

Reparations, Responsibility

 Victimhood in Transitional Societies

**A promise to be fulfilled:**

# **REPARATIONS FOR VICTIMS OF THE ARMED CONFLICT IN GUATEMALA**

**August 2019**

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Cover photograph and one above are some of the mausoleums of 70-90 civilians who were massacred in Cocop community in April 1982. Photograph by Luke Moffett

*“I believe that reparations are for victims, because we have suffered. In my case, I can say why my children were dead. Why did they kill my children? I feel so sad about that. That’s what I felt and what I feel now. My children died and my brother was also murdered. I couldn’t see his body again when he was buried, a dog ate him. [...] After that we starved to death. We couldn’t eat. We were running and hiding in the mountains. We had nothing to eat. They also burned our corn. And after burning the corn they burned all the houses, and after burning our houses we had no place to sleep. And after that, they burn our boats too. My children, where are my children? We were very afraid of the military forces, that’s why we hide in the mountains. I don’t know if my kids are buried or not, or if they know where they are, they just got killed and I don’t know what happened next. [...] What happened to me when peace was signed and we returned, but there is no land, they stole our land, [there is] no place to live.”<sup>1</sup>*

<sup>1</sup> The vast majority of interviews in this report have been anonymized for security reasons. However, each interview has a code and indicates where and when it took place. Interview G20. Nebaj, May 2018.

# Reparations, Responsibility & Victimhood in Transitional Societies

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## Introduction

This report contains an analysis of the reparations policy for victims and survivors of Guatemala's internal armed conflict and victims' responses to that policy. In Guatemala, victims have access to reparation measures in three ways: a) the National Compensation Programme (PNR), created by the Government through a Governmental Agreement in 2003 to compensate victims of human rights violations during the internal armed conflict; b) the judicial rulings of Guatemalan courts for cases of violations of their human rights; and c) the recommendations made by the Inter-American Commission on Human Rights through substantive reports on individual cases or through orders given by the Inter-American Court of Human Rights through its rulings. This report examines each of these avenues and their impact on victims, particularly women and indigenous people.

The Guatemalan armed conflict (1960-1996) was one of the longest and most violent in Latin America. The report of the Commission for Historical Clarification (CEH) estimates a toll of more than 200,000 dead and missing, and more than one and a half million people displaced by the war.<sup>2</sup> Ninety-three per cent of these crimes were committed by the army and the Civil Self-Defense Patrols (paramilitaries) against the indigenous population because they believed that the indigenous communities in the northwest of the country collaborated with the guerrillas. According to the CEH Report, the State of Guatemala even committed acts of genocide against the indigenous population as part of its counterinsurgency strategy.<sup>3</sup>

"People in their testimonies say it was the military. In other words, they say it clearly: "I was raped by the military. I was tortured by the military, the civilian patrols, the national police" That is, ultimately, the responsibility of the state [in this] is clear. Obviously, there are also crimes committed by the guerrillas, but as far as the percentages are concerned, the percentage is much lower. (...) had the resources to carry out this violence. (...) Because the military had the planes, the helicopters had weapons, they weren't clandestine. So, ultimately, it has been shown that whoever had the greatest responsibility rested with the State. So, for me, what hurts the State the most was that responsibility... that implication [in the facts.] ["signalling"] Because there were many ways... within their strategy they used many ways... to bring food to people, to bring them sheets to build roofs, to educate them, to teach them literacy, but they never managed to put on that sheep costume... The wolf never managed to disguise himself because in the end it was clear what it was..."<sup>4</sup>

Following the signing of the peace accords in 1996, important steps have been taken in the area of transitional justice in Guatemala. Two truth commissions were created to collect information on the magnitude and severity of the violence. Likewise, more than 8,000 victims of the internal armed conflict have been exhumed and important historical archives have been recovered to clarify the facts.

<sup>2</sup> Commission for Historical Clarification (1999), *Guatemala memory of silence*. Conclusions and Recommendations. Guatemala: UNOPS.

<sup>3</sup> Ibid.

<sup>4</sup> Interview G09, Guatemala City, May 2018.

In addition, Guatemalan courts have tried just over 20 cases involving serious human rights violations of the internal armed conflict and have convicted senior army commanders, soldiers, police officers, civilian patrolmen and military commissioners. Since 2003, the Government created a national reparations program for victims of the internal armed conflict, and the Inter-American Court of Human Rights has issued more than a dozen judgments against Guatemala involving serious human rights violations during the internal armed conflict. However, these advances are limited in view of the magnitude and gravity of the events; moreover, the process has not been easy for the victims or human rights organizations, who must deal with the hostilities of the pro-military groups that promote a policy of forgiveness, impunity and oblivion, and with the lack of political will and corruption of the governments after the signing of the peace accords.

This report is divided into five sections. The first briefly explains the context of the internal armed conflict and peace process in Guatemala; the second analyses the main advances and challenges in the area of transitional justice; the third examines the mandate, functioning and results of the National Reparations Programme; the fourth analyses the reparations judgments handed down by Guatemalan courts; and finally, the fifth deals with reparation measures dictated by resolutions of the Inter-American Commission and Court of Human Rights. The last part presents some conclusions and reflections on reparations in Guatemala.

This report has been written by Denis Martinez, Guatemalan consultant, and Luisa Gomez, researcher within the project and Master's student at Geneva Academy. It has been reviewed and edited by Professor Clara Sandoval, from the School of Law and the Human Rights Centre of the University of Essex and the Geneva Academy, and has been informed by the findings of field work carried out in Guatemala in the summer of 2018, by Professor Sandoval and Dr. Luke Moffett, Principal Investigator of the project and Professor at Queen's University Belfast.



Photograph by: Luke Moffett

## 1. The internal armed conflict and the peace process

The armed conflict began in 1960 with the uprising of a group of young soldiers who opposed the intolerant and repressive policies of the government at the time. The crisis began in 1954 when President Jacobo Arbenz was overthrown as a result of an anti-communist military uprising led by conservative groups in alliance with the United States Government.<sup>5</sup> The first guerrilla groups emerged in the 1960s: the Movimiento Revolucionario 13 de noviembre (MR-13); the Fuerzas Armadas Rebeldes (FAR); the military wing of the Partido Guatemalteco del Trabajo (PGT); and the Frente Revolucionario 12 de abril. These groups operated in the capital and in the east of the country, but were quickly eliminated by state security forces.<sup>6</sup>

In the 1970s, two new guerrilla groups emerged in the north and west of the country, mostly indigenous regions: the Revolutionary Organization of the People in Arms (ORPA); and the Guerrilla Army of the Poor (EGP). Beginning in 1978, state security forces launched a strong campaign of persecution, enforced disappearances and assassinations against political leaders, trade unionists, academics, students and community leaders in the capital and western part of the country. The State promoted a policy of terror in the indigenous communities.<sup>7</sup>

The most intense period of the armed conflict took place between 1982 and 1983, during the dictatorship of General Efraín Ríos Montt. During this time the army destroyed entire communities and massacred civilian children, women, the elderly and men. Soldiers tortured men, raped women, disappeared and executed community leaders, and burned people's homes and crops. This caused a massive displacement of indigenous people, who had to seek refuge in the mountains or had to flee to other parts of the country or take refuge in Mexico.<sup>8</sup>

"Personally I had to hide in the mountains with a community of people who resisted the army. We were hungry, we had no food, no clothes, no resources. We even ate flowers, herbs and plants to have something to eat with because we had nothing else to eat. (...) At that time during the war, when I had my baby, for example, I had no one else to help me or take care of me. I had my son alone, alone. (...) I cleaned myself and my baby alone and that's how my other four children were born in the mountain."<sup>9</sup>

The population that survived and remained in their communities was under the control and surveillance of the Army. The Army forced community men to form Civil Self-Defense Patrols (PACs) and used a network of military commissioners to monitor and control its own neighbors.

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- 5 Streeeter, S. (2000). *Managing the counterrevolution: the United States and Guatemala, 1954-1961*. Athens, Ohio: University Center for International Studies.
- 6 Macías, J. C. (1997). *The guerrilla was my way*. Guatemala: Editorial Piedra Santa.
- 7 Le Bot, Y. (1992). *War on Mayan Lands: Community, Violence and Modernity in Guatemala (1970-1992)*. Mexico: Economic Culture Fund.
- 8 Falla, R. (1992). *Jungle Massacres*. Guatemala: Editorial Universitaria.
- 9 Focus group G21, Nebaj May 2018.

This caused deep divisions in the communities because many commissioners and civilian patrolmen committed abuses and crimes against the villagers.<sup>10</sup>

Both in the capital and in the other cities of the country the violence was selective. Security forces committed mass forced disappearances and extrajudicial executions of political and social leaders, students, trade unionists and anyone who questioned the dictatorial regime. While the media barely reported on these events, the population of the cities lived in fear and was practically unaware of the magnitude of the crimes being committed against indigenous people in rural areas.<sup>11</sup>

The intensity of the armed confrontation began to diminish in 1984 when the military began a process of transition to cede political power to civilian authorities. As part of this process, a new Constitution was issued in 1985 and elections were held with international observation. In 1986 the presidency was assumed by a civilian, Vinicio Cerezo,<sup>12</sup> and the Congress was installed with multi-party representation. More than a response to the demands of the social sectors, this relative democratic opening obeyed a strategic military decision to withdraw from administrative functions and concentrate on winning the war, under an obedient civilian government.<sup>13</sup>

In 1990, the government began negotiating a peace agreement with the guerrilla groups, grouped in the Guatemalan National Revolutionary Unity (URNG). Negotiations lasted for six years due to several political setbacks, until peace was finally signed in December 1996. In the negotiation process, 12 agreements were signed on substantive issues for the transformation of the country, including those relating to respect for human rights, particularly those of a socio-economic nature; the resolution of agrarian problems and rural development; reform of the State; the rights of indigenous peoples; military reform and the creation of a new police force; and the establishment of a truth commission.<sup>14</sup>

During the negotiation process, consultations were held with different social sectors: businessmen, churches, non-governmental organizations, as well as indigenous groups and women; however, the voice of the victims was not taken into account. For many sectors, the Peace Accords represented an agenda for the transformation and development of the country, while economic and political power groups questioned the legitimacy and binding nature of these agreements.

10 ODHAG (1998). Guatemala Nunca Más, Tomo II. Guatemala: ODHAG.  
 11 Figueroa Ibarra, C. (2011). *The Resource of Fear: State and Terror in Guatemala*. Guatemala: F&G Editores.  
 12 Handy, J. (1986). *Resurgent Democracy and the Guatemalan Militar*. Journal of Latin American Studies, Vol. 18, No. 2, pp. 383-408. Cambridge University Press.  
 13 Benítez Jiménez, M.I. (2016) *Guerra y posconflicto en Guatemala: búsqueda de justicia antes y después de los acuerdos de paz*. CS Magazine, no. 19, pp. 141-166. Cali, Colombia: Faculty of Law and Social Sciences, Icesi University.  
 14 Pásara, L. (2003). *Peace, hope and change in Guatemala: the peace process, its actors, achievements and limits*. Guatemala: Universidad Rafael Landívar.

