the NTJP, by facilitating traditional justice practices in communities where formal transitional justice mechanisms are out of reach, and by initiating memorialisation projects.⁴⁹

34 REDRESS National Report, 2020, Section 5: "The majority of victims consulted by REDRESS reported feeling excluded from the ongoing TJ processes, most notably from the decision-making discussions concerning the NTJP".

35 ASF, *Un long processus: l'Ouganda adopte une politique de justice transitionnelle*, 14 October 2019 (hereinafter: *Un long processus*); M. Otim and S.K. Kasande, *On the Path to Victims' Rights in Uganda*, 2015, p. 4.

36 REDRESS National Report, 2020, Section 5.

37 Ibid.

38 Ibid.

39 REDRESS National Report, 2020, Section 2.

40 ASF, *Un long processus*, 2019.

41 Advisory Consortium on Conflict Sensitivity (ACCS), *Northern Uganda Conflict Analysis*, September 2013, p. 32; REDRESS National Report, 2020, Section 4.5.

42 Moreover, in the absence of any truth-telling initiatives, it leaves many without a remedy and fails to support SGBV victims or properly reintegrate defectors into society. REDRESS National Report, 2020, Section 6.2: "The Amnesty Act also negatively impacted the rights and welfare of women due to the lack of gender-sensitive reintegration assistance and support to female returnees and total impunity for SGBV crimes that women suffered during the conflict. Moreover, including formerly abducted youth, women and girls, many of whom did not participate actively in combat, in the amnesty process rather than supporting rehabilitation was problematic and caused deep fissures."

43 JLOS, *Amnesty Law (2000) Issues Paper*, April 2012, p. 7.

44 Ibid.; see also: REDRESS National Report, 2020, Section 6.2.

45 ACCS, *Northern Uganda Conflict Analysis*, 2013, p. 34; REDRESS National Report, 2020, Section 6.2.

46 S. Oola, *Reparations in Uganda*, Draft Paper prepared for the Queens University Belfast Transitional Justice Project, (copy on file with author), p. 27. According to the author, the Refugee Law Project's National Memory and Peace Documentation Centre is conceived of as a "history clinic." Based in Kitgum, the facility is a repository of victims' testimonies and conflict-related artifacts.

47 Ibid.

48 J. Quinn, 'Madly Off in All Directions: Civil Society and the Use of Customary Justice as Transitional Justice in Uganda', in J. Brankovic, H. van der Merwe (eds.), *Advocating Transitional Justice in Africa*, 2018, p. 135 (hereinafter: *Madly Off in All Directions*).

49 See: REDRESS National Report, 2020, Section 7.1.

Yet, in Uganda civil society has often appeared fragmented and divided, and has struggled to find a unified agenda around key transitional justice matters that affect the country more broadly.⁵⁰ As such, divisions have been observed between Kampala and Northern Uganda-based civil society organisations and, within the North, between those based in Gulu and those in rural areas where many victims live.⁵¹ Further, civil society organisations and movements in Uganda have not always been successful in developing a strong base of membership, galvanising participation and mobilisation.⁵² There are several reasons for this, including the increasingly difficult environment and space for civil society to work, especially those working on human rights issues and/or involved in challenging power and economic structures.⁵³ The shifting priorities of donors, which have often marked the agenda of local NGOs,⁵⁴ has been another factor that has fostered tension and competition for resources in an already constrained political space.⁵⁵

These challenges have resulted in civil society operating mainly within the framework established by the government, in a transitional justice process that has been strongly led by Ugandan authorities and the international community thus far. While civil society has on occasion managed to channel the views of society and to contest government policy – for instance around the Amnesty Act (2000) – this has been rare.⁵⁶

As such, ICTJ noted that the process through which the State has engaged with relevant actors including the victims’ communities around the transitional justice framework has been ‘dominated by a few senior bureaucrats at the technical level, with limited involvement of [civil society organisations] and stakeholders at the grassroots level to obtain their input and galvanize public support’.⁵⁷

Most civil society organisations in Uganda fully support the establishment of a truth-seeking body but have different views concerning the form it should take. While some propose the establishment of a national reconciliation forum,⁵⁸ others support a more formal mechanism whose findings are authoritative and widely accepted.⁵⁹

50 P. Clark, ‘All these Outsiders Shouted Louder than Us’: Civil Society Engagement with Transitional Justice in Uganda, 2015, p. 3 (hereinafter: All these Outsiders Shouted Louder than Us).

51 Ibid.

52 M. Mugisha, Y. Kiranda and M. Mbate, Civil Society in Uganda: Broadening Understanding of Uganda’s Civil Society Ecosystem and Identifying Pathways for Effective Engagement with Civil Society in the Development Process, Konrad Adenauer Stiftung and Centre for Development Alternatives, p. 50 et seq.

53 HRW, Curtailing Criticism: Intimidation and Obstruction of Civil Society in Uganda, August 2012; J. Budesta Batanda, The Role of Civil Society in Advocating for Transitional Justice in Uganda, Institute for Justice and Reconciliation, 2009, pp. 4-5.

54 J. Quinn, Madly Off in All Directions, 2018, pp. 154-55.

55 A. MacDonald, Exploring the TJ Implementation Gap in Uganda, 2019, pp. 225-248.

56 P. Clark, All these Outsiders Shouted Louder than Us, 2015, p. 6; See also, L.Hovil, M.C. Okello, Editorial Note, *International Journal of Transitional Justice*, Volume 5, Issue 3, 2011, pp. 338–339.

57 M. Otim and S.K. Kasande, On the Path to Victims’ Rights in Uganda, 2015, p. 8.

58 See: The National Reconciliation Bill 2009.

59 UVF, Statement on the National Reconciliation Bill of 2009, 4 November 2009.

C. INTERNATIONAL ACTORS

Thus far, the influence of external actors, including donors and the ICC, has contributed to the adoption of a top-down and piecemeal approach to transitional justice in Uganda, largely at the expense of victims. Donor funds for transitional justice have been disproportionately poured into the ICD.⁶⁰ This approach has yielded little result for victims – as the policies adopted were not informed by and hence have not reflected the needs of the victims themselves. Meanwhile, donors have begun to shift their priorities away from the transitional justice process and towards development efforts, evidencing growing impatience and fatigue with the pace and lack of results of the transitional justice process.⁶¹

The involvement of the ICC has also contributed to a top-down approach in Uganda. Indeed, as discussed earlier, the Juba Peace Process, was in part triggered by the arrest warrants issued by the ICC. Some authors have argued that the country ratified the Rome Statute in 2002 to please donor States and institutions by being perceived as a “compliant State”.⁶² The role of the ICC as part of justice efforts in Uganda will be furthered discussed in Chapter 2.

60 REDRESS National Report, 2020, Section 9.2; see also: A. MacDonald, Exploring the TJ Implementation Gap in Uganda, 2019.

61 REDRESS National Report, 2020, Section 10.

62 J. Ramji-Nogales, Bespoke Transitional Justice at the International Criminal Court, 28 August 2014; C.M. De Vos, All Roads Lead to Rome, 2015, pp. 111, 388 and 404.

GUATEMALA

1. CASE BACKGROUND

Guatemala's internal armed conflict (1960-1996), fought between the State's armed forces and the Guatemalan National Revolutionary Unity (*Unidad Revolucionaria Nacional Guatemalteca*; URNG), was one of the longest and most violent in Latin America. It is estimated that over 200,000 persons were killed or disappeared and up to one and a half million were internally displaced.⁶³ Villages were razed to the ground, women were raped on a massive scale, children and the elderly were targeted as bearers of culture, and crops, forests, and animals were destroyed.⁶⁴ The army and related paramilitaries were responsible for 93% of documented violations, the majority of which were perpetrated in the late 1970s and early 1980s.⁶⁵ The State also committed acts of genocide against Guatemala's indigenous population in at least four parts of the country as part of its counterinsurgency strategy.⁶⁶ The military repression of indigenous communities, including the control and surveillance enforced by way of a wide network of military commissioners and civil self-defence patrols (*Patrullas de Autodefensa Civil*; PACs),⁶⁷ caused widespread terror and inflicted deep harm to Guatemala's community organisation and social fabric.⁶⁸

2. TRANSITIONAL JUSTICE ARCHITECTURE

The Peace Accords, which the Guatemalan government and the URNG signed in 1996, comprise commitments on social, economic, and political reforms.⁶⁹ They set the stage for a number of transitional justice policies in the country. While the government never adopted a comprehensive transitional justice policy framework or law, important State- and civil society-led institutions and mechanisms have been established. These include the Secretariat for Peace (*Secretaría de la Paz*; SEPAZ) in 1997, two truth commissions –the civil society-led Recovery of Historical Memory Project (*Recuperación de la Memoria Histórica*; REMHI) and the



UN-led Commission for Historical Clarification (*La Comisión para el Esclarecimiento Histórico*; CEH)– and a National Reparations Programme (*Programa Nacional de Resarcimiento*; PNR). While an extraordinary justice mechanism to investigate and prosecute those responsible for violations during the conflict has not been established, a number of key military leaders have been prosecuted through ordinary courts.

Some advancements have been made to address the root causes of violence and to prevent violence from recurring. These include the dismantling of the PACs in 1996, the creation of a new National Civil Police in 1997,⁷⁰ and the ratification of the Rome Statute in 2012.⁷¹ Moreover, in 2006, the UN-backed International Commission against Impunity in Guatemala (*Comisión Internacional contra la Impunidad en Guatemala*; CICIG) was created in response to civil society pressure, which advocated for the establishment of an international independent body to carry out investigations and prosecutions to uproot entrenched impunity. As powerful elites implicated in the conflict had remained in power and continued to use the State infrastructure to promote their interests, civil society considered that it was essential to bring in an independent external body in order to ensure that the investigation and prosecution of State officials and others implicated in systemic

63 Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, pp. 17, 30-31. For a more detailed summary on the context of the internal armed conflict and peace process in Guatemala, see, *inter alia*, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019. See also, N. Roht-Arriaza, 'Guatemala: Lessons for Transitional Justice', in C. Lawther, L. Moffett and D. Jacobs (eds.) *Research Handbook on Transitional Justice*, 2017, pp. 445-446 (hereinafter: Guatemala: Lessons for Transitional Justice).

64 N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 446.

65 Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, pp. 17, 20, 31, 86. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 5.

66 Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, pp. 38-41. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 5.

67 Paramilitary groups integrated by male youth and men from the communities, who were forced by the Military to survey their own communities in order to "protect" the population from the guerrillas. Impunity Watch, *Reparations in Guatemala*, 2018, p. 5.

68 In many places, former military commissioners and civilian patrol members continue to control and generate fear, distrust, and polarisation in communities, even though the PACs were formally dissolved in 1996 as part of the Peace Accords. This is the case, for example, for the women in the Maya Achi sexual violence case, who live in the same communities as their alleged perpetrators.

69 A total of 13 peace accords were signed on different topics, including respect for human rights, socio-economic rights and the agrarian situation, institutional and military reforms, indigenous peoples' rights, the creation of the National Civil Police, and the installation of the Historical Clarification Commission, among others. See D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 7; D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 10.

70 The police had previously been linked to – and used as an instrument of – the State and involved in the repression and crimes committed during the internal armed conflict. To ensure independence and attempt to rebuild trust in law enforcement, it was thus important to reform the police force.

71 See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 16.

corruption and impunity could be conducted effectively.⁷² CICIG collaborated closely with the Guatemalan Public Prosecutor's Office to combat corruption and impunity.⁷³ In general, its impact was to embolden judges and prosecutors to take on Guatemala's embedded culture of impunity and corruption, as a critical step towards non-repetition.⁷⁴ The Commission and those who supported its mandate enjoyed far-reaching support from society, including victims.⁷⁵ However, despite important successes, CICIG's mandate was not renewed, following investigations into irregularities in campaign financing of then President Jimmy Morales and corruption allegations against his close allies and family members. After its closing, those directly affected by CICIG's work, reaffirmed their grip to power, and began a process to systematically dismantle important achievements made in fighting impunity.

Amnesties represent a significant obstacle to ensuring access to justice for victims. Guatemala's National Reconciliation Law, passed in the wake of the 1996 Peace Accords, provides amnesty for political crimes committed in the context of the internal armed conflict. It explicitly excludes from amnesty the crimes of genocide, torture and enforced disappearance.⁷⁶ In recent years, however, this aspect of the law has come under threat, with members of the economic elite, former military, and other powerful groups and allies intent on forgetting, promoting policies of pardon, and furthering impunity by aggressively lobbying for amendments to the law to remove the exclusions to amnesty.⁷⁷

3. ROLE OF VICTIMS, CIVIL SOCIETY AND INTERNATIONAL ACTORS IN SHAPING TRANSITIONAL JUSTICE

In Guatemala, the united efforts of victims, local civil society, and international allies have been essential for advancing the fight against impunity. Given the high level of cooperation among these actors, their role in the development of transitional justice initiatives is discussed in a single section (as opposed to in separated sections like in the discussion in Uganda). With the support of the international community and local civil society organisations, victim organisations have been key actors in promoting the commitments made under the Peace Accords. Advancements in the area of transitional justice have therefore largely resulted from the persistent struggles of victims and the critical support of their domestic and international allies.⁷⁸ At the

72 These *Cuerpos Ilegales y de Aparatos Clandestinos de Seguridad* (CICIACS) – or criminal groups – who are believed to have infiltrated State institutions, continue to foster impunity and undermine democratic gains in Guatemala. See also, Open Society, *Against the Odds: CICIG in Guatemala*, 2016.

73 See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 16.

74 R. Brett and L. Malagón, *Realising Victims' Rights to Reparations*, 2020, p. 14.

75 This was evident during the final seminar held by the Commission in August 2019, which saw the attendance and participation of victims from across the country.

76 National Reconciliation Law (1996), Article 8. Also excluded are crimes not subject to limitations or which, in conformity with domestic law or international treaties ratified by Guatemala, do not allow for the release of criminal responsibility. See ICRC Customary Law Database, *Guatemala - Practice Relating to Rule 159: Amnesty*.

77 Importantly, such pushback coincided with the prosecution (and conviction) of key military and political figures for their responsibility in acts perpetrated during the internal armed conflict, including a former Head of State, Head of Military Intelligence, Army Chief of Staff, as well as commanders of military zones and other high-ranking officers. See Impunity Watch, *Avances y obstáculos de la justicia transicional en Guatemala. Informe de Monitoreo 2014-2017*, July 2018, (hereinafter: *Avances y obstáculos*), p. 67.

78 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 7; Impunity Watch, *Guatemala se resiste a olvidar: iniciativas de memorialización en el post-conflicto*, 2012.

domestic level, human rights organisations and the Catholic Church have accompanied victims in their search for justice. At the international level, the Inter-American human rights system –both the Inter-American Court of Human Rights (IACtHR) and the Inter-American Commission (IACHR)–, the United Nations (UN), and the international community more broadly, have acted as strategic allies, as they have provided alternatives to seek justice and to recognise the rights of victims, particularly in the face of prevailing impunity at the domestic level.

Guatemala has a vibrant and diverse victim movement, which comprises a wide range of groups and organisations with national representatives and small-scale local committees in various parts of the country that have focused on specific issues.⁷⁹ The movement has enjoyed broad and sustained support of local civil society organisations. The first victim organisations emerged in the mid-1980s when the intensity of the internal armed conflict started to diminish and the process of transitioning to democracy began. Initially, these groups, many of which were led by women, brought together the families of the dead and disappeared.⁸⁰ They demanded that the State stop the violence in indigenous communities, including the forced recruitment of men and boys, and create a commission to search for the disappeared. From the start, they exhibited a strong political agenda, substantiated by clear and concrete demands that went to the heart of victims' priorities. A common underlying goal of many of these organisations has been to fight impunity and tackle the root causes of violence. At times, these groups have also united around a common cause.