The international community supported the negotiations and implementation of the agreements through the United Nations Mission for Guatemala (MINUGUA), which was present in the country for 10 years (1994-2004).<sup>15</sup> Some elements of the agreements were complied with, such as the demobilization of armed groups, some legal reforms and the modernization of state institutions. However, in substantive areas such as agrarian reform, overcoming poverty, guaranteeing the rights of indigenous peoples and strengthening justice, very little was achieved. Peace did not bring the changes expected by many sectors. The elites and power groups maintained their privileges and inequality deepened in the post-conflict period.

### 1.1 Reparations in Peace Accords

In the Peace Accords, the State assumed specific commitments to compensate the victims, which are contained in the Global Agreement on Human Rights, the Agreement on the Resettlement of Populations Uprooted by Armed Conflict, and the Agreement on the Establishment of the Commission for Historical Clarification.<sup>16</sup>

“It is a humanitarian duty to compensate and/or assist victims of human rights violations. Such compensation or assistance shall be effective through government measures and programs of a civil and socioeconomic nature, directed as a priority to those who need it most, given their economic and social condition.”<sup>17</sup>

“In the particular case of land abandonment due to armed confrontation, the Government will promote the return of land to the original holders and/or seek adequate compensatory solutions.”<sup>18</sup>

“Any violation of a human right gives rise to a right of the victim to obtain reparation and imposes a duty on the State to make reparation.”<sup>19</sup>

In addition, the National Reconciliation Law states that the Secretariat of Peace (SEPAZ) will make reparations through programs for the victims of the internal armed confrontation.<sup>20</sup>

15 For further references on the work of the United Nations Verification Mission in Guatemala (MINUGUA) see: UN General Assembly, United Nations Verification Mission in Guatemala, Final Report of the Secretary-General No. A/59/746, March 2005.  
 16 Secretaria de la Paz Presidencia de la República (SEPAZ). Compendio de los acuerdos de paz de Guatemala. Available at <https://www.sepaz.gob.gt/images/Descargas/Acuerdos-de-Paz.pdf>  
 17 Global Agreement on Human Rights, Point 8. Signed by the Government of Guatemala and URNG, Mexico City, 29 March 1994.  
 18 Agreement for the Resettlement of Populations Uprooted by Armed Conflict, Point 9, Chapter 2. Signed by the Government of Guatemala and the URNG, Oslo, Norway, 17 June 1994.  
 19 Agreement on Bases for the Incorporation of URNG into Legal Life. Signed by the Government of Guatemala and the URNG, Madrid, Spain, 12 December 1996.  
 20 National Reconciliation Law, Decree 145-96 of the Congress of the Republic.

The Commission for Historical Clarification also recommended the creation and implementation, as a matter of national urgency, of a National Reparation Programme for victims of human rights violations and acts of violence linked to the armed conflict and their families.<sup>21</sup>

The Peace Accords also included other transitional justice measures, such as the demobilisation of guerrilla groups, the dismantling of civilian self-defence patrols, the creation of a new civilian police force, reforms in the army, reforms in the judicial system, among others. The State began to implement a good part of these measures after the signing of the peace agreement in 1996 with the support of MINUGUA.<sup>22</sup>

Yet, more than 20 years after the signing of the peace agreement, many of the substantive issues of the peace agreements have not been met or only partially met, such as access to land, fiscal reform, army reform and the rights of indigenous peoples. This is due to the lack of political will of the State and the constant opposition of the private sector that has never fully agreed with the peace agenda because it affects their economic interests.<sup>23</sup> On the occasion of the 20th anniversary of the signing of the peace in December 2016, the victims demonstrated:

“Our record of compliance with the Peace Accords is negative. We consider that the State has not shown sufficient political will or capacity to fulfil the commitments of the Peace Accords or to guarantee the rights of the victims and survivors of the armed conflict. All post-peace-signing governments have pushed the peace agenda into the background, prioritizing their own agenda and using the state to respond to personal interests.

Indigenous peoples and victims are people of peace and we hope that the horrors of genocide and war will never be repeated. However, we are concerned that the State continues to fail to address the country’s structural problems: inequality and poverty, access to land, the demilitarization of security, the lack of political participation of women and indigenous peoples and the fight against racism. We believe that as long as these problems are not resolved, Guatemala runs the risk of living in permanent social conflict.”<sup>24</sup>

The presence of obstacles of various kinds in advancing the implementation of the peace accords and the reparation of victims is tangible in the recent initiative of the Guatemalan government to reform the National Reconciliation Law in order to give amnesty to members of the army and others who carried out serious human rights violations during the armed conflict.<sup>25</sup>

21 Commission for Historical Clarification (1999). *Guatemala Memory of Silence*. Conclusions and Recommendations, page 52.

22 On the work of the United Nations Verification Mission in Guatemala (MINUGUA) and the peace process in Guatemala see their reports at [http://memoriavirtualguatemala.org:8080/xmlui/discover?filtertype=author&filter\\_relational\\_operator>equals&filter=MINUGUA](http://memoriavirtualguatemala.org:8080/xmlui/discover?filtertype=author&filter_relational_operator>equals&filter=MINUGUA)

23 On the implementation of the Peace Accords, see the reports of the National Council for the Implementation of the Peace Accords (CENAP) at <http://www.cnap.gob.gt/informes.html>

24 Joint Declaration of the Council, the Network and the National Victims’ Movement: Impact of the Peace Accords on the victims of the internal armed conflict 1996-2016. Guatemala, 12 December 2016.

25 OHCHR, ‘Guatemala: Bachelet advierte que la modificación de la Ley de reconciliación Nacional conducirá a la impunidad por graves crímenes’, 22 January 2019, available at: <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=24098&LangID=S>

## 2. Progress and obstacles in the area of transitional justice

The first struggles for transitional justice began during the transition to democracy (1985-1990). In that period the first victims’ organizations emerged: the Mutual Support Group (GAM) and the Coordinator of Widows of Guatemala (CONAVIGUA) who began to denounce forced disappearances in cities and massacres in rural indigenous communities. They demanded that the state stop violence in indigenous communities and create a commission to search for the disappeared.

“Then thinking about a reconciliation issue cannot happen if the State does not comply. For example, establish what happened with missing persons, for example. Let’s not believe that the commission for the search of disappeared persons is stagnant in the congress. Let there be no justice and let those responsible not be punished. That the PNR does not fulfill its mandate and that it really has this integral vision and that it understands the concept, that it understands the dimension of the violations. While that is not achieved, we cannot reach a reconciliation and while the army, for example, insists on denying the facts... because there in the hearings we have heard it and they even have a campaign... distorting, delegitimizing and even insulting and... offending the victims, the relatives of the victims. While that’s going on, things aren’t going to change. Here there has to be... a commitment. For example, we are very hopeful about what the ministry of education can do to change the mentality of the young people so that they can spread the word, saying that what happened here in Guatemala deserves to be known, that it should not be forgotten, that there should be justice, that the dimension of the violations that were committed should be known.”<sup>26</sup>

### 2.1 Right to the truth

In terms of truth, the main achievements have been: the Guatemala Nunca Más Report of the Project for the Recovery of Historical Memory (REMHI), of the Catholic Church in 1998; the *Guatemala Report Memoria del Silencio* of the Commission for Historical Clarification, presided over by the United Nations in 1999; the discovery of the Army’s counterinsurgency war plans in the 1990s; the discovery of the Military Diary in 1999; the National Police Archive in 2005; and the Judicial Branch Archive in 2012. These documents and archives 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.<sup>27</sup>

“As of that date, Monsignor Gerardi,... proposes an Archdiocesan office with a focus on human rights, as had already been established in Chile and El Salvador in order to respond

26 Interview G18, Guatemala City, May 2018.

27 Impunity Watch. (2013) *Monitoring Transitional Justice in Guatemala*. Volume II. Right to Justice for Victims of the Internal Armed Conflict. Guatemala: Impunity Watch.

to the [justice] demands of the victims.... And somehow he wanted to make public what people had been living... because many people approached him and said “Monsignor, believe me” and he believed them, but the rest of the world did not believe these people, the victims. Thus, from this initiative, work on human rights in alternative reports was initiated... The preparation of the report began in localities where very normal people were involved... 600 people were involved. The second stage consisted in collecting the testimonies. Approximately 5,400 testimonies were collected. We picked them up in the people’s mother tongue... The third phase, which was the digitization of testimonies, the cross-checking of data, and the inclusion of complementing these data with particular studies... The report... was completed and published on 26 April 1998.”<sup>28</sup>

In the 1990s, civil society organizations began to do extraordinary exhumation work, particularly the Forensic Anthropology Foundation (FAFG).<sup>29</sup> To date, FAFG has carried out more than 1,273 exhumations throughout the country and has found around 8,000 bones of victims of the internal armed conflict, including children, women and peasants from different regions of the country. However, according to FAFG data, only 2,179 victims have been identified.<sup>30</sup>

An example of the work of the FAFG is the exhumation carried out in the Regional Operations and Training Centre for Peace Missions (CREOMPAZ) where the Military Zone 21 of Cobán, Alta Verapaz, one of the most violent and feared military bases during the war, used to operate. Between 2012 and 2015, FAFG conducted 14 exhumations in CREOMPAZ and found 558 bones in four graves, some of the largest mass graves found in Guatemala and the Americas to date. About 16 per cent of the remains found belonged to children, the rest of the victims were peasants, women and elderly people from the region who disappeared in the 1980s. Most showed signs of torture, bruises on the head and throat; many showed signs of graceful firing and were found with blindfolds and ribbons or chains around the ankles and necks. By 2017, the FAFG had managed to identify 128 of the victims and hand them over to their families for burial.<sup>31</sup>

In indigenous communities, relatives usually bury the remains of victims found in collective ceremonies accompanied by religious rituals. An example of collective burials is the burial of the remains of 172 victims of the internal armed conflict in the community of Santa Avelina, El Quiché, in November 2017.<sup>32</sup> As one interviewee stated,

“Then the implicit fact as a person transcends it more, as its culture, as its action of being able to make a good burial, of being able to dignify that victim and that is why when we make the deliveries of the bones more than thirty years have passed but a wake is held as if death had been that day. In other words, a burial is made as if death had been yesterday.