Victims have played a central role in recovering and preserving the facts and historical memory of the internal armed conflict in Guatemala.⁸¹ For example, many local victims' organisations have undertaken memorials to honour their loved ones and preserve the memory of the past. Particularly noteworthy have been the publication of individual and collective histories; the building of murals, monuments, and small museums; video productions; photographic exhibits; and other community initiatives.⁸² All of these initiatives have received broad support and sustained support from local civil society organisations.

Victims directly participated in and offered their testimony to the country's two truth commissions, the REHMI and the CEH. Signed in 1994, the agreement establishing the CEH turned out to be the shortest, weakest, and most contentious of all the Guatemalan Peace Accords.⁸³ One key limitation of the CEH, run by the UN between 1997 and 1999, was that it could not attribute responsibility to individuals for crimes committed during the internal armed conflict. Nor would the findings in its report have legal consequences.⁸⁴ Victims and civil society were practically excluded from the negotiations of the agreement establishing the CEH. They did not participate in the design stage of the process, and thus were precluded from formally participating

79 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 19.

80 Over 90% of victims of enforced disappearance were men. See Impunity Watch, *Impact of the CEH Report*, 2020, p. 9. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 11. D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 6-7.

81 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 13.

82 See D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 21, 31-35, 64. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 13.

83 Conciliation Resources, *Negotiating Rights: The Guatemalan Peace Process*, November 1997, p. 19; N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 447.

84 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 21.

in defining its mandate.⁸⁵ Given the dissatisfaction regarding the CEH's limited scope and mandate, between 1995 and 1998, the Catholic Church sponsored an unofficial truth-seeking effort – REMHI.⁸⁶ Its findings and final report,⁸⁷ published in April 1998, were handed over to the CEH.⁸⁸ Its far-reaching conclusions set the bar high and pushed the CEH to be bold in its own investigations, analysis and findings.⁸⁹

The 1999 CEH's report, largely as a result of the influence of REMHI, was based heavily on the testimonies of victims of the internal armed conflict.⁹⁰ The CEH's report caused great astonishment in and outside Guatemala due to the severity of the reported incidents and its extreme conclusions. The report's most significant finding was that the State committed acts of genocide against the Mayan population in military operations between 1981 and 1983.⁹¹ The report envisioned the active participation of victims' organisations in its dissemination, in design and implementation of its recommendations, and in monitoring the reform and policies proposed by the CEH.⁹² Formally, these recommendations have remained largely unimplemented.

The report has paved the way for new transitional justice strategies and initiatives, both formal and informal, including the identification of clandestine cemeteries, the exhumation of more than 8,000 victims' remains, and the recovery of important historical archives.⁹³ It serves as a historical record for the victims and a tool to facilitate local-level reconstruction of historical memory. It has also served as documentary evidence of human rights violations in numerous cases before national and regional justice mechanisms. The country's two truth commissions provided many victims with a first opportunity to open up and speak about what happened to them and their communities during the internal armed conflict. In the context of continued violence and impunity, the confidential setting –and the fact that their testimonies would not have legal ramifications, as compared to testimonies before a court– allowed victims to speak with less fear of retaliation from alleged perpetrators.

In the immediate aftermath of the conflict in Guatemala, prevailing impunity and a lack of judicial independence in the court system and the Public Prosecutor's Office made it nearly impossible to move

85 The CEH's eventual three-part mission included: investigating "human rights violations and violent acts that have caused suffering among the population, connected to the armed confrontation"; writing up its conclusions in a public report; and making recommendations to honour the memory of the victims and create a culture of respect for human rights and democracy. See N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 447. See also, D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 21; and Impunity Watch, *Reparations in Guatemala*, 2018, p. 4.

86 Conciliation Resources, *Negotiating Rights: The Guatemalan Peace Process*, November 1997, p. 21. See also, Impunity Watch, *Impact of the CEH Report*, 2020, pp. 4-5.

87 REMHI, *Guatemala: Nunca Más*, 24 April 1998 (in Spanish).

88 With the intention to send a clear message to the CEH and others seeking to uncover the truth about what happened, Bishop Gerardi was brutally murdered in his home two days after the report was published. Following a long investigation, a Guatemalan court charged and convicted three soldiers with the murder, and the priest who lived with him as an accomplice thereto. See Impunity Watch, *Impact of the CEH Report*, 2020, pp. 4-5.

89 V. Nesiiah, *Scoping Study: Transitional Justice Practices: Looking Back, Moving Forward*, Impunity Watch, May 2016, p. 14.

90 Impunity Watch, *Impact of the CEH Report*, 2020, p. 5.

91 See, in general, Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999.

92 *Ibid.* pp. 27-28.

93 D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 11. These include the discovery of the army's counterinsurgency war plans in the 1990s; the Military Diary in 1999; the National Police Archive in 2005; and the Judicial Branch Archive in 2012, all of which have contributed to knowing and understanding the magnitude and gravity of what happened during the internal armed conflict, and have been used as evidence in the trials of serious violations of the human rights of the internal armed conflict in both national and international courts.

criminal cases forward. In the first decade after the signing of the Peace Accords, domestic prosecutions were few, limited to emblematic cases.⁹⁴ As a result, victims and human rights activists repeatedly turned to regional and international mechanisms, such as the Inter-American human rights system, in search of justice and recognition.⁹⁵ The IACHR and the IACtHR have both played an important role in acknowledging the violations that occurred in Guatemala and restoring the dignity of victims, providing them with tools to put pressure on the State in support of their rights to truth, justice, reparations, and guarantees of non-recurrence at the domestic level.

As it will be discussed in Chapter 2, the persistence of victims and civil society, combined with external pressure from institutions like the IACtHR, have been instrumental in ensuring institutional changes at the domestic level and the subsequent investigations and prosecutions of key former military leaders. Civil society and human rights advocates have also played a crucial role in documenting violations, collecting evidence, and preparing these cases, thereby laying the foundation for domestic prosecutions in anticipation of future windows of opportunity and a more favourable political climate.

Victims and civil society organisation's pressure was also essential for the establishment of the PNR, which was this was set up as part of the recommendations of the CEH. As it will further be explored in Chapter 2, this pressure has also been fundamental to keep the mechanism alive.⁹⁶ Regrettably, the bureaucracy inherent in a government institution, paired with political interference and a chronic lack of funding, has significantly reduced the transformative potential the programme could have had. Nevertheless, it remains an important institution for many victims of the internal armed conflict.

DISCUSSION

The experiences of Guatemala and Uganda vary widely in terms of the role that victims, civil society, and international actors have played in the development of their transitional justice architectures. These contrasting dynamics have had a visible effect on the way that the architectures have been able to respond to victims' needs and to contribute to transformative change.

In Uganda, existing transitional justice policies and mechanisms, including the NTJP and ICD, have largely been the result of international pressure. This top-down approach has prevented victims from playing an active role in developing the country's transitional justice agenda. It has also led to feelings of exclusion and disappointment among victims, even in the spaces they have been able to participate. While the NTJP lists "victim-centeredness" as a key principle and contains provisions for victim participation, in practice, victims have been at the margins of the transitional justice process in the country and had had little opportunity to

94 N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 453.

95 Other efforts included, for example, transnational litigation based on the principle of universal jurisdiction, including the case brought by Nobel Peace Prize winner Rigoberta Menchú and others before the Spanish Audiencia Nacional in December 1999. For more on this case, see N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 453 *et seq.*

96 Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, p. 50. D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 16.

shape it. The absence of real engagement and participation by victims has resulted in a policy that poorly reflects victims' needs and claims for justice. One example is the de-prioritisation of a truth commission within the NTJP. Even though victims expressed their desire for the establishment of a truth-seeking effort, their justice claim has been ignored. Without proper mechanisms to ensure real victim participation and centredness, a national transitional justice policy could just be a paper commitment with empty promises, even if the policy itself reflects the highest international standards.

In contrast, in Guatemala, victims' activism played a fundamental role in shaping existing transitional justice efforts. As such, the experience highlights the transformative potential of bottom-up grassroots-led approaches, in which women and indigenous communities have played a particularly important role. The experience is also illustrative of how victims have made it possible to apply pressure and to find creative ways to make the most out of imperfect formal transitional justice processes, to ensure their claims for justice are heard, and to create parallel civil society-led mechanisms. The establishment of the REHMI and its effect on the CEH are a key example of this, as the synergies between these two parallel –formal and informal– transitional justice initiatives translated into greater recognition of and transformation for victims in Guatemala. Moreover, the experience of Guatemala shows that a weak mandate on paper did not deter CEH Commissioners from arriving at strong, meaningful conclusions and recommendations. Victim participation, through the provision of their testimonies as well as their activism, was central to this outcome. Still, victims' activism has come at a cost. If indeed victims' active participation has translated into more victim-centred transitional justice processes, it has also triggered a strong push back from State authorities. As such, the experience of Guatemala highlights that victim participation --no matter how active-- is unlikely to uproot structures of impunity in the long-term, if the State actively undermines transitional justice processes and is unwilling to genuinely engage with victims.

The role that civil society organisations and international actors have played in each transitional justice process also bears striking differences. In Uganda, civil society organisations have contributed to the development of the transitional justice agenda, yet they have not always acted as a united front. This has partly resulted from the competition for financial resources coming from international donors as well as from the increasingly difficult context in which civil society organisations work in Uganda. Moreover, civil society organisations have not always enabled platforms for victims to speak for themselves, which might have contributed to hierarchies of power that are not conducive to political transformation. It has also prevented existing efforts to complement one another. Despite their best intentions, international actors have also perpetuated uneven power dynamics by imposing their justice agenda, as opposed to developing it alongside victims. While the ICC's contributions to criminal accountability in Uganda are undeniable, the Court has limitations inherent to its mandate and jurisdiction. Further, the ICD, which has received significant funding, has had very limited opportunities to meaningfully disrupt structures of impunity. This is further examined in Chapter 2.

In Guatemala, civil society organisations have consistently accompanied victims of the internal armed conflict and, as such, have acted as central allies to them. They have come together as a unified front, with the common purpose of advancing victims' rights and fighting against impunity. This scheme of more horizontal cooperation has enabled distinct transitional efforts to complement one another. Beyond domestic allies, the Inter-American human rights system, UN, and others within the international community more broadly have

also set their agenda around victims' claims for justice and acted as a powerful counterbalance to Guatemalan authorities seeking to perpetuate impunity. This has contributed to some meaningful political changes in the country. In recent years, however, at a critical time for ensuring the success and sustainability of these efforts, political and financial support from the international community has waned, with grave consequences that have seen an unravelling of many of the important results achieved. As such, the Guatemalan experience illustrates the importance of building and maintaining strong partnerships between local, national, regional and international organisations, where strategies are supported with a common agenda. Significantly, the experience also illustrates the importance of complementarity among these actors. While acting together to move forward transitional justice efforts, each actor has focused on different advocacy areas and as such, their efforts have complemented one another.

In spite of these differences, Guatemala and Uganda also share many common obstacles to ensuring that their transitional justice processes contribute to political transformation in the long term. Even though formal transitional justice processes have been initiated in both countries, they have lacked a genuine commitment by the State to promote political change, to strengthen the rule of law, and to address the underlying causes that led to violence in the country. This has partly been the result of the absence of a real political transition at the end of the conflict in both countries. The transformative potential of transitional justice developments has thus been curtailed, as structures of impunity have remained largely unchallenged. The passing of amnesty laws has additionally contributed to perpetuating impunity in both countries.

The lack of political will of Guatemalan and Ugandan authorities has led to different outcomes, however. In Uganda, the State's unwillingness to engage with victims has prevented the transitional justice process from yielding transformative results so far. The fact that the NTJP took 10 years to develop and has so far generated no concrete results is testimony to this fact. Meanwhile in Guatemala, where the transitional justice process has moved forward largely as a result of the advocacy of victims and their allies, the State's lack of political will to support political change has translated into active efforts to undermine the country's transitional justice architecture and to suppress victims' activism. The government's unwillingness to renew the mandate of CICIG, and bar the re-entry of Commissioner Iván Velázquez in 2018, serves as a case in point. Further, the elite's active efforts to reverse the progress made by the victims' movement have meant that victims have had to make huge sacrifices to ensure that transitional justice initiatives remain in place. This has often come at the expense of their psychological wellbeing and, at times, their personal safety.

Overall, victims face many obstacles to shaping and influencing peace and transitional justice processes conducive to responding to their needs and allowing them to become protagonists of their future. In both cases, the lack of a political change after the conflict has not allowed existing transitional justice architectures to substantially address the root causes of violence and to tackle structures of impunity. This, in turn, has limited their transformative potential. Against these restraining political circumstances, victims' activism can still make a difference. An articulate victims' movement, politically and financially supported by local and international allies, might exert meaningful influence on existing mechanisms and spurred the creation of new ones. When victims can influence the shaping and design of transitional justice initiatives, and have a role in monitoring their implementation, these processes are likely to more adequately respond to their needs.

CHAPTER 2

JUSTICE AND REPARATIONS EFFORTS IN UGANDA AND GUATEMALA

“ We search for justice because we simply want to dignify our loved ones. A great step forward has been to overcome our fear to speak out on what we have suffered as a result of the armed conflict. And now, having initiated this process before the Inter-American Court for Human Rights, we hope and trust to finally achieve the justice that we have been seeking for 35 years. ”

Marielos Loch, survivor (Santa Lucía Cotzumalguapa, Guatemala).

INTRODUCTION

For victims in Guatemala and Uganda, an acknowledgment of the injustices that were inflicted upon them, and of the suffering that this caused, is central to their understanding of justice. As such, an essential first step to meeting victims’ justice needs entails that the State acknowledges that these transgressions occurred, and takes responsibility for having either committed these injustices or for having failed to prevent them and to protect its citizens. In practice, this means that the State meaningfully addresses the harm done to victims and takes active steps to prevent such crimes from happening again, through uprooting the structures of impunity, inequality, and violence that allowed those injustices to happen in the first place. It is also only by acknowledging its responsibility that the State can ensure that victims can free themselves from the burden of guilt and blame, which was unfairly placed on them.

Victims’ understanding of justice is thus broad and encompassing of varied measures, which include recognition and acknowledgment, truth, accountability, comprehensive reparations, and guarantees of non-recurrence. In Guatemala and Uganda, in particular, accountability and reparations have been two central justice claims of the victims. These two claims have also been at the centre of the transitional justice efforts of these countries, including through the implementation of State-sanctioned mechanisms, the use of traditional forms of justice, the use of strategic litigation, the pursue of international justice, and the creation



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of civil society initiatives. Moreover, accountability and reparations have received support and attention from the international community in both countries, albeit with varied intensity.

Against this background, this chapter is set to examine accountability and reparations efforts in Guatemala and Uganda as two central justice claims of victims and to put their perspective at the centre. It explores whether existing mechanisms and processes have responded to the claims for justice of victims; whether they have adequately met victims’ needs; and whether they have contributed to transformative change by tackling root causes of violence—including structures of impunity, gender and racial discrimination, and economic inequality—and by promoting wider social and political changes in the countries in which they have been implemented. Our analysis provides evidence that the active participation of victims—both within transitional justice mechanisms and outside of them through victims’ activism—increases the possibilities that justice and reparation efforts meet these goals.

The chapter contains sections for both Uganda and Guatemala. Each section begins by addressing the victims’ perspectives on justice and reparations and by outlining their existing demands. Then, they provide an overview of these efforts in the respective countries. Following the country sections, the chapter moves on to provide a comparative analysis that evaluates the extent to which justice and reparations efforts in Uganda and Guatemala have adequately met the needs of victims and contributed to generating transformative change.