28 Interview G09, Guatemala City, May 2018.

29 Sanford, V. (2003). *Buried Secrets: Truth and Human Rights in Guatemala*. New York: Palgrave Macmillan.

30 Forensic Anthropology Foundation of Guatemala (FAFG). Database. Available at <https://www.fafg.org/bd/>

31 Nisgua (2016). CREOMPAZ: The largest case of enforced disappearance in Latin America. Available at [http://nisgua.org/wp-content/uploads/2016/06/R88\\_Junio16\\_CREOMPAZEspanol.pdf](http://nisgua.org/wp-content/uploads/2016/06/R88_Junio16_CREOMPAZEspanol.pdf)

32 See Daniele Volpe, *Víctimas de la guerra civil de Guatemala yacen en paz, tres décadas después*, New York Times, 26 diciembre 2017 <https://www.nytimes.com/es/2017/12/26/victimas-de-la-guerra-civil-de-guatemala-yacen-en-paz-tres-decadas-despues/>

And this action not only in the field... directly from the ritual, but also socially, is very representative. It is the... socialization of death, but also of what happened and then when they make those small demonstrations where there is a kind of procession where they are circulating the boxes of the dead in the main streets of the town and they go there. Well, there is a demonstration of citizenship and it is not only the fact of saying “here we have died”, but that “we are the survivors and we are also here making a presence.”<sup>33</sup>

In recent years, initiatives and projects of historical memory have also grown, such as the Memory House in Guatemala City, the Rabinal Achí Community Museum, the murals of San Cristóbal Verapaz, the memory center of the internally displaced in the Victoria Retahuleu Union, the construction of monuments, photo exhibitions, video-documentaries, books, among other initiatives. Much of this has been achieved with the support of human rights organizations and the international community, without any support from the State.<sup>34</sup>



Community Museum of Historical Memory, Rabinal, Baja Verapaz. Photograph by: Luke Moffett

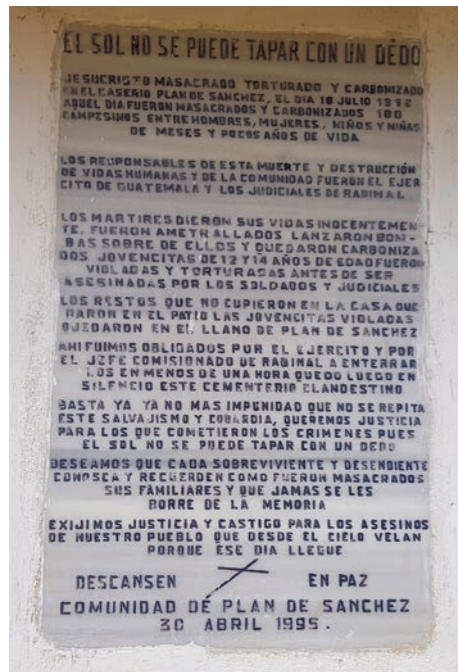
## 2.2 Right to justice

Although there are no special courts to hear cases of the internal armed conflict, in Guatemala there have been important advances in the area of justice through the ordinary courts. To date, the courts have tried 21 cases of serious human rights violations in the context of the armed conflict. In 20 of them, ex-military personnel, civilian patrolmen and military commissioners have been convicted, and only one ex-guerrilla has been convicted.<sup>35</sup>

33 Interview G15, Guatemala City, May 2018.

34 Impunity Watch. (2012) *Guatemala resists forgetting: initiatives of memory in post-conflict*. Guatemala: Impunity Watch.

35 See section 4 of this report for a complete list of cases.



The Public Prosecutor's Office has a specialized unit to investigate this type of case, the Special Investigations Unit for the Internal Armed Conflict (UCECAI), which was created in 2005 within the Human Rights Prosecutor's Office, based in Guatemala City.<sup>36</sup> This Unit was created at the insistence of victims' and human rights organizations to concentrate investigations of the internal armed conflict, since previously complaints and investigations were scattered throughout the country's prosecutor's offices. The UCECAI investigates human rights violations committed by state security forces and paramilitary groups, and there is a special unit to investigate crimes committed by the guerrillas. To date, the Public Prosecutor's Office has about 3,500 cases from the armed conflict, which involves a considerable volume of facts, violations, victims and perpetrators.<sup>37</sup>

Since 2010, armed conflict cases have been referred to the Highest-Risk Courts, which were created to hear cases of high-impact crimes such as drug trafficking, kidnapping, human trafficking, money laundering, crimes against humanity, among others.<sup>38</sup> From this account, in recent years, the Courts of Greater Risk have known relevant cases such as the cases of genocide, the Spanish Embassy, Sepur Zarco, Creompaz and Molina Theissen.

Of the 21 cases, only four have ordered reparation measures: the cases of the Spanish Embassy, genocide, Sepur Zarco and Molina Theissen.<sup>39</sup> This is due to the fact that only until 2011 was a reform introduced to Article 124 of the Guatemalan Code of Criminal Procedure that incorporated the hearing of dignified reparation. Through this figure, once the guilt of the accused has been determined, they are obliged to include reparation measures in the sentence.<sup>40</sup>

Victims and human rights activists have also turned to the Inter-American Human Rights System, both the Commission and the Court, in search of justice because of the slowness and, in many cases, negligence of Guatemalan justice. Since 1999, the IACHR has issued at least 15 judgments against Guatemala for serious human rights violations during the internal armed conflict. See the list of cases in section 5.

36 The Public Prosecutor's Office created the Human Rights Section through Agreement No. 03-2005.

37 Official data from the Public Prosecutor's Office, February 2018.

38 The Highest-Risk Courts were created by Congress (Decree 21-2009), on the initiative of the International Commission against Impunity in Guatemala (CICIG) to guarantee the safety of judges and magistrates hearing this type of case.

39 See the remedies for these cases in section 4 of this report.

40 Reforms to the Criminal Procedure Code, Decree 7-2011.

"8 years have passed and nothing has happened, that is why we are demanding the State now in the International Court of Human Rights because we believe that this presence will give us an answer. That's how we fought. We're not going to rest... the community suffered torture, massacres, violence against women and children, the disappeared, sexual violence. They lost the opportunity to continue studying, to continue with their lives, we all stopped working, we all stopped living as before. It's really too much of what they've been doing to us and that's why we're organized and making decisions to continue the fight for justice. We want to be repaired the way we earn it or the way we deserve it... We are not asking the Guatemalan State to give us a gift, just to give us a real one, we want them to give us what they have to give us. A struggle for justice, memory, all the houses that were burned, all the animals, everything that was lost, everything was destroyed. Our land, our corn."<sup>41</sup>



Photograph by: Luke Moffett

### 2.3 Right to Reparation

With regard to the right to reparation, as indicated above, in 2003 the Government of Guatemala created the National Reparation Programme (PNR) to provide reparation to victims of human rights violations in the context of the armed conflict. This program was created by a Governmental Agreement of the President of the Republic, at that time Alfonso Portillo, given that the Congress of the Republic never had nor has it ever had the political will to approve a reparations law for the victims of the internal armed conflict that would provide legal security and institutional support to the domestic reparations program.<sup>42</sup>

41 Interview G19, Nebaj, May 2018.

42 The PNR was created through Governmental Agreement 258-2003, despite victims' organizations requiring Congress to pass a reparations law to ensure the stability and autonomy of the National Reparations Program.



The Government created the PNR in response to the recommendations of the CEH Report and pressure from victims' and human rights organizations that in 2000 formed the Multi-Institutional Instance for Peace and Concord to demand that the State comply with the recommendations of the aforementioned Report. The Report recommended that a policy of redress for victims and their families should be put in place to dignify them, ensure non-repetition, and respect national and international human rights standards.<sup>43</sup>

The PNR's reparation policy, known as the "Blue Book", includes five reparation measures: material restitution, economic compensation, psychosocial support and rehabilitation, dignification of victims, and cultural restitution measures.<sup>44</sup> However, after more than 15 years, the PNR has only compensated 32,802 victims<sup>45</sup> out of a total of 200,000 dead and disappeared according to the CEH Report.<sup>46</sup> In addition, over the past six years, during the pro-military governments of President Otto Pérez Molina and Jimmy Morales, the PNR has faced progressive weakening due to low budget allocations and constant changes in the authorities and technical personnel in charge of implementing the program.<sup>47</sup>

"probably if reparations programs were run by indigenous authorities because they know what communities need and people trust them, the results of the program could probably be different."<sup>48</sup>

### 2.4 Guarantees of non-repetition

In terms of non-repetition, it is important to highlight the dismantling of the Civil Self-Defense Patrols (PAC) in 1996, the creation of a new National Civil Police in 1997, the reduction of the Army by 33% of its members in 2006, and the ratification of the Rome Statute in 2012. In addition, the democratic electoral system has been strengthened and in 2006 the International Commission against Impunity in Guatemala (CICIG) was created, which arose out of a commitment to dismantle the illegal bodies and clandestine security apparatuses mentioned in the Global Agreement on Human Rights.

However, the structural problems that gave rise to the armed conflict persist: racism, inequality, political participation and violence. The vast majority of victims continue to live in extreme poverty and face great obstacles to access to justice, reparation and citizen participation. In addition, victims are constantly harassed and stigmatized by former military, former civilian patrolmen and conservative groups interested in imposing a policy of forgiveness, oblivion and impunity. These groups systematically deny the facts of the past, present amnesty initiatives to evade

43 Commission for Historical Clarification. Guatemala, Memory of Silence. (1999). Volume V. Conclusions and Recommendations. pp. 62.  
 44 PNR 2005. National Reparation Policy (blue book).  
 45 National Reparation Program. (n.d.) *Number of beneficiaries by type of violation from 2005-2014*. Guatemala: National Reparation Program.  
 46 In Guatemala there is no official register of victims, and the only data used as a reference are estimates from the CEH report: 200,000 dead and disappeared, and 1.5 million internally displaced persons.  
 47 This situation is discussed in more detail in section 4 of this report.  
 48 Interview G17, Guatemala City, May 2018.

justice such as that already referred to and currently underway in the Guatemalan Congress,<sup>49</sup> and accuse victims of seeking money through reparation.

"And that is that when memory is built... or recovered, victims are asked a question: 'What do you think is necessary so that this doesn't happen again? So that's where the report's recommendations come from and that's where we have [a variety of recommendations], starting with respect for human rights, that the new generations must know what happened, that discrimination and racism must be eliminated, and also the whole part about the disappeared, finding the dead so that they can be buried in a dignified way and, well, another part that I remember now is the part about poverty.... to eliminate poverty."<sup>50</sup>



Community Museum of Historical Memory, Rabinal, Baja Verapaz. Photograph by: Luke Moffett

## 3. The National Reparation Program

The PNR was created to "provide individual and collective reparation to civilian victims of human rights violations and crimes against humanity committed during the internal armed conflict."<sup>51</sup> Initially, it was created for a period of 10 years and in 2013 it was extended for a further 10 years.<sup>52</sup>

For the purposes of the Programme, victims are considered to be those who suffered directly or indirectly, individually or collectively, the following human rights violations: 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, and human shield, as well as by attempted arbitrary execution.<sup>53</sup>

49 Recently the initiative of Law 5377, presented to reform the Law of National Reconciliation with the purpose of declaring a general amnesty for the crimes of the internal armed conflict, is discussed in the Guatemalan Congress.  
 50 Interview G09, Guatemala City, May 2018.  
 51 Governmental Agreement 258-2003, article 1.  
 52 Governmental Agreement 539-2013.  
 53 Governmental Agreements 258-2003, 619-2005, and 539-2013.

However, the PNR did not include the crime of genocide despite the fact that it is typified in Article 376 of the Guatemalan Penal Code and was one of the conclusions of the CEH.<sup>54</sup>

The PNR does not offer reparations to ex-military or ex-combatants of the guerrilla; specific programs were created for them, implemented after the signing of the peace agreement. In the case of compensation for former civilian patrolmen there has been intense debate in Guatemala, the former patrolmen claim compensation because in the 1980s the Army forced them to patrol in their own communities, but human rights organizations say the former patrolmen cannot be considered victims because many of them participated in the crimes committed by the Army against the civilian population.

In 2002, former patrol members organized to claim financial compensation from the State for “services rendered to the nation” during the internal armed conflict. Patrolmen staged protests, closed roads and threatened to take over public facilities if the state did not respond to their demands. In 2003, President Alfonso Portillo offered individual financial compensation to former patrol members,<sup>55</sup> but the measure was criticized by victims’ and human rights organizations, as well as other social sectors, who considered the government’s willingness to compensate paramilitary groups rather than promote reparations for victims to be ethically and politically incorrect. In addition, it was a proselytizing measure to support General Ríos Montt’s candidacy for the presidency in that year.<sup>56</sup> After two attempts by Alfonso Portillo’s government to legalize the measure, it was rejected by Guatemala’s Constitutional Court.<sup>57</sup>

Finally, in 2005 the Government of Oscar Berger created a program to compensate former members of the Civil Self-Defense Patrols (ex PAC), the Forests and Water for Concord Program.<sup>58</sup> The objective was to offer individual compensation to more than 500,000 former patrol members in exchange for planting 30 million trees; the compensation was 5,200 quetzales (approximately US\$ 700) in three payments. In this way, the government would compensate former patrolmen for a service currently provided and not for services rendered during the armed conflict. Berger’s government made the first two payments and Álvaro Colom’s government made the third. However, not all patrolmen received full compensation for lack of funds and administrative problems. Today, many former patrol members continue to demand pending compensation, threatening demonstrations and roadblocks.<sup>59</sup>

54 The Guatemalan Penal Code dates from 1973 (Decree 17-73) and Article 376 defines the crime of genocide, which served as the basis for the accusation in the case of genocide against former dictator Ríos Montt and his intelligence chief Rodríguez Sánchez.

55 The compensation would be Q.5,241.60 (approximately US\$700). The amount was set according to what an army soldier earns during three years of service, plus 30% economic advantages. The contribution would be made in three payments of Q.1,747.20, one in April 2003 and the other two during the following year, and would be paid through the departmental governments. Centre for National Economic Research (2003). Economic Letter No. 246.

56 Hernández Pico, J. (2005). *Ending the war, betraying peace: Guatemala in the two presidencies of peace 1996-2004*. Guatemala: FLACSO.

57 Governmental Agreements 228-2003 and 566-2003, both suspended by the Constitutional Court through file 2121-2003.

58 Governmental Agreement 387-2005.

59 Public Square, October 15, 2012, The last trees of the former PAC will cost 2 billion. Available at <https://www.plazapublica.com.gt/content/los-ultimos-arboles-de-los-ex-pac-que-costaron-q2-mil-millones>

### 3.1 Number of victims

In Guatemala there is no national register of victims and therefore there is no certainty about the total number of victims of the internal armed conflict. The estimates of the CEH Report are generally used as a reference, estimating 200,000 deaths and disappearances and 1.5 million displaced persons.<sup>60</sup> Victim organisations have insisted on the need to create such a register, but the State has not yet done so. This limits the possibility of implementing reparation policies as there is no clarity as to who and how many are the victims, where they are, etc.



Photograph by: Luke Moffett

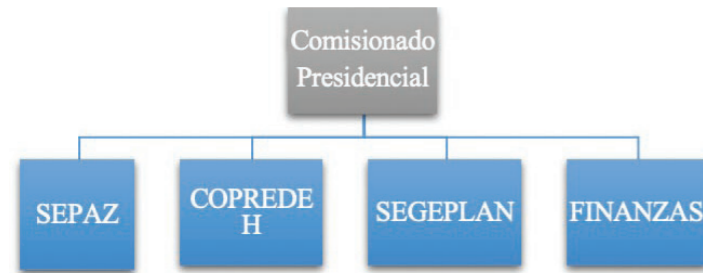
### 3.2 Organization and functioning of the PNR

The PNR is directed by the National Compensation Commission (CNR), composed of five members: a) a delegate appointed by the President of the Republic, b) the Minister of Public Finance, c) the Secretary of Planning and Programming of the Presidency (SEGEPLAN), d) the Secretary of Peace (SEPAZ), and e) the President of the Presidential Commission for Coordinating Executive Policy on Human Rights (COPREDEH). The Commission is headed by the delegate appointed by the President of the Republic and the main functions of the CNR are to define the reparation policy, ensure its proper implementation, manage the necessary funds for the PNR, and consult with the victims.<sup>61</sup>

60 Commission for Historical Clarification. (1999) Guatemala, Memoria del Silencio. Conclusions and Recommendations. Guatemala: Commission for Historical Clarification.

61 Agreement 539-2013.

National Compensation Commission



In the early years (2003-2005), the NRC was composed of public officials and victims' representatives, but because they did not agree on the criteria and functioning of the PNR, in 2005 President Oscar Berger decided that the NRC should be composed only of public officials.<sup>62</sup> The members of the NRC meet every two months to evaluate the development of the program, but in practice the members of the NRC are not involved in the NRP and leave this responsibility to the presidential delegate.

The PNR is attached to the Secretaría de la Paz, that is, it does not have administrative autonomy to disburse the funds to compensate the victims, and all expenses depend on SEPZ<sup>63</sup>. This leads to slowness and bureaucracy in the management of redress. The Program has 14 regional headquarters located in the main areas affected by the internal armed conflict: Ixcán, Barillas, Chimaltenango, Nentón, Chiquimula, Huehuetenango, Cobán, Mazatenango, Nebaj, Petén, Quiché, Rabinal, San Marcos, and Sololá. However, currently only 11 offices are operating due to lack of staff and budget, since 2016 the offices of San Marcos, Nenton and Ixcán are closed.

UNDP HEADQUARTERS IN OPERATION	
APARTMENT	PNR HEADQUARTERS
Chiquimula	Chiquimula
Huehuetenango	Huehuetenango
Quiche	Nebaj
Sololá	Sololá
Baja Verapaz	Rabbi
Alta Verapaz	Coban
Quiche	Quiche
Suchitepéquez	Mazatenango
Huehuetenango	Barillas
Petén	Petén
Chimaltenango	Chimaltenango

Source Official PNR Information

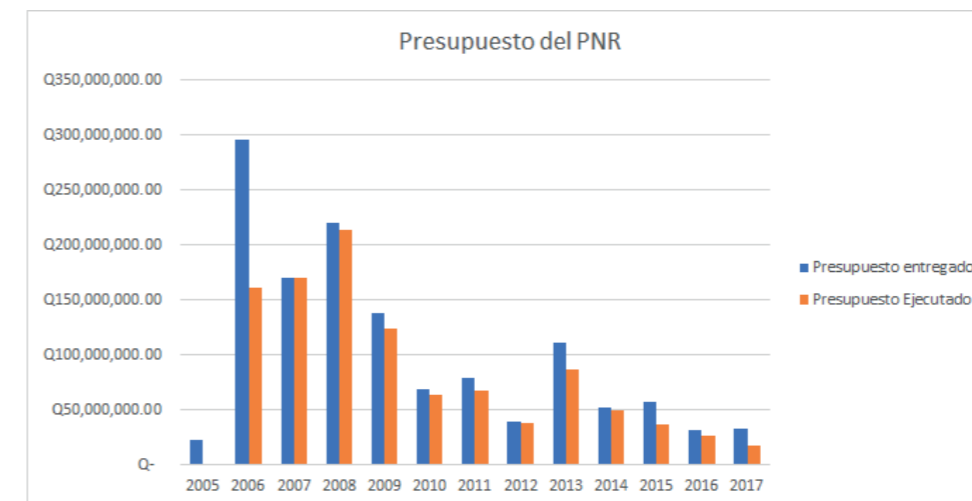
62 The composition of the CNR was modified through Governmental Agreement 619-2005.

63 Since 2006, victims' organizations have presented to the Congress of the Republic the initiative of Law 3551 on the National Compensation Program, but to date this initiative has not been approved.

According to PNR's internal planning, each headquarters should have an interdisciplinary team made up of five professionals: coordinator, lawyer, analyst, psychologist and promoter; however, in practice, headquarters staff is incomplete and in some offices only one person works. In 2017, about 110 people worked at the PNR, most of them at headquarters. In addition, local headquarters operate precariously, in some cases without basic services such as internet, telephone, electricity and water.<sup>64</sup>

"We don't have internet here, we don't have it. And so we still have the progress of our files, because we would have to travel to Guatemala, go to these consultations, return and integrate each one of the files so that it has its corresponding course of the file. (...) At times we lose credibility as a PNR because we do not have the necessary working conditions. I can tell you that to this day we have the blessed electrical energy. They took us away for a month. We don't have a phone line to call the victims, we have to balance our cell phones. (...) Fuel, very limited in the program, they don't give it to us. We don't have a fixed pilot to take the areas that need to be moved to the communities."<sup>65</sup>

Regarding the budget, according to the reparation policy, the PNR should receive 300 million quetzales (around US\$40 million) annually, however, this has never been fulfilled and with the passage of time the PNR budget is reduced more and more. For example, in 2017 the PNR received a budget of 28 million quetzales (US\$4 million) and only disbursed 14 million (US\$2 million), of which 10 million were invested in operations and only 4 million in reparations for victims. This goes against the principles of the reparation policy and Governmental Agreement 539-2013, which clearly states that the NRP should only invest 10% of its operating budget, and 90% in reparation measures. The following graph shows the budget allocated and disbursed by PNR in recent years.