UGANDA

1. JUSTICE AND ACCOUNTABILITY EFFORTS

In Uganda, victims have expressed a broad understanding of justice that goes beyond prosecutions and criminal accountability. When asked about the meaning of “justice”, responses from participants in the 2014 National Reconciliation and Transitional Justice Audit by the Refugee Law Project revealed ‘a vision of social justice and focused on socioeconomic rights’. Participants did not focus on formal justice, courts or civil and political rights, but rather on concepts of fairness, equal distribution of resources and equal opportunities.⁹⁷ Accountability is understood broadly by Ugandan society to include ‘confession, acknowledgement, acceptance of responsibility, apology, repentance, asking for forgiveness, truth, fulfilment of promises and reparations.’⁹⁸ In the post-conflict context, victims in Uganda believe that all sides of the conflict –whether government or rebel forces– should be held accountable through appropriate channels.⁹⁹

Nevertheless, much of the focus of transitional justice in Uganda has been on formal accountability mechanisms. These have been limited in their ability to meet victims’ broad understanding of justice because of their focus on individual criminal responsibility. The two formal accountability mechanisms dealing with the conflict between States forces and the LRA in Uganda are the ICD and the ICC. Under the Juba Peace Agreement, serious crimes committed by the LRA are to be prosecuted nationally before the ICD, while those deemed “most responsible” would at least in principle be subject to prosecution before the ICC.¹⁰⁰ Criminal proceedings within Uganda for past atrocities have been limited to the *Kwoyelo* case before the ICD and the *Ongwen* case before the ICC, both related to former LRA members.

97 Refugee Law Project, *Compendium of Conflicts in Uganda*, 2014, p. 59; see also: ICTJ, *When the War Ends*, 2007, p. 33.

98 REDRESS National Report, 2020, Section 6.1; see also: Refugee Law Project, *Compendium of Conflicts in Uganda*, 2014, p. 233. Different people wanted different mechanisms: some Ugandans wanted retributive justice, while others preferred truth-seeking processes, amnesties, or simply reparations. See, J. Quinn, *Madly Off in All Directions*, 2018, p. 135.

99 REDRESS National Report, 2020, Section 6.1.

100 REDRESS National Report, 2020, Section 6.3; *Annexure to the Agreement on Accountability and Reconciliation*, 19 February 2008, para. 7.

ICD CASE STUDY: THE KWOYELO CASE¹⁰¹



THE CASE

Thomas Kwoyelo is a former child soldier and LRA commander alleged to have carried out a series of attacks on a village and two camps of internally displaced persons (IDPs) between 1993 and 2005, resulting in killings, torture, ill-treatment and abductions. He was captured by Ugandan forces in 2008 and charged before the ICD with 93 counts of war crimes, crimes against humanity and domestic crimes. He waited 10 years for his trial to start in 2018.

VICTIM PARTICIPATION IN THE CASE

Victims’ counsel were appointed in April 2016.¹⁰² This was the first case of its kind in Uganda, and victim participation was not part of the usual criminal justice process. In this sense the lawyers were starting from scratch, and had insufficient support and formal training from the government. When the trial started, counsel had not yet engaged with victims’ communities and no application or registration procedures were in place; participation was only allowed at the pre-trial phase but not at the trial phase. While 93 victims had applied to participate, only 25 were deemed by the court to be eligible to participate. A further 38 were required to present additional information before being able to determine eligibility (this additional information is in the process of being filed). Some general eligibility criteria were formulated, but the court provided no individual reasoning for this decision.

Victims’ counsel noted that in the absence of a clear policy or legislative framework providing for victim participation at all stages of court proceedings, there is marked reluctance by the judges at the trial phase to enable the direct participation of victims.¹⁰³ *Avocats Sans Frontières* (ASF) has noted that, “the Court has so far taken a reactive approach which has made it difficult for the victims’ lawyers to make participation meaningful.”¹⁰⁴

101 REDRESS National Report, 2020, Section 6.3.3; ASF, *Policy Brief: Reflections on Victim’s Participation Before the International Crimes Division in Uganda*, September 2019; J. P. Bako, *One Step Forward, One Step Back: The Fate of Victims Before the International Crimes Division in Uganda*, *International Justice Monitor*, July 2018; REDRESS, *Human Rights Center Berkeley School of Law, ICTJ, Victim Participation at the International Crimes Division in Uganda – Stakeholder Roundtable*, January 2017.

102 ASF, *Policy Brief: Reflections on Victim’s Participation Before the International Crimes Division in Uganda*, September 2019, p. 3; REDRESS National Report, 2020, Section 6.3.2.

103 REDRESS National Report, 2020, Section 6.3.2.

104 ASF, *Policy Brief: Reflections on Victim’s Participation Before the International Crimes Division in Uganda*, September 2019.

Absence of adequate outreach. Victim consultations in 2019 revealed the growing disinterest of victims in participation and the challenges being faced by those still interested.¹⁰⁵ Victims knew very little about the Court and judicial developments. Counsel surmised that this was largely because the ICD had not provided the communities with case information packages, or made any concrete attempt to involve victims in the trial either through physical participation, by arranging to transport them to the hearings, or through radio broadcasts or video links.¹⁰⁶

Over the many years that it had taken for the trial to begin, many victims had become ill, affecting their ability to meaningfully participate in the proceedings. This is due to a combination of factors including age, stress, poverty, lack of proper nutrition, and medical complications, and some had since passed away.¹⁰⁷

CONCLUSIONS

The absence of clear rules, a transparent framework and strategy for victim participation before the ICD, a protection scheme for victims and witnesses, and a proper outreach programme, have made victim participation in the *Kwoyelo* case and engagement with the court difficult. The failure to provide training to the registry and judicial staff on how to deal with victim participation has been a further barrier. These factors have led to a disinterest of victims in the process.

The ICD has thus failed to provide redress to the victims of conflict in virtually every way. As a result, victims have largely turned away from the ICD; discouraged and disillusioned by the process that has resulted in little if any meaningful transformation for the victims themselves as well as for broader affected communities. Meanwhile, the ICC has been hearing another case, the *Ongwen* case, which has also yielded disappointment amongst victims. It nonetheless offers some positive input as to how victim participation could be improved before the ICD.

¹⁰⁵ Report of Legal Representatives of Victims on outreach and consultations in Amuru District in the *Kwoyelo* case, on file with REDRESS; REDRESS National Report, 2020, Section 6.3.2

¹⁰⁶ Report of Legal Representatives of Victims on outreach and consultations in Amuru District in the *Kwoyelo* case, on file with REDRESS; REDRESS National Report, 2020, Section 6.3.2

¹⁰⁷ Report of Legal Representatives of Victims on outreach and consultations in Amuru District in the *Kwoyelo* case, on file with REDRESS; REDRESS National Report, 2020, Section 6.3.2

ICC CASE STUDY: THE ONGWEN CASE



THE CASE

Dominic Ongwen, alleged Brigadier General of the LRA, is charged with 70 counts of crimes against humanity and war crimes including murder, torture, enslavement, and pillaging by the ICC. The ICC issued an arrest warrant in 2005, although Ongwen was only transferred to the ICC in January 2015. Ongwen was initially charged with crimes committed in the Lukodi IDP camp, but following a visit to the affected communities by the ICC Prosecutor, the charges were expanded to include other IDP camps, namely Pajule, Odek, and Abok. In addition to child soldier-related charges, 19 of the 70 charges faced by Ongwen are for crimes of sexual violence including rape, sexual slavery, and forced marriage of abducted women and girls.¹⁰⁸ He is the first person to be charged at the ICC with the crime of forced marriage.¹⁰⁹ The case therefore has the potential to be significant for victims and in particular victims of SGBV.

VICTIM PARTICIPATION IN THE CASE

The scope of the indictment was geographically and substantively limited, thus excluding vast numbers of victims from the proceedings. Yet, a total number of 4,065 victims were granted the right to participate in the proceedings. From these, 2,564 are represented by two appointed external counsel of their choice as Legal Representatives of Victims (LRVs). A second group of 1,501 victims, who did not choose a specific counsel, are represented by the in-house Office of Public Counsel for Victims.¹¹⁰

Victims represented by the LRVs were consulted regularly by counsel and informed of the procedural developments in the case. Smaller group meetings also took place to allow victims to convey their personal experiences, expectations and views.¹¹¹

Participation of victims in the courtroom has been limited, however. LRVs were not allowed by the ICC Trial Chamber to question witnesses in court about the personal responsibility of Ongwen. Further, while LRVs were allowed to present the victims' case, only three victims and one expert were ultimately authorised by the Trial Chamber to provide testimony in court.¹¹²

¹⁰⁸ ICC, *The Prosecutor v. Dominic Ongwen*, Questions and Answers, ICC-PIDS-Q&A-UGA-02-01/16_Eng, November 2016.

¹⁰⁹ D. De Vos, *A day to remember: Ongwen's trial starts 6 December*, European University Institute, 5 December 2016; see also: REDRESS National Report, 2020, Section 6.3.1.

¹¹⁰ ICC, *The Prosecutor v. Dominic Ongwen*, Case Information Sheet, ICC-PIDS-CIS-UGA-02-018/20_Eng, March 2020.

¹¹¹ FIDH, *Victims at the Center of Justice*, December 2018, pp. 50-51.

¹¹² *Ibid.* p. 51.

Nevertheless, in a limited way, victims were able to express their views and concerns through counsel and their suffering and victimisation has been made part of the case record. The LRVs have noted that some victims experienced some level of healing through the process.¹¹³ The participation of victims has brought new information and perspectives from the field to the ICC. For instance, the application by the legal representatives to present evidence concerning SGBV crimes against men and boys shed light on an under-addressed aspect of the conflict, and what appears to be a gap in the Prosecutor's charges. Despite the judges' rejection of the application, their efforts to raise an issue that was unaddressed by the Prosecutions' case, underscores the important role that victims can play as independent participants and not solely as prosecution witnesses.¹¹⁴

CONCLUSIONS

A group of victims consulted about the Ongwen trial expressed mixed views about the case. Some felt that the Court should drop all charges against Ongwen, arguing that he was a victim turned perpetrator, and this should have absolved his liability.¹¹⁵ Yet for others, the case represents a chance to finally have justice, with justice mainly understood in terms of reparation afforded by the Court. For some victims, the case is a step towards establishing the legal truth concerning crimes committed during the conflict, which should be followed by community-level truth processes in order to trigger social healing.¹¹⁶

A pressing issue which will arise depending on the judgment in the case is whether, if Ongwen is convicted, reparations proceedings could be perceived as one-sided or disrupt the fragile state that currently prevails in the affected communities in the North. The provision of reparations by the ICC may foster further divisions between those victims included in the indictment and those whose needs remain unaddressed, unless measures are adopted to mitigate such risks.¹¹⁷

These two case studies reveal in different ways the complexity and limitations of retributive justice in Uganda in being able to address the violations committed during the conflict. They also reveal the dilemma of placing victims and alleged perpetrators in fixed, immovable boxes or categories, as well as the challenges associated with effective victim participation.¹¹⁸ Ugandan victims have found limitations in both forums to select counsel of their choice. Further, justice has been delayed in both courts. This has generated victim fatigue and disinterest, further diminishing the legitimacy of the process.

113 Ibid. pp. 52-53; REDRESS National Report, 2020, Section 6.3.1.

114 ICC, *The Prosecutor v. Dominic Ongwen, Decision on the Legal Representatives for Victims Requests to Present Evidence and Views and Concerns and related requests*, 6 March 2018, para. 57. For a detailed commentary see L. Ogora, 'Sexual Violence against Men and Boys and its Relevance to the Trial of Dominic Ongwen', International Justice Monitor, 24 April 2018; REDRESS National Report, 2020, Section 6.3.1.

115 Refugee Law Project, Ongwen's Justice Dilemma Part II, p. 11.

116 Ibid. p. 12; REDRESS National Report, 2020, Section 6.3.1.

117 REDRESS National Report, 2020, Section 6.3.1.

118 Ibid. Section 6.3.

Beyond formal accountability mechanisms, traditional forms of justice have also played an important role in satisfying demands for proximate justice and in facilitating reconciliation. This role is acknowledged in both the Juba Peace Accords and the NTJP.¹¹⁹ Yet they have yielded mixed results in terms of addressing victims' needs and in their ability to enable transformative change. Traditional justice systems consist of rites to promote forgiveness in the community and encourage reintegration. As they are designed 'not to simply punish an individual perpetrator, but to restore severed social ties, their continued existence, in whatever form, provides an important process for helping mend damaged communities'.¹²⁰ For instance, *mato oput* ("drinking the bitter root") has been used to reconcile the parties after they acknowledge their wrongdoing in front of the community; *nyono tong gweno* ("stepping on an egg"); *culo kwor*, to make compensation to the victim's clan and share a meal; *moyo kum* ("cleansing of the body"), for those suffering from vengeance from the victims' spirit (*cen*); *gomo tong* ("bending of spears") to prevent recurrence of violence; or *moyo piny* to cleanse the land soiled by the unburied dead.¹²¹ They differ according to the regions and local traditions.

Many Ugandan victims have indicated a preference for traditional justice processes as they are believed to have the advantage of being easy to understand, accessible, tied to the cultural context, led in the local language, non-bureaucratic, and able to restore social justice within communities.¹²² Traditional processes have played a significant role in the reintegration of LRA members back into their communities. More than 15,000 former LRA rebels have been reintegrated into their local communities through traditional justice processes, including some senior rebel commanders.¹²³

Yet, traditional justice as a response to serious crimes has important limitations, including the lack of skills and resources of traditional leaders to handle such cases. A 2013 survey demonstrated that respondents did not fully understand the role of traditional justice mechanisms in addressing serious crimes and violations.¹²⁴ These processes have proved inadequate to transform root causes of violence, particularly gender violence, as they tend to be dominated by male leaders with limited scope for female engagement or training in relation to these types of violations and the specific needs of survivors. They do not escape the risk of being affected by local corruption. Further, they do not enable a holistic approach to victim participation since, given financial and technical limitations; they do not assess victims' needs or help provide them with access to services.¹²⁵ A 2020 radio poll in Northern Uganda highlighted that respondents were in favour of involving women and

119 REDRESS National Report, 2020, Section 6.1; see also: M.A. Newton, 'A Synthesis of Community-Based Justice and Complementarity', in C.M. De Vos, S. Kendall and C. Stahn (eds.), *Contested Justice: The Politics and Practice of the International Criminal Court's Interventions*, Cambridge University Press, 2015, p. 134.

120 T. Atim and K. Proctor, 'Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango', Feinstein International Center, Tufts University, June 2013, p. 4; see also: REDRESS National Report, 2020, Section 6.4.

121 S. Oola and L. Moffett, *Cul Pi Bal*, 2020, p. 19; E.K. Baines, 'The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda', *International Journal of Transitional Justice*, Volume 1, Issue 1, 1 March 2007, pp. 91-114.

122 "People [...] trust and rely on these practices", J. Quinn, *Madly Off in All Directions*, 2018, p. 142.

123 M. Vickery, 'Uganda traditional justice mechanisms must triumph over western interventionism', *Open Democracy*, 27 March 2012; Aljazeera, *Bitter Root: two former Lord's Resistance Army commanders seek tribal justice in order to be granted atonement for their crimes*, 28 June 2012; BBC News, *Traditional drink unites Ugandans*, 29 September 2006; see also: REDRESS National Report, 2020, Section 6.4.

124 T. Atim and K. Proctor, 'Modern Challenges to Traditional Justice: The Struggle to Deliver Remedy and Reparation in War-Affected Lango', Feinstein International Center, Tufts University, June 2013, p. 2; see also: REDRESS National Report, 2020, Section 6.4.

125 REDRESS National Report, 2020, Section 6.4.

youth in the decision-making of traditional mechanisms to help strengthen them.¹²⁶ While informal and traditional justice mechanisms can have an important impact on horizontal relations and reconciliation at a more local and community level, they are unlikely to be able to tackle impunity and impact or restore the relationship between these societies and the State.