Source Work reports and official PNR data

64 Official PNR data obtained through the Access to Public Information Act.

65 Interview G04, Rabinal, May 2018.

As shown in the graph, between 2016 and 2017 the PNR has had an average budget of 25 million quetzales per year, and only executes around 15 million quetzales per year. This represents just 8% of the \$300 million it should receive. The Congress of the Republic argues that it cannot increase the PNR budget because the country has low tax revenues, there are other ministries that need more resources (health, education and security), and the PNR has little financial execution capacity.<sup>66</sup> The low budget and low execution causes the weakening of regional headquarters and lack of reparation for the victims.

Every year victim organizations make great efforts to demand that the Government and Congress increase the Program's budget. For example, in February 2017, after a series of protests and advocacy activities, the victims managed to get the Vice President of the Republic to sign a commitment to increase the PNR budget by 132 million quetzales, but in that year the PNR only executed 14 million quetzals. For this reason, in December the vice-president renewed the validity of this commitment for 2018.<sup>67</sup> In addition, the victims constantly lobby the Congress of the Republic to increase the budget of the Program, without getting a real commitment from the deputies.

### 3.3 Reparations Policy (“The Blue Book”)

The reparation policy is embodied in a document known as “The Blue Book” which was agreed between the Government and victims' organizations in 2005. The policy contains the principles, criteria, measures and violations of human rights that must be compensated. The reparations policy includes five measures of redress:

- a. Material restitution measures, which are aimed at re-establishing or compensating for the material losses of people before the violence, and which include the restitution of land, housing and productive investment projects.
- b. Economic compensation measures, which consist fundamentally of granting an economic amount to the victims or their families through which the State recognizes the moral, physical and material damage caused.
- c. Psychosocial reparation and rehabilitation measures for victims suffering from psychosocial or physical conditions resulting from the internal armed conflict. This includes the rehabilitation of people with disabilities, the recovery of culture, education, care for women victims of sexual violence and the elderly, as well as accompaniment in those cases of reunion or culmination of mourning in the case of missing children.
- d. Measures to dignify victims, including the celebration of the National Day of Victims, the dissemination of CEH and REMHI reports, the creation of museums and monuments, as well as support for exhumations and burials of victims of the internal armed conflict.
- e. Cultural restitution measures to recover the culture of war-affected indigenous communities. Such measures include the recovery of the history and customs of

66 In 2017 Guatemala's total budget was 77.309 million quetzales (about \$10 billion), which means that the PNR budget represents 0.036%. While the Army budget was 1.908 million, which is equivalent to 2.5% of the national budget.

67 Political commitment of Vice-President Jafeth Cabrera to the victims of the internal armed conflict, 15 February 2017.

communities based on the experience of the elderly, the rescue of mother tongues and other activities to promote multiculturalism and interculturality. However,<sup>68</sup> PNR rarely implements such measures or takes into account the cultural diversity of indigenous communities.

“They burn everything, they burn all our clothes, we didn't even have anything like anything to weave or sew because if we had done it in the mountain but we couldn't weave there, everything had disappeared, everything had disappeared, everything in our culture was disappearing, people were disappearing, they were burning us, they were burning our things. (...) And also, when we came back with nothing, (...) I was working in the land, planting, but they really pay little and as they stole the land from us, as the Guatemalan state stole the land from us, we didn't have land to plant because we are used to planting and eating what we planted. I really believe that people (...) who have a lot of money, want to continue doing us this damage. They've even treated us as if we were animals at the time and I think they're still doing those things right now, but they treat us as if we were animals. They'll want to extinguish us.”<sup>69</sup>

One of the great weaknesses of the reparation policy is that it does not have a gender or differential focus, that is to say that it does not contemplate specific measures or procedures to attend to women and other people in situations of vulnerability.<sup>70</sup> On the contrary, PNR often goes so far as to deny redress to women who seek redress for cases of sexual violence on the grounds that it is very difficult to prove the facts or that “they are lying”.<sup>71</sup>

“According to our protocol [we should have a specialist providing psychosocial and physical support to victims of sexual violence within the framework of the armed conflict], but nevertheless, due to the lack of personnel or the limited budget, we have been without this professional in psychology for from 6 months to a year, when it should be the transversal axis because it is of great physical and psychological help for the victims. And in the absence of this specialist, simply] the file does not follow the course”.<sup>72</sup>

68 PNR (2010) *National Reparation Policy*. Guatemala: PNR. pp. 31-32.

69 Focus group G21, Nebaj, May 2018.

70 Impunity Watch (2019) *Policy Brief: Strategic Litigation for Cases of Sexual and Gender-Based Violence in Guatemala*. Guatemala: Impunity Watch.

71 Weber, S. (2012) *Creating a Space for the Voices of All Victims Toward Gender-Sensitive Truth, Justice, Reparation and Non-Repitition (VJRNR) Processes in Guatemala*. Guatemala: Impunity Watch.

72 Interview G04, Rabinal, May 2018.

### 3.4 Requirements for redress

In order to have access to reparation measures, the victims' relatives must approach any of the PNR headquarters and comply with three requirements:

1. Present testimony of the violations suffered during the armed conflict and identify the victims involved in the events.
2. Present your personal identification document (DPI).
3. Present the birth or death certificate of all victims involved in the testimony.<sup>73</sup>

For many victims it is difficult to present identity documents because they do not have the birth or death certificates of the victims since most of them disappeared or died in massacres or while fleeing the war. In addition, historically, the State of Guatemala has had a deficient system of registration of citizens and lands and the victims did not have identification or property titles at the time of the events. In addition, during the internal armed conflict, records were destroyed in many municipalities and public institutions, affecting thousands of victims who cannot prove that they own the houses or land they abandoned during the war. Moreover, the PNR requires victims to collect identity documents despite the fact that many victims are elderly people and indigenous women who live in distant places and do not speak Spanish. The PNR does not offer them legal assistance to obtain the documents and only a few civil society organizations provide this service.

After all documentation is submitted, a PNR attorney must issue a ruling to indicate that the person may apply for one or more of the relief measures and assign a case file number to your case. Victims must then meet other requirements in order for reparation to be made. For example, to apply for housing restitution, a legally registered community association must submit an application, socioeconomic studies of victims and the community are conducted, a census of beneficiaries is carried out, land is evaluated, purchase and ownership of land, building permits are accredited, and a host of other requirements that can postpone compensation for years.<sup>74</sup>

In many communities, people feel mocked by the failure to comply with the PNR. Program officials assure them that they will soon approve their requests for individual redress or their productive projects, but they are unlikely to do so. Officials say the delay is due to the large number of requests, incomplete files, or insufficient budget to respond to all requests. In 2015 the PNR had more than 38,000 unresolved files.<sup>75</sup>

“They are penalties, they are realities of the program of this government... conditions in this program we do not have them. [In spite of that], for me what is significant is the courage of the victims because there are always contradictions or limitations for them but they never regressed, but rather they made the push.

73 Manual of Basic Criteria for the Application of Reparation Measures Granted by the National Reparation Program.

74 See PNR 2017. Specific Guide to Requirements for the Application of Reparation Measures Granted by the National Reparation Program.

75 Information provided by PNR to Impunity Watch, 14 December 2015.

But] we are in a reality, the majority of the victims are already old adults and already with many illnesses, difficulties... we regret a lot because the victims die and do not receive compensation...”<sup>76</sup>

The Office of the Human Rights Procurator in Guatemala (PDH) has periodically monitored the functioning and results of the PNR. The Human Rights Ombudsman has issued several resolutions demonstrating that reparation policies are not comprehensive and that the PNR has favoured monetary and material reparation measures, leaving aside the dignification of victims, psychosocial reparation and cultural reparation.<sup>77</sup>

“The program’s greatest success during the program’s 15 years of work “has been economic redress”.<sup>78</sup>

### 3.5 Victims’ participation in PNR



Photograph by: Luke Moffett

As noted above, victims have no say in the definition of programmes or in PNR decisions. Governmental Agreement 539-2013, which amends Governmental Agreement 258-2003 that created the PNR, and extended its validity until December 31, 2023, contemplates the participation of victims in the PNR through the Consultative Council of Victim Organizations (Article 4 Bis of the Agreement), but this has never been integrated. The Council should be composed of five representatives of victims’ organizations who may participate in the meetings of the National Reparations Commission, but without a vote.

76 Interview G04, Rabinal, May 2018.

77 Office of the Human Rights Procurator (2015). *Supervision report of the National Reparation Program*. Guatemala: PDH

78 Interview G04, Rabinal, May 2018.

The NRC should convene the Consultative Council of Victim Organizations four times a year to publicize the plans, activities, results and budget of the NRP, but so far the NRC has shown no political will to integrate or convene the Victim Consultative Council.<sup>79</sup>

In general terms, the victims do not trust the PNR authorities, they consider that the Program officials only respond to the interests of the government in power and not to the real needs of the victims. Victims' organizations think that PNR managers do not take their requests or proposals seriously, and seldom keep their promises. In addition, they consider that the Advisory Council is merely a symbolic body, while they demand a real participation in the decisions of the PNR.

For its part, the PNR sees the victims of the internal armed conflict as mere beneficiaries or recipients of reparation programs and not as subjects of reparation, as established by international standards on reparation. The United Nations *Joint Statement of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity* (2005) states that: "Victims and other sectors of civil society must play a significant role in the design and implementation of reparation programmes. Concerted efforts should be made to ensure that women and minority groups participate in public consultations aimed at designing, implementing and evaluating reparation programmes."<sup>80</sup> However, this is not the case in Guatemala.

### 3.6 PNR achievements and results

According to official data, between 2005 and 2015 the PNR has provided reparations to 32,802 victims of the internal armed conflict, of whom 20,444 (63%) are women and 12,076 (37%) are men.<sup>81</sup> The 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. In any case, this number is low in relation to the 200,000 victims indicated in the CEH Report.<sup>82</sup>

The data reveal that during the first years of the installation of the NRP (2003-2005) virtually no reparations was offered because the program was being installed and the reparations policy was being defined. The first reparation measures began to be offered during the government of President Oscar Berger (2004-2008), but increased considerably during the government of President Álvaro Colom (2008-2012), and began to decrease during the government of Otto Pérez Molina (2012-2015) and the government of Jimmy Morales (2016-2018).

79 Governmental Agreement 539-2013.

80 United Nations (2005). *Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*. E/CN.4/2005/102. Principle 32, Reparation Procedures.

81 National Reparation Program. (n.d.) *Number of beneficiaries by type of violation from 2005-2014*. Guatemala: National Reparation Program.

82 The UNDP Transitional Justice Support Programme (PAJUST) has offered technical assistance to the PNR to create the national register of victims, while the Red Cross has also set up a database based on information provided by victims' and human rights organizations; however, there has been little government interest in creating such a register.



Source Work reports and official PNR data

This has been seriously criticized by victims' and human rights organizations, who consider that the Government has used individual compensation as a clientelistic strategy by taking advantage of the poverty of the victims.<sup>83</sup> The amount of compensation depends on the type of violation suffered. The following table shows the amounts of compensation offered by the PNR.

Amounts of compensation awarded by PNR

Type of violation	Amount in Quetzales	Amount in US\$
Enforced disappearance	Q 24,000.00	\$3,200
Extrajudicial killing	Q 24,000.00	\$3,200
Death resulting from internal armed conflict	Q 24,000.00	\$3,200
Torture	Q 20,000.00	\$2,666
Sexual violence	Q 20,000.00	\$2,666
Attempted extrajudicial execution	Q12,000.00	\$1,600
Serious human shield injuries	Q12,000.00	\$1,600
Serious injuries from indiscriminate attack	Q12,000.00	\$1,600
Serious mine injuries	Q12,000.00	\$1,600
Serious crossfire injuries	Q12,000.00	\$1,600
Serious persecution injuries	Q12,000.00	\$1,600
Attempted arbitrary execution	Q12,000.00	\$1,600

Source 2011 PNR Procedures Manual

83 Impunity Watch (2014). *Monitoring Transitional Justice in Guatemala*. Volume III Right to Reparation for Victims of the Internal Armed Conflict. Guatemala: Impunity Watch.

The total amount is given to the entire family, and on average Guatemalan families are made up of six members, meaning that the wife or daughter of a victim may receive 4,000 Queztales (US\$500) for a missing or murdered family member. In addition, in many cases financial compensation creates division between families and communities because not everyone agrees to receive money for the life of their relatives.

During Álvaro Colom's social democratic government (2008-2012), the greatest number of compensation awards was offered to victims. The compensation was usually accompanied by a letter of apology on behalf of the State, which had symbolic value for the victims. During this period, the PNR also began to deliver houses to the widows and children of the victims, although many houses remained incomplete and there were signs of embezzlement of funds in the construction of the houses, which was in charge of the National Fund for Peace (FONAPAZ).<sup>84</sup>

President Colom participated in several acts to honour the memory of the victims, publicly acknowledged that there was genocide, and apologized in the name of the state. Declaring 2011 the *year of the institutionalization of memory*, both SEPAZ and PNR organized several ceremonies to recognize leaders and intellectuals who died during the war, such as poet Otto René Castillo, activist Rogelia Cruz, young Nora Paiz, among others. In addition, during his administration, peace archives were created to house important military documents on the internal armed conflict, and several publications related to the armed conflict and local historical memory was funded.<sup>85</sup>

During the pro-military government of Otto Pérez Molina (2012-2015), the PNR began to weaken. The budget of the Programme was halved and few individual compensations and houses for victims were provided. President Pérez repeatedly denied the existence of the genocide, suspended the delivery of letters of forgiveness to the families of the victims, and his participation in important acts to dignify the memory of the victims was practically nil.<sup>86</sup> His Government had closed the peace archives and refused to comply with the reparation measures ordered by the Inter-American Court of Human Rights.<sup>87</sup>

The government of Pérez Molina basically promoted two types of reparation measures: productive projects for the community and support for burials. The productive projects consisted of financing small victims' cooperatives. The victims had to form a cooperative and develop a project to establish a self-sustainable microenterprise. The PNR provided technical advice for the development of the project and financed it.

Although this type of compensation generated great expectations in many communities, the government of Pérez Molina only financed six productive projects in the north of Quiché and Huehuetenango, a situation that caused annoyance and frustration in the communities that presented their projects to the PNR. However, the implementation and outcome of these projects have not yet been evaluated.

During this period, the PNR supported several burials of victims of the armed conflict. The Program paid for the ossuary, the cemetery niche, and food for those participating in the burial ceremony, as well as providing psychological accompaniment to the families of the victims before the ceremony. However, it is important to remember that the Guatemalan State has never taken charge of the exhumations of the internal armed conflict; this task has always been carried out by civil society organizations and financed by the international community. This is in spite of what was ordered by the Inter-American Court of Human Rights in cases such as Molina Theissen.<sup>88</sup>

Most of the exhumations in Guatemala have been carried out by the Forensic Anthropology Foundation (FAFG) and the Center for Forensic Analysis and Applied Sciences (CAFCA), with funds from international cooperation. To date, more than 8,000 exhumations have been carried out nationwide, and forensic findings have been critical evidence in judicial investigations. The psychosocial accompaniment of the victims' relatives is generally carried out by organizations such as the Human Rights Office of the Archbishopric of Guatemala (ODHAG), the Maya Saq Center b'é, the Mutual Support Group (GAM), the Utz Group K'aslemal, the Community Studies and Psychosocial Action Team (ECAP), among others. In general terms, victims rely more on civil society organisations than on state institutions, where they often feel mistreated.<sup>89</sup>

During the government of Jimmy Morales (2016-), the PNR has continued to weaken. During his tenure, he has repeatedly changed the president of the CNR and reduced the budget of the Programme to 25 million per year. This, added to the institutional weakness that has caused three regional headquarters to remain closed and the others to function with great difficulty. This means that during this presidential term virtually no reparations have been given to the victims. The victims consider that this is due to a mixture of a lack of political will on the part of the Government as well as the ineptitude of the programme officials, since many of them have no previous experience in these matters.

84 Prensa Libre, 11 June 2013, "Denuncias en Fonapaz suman Q19 millones. &lt;font color="#ffff00"&gt;=<a href="https://sv.transdoc.com/articulos/Denuncias-Corrupcion/Denuncias-de-Corrupcion-junio-10-lunes/27825--sync:BÇÈÈÈ" style="color: #ffff00;">https://sv.transdoc.com/articulos/Denuncias-Corrupcion/Denuncias-de-Corrupcion-junio-10-lunes/27825--sync:BÇÈÈÈ

85 Impunity Watch. (2012) Guatemala resists forgetting: initiatives of memory in post-conflict. Guatemala: Impunity Watch.

86 Office of the Human Rights Procurator (2015). *Supervision report of the National Reparation Program*. Guatemala: PDH.

87 Cerigua, 31 May 2012: *Closure of Peace Archives generates rejection*. <a href="https://www.impunitywatch.org/docs/Luchamos\_con\_dignidad\_participacion\_de\_victimas\_Guatemala.pdf">https://www.impunitywatch.org/docs/Luchamos\_con\_dignidad\_participacion\_de\_victimas\_Guatemala.pdf

88 Inter-American Court of Human Rights, Judgment of July 3, 2004, Case of Molina Theissen v. Guatemala. Reparations and Costs, para. 85, p. 43 and 44.

89 Impunity Watch. (2014) *Monitoring Transitional Justice in Guatemala*. Volume I. Right to Justice for Victims of the Internal Armed Conflict. Guatemala: Impunity Watch.

## 4. Reparation in Guatemalan court rulings

Victims can also access reparation through a court judgement. The Guatemalan Code of Criminal Procedure establishes that victims may participate in the criminal process as complainants, witnesses, adhesive complainants and subjects of reparation. However, for indigenous victims it is virtually impossible to participate in the criminal process because the judicial system is monolingual, slow and bureaucratic. In addition, the victims live in distant places and need the help of a lawyer.

Practically the only cases that make progress in Guatemalan criminal justice are those in which the victims participate as adhesive plaintiffs and have the support of a human rights organization. The Guatemalan Criminal Code contemplates the figure of adhesive plaintiff for crimes of public action, that is to say that the aggrieved party or his representative can provoke criminal prosecution or adhere to the criminal action of the Public Prosecutor's Office. This right may be exercised by any citizen or association of citizens against civil servants or public employees who directly violate human rights in the exercise of their function or who abuse their power.<sup>90</sup> Victims and rights organizations have used the figure of the adhesive plaintiff to actively participate in the criminal process by providing testimonies, evidence, and participating in the litigation strategy of the Public Prosecutor's Office.



Photograph by: Luke Moffett

90 Code of Criminal Procedure, Article 116.

So far, 21 cases of serious human rights violations of the armed conflict have been tried by the courts of justice. However, as noted, only in cases of genocide, Sepur Zarco, Embassy of Spain and Molina Theissen have reparation measures been included, thanks to the figure of the hearing of dignified reparation introduced in 2011 to the Guatemalan criminal procedural legislation.<sup>91</sup>

### Guatemalan court rulings in cases of armed conflict

No.	Case	Year Imputed	Criminal Offense
1	Ixtahuacan	1993	1 military commissioner Material Murder
2	Myrna Mack	1993	1 sergeant major Material Murder
		2002	1 colonel Intellectual Murder
3	Chorroaj Massacre	1996	1 CAP Material Murder
4	Colotenango	1998	11 CAP Material Murder
5	Rio Negro Massacre	1999	1 commissioner and 2 PAC Material Murder
		2008	5 CAP Material Murder
		2008	1 CAP Material Murder
6	Tululché Massacre	1999	1 military commissioner Material Murder
			Homicide
7	Nicholas Chapman Blake	2000	1 CAP Material Murder
8	Anabella Garniga Osorio	2001	1 commissioner Material Murder
9	Moseñor Gerardi	2001	1 colonel Intellectuals Extrajudicial killing
			1 captain Accomplice Use of forged documents
			1 sergeant
			1 civilian
10	Xamán Massacre	2004	1 second lieutenant and 13 soldiers Material Murder
11	Choatalum	2009	1 commissioner Material Enforced disappearance
			Crimes against the duties of humanity

91 Reforms to the Criminal Procedure Code, Decree 7-2011.



12	The Jute	2009	1 colonel and 3 commissioners	Intellectual	Enforced disappearance Crimes against the duties of humanity
13	Édgar Fernando García	2010	2 policemen	Material	Enforced disappearance
		2013	1 colonel and 1 police officer	Intellectual	Enforced disappearance
14	Massacre of Dos Erres	2012	1 soldier kaibil	Intellectual	Murder Crimes against the duties of humanity
		2011	1 lieutenant and 3 kaibile soldiers	Material	Murder Crimes against the duties of humanity Aggravated theft
15	Plan de Sánchez Massacre	2012	1 commissioner and 4 PAC	Material	Murder Crimes against the duties of humanity
16	Édgar Enrique Sáenz Calito	2012	1 chief of police	Intellectual	Enforced disappearance Crimes against the duties of humanity
17	Édgar Leonel Paredes Chegüén	2013	1 military commissioner	Material	Enforced disappearance Crimes against the duties of humanity
18	Ixil Genocide	2013	1 former head of state	Intellectual	Genocide Crimes against the duties of humanity
19	Spanish Embassy	2015	1 Chief of Police	Intellectual	Murder Attempted Murder Crimes against the duties of humanity
20	Sepur Zarco	2016	1 second lieutenant and 1 commissioner	Intellectual	Crimes against the duties of humanity
					Murder Enforced disappearance
21	Molina Theissen	2018	2 general	Intellectuals	Crimes against the duties of humanity
			2 colonels		Aggravated rape
					Extrajudicial killing

Source: Prepared by the authors on the basis of information from the judiciary and other sources. Human Rights Reports

### 4.1 Case of genocide

On May 10, 2013, the B Major Risk Court sentenced former head of state Efraín Ríos Montt to 80 years in prison for genocide and crimes against humanity's duties against the Mayan Ixil People. The<sup>92</sup> sentence caused great national and international impact because of the gravity of the facts and because for the first time in the world a national court condemned a former head of state for genocide. The business elite, the military and the Government of Guatemala rejected the sentence and publicly denied that genocide had taken place. Ten days later, the Constitutional Court, Guatemala's highest constitutional court, annulled the process on the grounds that the rights of Rios Montt's defense lawyers had not been respected and ordered the trial to be repeated.<sup>93</sup> The second trial began in 2015, but Rios Montt was declared mentally incompetent to participate in the process and therefore the trial was conducted behind closed doors with only the representation of his lawyers. In 2016, the trial was again interrupted by appeals from defence counsel, and resumed at the end of 2017. Before the conclusion of the second trial in April 2018, Rios Montt died. He was under<sup>94</sup> house arrest, which led to the extinction of the criminal proceedings against him.<sup>95</sup> The new trial continued against a single defendant, José Mauricio Rodríguez Sánchez, the former head of Ríos Montt's Military Intelligence Service.