Prevailing impunity, particularly around the lack of prosecutions against State authorities, has further undermined the legitimacy and transformative potential of accountability efforts in the eyes of victims. No State officials have been investigated or prosecuted by the ICD or the ICC in relation to crimes allegedly committed by the government armed forces. The limited number of prosecutions of LRA members, the lack of investigation and prosecution of State perpetrators, and the impact of the Amnesty Act, have resulted in victims not having adequate access to justice for grave human rights violations committed in Uganda. Thus, impunity is still rampant.¹²⁷

Given the limitations of criminal accountability, several victims and the civil society organisations supporting them, have filed civil claims against the State alleging that it is responsible for committing crimes and/or for not fulfilling its duty to protect Ugandans against human rights violations committed during the conflict. Procedural delays, insufficient capacity of local lawyers, among other obstacles, have largely limited the effectiveness of these actions.

In the “Barlonyo” case, a civil claim was initiated on behalf of 1,200 victims seeking compensation for injuries, loss of property and loss of lives of their relatives, as a result of the government’s failure to protect them from the massacre perpetrated in 2004 by the LRA in the Barlonyo camp. The matter was heard by the Lira High Court in 2018, and shortly after the case went to trial. However, the victims did not have the financial means to pay legal fees to obtain a valuation of their damages. While victims got some external support to do this, local counsel representing victims arguably did not act with sufficient diligence and the valuation has not been completed to date. Equally, FIDA Uganda submitted a civil claim against the government for its failure to exercise due diligence to prevent the perpetration of SGBV against a group of women victims during the conflict. The case has been pending before the High Court of Lira since 2018, without resolution.

To date, legal representatives of victims have not used litigation before regional human rights mechanisms (such as the African Commission on Human and Peoples’ Rights) or other international bodies as a strategic priority that could trigger local authorities to act in order to eradicate impunity for past crimes.

While some advancements have been made to bring perpetrators to account through domestic and international courts, and to reintegrate former LRA members, justice in Uganda has remained largely inadequate to meet victims’ needs and claims. Given the absence of prosecutions against members of the State, justice efforts are yet to achieve their transformative potential, as they have not been able to uproot structures of impunity.

126 TRAC FM Poll, *What should be done to make traditional justice more effective in your community*, March 2020; see also: REDRESS National Report, 2020, Section 6.4.

127 In relation to the ICD, it is important to bear in mind the political context whereby certain alleged perpetrators remain in positions of power and authority and are able to exert influence (and/or are perceived to exert such influence) over TJ processes and their focuses, including the formal justice system. See M. Otim and S.K. Kasande, *On the Path to Victims’ Rights in Uganda*, 2015, p. 4.

2. REPARATION EFFORTS

The provision of reparations for victims of serious conflict-related human rights violations remains an unmet need and an urgent challenge in Uganda. Government initiatives in the conflict-affected parts of the country have focused on stabilisation, development, and poverty-reduction objectives rather than justice and reparations. This has left a critical gap by failing to adequately address the physical and psychological suffering of Uganda’s many victims.¹²⁸

Findings from studies and consultations with victims conducted in 2018-2019, indicate that victims in Northern Uganda desire both material and symbolic forms of reparation, in particular medical/rehabilitative, psychosocial, and livelihood/economic support in addition to symbolic forms such as apologies and other forms of satisfaction.¹²⁹ Additionally, ‘[v]ictims view both individual and collective reparations as a necessary, if not fundamental, part of remedying the conflict in Northern Uganda’.¹³⁰

The majority of victims want to be compensated for their losses and view economic reparations as key to sustaining their livelihood.¹³¹ Many request start-up capital for livelihood support initiatives or compensation for cattle and property lost during the conflict. However, victims want compensation to be complemented by other mechanisms.¹³² Over the years, some monetary awards have been made by the Ugandan government.¹³³ For instance, the Acholi War Debt Claimants Association, which represents persons who lost property or livestock during the LRA conflict has received ongoing payments from the Government.¹³⁴ However, there was no recognition of the harm done to them, which questions whether these awards can be called reparations.¹³⁵

Beyond compensation measures, many victims prioritise restitution or restoration to the life they previously enjoyed prior to the conflict including return to their family, clan or community, and the opportunity to claim lost or stolen property and access educational opportunities.¹³⁶ The lack of education and the stigmatisation of children born of war remains a pressing issue.¹³⁷ Without identity documents, many have been unable to access schools.¹³⁸

128 See: REDRESS National Report, 2020, Section 8.

129 REDRESS National Report, 2020, Section 8.2.

130 S. Oola and L. Moffett, *Cul Pi Bal*, 2020, Section 4.3.

131 See for example, ASF, *A Beggar has no Choice: Victims’ Perspectives on a Reparations Framework for Uganda*, 2017, pp. 13-14 (hereinafter: *A Beggar has no Choice*); Refugee Law Project, *Compendium of Conflicts in Uganda*, 2014, p. 260; ACCS, *Northern Uganda Conflict Analysis*, 2013, pp. 33-34; OHCHR, *The Dust has not yet settled*, 2011, p. 32.

132 Refugee Law Project, *Compendium of Conflicts in Uganda*, 2014, p. 260.

133 ASF, *Towards a Comprehensive and Holistic Transitional Justice Policy in Uganda*, August 2013, p. 45.

134 Ibid.

135 Ibid.

136 Refugee Law Project, *Compendium of Conflicts in Uganda*, 2014, p. 260.

137 See Annex A to this report- Letter to Honourable Speaker of Parliament, Rebecca Kadaga, 18 June 2019.

138 Article 18 of the Constitution of the Republic of Uganda provides that every birth and marriage that occurs in Uganda shall be registered under the Registration of Persons Act (2015) (RPA). Section 34 of the RPA which states that the father of the child must appear in person or that other means of establishing paternity must be presented, creates significant hardship for children born of war to be registered and obtain a birth certificate because in circumstances of forced marriage and sexual slavery where girls may have been ‘married’ to different commanders, the paternity of the child is not always known.

Symbolic measures such as memorial sites, decent burials, apologies and acknowledgment of suffering also have important reparative value for victims of the Ugandan conflicts.¹³⁹ In the absence of State-led measures, civil society and victims' groups have undertaken important initiatives to this effect. For instance, a community in Pader district built a "missing person's hut" in which the names and details of some missing persons are stored. Various traditional rituals are performed by calling the names of the missing persons, an act traditionally performed to instigate closure for the families and as a healing therapy.¹⁴⁰ Lastly, victims have also highlighted the persistent need for rehabilitation, as well as medical services to treat wounds and deal with the psychosocial effects of the war.¹⁴¹ Provision of interim assistance is urgently required, in particular for specific categories of vulnerable victims including SGBV victims and their children born of war. Interim measures would help 'restore hope and dignity to the most vulnerable victims who are in need of immediate support, whilst the policy development continues for a holistic government intervention'.¹⁴² More than 20 years after the end of the conflict, many victims continue to live with unresolved medical issues, some of which have resulted in physical disabilities.

When asked, victims envisage reparations in a comprehensive manner, encompassing complementary forms of reparations. Victims have voiced their willingness to be involved in the management of reparations. For instance, communities in Northern Uganda support the inclusion of victims in budget and planning processes to address victims' needs at the sub-county level.¹⁴³ Victims are keen to participate in determining the most appropriate form and modalities of reparations, and to ensure ownership and satisfaction concerning the planned outcomes.

They nevertheless feel largely excluded from the discussion on reparations in the country. This is illustrated for instance by the controversy surrounding the memorial erected in Barlonyo, the site of one of the most horrific LRA attacks on an IDP camp in Northern Uganda. According to the victims, the monument refers to 121 deceased victims. The Barlonyo victims were adamant that more than 300 victims were massacred that day and buried hastily. In their view, the fact that the monument reflects an inaccurate number is an attempt by the government to cover up what happened and an insult to the memory of the departed. A monument that was meant to honour the victims is thus perceived as a manipulation of the truth and a revictimizing measure.¹⁴⁴

While the NTJP calls for an "appropriately conceptualised" and "well-developed" reparations programme, the process to craft this framework is ongoing.¹⁴⁵ The NTJP mentions several specific goals for reparations, including a victim mapping exercise, public participation in the reparations process, and the use of traditional justice mechanisms.¹⁴⁶ The NTJP further proposes that legislation be enacted to guide the reparations process, which should be financed through the consolidated fund and other development funds.¹⁴⁷

139 Refugee Law Project, *Compendium of Conflicts in Uganda*, 2014, p. 261.

140 Refugee Law Project, *Are the Missing Persons the Victims of Conflict we Forget?*, last accessed 30 October 2020.

141 A. Dutton, F.D. Ni Aolain, *Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate*, 24 September 2018, p. 58; REDRESS National Report, 2020, Section 8.2.

142 UVF, *Transitional Justice Working Paper Series 2014, Restoring Hope for Humanity through Interim Reparations*, August 2014, p. 1.

143 TRAC FM Poll, *What should be done to address the immediate needs of victims of armed conflict*, April 2020; REDRESS National Report, 2020, Section 8.1.

144 REDRESS National Report, 2020, Section 8.1.

145 JLOS, *The National Transitional Justice Policy*, 2019, pp. 13 and 20; See also: REDRESS National Report, 2020, Section 8.

146 S. Oola and L. Moffett, *Cul Pi Bal*, 2020, Section 3.4.

147 REDRESS National Report, 2020, Section 8.

The NTJP framework does not, however, include details on what a reparations programme would look like, or how it would operate.¹⁴⁸ Very limited reparation measures have been implemented to date. A REDRESS-commissioned survey of victims in the affected sub-regions of West Nile, Lango, Acholi, and Teso in 2020 found that over 90% of affected victims had not received any form of reparations.¹⁴⁹

Assistance in the form of medical and psychological support has been provided to victims in specific conflict-affected areas through the implementation of the ICC Trust Fund for Victims' assistance mandate. However, this is limited as it requires that the beneficiary demonstrate that the harm they suffered occurred after 1 July 2002.¹⁵⁰ For victims and the implementing bodies, these cut-off dates may not correspond to the totality of the harms experienced, and often exclude victims' groups on the sole basis that they suffered harm before an arbitrary date.¹⁵¹ Meanwhile, in the case of Thomas Kwoyelo at the ICD, a clear legal framework for reparations upon conviction is lacking.¹⁵²

Several development, recovery, and reconstruction initiatives in the Greater North of Uganda since 2003 have been mistakenly considered as reparations and plagued by corruption.¹⁵³ While development efforts could serve to further certain reparative goals, development and recovery programmes in Uganda have neither addressed victims' reparative needs nor targeted vulnerable victims.¹⁵⁴ This is the case with the Northern Uganda Social Action Funds as well as the Peace Recovery and Development Plan.¹⁵⁵

Overall, existing reparation efforts have largely failed to address victims' needs and desire for comprehensive reparation measures. Given that they have been mostly excluded from the design and implementation of these limited measures, victims have not had an opportunity to act as active right-holders. Moreover, reparations have not been able to tackle the root causes of violence and thus promote wider social change in Uganda.

148 S. Oola and L. Moffett, *Cul Pi Bal*, 2020, Section 3.4.

149 REDRESS National Report, 2020, Section 8.2.

150 A. Dutton, F.D. Ni Aolain, *Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate*, 24 September 2018, p. 58. The Trust Fund's mandate is limited to providing assistance to victims who fall within the Court's jurisdiction. The Rome Statute came into effect on 1 July 2002, thus the Trust Fund's work only applies to persons who suffered harm after that time, which for victims is an artificial cut-off date. See also: REDRESS National Report, 2020, Section 8.2.

151 A. Dutton, F.D. Ni Aolain, *Between Reparations and Repair: Assessing the Work of the ICC Trust Fund for Victims Under Its Assistance Mandate*, 24 September 2018, p. 58. See also: REDRESS National Report, 2020, Section 8.2.

152 *Ibid.* Section 6.3.1.

153 *Ibid.* Section 8.5; See also: S. Oola and L. Moffett, *Cul Pi Bal*, 2020, Section 4.4; ASF, *Towards a Comprehensive and Holistic Transitional Justice Policy in Uganda*, August 2013, pp. 45-46.

154 REDRESS National Report, 2020, Section 8.5; See also: M. Otim and S.K. Kasande, *On the Path to Victims' Rights in Uganda*, 2015, p. 9.

155 REDRESS National Report, 2020, Section 8.5; S. Oola and L. Moffett, *Cul Pi Bal*, 2020, Section 3.

GUATEMALA

1. JUSTICE AND ACCOUNTABILITY EFFORTS

Victims in Guatemala also have a broad notion of justice, which encompasses more than formal criminal accountability mechanisms. For them, justice requires public acknowledgement of the injustices inflicted upon them and an explanation as to why they were inflicted. Acknowledgement requires that the responsibility for these injustices be attributed on an individual level, but also that the structures of repression and impunity that facilitated those injustices are tackled. Justice also means implementing reforms so that conditions of vulnerability and violence that continue to affect victims are addressed. It further means that the State complies with its obligations to provide reparations and put in place guarantees of non-repetition.¹⁵⁶

Many Guatemalan victims have tirelessly pursued this broad notion of justice. Since the mid-1980s, victims –among them the family members of the disappeared, and particularly women-- have turned to judicial institutions to obtain news of their loved ones, nationally and internationally.¹⁵⁷ However, the State has rarely responded to their demands. There are no special courts to hear cases concerning the internal armed conflict in Guatemala.

Against this backdrop, in the past decade or so, at the insistence of victims, civil society, and external actors, important reforms have taken place which have strengthened the rule of law and enabled the successful prosecution of landmark cases concerning key individuals responsible for crimes committed during the armed conflict, including senior military officials. In 2005, a Special Investigations Unit for the Internal Armed Conflict (*la Unidad de Casos Especiales del Conflicto Armado Interno*) was established within the Public Prosecutor's Office to investigate these types of crimes.¹⁵⁸ Moreover, since 2009, most cases concerning the internal armed conflict have been referred to Guatemala's High-Risk Courts, located in Guatemala City. The High-Risk Courts were created to handle cases requiring special security measures to protect justice officials, witnesses, and other persons involved in the proceedings.¹⁵⁹ This is a very positive development, as it has created avenues for the prosecution of crimes committed during the conflict within the existing judicial system, with important results. The strengthening of ordinary justice institutions is of great importance given that these are permanent, as opposed to temporary like in the case of extraordinary justice institutions. Still, the fact that courts and offices of the Public Prosecutor are located only in major cities, with minimal staff and resources, has made them difficult for victims to access. Moreover, prosecutions have remained the exception rather than the norm.



[Watch Miguel Itzep's story here](#)

In theory, the Guatemalan Code of Criminal Procedure provides various ways for victims to participate in proceedings.¹⁶⁰ Nevertheless, in practice, it remains nearly impossible for victims to access justice and participate in criminal proceedings.¹⁶¹ The reasons for this include impunity and the resulting distrust for and fear of the State, as many military and public officials implicated in the armed conflict continue to exercise power; the slow pace of justice institutions, their bureaucracy, inherent racism of the justice system, and the remoteness of where most victims live in relation to the proceedings; as well as the immense personal and financial cost attached to their participation.¹⁶²

Although the State is legally obligated to guarantee victims' and witnesses' protection, the Public Ministry's witness protection programme for high-risk cases is small and has minimal resources. This often leaves victims,

156 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 37, 48-50.

157 Ibid. p. 34.

158 For more information on this unit, see D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 14.

159 They have been instrumental in the success of several emblematic cases. See *Ley de competencia penal en procesos de alto riesgo* (Criminal Jurisdiction Law for High-Risk Proceedings) (Congressional Decree 21-2009). See more generally, D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 35.