The process culminated in the first instance in a ruling on September 26, 2018, which confirmed that the Ixiles had been victims of a systematic extermination plan carried out by the Guatemalan army.<sup>96</sup> Despite recognition of the genocide, the Major Risk B Court, in a divided opinion, found that Rodriguez Sanchez should be acquitted.<sup>97</sup> In addition, in the latter decision no reparation measures were contemplated, nor was there a dignified reparation hearing, although the possibility of resorting to civil remedies was left open.<sup>98</sup> The decision has been widely criticized by human rights organizations and especially by the victims, who consider that the response to their demands for justice was not substantive.<sup>99</sup> For this reason, in part, victims' and human rights organisations continue to defend the validity of the measures ordered in the first judgement.

92 CALDH 2013. Sentence for genocide and crimes against the duties of humanity against the Mayan Ixil People. Sentence dictated by the First Court of Criminal Sentence, Narcoactivity and Crimes against the Environment A. Guatemala, 2013.

93 Prensa Libre, 20 May 2013. "CC annuls conviction of Rios Montt." [http://www.prensalibre.com/noticias/justicia/CC-deliberando-resolucion-Rios-Montt\\_0\\_922707981.html](http://www.prensalibre.com/noticias/justicia/CC-deliberando-resolucion-Rios-Montt_0_922707981.html)

94 New York Times, April 1, 2018. "Efraín Ríos Montt, Guatemalan dictator, died at the age of 91." <https://www.nytimes.com/es/2018/04/01/efrain-rios-montt-obituario/>

95 UN News, 22 October 2018. The recognition of the genocide of Maya Ixil in Guatemala is a step forward against impunity. <https://news.un.org/es/story/2018/10/1444072>

96 Sentence C-01076-2011-00015 2nd Assistant. Guatemala, 26 September 2016, pp. 122 and 123.

97 International Justice Monitor, 28 de septiembre de 2018. "Court Finds Guatemalan Army Committed Genocide, but Acquits Military Intelligence Chief." <https://www.ijmonitor.org/2018/09/court-finds-guatemalan-army-committed-genocide-but-acquits-military-intelligence-chief/>

98 Sentence C-01076-2011-00015 2nd Assistant. Guatemala, 26 September 2016, p. 924.

99 El faro, September 27, 2018. For the second time a judge has ruled that there was genocide in Guatemala. <https://elfaro.net/es/201809/centroamerica/22491/por-segunda-vez-una-jueza-sentencia-que-s%C3%AD-hub-genocidio-en-Guatemala.htm>

The genocide sentence of 10 May 2013 contains 11 reparation measures.<sup>100</sup>

1. The State should conduct public ceremonies in the National Palace and in the municipal capitals of Santa María Nebaj, San Juan Cotzal and San Gaspar Chajul and apologize to the women and men of the Ixil people.
2. The President of the Republic and the Minister of National Defense must deposit a scroll containing the apologies of the Guatemalan government and army in the municipal mayor's offices of the Ixil region.
3. The Executive should create a national monument and other monuments in the municipalities of the Ixil area to make visible the gender violence and violence against children of the Ixil People.
4. Educational processes on Human Rights and International Humanitarian Law should be carried out in military, police or any other similar training centres aimed at guaranteeing non-repetition.
5. The Ministry of Education and Culture should create an itinerant museum that promotes respect for the identity of peoples, peaceful coexistence and non-repetition.
6. The Executive must disseminate the Sentence through official and private media.
7. The Public Prosecutor's Office should contribute to a justice system that respects cultural diversity through a mural dedicated to the Ixil people.
8. To implement study centres from pre-primary to university level in the Ixil region.
9. Incorporate the crimes of genocide and crimes against humanity's duties within the PNR to access redress.
10. Build a cultural center in the Ixil region for the rescue and promotion of historical memory historical memory and the non-repetition of acts against the freedom of thought and cultural identity of peoples.
11. Submit a bill to Congress to designate March 23 as the National Day Against Genocide.
12. None of the reparation measures were in the hands of Ríos Montt, and despite the fact that the sentence stated that 'at no time is the State of Guatemala being condemned', the responsibility for compliance with all reparation orders remained in the hands of the latter. However, none of these measures have been implemented. This may be a consequence of the annulment decision by the Guatemalan Constitutional Court.

100 This providence is available at <http://www.justiciaviva.org.pe/especiales/efrain-rios-montt.php>

## 4.2 Case of the Embassy of Spain

On January 19, 2015, the Tribunal de Mayor Riesgo B sentenced former police chief Pedro García Arredondo to 90 years in prison for ordering the murder of 37 people who were burned to death at the Spanish Embassy in 1980. This fact caused great national and international impact due to the brutality in which the peasants and officials who were inside the Embassy died on the day of the event, and for this reason Spain broke off diplomatic relations with Guatemala for several years. In the process he acted as adhesive plaintiff Rigoberta Menchú, whose father perished in the fire.<sup>101</sup>

In the reparation judgment the State is ordered to pay economic compensation of 1,500,000 quetzales (approx. US\$195,000) to each of the 6 families of the victims due to the moral damage and suffering caused as a consequence of the massacre.

At the dignified reparation hearing, in addition to the economic amount of compensation, the victims requested that the State perform solemn acts of public apology; the placement of plaques of the apology in the municipalities where the victims come from; the creation of an educational center in Chajul with the names of the victims; and the production and reproduction of a documentary on the case and the sentence.<sup>102</sup> However, the majority of the Court dismissed the claims for reparation of dignity of the victims without a sufficiently clear justification in the judgement and recommended that they resort to civil remedies.<sup>103</sup> However, civil proceedings in Guatemala can take years.



Photograph by: Luke Moffett

101 El País, January 20, 2015. "The policeman who assaulted the Spanish Embassy was convicted in Guatemala." [https://elpais.com/internacional/2015/01/20/actualidad/1421717929\\_612662.html](https://elpais.com/internacional/2015/01/20/actualidad/1421717929_612662.html)

102 Judgment C-01071-1980-00547 Of. 1. Guatemala, 19 January 2015, pp. 411-413.

103 Judgment C-01071-1980-00547 Of. 1. Guatemala, 19 January 2015, p. 415.

### 4.3 Case Sepur Zarco

On February 26, 2016, the Major Risk A Tribunal sentenced Lieutenant Esteelmer Reyes Girón to 120 years in prison and Military Commissioner Heriberto Valdez Asig to 240 years in prison for forced disappearance and crimes against humanity's duties against indigenous women in the community of Sepur Zarco, in Izabal.<sup>104</sup> This case attracted national and international attention because it demonstrated how the military subjected women to domestic and sexual slavery during the internal armed conflict. In the 1980s, officers and soldiers from the military zone of the community of Sepur Zarco disappeared several of the region's peasants to dispossess them of their lands and forced their wives and daughters to perform domestic duties in the military detachment where they sexually abused them for years.<sup>105</sup>

"Socio-economic studies were carried out, reparation workshops were held with the grandmothers to explain to them what the reparation was or what they thought, how they would repair. And definitely, as they say, sexual violence has no redress. The damage that they did to me, that they... that they pierced me, the fact that I am an undignified woman in my community.... killed me. In other words, when we talk about sexual violence we really say "they killed me in life, I'm alive but in the end I'm dead inside because they pierced my body". And that's really hard for women to repair. Not like that for others."<sup>106</sup>

In the case, 15 women survivors of sexual abuse and the Alliance Breaking the Silence, 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) acted as plaintiffs. The judgement provides for 16 reparation measures:

The Public Prosecutor's Office should continue with the investigation to determine the whereabouts of disappeared persons in and around Sepur Zarco.

1. The State should continue with the processing of land, initiated by the disappeared persons, in the institution that currently corresponds.
2. The Executive must provide housing for the victims and basic services to the communities surrounding Sepur Zarco.
3. The Ministry of Public Health and Social Assistance should build a health centre in the community of Sepur Zarco, with all the necessary medicines.
4. The Executive should improve the infrastructure of schools in the communities of Sepur Zarco, San Marcos, Poombaac and La Esperanza;

104 Judgment C-01076-2012-00021 Of. 2°. Guatemala, February 26, 2016. This ruling is available at [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=1C57325B4F89A421C12581B00043C3DF&action=openDocument&xp\\_countrySelected=GT&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=1C57325B4F89A421C12581B00043C3DF&action=openDocument&xp_countrySelected=GT&xp_topicSelected=GVAL-992BU6&from=state)

105 National Union of Guatemalan Women (2016). Sepur Zarco the path of women to justice. <https://www.mpdl.org/sites/default/files/160210-dossier-alianza-rompiendo-silencio.pdf>

106 Interview G07, Guatemala City, May 2018.

5. Establish a bilingual secondary education establishment that guarantees the right to education of girls, adolescents and women;
6. To grant scholarships at the three educational levels for the population of Sepur Zarco;
7. Include in the curricula, textbooks on the case of the women of Sepur Zarco.
8. The Ministry of Culture and Sports should develop cultural projects aimed at the women of Sepur Zarco and their communities.
9. Make a documentary about the case of the women of Sepur Zarco;
10. Translate the sentence of the Sepur Zarco case into 24 Mayan languages.
11. Proceed to have February 26 recognized as "Victims of Sexual Violence, Sexual Slavery and Domestic Violence Day",
12. Take the necessary steps before the Congress of the Republic in relation to the Enforced Disappearance Law.
13. The Ministry of Defence should include in military training courses on women's human rights and legislation to prevent violence against women.
14. The Ministry of the Interior shall coordinate security measures for members of the plaintiffs, victims and family members.
15. The accused Esteelmer Reyes Girón must pay 500 thousand quetzales (US\$66,000) to each of the 11 victims.
16. Defendant Heriberto Valdez Asig must pay 200,000 quetzales (US\$26,000) to each victim.<sup>107</sup>

In this case some of the reparation measures have been implemented, thanks to the follow-up work of the Breaking the Silence Alliance. For example, a small mobile clinic was established in Sepur Zarco for the entire community, although it does not have enough medicine. The Ministry of Education approved a cartoon on the case for high school students; dialogue tables have been established at the community level and with some ministries to implement reparation measures; and a bill was presented to recognize February 26 as "Day of the Victims of Sexual Violence, Sexual and Domestic Slavery", which has not yet been approved by the Congress of the Republic.