160 The Guatemalan criminal justice system provides four ways for victims to participate: as complainants, witnesses, co-plaintiffs, and beneficiaries of reparations. D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 34. For a more detailed overview of victim participation in the pursuit of justice and participation in criminal proceedings, see pp. 34-50.

161 Ibid. pp. 34, 64.

162 Ibid. pp. 37, 64. See also, R. Sieder, *Derecho consuetudinario y transición democrática en Guatemala*, FLACSO, 1996.

witnesses, and those representing them vulnerable and susceptible to intimidation or attack.¹⁶³ Further practical limitations to the full participation of many indigenous victims include the fact that proceedings are held in Spanish, the lack of qualified translators, and the technical and legal terminology used.¹⁶⁴ The process is even more difficult for survivors of SGBV, who must recount the violations endured to justice officials, the majority of whom are (ladino) men, while the majority of victims are (indigenous) women. The State does not provide any form of mental health or psychosocial support in such cases.¹⁶⁵ Similarly, victims and perpetrators are growing old, ill, and some will have passed away before justice is achieved.¹⁶⁶

In this context, the use of strategic litigation in Guatemala has been a powerful tool which has enabled victims to directly participate directly in the design, implementation, and monitoring of judicial processes; to gain ownership; and to shape outcomes that have contributed to change on different levels.¹⁶⁷ They have occupied a place at the heart of these processes, which is atypical of their experiences of ordinary local justice processes where they have been involved principally as witnesses or civil parties.

During the Ixil genocide case,¹⁶⁸ a comprehensive outreach campaign raised historical grievances, genocide, and racism in the media, academic and public spheres. Consequently, more people learnt about what happened and a much broader victim community felt heard and represented.¹⁶⁹ The case had a major social and political impact both nationally and internationally, not only because of the severity of the crimes involved, but also because the defendant, Efraín Ríos Montt, was a former Head of State and a powerful military officer with strong political influence.¹⁷⁰ The judgment of 10 May 2013, which sentenced Ríos Montt to 80 years in prison for genocide and crimes against humanity, was the first time the national courts established that genocide had occurred in Guatemala. Its impact reverberated throughout Guatemala and beyond. The judgment remains an important tool to promote structural changes, tackle racism, and restore the dignity of the victims of genocide.¹⁷¹ The case motivated many other victims to demand justice.

The Constitutional Court ultimately annulled the judgment within days of being rendered, as a result of the persistent influence of elites in the justice system, which enabled the overhauling of the sentence and thus impunity to prevail. In spite of this outcome, the multidisciplinary approach to strategic litigation adopted for this case –and others it has inspired– was crucial for the meaningful engagement of victims. This

approach included legal strategies such as including victims in identifying evidence to support the legal cases. Importantly, this resulted in proceedings that were important not only for the victims directly represented in the case, but were also meaningful for a much broader victim community who felt indirectly represented by the case and the crimes concerned. This legal strategy was reinforced with political, security, psychosocial, communication and outreach strategies, which victims have found to be meaningful and transformative. Moreover, the approach taken in these cases has bolstered social mobilisation by providing victims, activists, professionals and civil society with the opportunity to organise and mobilise around the cases and key themes addressed within them.¹⁷²

At the same time, strategic litigation strategies have benefited from the presence of independent judges who, in spite of working in a system where impunity is the norm, have been able to arrive to important verdicts.¹⁷³ Still, some judges in Guatemala are facing reprisal for their support to transitional justice efforts. While the international community initially supported them, political (and financial) support has increasingly been found wanting at critical moments in recent years. In order to ensure sustainability of important investments and advancements made –including those to which the international community has directly contributed– it is thus essential that the international community provide broad and continued support. What such support should look like will vary depending on the needs of victims, as processes evolve over time. As can be seen in the case of Guatemala, for example, the more successful a process becomes at tackling root causes and bringing about transformation, the more those advocating for it will face pushback. Continued strategic, political, and financial support to key actors involved in these processes –in order for them to be able to maintain their efforts to uphold the rule of law– and the independence of the judiciary more broadly, will contribute to effectively tackling systemic impunity.

163 It must be noted that human rights organisations that accompany victims and witnesses in litigation efforts, including the Human Rights Defenders Unit of Guatemala (UDEFEQUA), the Coordination of International Accompaniment in Guatemala (ACOGUATE), and the Network in Solidarity with the People of Guatemala (NISGUA), which work in close collaboration with the Public Prosecutor's Office, provide invaluable support in this respect. See D. Martinez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 39.

164 See D. Martinez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 38.

165 Ibid. p. 64.

166 Ibid. p. 38. For instance, Efraín Ríos Montt died in April 2018, while awaiting his retrial.

167 Impunity Watch, *Policy Brief: Strategic Litigation for Cases of Sexual and Gender-Based Violence in Guatemala*, June 2019 (hereinafter: *Policy Brief: Strategic Litigation of SGBV Cases*), pp.2, 8.

168 Presented by the *Asociación para la Justicia y Reconciliación* (Association Justice and Reconciliation; AJR), a victims organisation, with the support of the *Centro para la Acción Legal en Derechos Humanos* (Legal Action Centre for Human Rights; CALDH).

169 Impunity Watch, *Policy Brief: Strategic Litigation of SGBV Cases*, 2019, p. 6.

170 Ríos Montt was President of Guatemala from March 1982 to August 1983, commonly considered one of the most brutal periods within the internal armed conflict, and President of the Guatemalan Congress from January 2000 to January 2004. More on this case can be found in, *inter alia*, D. Martinez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 41-44.

171 Impunity Watch, *Policy Brief: Strategic Litigation of SGBV Cases*, 2019, p. 6.

172 Impunity Watch, *Policy Brief: Strategic Litigation of SGBV Cases*, 2019, p. 11.

173 Ibid. p. 2.

GUATEMALA CASE STUDY: THE MAYA ACHÍ SEXUAL VIOLENCE CASE¹⁷⁴



THE CASE

This is a case of sexual violence against 36 Maya-Achi women from the region of Rabinal, Baja Verapaz, who were subjected to repeated acts of sexual violence by members of the civil defense patrols (PACs) in their homes, communities, and/or during their illegal detention in the former military facilities of Rabinal between 1981 and 1985.¹⁷⁵

The accused were charged with crimes against humanity in the form of sexual violence.¹⁷⁶ The women submitted that the patrolmen, military commissioners, and members of the army are responsible for these violations. Much of the alleged abuse occurred at a military base and in the context of military campaigns against the Maya Achi population in Rabinal, following local resistance to the construction of a major hydroelectric project in 1978. The CEH found that these attacks, which killed 20% of the local population and destroyed entire hamlets, constituted genocide.¹⁷⁷

Hearings commenced in April 2019. On 21 June 2019, Judge Domínguez of High-Risk Court “A” ruled that there was insufficient evidence to send the six accused to trial, thereby dismissing the charges against them and ordering their immediate release. The ruling was heavily criticised as it excluded key pieces of evidence, such as the direct testimonies of the women-survivors, in which they identified the accused as the direct perpetrators. No measures were taken by the State to ensure the safety of the victim co-plaintiffs. They were left in a situation of total vulnerability with their alleged aggressors freed, and many residing in the same communities. The women have since appealed the decision.¹⁷⁸

174 See, Impunity Watch, *The path to justice continues for Maya Achi women*, 2019; Impunity Watch, *Guatemalan Judge dismisses charges in the Maya Achi Sexual Violence Case*, last accessed 29 October 2020; Impunity Watch, *Maya Achi women file complaint of racism and discrimination against lead judge*, last accessed 29 October 2020. For additional information on this case see articles by J. Burt and P. Estrada in the *International Justice Monitor*, available at <https://www.ijmonitor.org/category/guatemala-trials/>.

175 Given the intensity of the violence against the Maya Achi people of Rabinal, the IACtHR has sentenced Guatemala on three occasions in relation thereto: in the case of the Plan de Sanchez Massacre (2004), in the case of the Rio Negro Massacre (2012), and in the case of the members of the Chichupac Village and the neighbouring communities of the Municipality of Rabinal (2016). In the Chichupac ruling, the IACtHR concluded that Guatemala continues to fail to comply with its obligation to investigate the grave human rights violations against the Maya Achi people, ordering it to investigate these violations, *including acts of genocide and sexual violence against women* [emphasis added]. IACtHR, *Caso Miembros de la Aldea Chichupac y Comunidades Vecinas del Municipio de Rabinal vs. Guatemala* (in Spanish).

176 The six accused in the case are Pedro Sánchez Córdex, Bernardo Ruíz Aquino, Benbenuto Ruíz Aquino, Damian Cuxum Alvarado, and Símeon Enríquez Gómez. A seventh accused, Juan Cecilio Guzmán Torres, died in custody in August 2018, due to health problems.

177 Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, pp. 38-41.

178 In February 2020, Francisco Cuxum Alvarado was indicted by the Guatemala High Risk Court “B” on charges of crimes against humanity and aggravated sexual assault in the case. The indictment of Alvarado reopens the case.

VICTIM PARTICIPATION IN THE CASE

The 36 Maya Achi women are co-plaintiffs in the case. The victims’ counsel were selected in consultation with the women.¹⁷⁹

In December 2019, the women filed a complaint against Judge Domínguez for discrimination and racism against them during the case.¹⁸⁰ The complaint, supported by an expert report, submitted that the Judge did not comply with international standards during the hearings; especially in the way she treated victims of sexual violence. She did not listen impartially to their testimonies and questioned their motives for seeking justice. Irrespective of the outcome of the complaint, the victims’ ability to speak out about the structural racism and discrimination faced by indigenous communities in Guatemala, including in the justice system, was transformative for the women involved and an important example for others.

CONCLUSION

This case illustrates both obstacles and opportunities faced by indigenous victims when engaging with a legal system that is not inherently conducive to justice. It highlights the importance of addressing systematic abuses, such as racism, discrimination and marginalisation, which remain pervasive, in addition to addressing specific abuses, such as sexual and gender based violence crimes. The case, inspired by earlier litigation, is an example of how victims and their representatives have creatively transformed the obstacles they faced to their advantage by explicitly addressing existing attitudes and practices within the justice system (and more broadly) which disadvantage vulnerable groups. It demonstrates that it is imperative to innovate and create new spaces to tackle structural impunity and address root causes of injustice. Successfully challenging the independence of the Judge and her decisions has been empowering for the victims involved. It is their resilience and resoluteness that advance justice processes.

The Achi women have become vocal advocates of their rights and continue to find ways to obtain justice and reparation for themselves and their community. Independently of a conviction or acquittal by a judge, verdicts that recognise the commission of gross human rights violations can provide acknowledgment of the truth and recognition of the dignity, history and voices of the victims. Too often, a judgment (particularly when there is a conviction) is perceived as fulfilling victims’ need for justice, when it should be a starting point towards rebuilding society. A judgment is important, but it is what comes after the verdict, what is set in motion as a result, that will have most impact and be indicative of whether there has really been any meaningful change. This is true for cases both at the national and regional level.

179 They include indigenous women lawyers, Haydee Varley (of Impunity Watch) and Lucia Xiloj and the *Asociación Bufete Jurídico Popular* (Popular Law Firm of Rabinal).

180 Judge Domínguez was found to be biased and prejudiced against the survivors and removed from the case in September 2019, following a recusal motion filed by the Attorney General Office. Victims in two other cases concerning gross human rights violations have also filed recusal motions against Judge Domínguez. See J. Burt and P. Estrada, *Judge Domínguez Removed from Maya Achi Sexual Violence Case*, *International Justice Monitor*, 12 September 2019.

Beyond formal mechanisms, Indigenous peoples have traditionally resolved problems through their own informal justice systems in Guatemala. These may vary from one community to another, but are based on ancestral indigenous attitudes, principles, procedures, and leadership. Traditional authorities play an important role in settling all kinds of disputes and are considered an important justice mechanism in Mayan communities. They play a key role in preserving peace and maintaining order. Mayan normative systems seek to restore balance and social harmony.¹⁸¹ While considered an important tool within indigenous communities for settling disputes, particularly at a local or community level, these practices have generally not been considered as appropriate for addressing the gross human rights violations perpetrated against these communities by the State.

Despite some important successes over the years, the overall inefficiency and ineffectiveness of the Guatemalan justice system has often discouraged victims to pursue justice locally. As a result, some have turned to international justice and allies, including the IACtHR, UN, and diplomats.¹⁸² In the last 20 years, the IACtHR, in particular, has issued close at least 15 judgments against Guatemala for cases involving human rights violations perpetrated during the internal armed conflict.¹⁸³ In many of these cases, the IACtHR has found the State responsible for violations and has ordered reparations, often including substantial monetary awards in addition to orders to investigate and prosecute the crimes.¹⁸⁴ Moreover, the IACHR has visited Guatemala numerous times, and issued multiple reports on the justice system and the persistence of impunity.¹⁸⁵

International justice processes can also be lengthy, time consuming, and costly. Yet, the IACtHR has issued far-reaching and meaningful judgments, which have played an important part in the recognition of crimes, and acknowledgement of victims' suffering and systemic injustices. The system's lack of coercive power to ensure State compliance with its judgments and its inability to prosecute and punish alleged perpetrators has limitations.¹⁸⁶ The Guatemalan State has been slow to implement the IACtHR's judgments and has failed to fully comply with them.¹⁸⁷ Nevertheless, participation in these processes can still be transformative for victims. In the case of Santa Lucía Cotzumalguapa,¹⁸⁸ for example, the IACHR reaffirmed the continuous nature of certain human rights violations, including enforced disappearances, when the fate and whereabouts of loved

ones remain unknown.¹⁸⁹ This acknowledgement has had a powerful reparatory impact on the victims of Santa Lucía, who have been encouraged to continue efforts to seek justice at national and international levels.

The Guatemalan experience highlights the powerful effect that victims' activism may have in justice processes. In the context of a State that actively perpetuates impunity, the activism of Guatemalan victims has been essential to ensure that transitional justice efforts move forward. Victims' active engagement has challenged structures of impunity and thus contributed to transformative political change. However, active participation has come at a high cost for victims. While the Inter-American human rights system has been a key supportive ally, the long-term support of other international actors is needed in order to ensure victims' activism is sustainable. As priorities and financial contribution among international allies have changed, transitional justice processes have been undermined and actors on the ground have lost access to resources to make their efforts sustainable. It is thus essential that international support is long-term and does not drop as soon as mechanisms are established.

2. REPARATION EFFORTS

Victims in Guatemala view reparations as an essential measure to remedy the harm they have suffered. For them, it is crucial that the State takes active steps to repair the damage that has been inflicted, that it acknowledges their suffering and identifies and addresses root causes of violence and vulnerability, and that key institutions that carried responsibility offer apologies. However, since the signing of the Peace Accords, the State has done little to repair the damage caused to the victims of the internal armed conflict and has failed to adopt a meaningful and comprehensive approach to reparations. Still, some victims in Guatemala have been able to access reparations through the PNR, the rulings of Guatemalan courts; and the orders given by the IACtHR through its judicial rulings or the recommendations made by the IACHR through substantive reports on individual cases.¹⁹⁰ Despite the many obstacles that remain, the process of demanding reparations has on several occasions proven to be transformative for many victims.

In 2003, and in response to the recommendations of the CEH report and pressure from victims' and human rights organisations, the Guatemalan government created the PNR for the purpose of providing reparations to victims.¹⁹¹ It was initially created for a period of ten years (2003-2013) and subsequently extended for another ten years (2013-2023).¹⁹² The scope of the PNR is limited to victims of specific crimes,¹⁹³ and excludes

181 L. Viaene, *The internal logic of the cosmos as "justice" and "reconciliation": Micro-level perceptions in post-conflict Guatemala*, 2010, *Critique of Anthropology* 30(3) 287-312, pp. 297-299, 304-305 (hereinafter: *The internal logic of the cosmos*). According to Maya Q'eqchi' survivors in Alta Verapaz, for example, certain transgressions will be resolved by spiritual interventions, which transcend their human capacity. Some consider the circumstances in which 83-year-old General Lucas García died in 2006 as *q'oqonk*; the internal logic of the cosmos that, through an invisible spiritual force, fosters a new *tuqtuukilal* or tranquillity (in the form of some retributive consequence on the responsible party).

182 See D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 37, 44-47.

183 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 41-45. See also, Impunity Watch, *Avances y obstáculos*, 2018, p. 87.

184 See e.g., IACtHR, *Case of Plan de Sánchez Massacre v Guatemala*, Judgment of 29 April 2004; IACtHR, *Case of the "Las Dos Erres" Massacre v Guatemala*, Judgment of 24 November 2009; and IACtHR, *Case of the Rio Negro Massacre v Guatemala*, Judgment of 4 September 2012, in addition to a number of cases involving individual complainants like Emma Molina Theissen and Myrna Mack. N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 456.

185 N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 456.

186 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 45.

187 *Ibid.* pp. 45, 47. See also the IACtHR resolution of 24 November 2015, on supervising compliance with the reparations measures in 12 cases.

188 The case concerns over 100 sugar cane workers and religious leaders from Santa Lucía, who were killed or disappeared by State forces to terrorise the population, dismantle the organisation of trade unions, and silence demands for better working conditions and wage increases in the late 1970s and early 1980s.

189 For a summary of the hearings, see Impunity Watch, *Video: Resumen audiencia CIDH Santa Lucía Cotzumalguapa*, 2019.

190 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 5.

191 See Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, p. 62. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 16-17; D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 51; and Impunity Watch, *Reparations in Guatemala*, 2018.

192 *Governmental Agreement 258-2003; Governmental Agreement 539-2013*. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 17; Impunity Watch, *Reparations in Guatemala*, 2018. See also N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 449.

193 Enforced disappearance, extrajudicial execution, physical and psychological torture, forced displacement, forced recruitment of minors, sexual violence, violations against children, massacres and injuries by indiscriminate attack, crossfire, persecution, human shield, and attempted arbitrary execution. See *Governmental Accords 258-2003, 619-2005, and 539-2013*. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 17; N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 449.

the crime of genocide, despite the findings of the CEH.¹⁹⁴ No law was created to ensure the fulfilment of the State's commitment to provide integral reparations, even though human rights and victims' organisations have insisted on this to ensure the sustainability of the PNR.¹⁹⁵

The PNR's reparation policy, known as the 'Blue Book', provides for reparations from five integrated angles: material restitution, economic compensation, psychosocial support and rehabilitation, cultural restitution, and measures to restore the dignity of victims.¹⁹⁶ Seemingly comprehensive, the PNR raised great expectations in many communities, but also caused much disappointment and frustration.¹⁹⁷ Instead of responding to victims' needs, the PNR has been heavily influenced by the political interests of ruling administrations. The PNR's governmental accord has been modified numerous times, its budget is cut every year, and the possibility for victims to participate in PNR decision-making has effectively ended.¹⁹⁸ Moreover, each successive government administration has modified the programme at its own discretion, using the PNR for political patronage, granting monetary compensation or projects to victims in exchange for votes or political backing.¹⁹⁹

The PNR has served approximately 32,802 victims.²⁰⁰ While the exact number of victims is unknown, as no official victims registry was ever established, this constitutes a mere fraction of the total number of victims identified by the CEH.²⁰¹ The PNR has primarily offered victims individual economic compensation or material reparations measures, which have been low and generally disappointing to the victims.²⁰² Few if any efforts have been made to restore the dignity of the victims or to provide psychosocial and cultural reparations. Similarly, no reparations or land restitution programmes have been instituted for the over 1.5 million IDPs who lost their land or property during the armed conflict.²⁰³

Economic payments have caused discomfort and division within families and communities.²⁰⁴ Victims have repeatedly stated that monetary compensation does not heal the damage committed against their loved ones. It is more important to them to find their loved ones' remains, understand what happened, and bury

them with dignity.²⁰⁵ For victims and survivors, it is crucial that the State not only repairs the damage caused, but also acknowledges the crimes and asks for forgiveness for past atrocities.²⁰⁶

Efforts were made by earlier administrations to preserve historical memory, to publicly acknowledge that genocide occurred in Guatemala, and to create Peace Archives to safeguard military documents about the internal armed conflict. In recent years however, the pro-military governments of Presidents Otto Pérez Molina and Jimmy Morales, have shown a backsliding on many of these commitments. The PNR has been progressively weakened due to lack of institutional and political support.²⁰⁷ These barriers impede the right to reparation and the PNR's ability to contribute to meaningful transformation. Reparations have only decreased in recent years. The incumbent administration under President Alejandro Giammattei has taken alarming steps to close down the SEPАЗ altogether. This move raises serious concerns about the survival of the PNR.²⁰⁸

Another major shortcoming of the PNR's reparations policy is its failure to adopt a gendered or differentiated approach. This prevents it from adequately addressing the particular harms suffered by women and other vulnerable groups.²⁰⁹ The PNR has often denied reparations to women in cases of sexual violence, arguing that it is difficult to prove that type of crime or that "the women are lying".²¹⁰

The PNR considers victims solely as beneficiaries of reparations rather than as subjects of rights with decision-making abilities, as envisioned by international standards.²¹¹ As such, there is limited –if any– room for victims to participate in the PNR's programmes or decision-making.²¹² Victims consider the PNR to be reflective of the interests of incumbent administrations as opposed to victims' real needs, as its leadership does not appear to take their requests or proposals seriously and rarely fulfils its promises.²¹³ The application process to the PNR

194 See Commission for Historical Clarification, *Guatemala Memory of Silence*, 1999, pp. 38-41. See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 18. Impunity Watch, *Reparations in Guatemala*, 2018, p. 6.

195 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 51. D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 48. See also, R. Brett and L. Malagón, *Realising Victims' Rights to Reparations*, 2020, p. 9.

196 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 16; D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 52; Impunity Watch, *Reparations in Guatemala*, 2018, p. 7.

197 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 61; N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, p. 449.

198 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 51, 65. See e.g. Governmental Accord 188-2004, Accord 619-2005, and Accord 539-2013.

199 D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 27. See also, D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 55, 65. Impunity Watch, *Reparations in Guatemala*, 2018, p. 9.

200 PNR data do not detail the ethnic identity, age or place of origin of the persons compensated, nor do they specify the type of crime they suffered. D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 54. See also, R. Brett and L. Malagón, *Realising Victims' Rights to Reparations*, 2020, p. 10. Impunity Watch, *Reparations in Guatemala*, 2018, p. 7.

201 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 54; Impunity Watch, *Reparations in Guatemala*, 2018, p. 7.

202 For an itemised table, see Impunity Watch, *Reparations in Guatemala*, 2018, pp. 9-10. See also, D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 56, 65.

203 D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 16, 45. See also Impunity Watch, *Reparations in Guatemala*, 2018.

204 Not everyone agrees with receiving money on behalf of their deceased loved ones or agrees with the way the money is distributed. Instead of contributing to reparation or reconciliation, this has caused more tension than relief. See: D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 56, 65.

205 Ibid. p. 56.

206 Ibid. p. 61.

207 D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 12.

208 See L. Gonzalez, *Presidente anuncia el cierre de la Sepaz y Secretaría de Asuntos Agrarios*, 1 April 2020 (in Spanish). See also, Peace Brigades International, *Monthly Updates from 27 May 2020*.

209 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 22-23; Impunity Watch, *Policy Brief: Strategic Litigation of SGBV Cases*, 2019; Impunity Watch, *Policy Brief: Reparación con perspectiva de género, una apuesta para contribuir al cambio de las estructuras de desigualdad y discriminación en Guatemala*, December 2014 (in Spanish); Impunity Watch, *Reparations in Guatemala*, 2018, p. 7.

210 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 52, 54. See also S. Weber, *Giving a voice to victims: Towards gender-sensitive processes of Truth, Justice, Reparations and Guarantees of Non-Recurrence (TJRNR) in Guatemala*, 2012, Impunity Watch: Perspective Series, p. 38.

211 See e.g. OHCHR, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1, 2005. Principle 32, reparations procedures, provides that "Victims and other sectors of civil society should play a meaningful role in the design and implementation of such programmes. Concerted efforts should be made to ensure that women and minority groups participate in public consultations aimed at developing, implementing, and assessing reparations programmes."

212 While Governmental Agreement 539-2013 contemplates victim participation through a 'Consultative Council of Victim Organizations' – composed of five representatives of victims' organisations who may participate in the meetings of the National Reparations Commission, but without a vote – the latter was never integrated and considered to be purely symbolic. See D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 51, 54, 61; D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 25-26.

213 D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 54, 61. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 26.

is also slow, ineffective, and places a high burden on victims.²¹⁴ Files are sometimes delayed for years without justification and paperwork is lost. The situation is aggravated with each government change. All of these barriers cause victims wear and tear, hopelessness, and frustration.²¹⁵

Yet, as illustrated above, the creation of the PNR was in large part the result of the long struggle of victims and human rights organisations, who continue to push for change within the PNR and demand fulfilment of its mandate. National coalitions of victims' organisations were formed to monitor and place pressure on the PNR. For instance, the National Victims' Movement, the National Victims' Network, and the National Victims' Council are comprised primarily of indigenous victims' committees in rural areas. These groups provide victims with information about the PNR, help them prepare their requests, monitor the request process, and also place political pressure on PNR officials to fulfil their duties. They have also presented several complaints to the formal institutions, such as the Human Rights Ombudsman (*Procuraduría de los Derechos Humanos*; PDH) for violations of the right to reparations; they have developed monitoring reports; and met numerous times with the PNR leadership, congressional representatives, and government officials to demand improvements. Despite the evident limitations of this institution, the PNR remains an important instrument to victims in Guatemala, who defend it at all costs, knowing that if the PNR is shut down, there will unlikely be new opportunities for them to obtain reparations from the State.

Victims in Guatemala can also access reparation through a court judgment.²¹⁶ Of at least 21 conflict-related cases tried before Guatemalan courts since the signing of the Peace Accords, only four have ordered reparation measures,²¹⁷ and the State has largely failed to comply with the reparation judgments of both national and international courts. Nevertheless, these four reparations judgments are significant landmarks for the victims. They exemplify the importance of victim participation in informing requests for reparations measures to ensure that these reflect the needs and those of their communities. The outcome: comprehensive and holistic reparation measures that impact and have meaning for victim groups and communities beyond the victims directly involved in a particular case.

214 This includes the presentation of i) proof of harm and identifying victims; ii) personal identification documents; and iii) birth or death certificates for all victims included in the testimony (it was dangerous or impossible to obtain such certificates in the context of the war). See: Manual of Basic Criteria for the Application of Reparation Measures Granted by the National Reparation Programme. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 24, and, D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, pp. 58, 61.

215 D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, p. 46.

216 Amendments to Article 124 of the Guatemalan Code of Criminal Procedure were introduced in 2011, obliging the court to include reparation measures in the sentence once the guilt of the accused has been determined: Reforms to the Criminal Procedure Code, Decree 7-2011. D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 14, 30. For a more in-depth analysis of reparations in cases before Guatemalan and international courts, see pp. 30-41.

217 These are the cases of the Spanish Embassy, Ixil genocide (Rios Montt), Sepur Zarco and Molina Theissen. See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 14, 31. More detailed information on these four cases and the reparations rulings therein can be found on pp. 33-39.

MOLINA THEISSEN CASE²¹⁸



FACTS ABOUT THE CASE

On 23 May 2018, the High-Risk Court 'C' convicted four former high-ranking military officials of crimes against humanity, including of the enforced disappearance of 14-year old Marco Antonio Molina Theissen and the illegal detention, torture, and rape of his sister Emma Guadalupe in 1981. The case contains the first ruling on the enforced disappearance of children during the internal armed conflict, and those convicted were (high-ranking) leaders of the military elite, responsible for hundreds of disappearances, massacres and murders between 1978 and 1982. Emma Guadalupe acted as co-plaintiff in the case with her mother and two sisters.

This case is a consequence of the IACtHR's orders to Guatemala to investigate, prosecute, and punish the perpetrators of Marco Antonio's disappearance.²¹⁹

REPARATIONS MEASURES

The reparations and non-recurrence measures ordered by the court in this case are an example of structural proposals to contribute to change.²²⁰ The judgment provides for 11 different reparation measures, pertaining to truth, the search for the disappeared, and restoring the dignity of victims. The court ordered, among other aspects, the creation of a national registry of victims of enforced disappearance, the passing of a law on missing persons, and the establishment of a national commission for the search of missing persons; the establishment of a monument in the military base where Emma Guadalupe was held, decorations, and scholarships in the names of Emma, Marco Antonio and the victims of the internal armed conflict; rewards for those who provide truthful information about clandestine cemeteries or graves; the production of a written and audio-visual documentary of the case; the designation of 6 October as 'National Day for Missing Children'; as well as more practical measures pertaining to guaranteeing the safety of the subjects of the case and the translation of the judgment into Mayan languages.²²¹

Importantly, it was the victims – and co-plaintiffs – in this case who formulated what they saw as appropriate reparations measures, which were largely followed by the judge.

218 Sentencia C-01077-1998-00002 of. 1ro. Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente de Mayor Riesgo Grupo "C" Guatemala, 23 May 2018. See also, D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 37-39. See also, J. Burt and P. Estrada, *Four Retired Senior Military Officers Found Guilty in Molina Theissen Case*, International Justice Monitor, 23 May 2018; J. Burt and P. Estrada, *The Molina Theissen Judgment, Part I: Overview of the Court's Findings*, International Justice Monitor, 3 August 2018; J. Burt and P. Estrada, *The Molina Theissen Judgment, Part II: The Court's Handling of Defense Arguments*, International Justice Monitor, 6 August 2018; J. Burt and P. Estrada, *The Molina Theissen Judgment, Part III: Reactions*, International Justice Monitor, 7 August 2018.

219 IACtHR, *Case of Molina-Theissen v. Guatemala*, Judgment of 3 July 2004: Reparations and Costs, paras. 82-83.

220 Impunity Watch, *Policy Brief: Strategic Litigation for Cases of Sexual and Gender-Based Violence in Guatemala*, June 2019, p. 6.

221 For a more comprehensive overview of the reparations measures awarded in this case see D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 37-39.

SEPUR ZARCO CASE²²²



FACTS ABOUT THE CASE

On 26 February 2016, the High-Risk Court 'A' convicted two former military officials for crimes against humanity, including counts of rape, murder, slavery and enforced disappearance. The case was brought by indigenous Maya Q'eqchi' women who were among those subjected to sexual violence and sexual and domestic slavery around a military detachment in the community of Sepur Zarco, in Izabal, as a means to control the community. The case attracted national and international attention. Fifteen survivors acted as co-plaintiffs in the case and were supported by the Breaking the Silence and Impunity Alliance.²²³

REPARATIONS MEASURES

The reparations measures ordered in this case set a precedent in going beyond the customary monetary compensation.²²⁴ The court ordered, among other aspects, the continued investigations into the disappeared; the provision of housing for the victims and basic services to the communities surrounding Sepur Zarco and the construction of a health centre; the improvement of infrastructure of schools in the area, the establishment of bilingual secondary education, and granting of scholarships at all levels of education, to guarantee the right to education of girls and women; the development of cultural projects aimed at the women of Sepur Zarco and their communities; the designation of 26 February as 'National Day of Victims of Sexual Violence, Sexual Slavery and Domestic Violence'; the production of a documentary of the case; the inclusion of courses on women's human rights and legislation to prevent violence against women in military training; monetary compensations for the direct plaintiffs and measures relating to the safety and security of the subjects of the case and the translation of the judgment into Mayan languages.²²⁵

The High-Risk Appellate Court upheld the judgment in July 2017. Some of the reparation measures have since been implemented, thanks to the follow-up work of the Breaking the Silence Alliance. A small mobile clinic was established in Sepur Zarco for the entire community, for example, although it is insufficiently stocked. The Ministry of Education approved a cartoon on the case for high school students and dialogue tables have been established at the community level and with some ministries to implement reparation measures. A bill to

222 SENTENCIA C-01076-2012-00021 OF.2o. TRIBUNAL PRIMERO DE SENTENCIA PENAL, NARCOACTIVIDAD Y DELITOS CONTRA EL AMBIENTE. GUATEMALA, 26 February 2016. D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 33-37.

223 The Breaking the Silence and Impunity Alliance was made up of three civil society organizations: *Mujeres Transformando el Mundo* (MTM), the Guatemalan Women's Union (UNAMG) and the *Equipo de Estudios Comunitarios y Acción Psicosocial* (ECAP).

224 Impunity Watch, *Policy Brief: Strategic Litigation of SGBV Cases*, 2019, p. 8.

225 For a more comprehensive overview of the reparations measures awarded in this case see D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 36-37.

recognise 26 February as "Day of the Victims of Sexual Violence, Sexual and Domestic Slavery" was presented, but is yet to be approved by Congress.

The judgment itself – and victims' participation in the process, including identifying appropriate reparations measures – was also of reparative significance for the women, who are considered role models. The case has paved the way for investigating and criminally prosecuting other cases of sexual violence crimes committed during the internal armed conflict in Guatemala, such as the Achí Women sexual violence case.²²⁶

Beyond domestic courts, Guatemalan victims have also been able to access reparations through the Inter-American human rights system. In the last 20 odd-years, the IACtHR has issued 15 judgments against Guatemala for cases involving human rights violations perpetrated during the internal armed conflict.²²⁷ Reparation measures ordered to compensate victims have included medical and psychological care, economic compensation for victims and their families (for both moral and pecuniary harm), guarantees of non-repetition, measures to promote justice, the recognition of facts, and acknowledgement of the truth.²²⁸ The IACtHR has also ordered the removal of obstacles to investigate, such as amnesty laws, and ordered the reform of laws used to obstruct the right to an effective judicial remedy.²²⁹

All judgments involving reparations for victims of the internal armed conflict are still pending and the IACtHR continues to monitor their execution.²³⁰ Some key reparation orders that the State has failed to comply with include: the creation of a commission to search for the disappeared and a national DNA database; the thorough investigation of gross human rights violations; and reforms to strengthen the Public Prosecutor's Office and the justice system in general.

The failure to comply is in large part the result of a lack of financial resources being made available, due to rampant corruption, prevailing impunity, and an overall lack of institutional and political will to compensate victims. Nevertheless, the importance of external bodies such as the IACtHR, should not be underestimated. It is pressure from institutions like these that has contributed to creation of windows of opportunity for transitional justice processes on the national level. It has also contributed to the protection of the rights of victims and supported the push back of Guatemalan civil society actors against the recent lapses into impunity.

226 Impunity Watch, *Policy Brief: Strategic Litigation of SGBV Cases*, 2019, pp. 4, 6-8; Impunity Watch, *Changing the Face of Justice: Keys to the Strategic Litigation of the Sepur Zarco Case*, Alliance to Break the Silence and Impunity, ECAP, MTM, UNAMG, 2017. See also, J. Burt, *Military Officers Convicted in Landmark Sepur Zarco Sexual Violence Case*, *International Justice Monitor*, 4 March 2016; J. Burt and P. Estrada, *Court Ratifies Historic Sepur Zarco Sexual Violence Judgment*, *International Justice Monitor*, 21 July 2017.

227 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 41-45. See also the jurisprudence of the IACtHR, available [here](#).

228 See D. Martínez and L. Gómez, *A promise to be fulfilled*, 2019, pp. 43-44.

229 *Ibid.*

230 *Ibid.* p. 44. D. Martínez, G. Flores and O. Rogers, *We Struggle with Dignity*, 2016, p. 61.

The Guatemalan experience shows the importance of victim participation in the design and implementation of reparation efforts and how this contributes to ensuring that – albeit imperfect – the issue remains on the agenda. Without victim activism, reparation programs would have already been dismantled by elites in power and co-opted State institutions. Participation within strategic litigation efforts has also proven to be essential to ensure that reparations obtained through Courts can be designed in a way that is more transformative to victims and the communities they come from.

DISCUSSION

1. CRIMINAL JUSTICE AND ACCOUNTABILITY EFFORTS IN UGANDA AND GUATEMALA

While important, the cases of Uganda and Guatemala show that criminal prosecutions alone are unlikely to bring about structural change that can contribute to positively transforming victims' lives. Similarly, the narrow focus of criminal prosecutions on individual criminal responsibility cannot fully address victims' needs and broad claims for justice. While victims in both countries have expressed that holding accountable those most responsible for atrocities is important to them, their understandings of justice are broader and thus require more comprehensive measures and processes. Both Uganda and Guatemala provide some insights on how this can be achieved.

The experiences show that, in order to meet the broad justice claims and needs of victims, justice and accountability efforts must be comprehensive and complement one another. Such efforts should be varied and not be limited to State-sanctioned criminal accountability mechanisms. These varied forms of justice efforts can include traditional systems, civil society initiatives, and international efforts, among others. While formal mechanisms should address the responsibility of the State towards victims' rights and promote structural reforms that address root causes and structural injustice, informal mechanisms can work more on the horizontal level to promote, for example, reconciliation and memorialisation. What is key is that these efforts are designed based on the needs and claims of the victims and that they reinforce one another.

Moreover, the experiences show that justice and accountability efforts are more likely to meet victims' needs and to contribute to transformative change when relevant stakeholders consider victims' local understanding of the concept of justice, take into account traditional justice systems, are mindful of socioeconomic and cultural barriers to participation, support victims' political organising and social mobilisation, ensure access to psychological services and security measures, and actively cooperate with civil society and international allies.

In Uganda, for example, victims understand justice in terms of fairness, redistribution of resources, and the creation of equal opportunities. From this standpoint, the ICD has fallen short in addressing victims' broader notion of justice, as it has solely focused on one-sided criminal accountability and has yielded little results so far. The top-down manner in which this mechanism was established, having failed to meaningfully engage with the needs or demands of victims in its design, may well have contributed to this. The body's failure to, among others, deliver information about proceedings, conduct adequate outreach, and act expeditiously has led to a further loss of interest among victims. Moreover, victims that have remained engaged have faced

numerous obstacles, including the judges' reluctance to allow them to participate in proceedings, which they justified in the absence of a clear policy on victim participation. Regrettably, many victims have stopped participating because of poverty, health issues, and other socio-economic factors. Addressing the immediate needs of victims is thus essential in order to ensure their continued and meaningful participation.

In contrast to the ICD, the ICC has made concrete efforts to create avenues for the formal participation of victims in proceedings, particularly by allowing them to submit their views and concerns. Despite being geographically more remote, the ICC has been more effective than the ICD in its outreach to victims and in making victim participation in the proceedings possible, even if such participation remains limited. This, in turn, has enabled victims to bring their perspectives from the field to the courtroom, which has been key to shedding light on aspects of the conflict that are important to them. Yet, victims still express mixed views regarding the ICC. Given the ICC's procedural and jurisdictional limitations, not all victims have been able to participate and those represented in the proceedings have seen their participation restricted by procedural rules. These limitations have translated into frustration and disagreement with the ICC proceedings, especially surrounding the *Ongwen* case. While some victims consider the case an important contribution to justice, others find it to be unfair.

The achievement of justice through formal accountability mechanisms has thus been limited. Victims' advice is critical in developing strategies that engage with the reality on the ground, and that have the ability to effect change that is relevant to the victims.

Further, as the ICD and the ICC have only prosecuted LRA members, victims' demands to have both sides held accountable have remained unfulfilled. In part, the lack of prosecutions against State officials is explained by the absence of a political transition in Uganda, whereby alleged perpetrators have remained in power and have been able to influence the transitional justice process. Prevailing impunity has thus affected victims' views on the legitimacy of transitional justice and further limited the ability of existing criminal accountability measures to contribute to transformative change.

Beyond the ICD and ICC, the Ugandan experience also shows the importance of taking into account traditional justice systems. Many victims in Uganda prefer these systems over formal alternatives, because they are tied to the local culture, led in the local language, and do not require a bureaucratic process. They might also align better with victims' understanding of accountability, which involves acknowledgment of wrongdoing, asking for forgiveness, and repentance. To the extent that these systems are focused on restoring social ties, they might also be more conducive to addressing the root causes of violence and thus to contribute to transformative change. Still, traditional justice has proven inadequate to address certain types of gross violations, including SGBV. Moreover, traditional justice systems are less likely to be able to transform State institutions and tackle systemic impunity. Nevertheless, they can serve as a complementary tool that, if designed in parallel to other justice initiatives, can contribute to complying with victims' broader notion of justice.

While victims' broad understanding of justice should have led to a complimentary, holistic, inclusive and transformative justice, Uganda is instead seeing piecemeal justice, scattered through different bodies, and taking various shapes, resulting in an unequal treatment of perpetrators and victims and widespread discontent.

In Guatemala, victims consider investigations and prosecutions to be of great importance, and one of the most concrete ways to receive recognition for and acknowledgment of the injustices inflicted upon them by the State (as well as other parties to the conflict). Holding State officials, including former high-ranking military officers, accountable also allows the possibility of relieving victims from the blame and stigmatisation they face. This, in turn, has the ability to affirm victims' dignity and their status as rights-holders, to whom the State must respond and treat as equal citizens.

However, victims—especially (Indigenous) women—continue to face multiple obstacles to accessing justice. Hearings remain mostly inaccessible given that courts and prosecution offices are located in major cities, far away from the home communities of many of the victims. Even though the law foresees the participation of victims through various mechanisms, it is nearly impossible in practice, because of prevailing impunity. Such impunity stems from the absence of a real transition of power after the conflict, the continuous efforts to obstruct and to delay justice by corrupt justice operators, the lack of adequate resource in the justice system, and the continuation of violence. Military and State officials who were implicated in the conflict continue to exert influence on the justice system, which works at an extremely slow pace, has a complex bureaucracy, and reproduces racist and discriminatory behaviours towards victims. Insufficient resources in the justice system have also translated into an inefficient witness protection system and the absence of key services, such as psychosocial support and translation services.

In spite of these obstacles, victims, supported by civil society organisations, have continued to pursue justice relentlessly, particularly through political activism and strategic litigation. The fact that Indigenous women, specifically those who survived sexual violence, are at the forefront of many of these justice efforts is already a significant achievement, as they belong to the most disenfranchised members of society, who not only face discrimination from State authorities, but also from within their own communities.

Notably, victims and their civil society allies have adopted a multidisciplinary approach to this form of litigation. Beyond the design of a legal strategy, this approach has encompassed, among other things, the psychosocial accompaniment of victims, the launching of campaigns to raise awareness and to gain support for the case, and the adoption of security measures. In doing so, cases have spurred social mobilisation in favour of the victims. As victims have actively participated in the design and implementation of the legal strategy and political campaigns around these cases, their needs and demands have been successfully captured. Moreover, their direct involvement has resulted in strategies that are designed to bear meaning for broader victim groups, beyond those directly involved in a particular case. Victims' active engagement with these processes has led to greater ownership, even when processes don't lead to results. Victims take strength and dignity from the process of demanding that the State to respond to its legal obligations.

The case of Guatemala further shows that strategic litigation might contribute to addressing root causes of violence and structural inequalities, specifically racism against Indigenous communities, as in the Maya Achí case. Strategic litigation has proven to be a powerful catalyst for wider social change. Many victims in Guatemala have continued advocating for their rights following their participation in these emblematic cases, regardless of the final judgment or outcome. This shows the importance of viewing verdicts not as an end, but as a starting point for a larger process of community transformation.

Lastly, in Guatemala, the synergies between the national, regional and international levels, and their effect on one another, must not be underestimated. In this regard, one aspect that distinguishes Latin America from some other regions dealing with transitional justice is the positive influence of the regional human rights system.²³¹ The IACtHR and IACHR have had an important catalytic role in Guatemala's own transitional justice processes. They have opened up discussions; contributed to establishing the facts of what happened during the conflict; put pressure on the State to act in accordance with its international obligations; prompted important legislative changes; and encouraged victims to pursue their rights.

Overall, the Guatemalan experience shows that active victim participation—particularly in the form of political activism—is essential to guarantee that justice processes adequately address victims' needs and justice claims. Victims' activism is also fundamental to ensure that justice processes are better equipped to contribute to transformation, as victims possess essential knowledge of obstacles on the ground, particularly with regard to prevailing structures of impunity. Strategic litigation might also help catalyse victims' political activism and thus contribute to social transformation. Still, it must be stressed that activism can take a toll on victims, as it represents a major emotional, financial, and time investment. It is thus key that allies, both locally and internationally, reflect on ways to better support victims engaged in these types of efforts. It is also essential to emphasise that the enormous sacrifices of victims and their active participation cannot contribute to transformative change if State authorities are unwilling to genuinely engage with them and to accommodate their needs. Where there is political continuity, State institutions will deal with a deeply ingrained legacy of impunity and corruption. It is therefore pivotal that the international community support efforts to build a different institutional culture that promotes new ethics which condemns the practice of impunity and corruption as the norm within these institutions, and which is respectful to victims and their demands for justice as legitimate rights the State has an obligation to comply with. This should ideally be done from within the State, by supporting actors who promote such a new culture from within, along with efforts to dismantle State capture and to enact institutional reform geared at independence and capacity based on international standards.

2. REPARATIONS EFFORTS IN UGANDA AND GUATEMALA

The experiences of Uganda and Guatemala illustrate that an official reparations policy does not necessarily ensure redress for the harms that victims have suffered. Both countries have yet to see the kind of holistic approach to reparations that could lead to healing and transformation of root causes that perpetuate victimisation and suffering in the present. Nevertheless, important lessons can be learnt from these contexts about how meaningful participation can contribute to shaping more effective reparations measures.

Ugandan victims have expressed a desire for comprehensive reparation measures, including compensation, restitution, satisfaction, and rehabilitation. While compensation is viewed as a key measure to sustaining their livelihoods, victims have also voiced their desire to obtain symbolic reparations that acknowledge their suffering. They have further highlighted their need for rehabilitation measures, particularly medical

231 For a more detailed account of the impact of the inter-American human rights system on Guatemala, see e.g. N. Roht-Arriaza, *Guatemala: Lessons for Transitional Justice*, 2017, pp. 456-458.

and psychosocial support, and expressed their desire to participate in the design of reparation measures that feel most appropriate to them. However, existing State-led efforts have been limited as they have not comprehensively provided access to all victims, nor have they engaged them in their design. Further, the Uganda government has prioritised development and poverty reduction initiatives in conflict-related areas. As a result, State-led reparation efforts have been scarce so far. Both the Northern Ugandan Social Action Fund and the Peace Recovery and Development Plan have been mistakenly considered as reparations. While these programmes have been valuable for addressing some of the victims' immediate needs, they are not designed to address harms and to respond to victims' claims for justice and reparations.

Uganda's NTJP has called for the creation of a reparations programme, but it provides little detail on how it will operate. Moreover, to date, victims have reportedly felt excluded from its design and consultations have not translated into results. The Ugandan case thus reaffirms that the existence of an official reparations plan on paper, however comprehensive, is not enough to guarantee its effective implementation. Lack of political will to prioritise victims and to meaningfully engage with them has meant that a comprehensive reparations programme is yet to be implemented, and that victims have not had the opportunity to contribute to shaping this process. This has led to frustration and loss of confidence among victims in the State and prevented them from becoming active citizens with a role in shaping the future of the country.

In the absence of effective State-led reparations programmes, victims have participated in civil society-led initiatives, particularly in the design and implementation of symbolic measures, including the creation of memorial sites. Even if not provided by the State, these types of initiatives can still be useful to address victims' need for acknowledgement. Beyond these efforts, the ICC has also taken steps to assist victims through the provision of medical and psychosocial support via its Trust Fund for Victims. However, assistance has been limited and excluded large groups of victims because of the ICC's various requirements to qualify as a beneficiary.

Overall, in Uganda, reparation efforts have been scattered and not designed as part of a broader comprehensive strategy responding to the demands of victims, thus losing potential to maximise impact. Further, the authorities in Uganda have failed so far to provide channels for the active engagement of victims in the design of reparation policies; as a result, the potential transformative effect of reparations has been significantly limited.

In Guatemala, victims have equally expressed their desire for a comprehensive approach to reparations. However, Guatemalan authorities have largely failed to meet victims' demands. The State's reparation programme, the PNR, has been limited in its ability to comprehensively address victims' needs and to tackle the root causes of violence. Even though its establishment was a success, achieved through pressure by victims, the PNR's mandate has been weakened and subject to political manipulation, particularly in recent administrations. On paper, the PNR's framework looked comprehensive. But in practice, the programme largely failed to fulfil the needs of the majority of victims across the country, given its regular budget cuts and the lack of political will to develop a more meaningful victim-informed strategy.

Moreover, the programme has predominantly focused on economic compensation, as opposed to more holistic reparative measures such as rehabilitation or symbolic actions. For some victims, especially the

families of the missing, compensation has been an insufficient measure, as their chief priority is that the whereabouts of their relatives is determined. The PNR has also failed to adopt a differentiated and gendered approach, which has, for example, led to the denial of access to reparations for victims of sexual violence. Lastly, as the PNR considered victims solely as beneficiaries, it has excluded them from acting as decision-makers. This has significantly impacted the PNR's ability to serve as a platform for transformation through active victim participation.

Nevertheless, the Guatemalan experience also illustrates the importance of evaluating reparations processes beyond the scope of State mechanisms alone. Victims have actively participated in advocacy efforts to gain access to reparations. It is indeed because of the victims' highly organised efforts that the PNR has been established and has continued to exist, in spite of numerous efforts from the government to undermine it. Victims' active involvement in what can be seen as a larger political process to claim their right to reparations has been described as a transformative experience for many of them. The process has enabled victims to act as rights-holders with the ability to challenge the institutions that denied their rights during the conflict.

This has similarly been the case in the litigation of landmark cases through which access to reparations has been secured. Even though the (criminal) justice system in Guatemala remains generally inaccessible for many victims, especially those from remotely located and Indigenous communities, they have been able to obtain reparations through the courts in some landmark cases thanks to their active political organising. Significantly, as the Molina Theissen and Sepur Zarco cases show, the active participation of victims was essential for the formulation of reparations that effectively met victims' needs and demands. The Sepur Zarco case, in particular, set a precedent for the adoption of a comprehensive approach to reparations, which, among other measures, granted access to essential services to the victims and the surrounding community, provided recognition to the victims through the establishment of a day to honour them, and affected legislation on sexual violence. This landmark case can be viewed as an outstanding example in which reparations successfully addressed victims' needs and significantly contributed to transformative change by tackling root causes of violence, namely gender-based violence and the marginalisation of Indigenous communities. The case further contributed to victims' confidence that, through strategic political activism, they can have the power to effect results.

Beyond national courts, victims have also actively participated in efforts to obtain reparations through the Inter-American human rights system. Victims view judgments that order reparations as an enormous success, because they offer them much-needed recognition of the injustices they suffered, place responsibility for the injustices on the State, as opposed to them, and affirm their commitment to see justice done. This remains true even if State authorities have largely failed to implement these measures. The acknowledgment that these judgments have provided to victims has been meaningful and reparative. The Inter-American human rights system has also acted as a counter-power to Guatemalan authorities and challenged attempts to obstruct justice and block access to reparations.

Overall, the Guatemalan case illustrates that, even in the face of prevailing impunity and backlash, victims can find innovative ways to fight for reparations, with the strategic support of local and international allies. Moreover, the case provides evidence of the ways in which the active participation of victims in the design of

reparations can translate into measures that positively contribute to addressing the root causes of violence and thus to bringing about wider social change. At the same time, as is the case with justice efforts, the experience shows that active victim participation cannot by itself yield results; it needs to be accompanied by efforts to increase the political receptiveness and technical ability of State authorities to accommodate victims' needs and to promote institutional change.

 [Watch Oyella Night's story here](#)



CONCLUSION

“ My father was killed at my watch. My house was burnt. My husband died. I gave birth to a child. I was the only woman who participated in the digging of mass graves. We're traumatised, we're stigmatised, so many things have been spoken about us. I really need help. ”

Elizabeth Adongo Ayonyo, sexual violence survivor (Obalanga Massacre, Uganda).

The experiences of Guatemala and Uganda reveal important lessons about the meaning of “victim-centred” approaches to transitional justice, including the practical challenges as well as potential avenues for overcoming them. These experiences can also be instrumental for gaining a more nuanced understanding of meaningful victim participation; one that views it as a complex political process that goes beyond victims' mere presence in State-sanctioned transitional justice mechanisms and that entails victims' active engagement in the negotiation, design and implementation of transitional justice measures through formal and informal channels.

Guatemala and Uganda have taken important steps for dealing with past atrocities through the adoption of various transitional justice policies and processes. On paper, these policies –including, for example, Uganda's NTJP and Guatemala's PNR– appear to be open to responding to victims' needs, to enabling channels of victim participation, and to contributing to transformative change. Yet, in practice, these policies have fallen short of tackling root causes of violence and ensuring the meaningful participation of victims. Partly, this is explained by the lack of political will to implement transitional justice policies that are genuinely victim-centred and have the ability to effectively uproot structures of impunity and challenge the status quo. Political – as well as economic and military – elites who were implicated in the conflict have remained in power in both Guatemala and Uganda. Unsurprisingly, they have no desire to implement policies that could undermine their interests. Even more so there is a high risk in both countries that State-sanctioned transitional justice mechanisms will provide a veneer of legitimacy to State authorities, through which they can consolidate structures of impunity that serve their interests, while appearing to embrace change from the outside. What we demonstrate in this report is that meaningful victim participation, capable of addressing victims' needs and contributing to transformation, has been minimal or non-existent. We are therefore confronted with a situation, and here Guatemala and Uganda are no exception, where policymakers say that transitional justice is done but for victims nothing has changed.

In spite of the adverse political circumstances, however, the transitional justice agenda has moved forward in both countries. Yet Uganda and Guatemala have had largely contrasting experiences in the way that victims have been able to shape, influence, and engage with their respective transitional justice processes.

On the one hand, in Uganda, the recent adoption of a transitional justice policy framework has largely been the consequence of international pressure, which has thus been implemented through a predominantly top-down approach. Regrettably, this approach has been exclusionary, as international actors have not worked with victims in a horizontal manner. This, in turn, has limited the ability of victims to influence the transitional justice process, to actively participate in the design of mechanisms, and importantly, to define the terms of their participation. Without the meaningful engagement of victims, external actors and local elites have been the ones who decide how victims participate in transitional justice mechanisms according to their interests and ideas. This has resulted in a form of victim participation that is nominal in nature and has accordingly prevented victims from taking ownership of the transitional justice process as a tool for addressing their needs and making a difference. As victims' perspectives have largely been excluded, transitional justice has failed to meet victims' needs, which has led to disappointment and disengagement with the transitional justice process. In the long run, the absence of victims' participation is likely to translate into a form of transitional justice that is disempowering to victims and that weakens their desire to make calls for political change. The latter are both goals that an effective transitional justice process should achieve. We acknowledge that we do not know precisely why there is less (political) victim activism in Uganda. We therefore call for studies that explore the reasons for this in more detail. This can help to provide further evidence and analysis to inform improved recommendations as to how to most meaningfully support victim activism and movement building.

On the other hand, in Guatemala, the transitional justice process was triggered by victims' calls for truth, justice, reparations and non-repetition/prevention. As victims' engagement with transitional justice initially derived from social mobilisations, their participation appears to have been richer and has taken place through both formal and informal channels. Victims' active mobilisation, supported by local civil society and international allies, ultimately translated into the adoption of transitional justice measures by State authorities. While these measures did not comprehensively capture victims' claims for justice, the process of mobilising for their establishment, continuation, and expansion resulted in a greater sense of ownership among victims. As those implicated in perpetuating violence remained in power in Guatemala, the adoption of transitional justice measures was a major accomplishment. Moreover, victims' activism also led to the establishment of non-State initiatives, supported by local civil society organisations. Arguably, these initiatives more adequately responded to victims' needs and addressed root causes of violence.

The role of the international actors in Guatemala has also looked different. The Inter-American human rights system, the UN, and the international community, all worked in a more horizontal manner with victims and local civil society. As a result, this approach was not exclusionary and was able to capture victims' needs and to take into account victims' useful perspectives on the best ways to tackle root causes of violence. Systems of impunity were thus challenged. Nevertheless, the support of international actors has weakened over time, as interest in the country and economic priorities have changed. This has dangerously undermined the successes that have been achieved and left victims more vulnerable to retaliation from the State.

Indeed, while victims have been able to move the transitional justice process forward in Guatemala, their efforts have been met with significant pushbacks. As soon as the transitional justice process began tackling structures of impunity, particularly by revealing the State's role in the perpetuation of violence and by prosecuting key actors, those in power took action to dismantle transitional justice and anti-impunity and corruption measures. This undermined the potential of these measures to have long-term impact. State authorities also began suppressing victims, civil society activists and actors of change within the State institutions with an interest in responding to victims' rights and fighting impunity and corruption. This implicated a serious risk for transitional justice advocates and many were subject to threats and attacks. The suppression of transitional justice advocates is even more dangerous against the backdrop of weakened international support.

Notwithstanding the risks to their safety, Guatemalan victims have not given up their demands for justice. In the face of adversity, they have continuously adapted their strategies and sought new ways to pursue their fight against impunity. Victims in Guatemala have also learned (the hard way) that transitional justice is not a linear but rather a long-term process with ups and downs, which requires the ability to adapt agendas to changing circumstances and to be able to identify emerging and closing windows of opportunity. Still, the abandonment of the international community has made it much more difficult to have victims' voices heard and taken into account. Victims have therefore had to learn to not become demoralised and hopeless about the possibilities for political change, in the face of an increasingly absent international community and powerful pushbacks. This has important implications for donors and the international community, as they do not usually commit to long-term processes. The lack of long-term commitment to these processes is a key factor undermining the possibilities for transitional justice –and social mobilisations more broadly– to contribute to transformative change, which can only come about through long-term investment, solidarity and accompaniment. It might also undermine existing transitional justice agendas and worryingly, put transitional justice advocates at risk.

Overall, and as this report demonstrates, the experiences in Uganda and Guatemala underline the importance of integrated approaches to transitional justice, which are encompassing of State-sanctioned mechanisms, traditional forms of justice, civil society initiatives, and international justice efforts. The incorporation of multiple approaches to justice is more likely to respond to the broad justice claims of victims and to address their varied needs. As such, these approaches should complement and reinforce one another. Further, the experiences also show that a combination of participation within transitional justice mechanisms as well as outside of these is essential to ensuring that the transitional justice process adequately meet victims' needs and contribute to wider political change. Meaningful participation within the transitional justice mechanisms is key to ensure that the interests of victims are adequately represented. Participation and engagement outside of the formal mechanisms is essential too, as these spaces can allow for more freedom to articulate and to push forward a political agenda that meets the demands of victims. Moreover, the experiences highlight the importance of horizontal cooperation among victims, civil society, international actors, and promoters of change within the State to move forward a common agenda of victim-centred transitional justice. Lastly, these experiences underscore the fact that victim participation cannot alone tackle structures of impunity and violence. A State that is responsive, that is willing to engage with victims, and that genuinely promotes institutional change is fundamental to bring about transformative political change.

RECOMMENDATIONS

Building on these lessons, the report calls for the adoption of a meaningful approach to victim participation in transitional justice processes. The two cases of Guatemala and Uganda provide valuable ideas on the scope and components of such meaningful victim participation approach. They include, among others:

- Ensuring that transitional justice processes reflect victims' needs in a long-term and sustainable fashion.
- Taking an integrated and holistic approach to justice, which responds to victims' activism and visions for justice. Such an approach must also seek to change the culture in the State institutions responsible for addressing the claims of victims, which would increase the potential to deliver concrete, transformative outcomes for victims.
- Connecting victim participation to broader societal transformation processes that tackle the root causes of the conflict, namely persistent structures of impunity, inequality, and violence.

RECOMMENDATION FOR POLICY-MAKERS AND DONORS TO MAKE MEANINGFUL PARTICIPATION A REALITY:

- Adopt and promote an integrated approach to justice in order to adequately meet victims' broad justice claims and to enable meaningful victim participation. This approach should incorporate multiple channels of active participation, which might take place in State-sanctioned transitional justice mechanisms, traditional justice systems, international justice, civil society initiatives, and participation through social mobilisations and activism.
- Take victims' needs as the main guiding factor in developing and operationalising transitional justice processes. Justice initiatives, such as accountability and reparation processes, should be determined based on the specific needs of the victims and consider the root causes of violence in the context in which they are implemented.
- Take a horizontal approach to the inclusion of victims' voices in transitional justice processes and ensure that the efforts of victims, local civil society organisations, and international allies are coordinated and complement one another.

- Support victims' activism and political organising as it can play a fundamental role in shaping transitional justice processes that more adequately respond to victims' needs and contribute to transformative change. Such activism should be supported from the early stages, even if State-sanctioned transitional justice mechanisms are yet to be adopted. This support should be sustainable and resilient to political changes on the ground taking into account the long-term and changing needs of victims.
- Support research looking into the factors that promote strong political victim activism and those that stand in the way of the emergence of such activism. This will provide insights on the most effective ways to support movement building, as well as on modalities currently employed that negatively impact activism.
- Support women, and specifically indigenous women, to increase their ability to engage in activism and justice efforts more broadly. This can ensure that their specific justice claims are addressed in transitional justice processes. Intersectional approaches should be taken into account in order to tackle context specific challenges of marginalisation, exclusion and vulnerabilities. In this regard, it is essential that support to victims' movements also seek to contribute to challenging gender hierarchies and discrimination within these movements, to ensure that obstacles to their participation are tackled and strong inclusive movements are promoted.
- Redouble efforts to actively work with State authorities to ensure that they genuinely engage with victims, are receptive to their needs and justice claims, and take effective action to reform State institutions. These efforts should include diplomacy initiatives to strengthen political will to engage with victims and promote measures to fight impunity, as well as financial support to increase the technical capacity of the State to accommodate victim participation and ensure respect for the rights of victims. Efforts need to be made both in bilateral engagements as well as in multilateral fora, both at the regional and international level. Support and assistance to transitional justice initiatives should be conditional on ensuring meaningful victim participation at the design, implementation and monitoring phase.
- Increase efforts to provide an environment that is conducive to meaningful victim participation and prevent pushback from State authorities against victims and civil society, such as reprisals.
- Conceive of transitional justice as a long-term process that requires long-term investment, solidarity, and accompaniment in order to achieve transformative change and be sustainable.
- While conducting evaluations of transitional justice processes, take into account meaningful victim participation that supports victims' needs and contributes to change as part. Develop evaluation frameworks in a context-specific manner and in close cooperation with victims.