### 4.4 Molina Theissen Case

On the 22nd May 2018, the Major Risk Court C convicted four high-ranking former military personnel for the forced disappearance of the child Marco Antonio Molina Theissen and the

107 Dignified Reparation Hearing. Judgment C-01076-2012-00021 Of. 2°. Guatemala, February 26, 2016. This ruling is available at [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=1C57325B4F89A421C12581B00043C3DF&action=openDocument&xp\\_countrySelected=GT&xp\\_topicSelected=GVAL-992BU6&from=state](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/caseLaw.xsp?documentId=1C57325B4F89A421C12581B00043C3DF&action=openDocument&xp_countrySelected=GT&xp_topicSelected=GVAL-992BU6&from=state)

illegal detention and rape of his sister Emma Guadalupe in 1981.<sup>108</sup> This case is relevant because it is the first sentence on forced disappearance of children during the internal armed conflict, one of the great human rights violations that took place, and because the four condemned were leaders of the military elite, two of them generals, responsible for hundreds of disappearances, massacres and murders during the military dictatorship of Lucas Garcia between 1978 and 1982.

Likewise, the Molina Theissen case is partly the result of the sentences and reparation orders given by the Inter-American Court of Human Rights to the government of Guatemala. In the reparations judgment in the Molina Theissen case, the Inter-American Court ordered that the perpetrators of Marco Antonio's disappearance be investigated, prosecuted, and punished.<sup>109</sup> In the process, Emma Guadalupe, her mother, and her sisters acted as civil plaintiffs. The reparation judgement provides for 11 reparation measures:

1. Create a National Registry of victims of enforced disappearance. The court orders the Legislative Branch to create a National Registry of Victims of Enforced Disappearance.
2. Comply with the reparation measures dictated by the Inter-American Court of Human Rights. The court orders the State to comply with the reparation measures dictated in the judgment of the IACHR in the Molina Theissen case that are pending compliance. It orders the Office of the Procurator-General of the Nation, as the representative of the State of Guatemala, to diligently promote effective compliance in the appropriate bodies.
3. To guarantee the safety of the subjects of the proceedings. The court orders the Human Rights Procurator to deal with any request from procedural subjects in the present case, as well as any person or institution related to the same, which requires precautionary measures, to proceed to its immediate processing before the corresponding authorities,
4. Pass a missing persons search law. The court orders the Legislature to approve Bill 3590 on the establishment of a National Commission for the Search of Missing Persons.
5. Produce a written and audiovisual documentary about the case. The court orders the University of San Carlos in Guatemala to produce a written and audiovisual documentary on the case and to make it known to the Guatemalan population.
6. Translate the sentence into Mayan languages. The court orders the Secretariat for Indigenous Affairs of the Judicial Branch to translate the sentence into the Mayan languages predominant in the departments of Guatemala and Quetzaltenango.
7. Create a scholarship under the name of Marco Antonio Molina Theissen. The court orders the Ministry of Education to create a scholarship under the name of Marco Antonio at the different levels of education in the country.
8. Create a decoration with the surname Molina Theissen in the Army. The court orders the Ministry of National Defence to create a decoration called Molina Theissen for members

108 Sentence C-01077-1998-00002 OF. Guatemala, May 23, 2018. This ruling is available at <https://reparations.qub.ac.uk/assets/uploads/sentencia-caso-molina-theissen.pdf>

109 Inter-American Court of Human Rights, Judgment of July 3, 2004, Case of Molina Theissen v. Guatemala. Reparations and Costs, paras. 82 and 83, p. 43.

of the army who have carried out humanitarian work or have stood out in the observance of human rights.

9. Offer a reward to those who provide information about clandestine cemeteries. The Ministry of the Interior is ordered to grant a financial reward for persons who provide truthful information on places where there are clandestine cemeteries of the internal armed conflict.
10. Declare 6 October as National Day for Missing Children. The President of the Republic is hereby ordered to declare 6 October as the National Day of the Disappeared Childhood, aimed at preserving and commemorating the historical memory of child victims of enforced disappearance.
11. Build a monument in honor of Emma Guadalupe Molina Theissen. The Ministry of Culture and Sports, in coordination with the Municipality of Quetzaltenango, is ordered to erect a memorial named Emma Guadalupe Molina Theissen, in memory of the victim's suffering in these facilities, known as Antigua Brigada and/or Zona Militar General Manuel Lisandro Barillas de Quetzaltenango.

The implementation of the reparation measures is pending due to the fact that the convicted persons and their defense attorneys as well as the Procuraduría General de la Nación filed several special appeals against the sentence of the court of first instance.<sup>110</sup> In addition to procedural delays, there are deep concerns at the national and regional levels, in this and other cases, over the application of legislative initiatives such as No. 5377, which would seek to grant a general amnesty to annul the trials and convictions of military personnel in the context of the internal armed conflict in Guatemala.<sup>111</sup>

#### 4.5 The Chixoy Case Redress Lawsuit

The Chixoy case is an atypical example of reparations. It refers to the demands of several communities in the region of Alta Verapaz and Baja Verapaz that were massacred and forced

110 Inter-American Court of Human Rights, Resolution of 14 March 2019. Supervisión Cumplimiento de Sentencia en Caso Molina Theissen vs. Guatemala, para. 10, p. 5. Available at [http://www.corteidh.or.cr/docs/supervisiones/molina\\_14\\_03\\_19.pdf](http://www.corteidh.or.cr/docs/supervisiones/molina_14_03_19.pdf)

111 para. 17-22 pp. 7-8.



Photograph by: Luke Moffett

## Reparation in Guatemalan court rulings

to abandon their lands by the army and former civilian patrol boats between 1975 and 1983 for the construction of the Chixoy hydroelectric dam, in charge of the National Electrification Institute (INDE). This is a state project that was financed by the World Bank and the Inter-American Development Bank (IDB) and had a cost of 900 million quetzales (US\$ 120 million). It is estimated that more than 400 peasants were killed during this period for refusing to leave the land, and many of them were falsely accused of guerrilla warfare.<sup>112</sup>

“Then came the day, the 13th of February. Several men, about 55 men from Rio Negro, and 18 women and children, went down to Xococ with the idea of going to the market but at the same time to collect the cells that had stayed there in Xococ. But I didn't. When they arrived in Xococ, they were captured and all the men and women were murdered there... some women were still young and were raped by the same soldiers and patrolmen, which is a very typical act in an armed conflict mainly and that is what happened in Guatemala. (...) One month after that massacre on February 13, they arrived the following month, precisely on March 13, to end the lives of the women and children who remained. On that day, the army and patrolmen killed about 107 children and 70 women.”<sup>113</sup>

The communities affected by the construction of the hydroelectric dam have made a persistent struggle to be compensated. In September 2004, they formed the Coordinadora de Comunidades Afectadas por la Construcción de la Hidroeléctrica Chixoy (COCAHICH) and occupied the facilities of the Hidroeléctrica to call the attention of the State. In 2006, the Government signed an agreement with 23 communities to seek a solution to the demands of those affected.<sup>114</sup> Subsequently, in 2010, the Government approved a 1.2 billion quetzal (US\$160 million) damage reparation plan that included land, housing, development projects and basic services for affected communities.<sup>115</sup>

In 2012, the Inter-American Court of Human Rights condemned the State of Guatemala for the massacre of 177 inhabitants of the community of Rio Negro, located on the banks of the Chixoy River, including women and children, and for another series of violations against survivors.<sup>116</sup> The events occurred between 1980 and 1982 and the bones of the victims were found in 1993. The Court ordered the State to take the following measures of reparation: (i) investigate, prosecute and punish those responsible; (ii) search for the disappeared, as well as the location, exhumation and identification of the other persons who were executed; (iii) publish the Judgment; (iv) carry out a public act of recognition of international responsibility for the facts; (v) carry out infrastructure works and basic services in favour of the members of the

112 Johnston, B. (2015). *Study of the elements of the legacy of the Chixoy Dam*. Santa Cruz, California, United States: Center for Political Ecology.

113 Interview with the victim representatives, G02, Rabinal, May 2018.

114 Coordinadora de Comunidades Afectadas por la Construcción de la Hidroeléctrica Chixoy (COCAHICH). (2009). Report on the identification and verification of damages caused to the communities affected by the construction of the Chixoy hydroelectric plant. Rabinal, Baja Verapaz, Guatemala. Printed on: Glyph.

115 Plan to repair damages suffered by the communities affected by the construction of the Chixoy hydroelectric plant. Government of Guatemala, 20 April 2010. <http://www.derechos.org/nizkor/guatemala/doc/chixoy11.html>

116 Inter-American Court of Human Rights, Judgment of September 4, 2012, Río Negro Massacre Case v. Guatemala. Preliminary Objection, Merits, Reparations and Costs, para. 324, p. 111.

## Reparation in the judgments of the Inter-American Court of Human Rights

community of Río Negro who reside in the Pacux colony; (vi) design and implement a project to rescue the Achí Mayan culture; (vii) provide medical and psychological treatment to the victims; (viii) pay victims compensation for material and non-material damages; and (ix) establish an adequate mechanism for other members of the Río Negro community to be considered victims and receive individual and collective reparations.

“Note that the most important damage would be the repair of material goods. For example, the construction of housing, the purchase of land,... but also the damage caused to the emotional and physical level of women and men who remained survivors because many people stayed (sic) a year, two years in the mountains, which often survived from other plants that many times, although not used to eat for people to survive, used that.”<sup>117</sup>

In 2014, the U.S. government pressured the Guatemalan government to comply with the compensation of Chixoy's victims as one of the conditions for continuing economic aid to Guatemala, according to the Consolidated Appropriations Law approved by the Guatemalan Congress. The U.S.<sup>118</sup> Government conditioned military aid to Guatemala, resources from the World Bank and resources from the Inter-American Development Bank as long as there are: a) advances in reparation to those affected by the construction of the Chixoy hydroelectric plant and b) all adoption cases involving U.S. citizens are resolved.<sup>119</sup> So far the Government has compensated 858 families, but 1,416 are missing. It is expected that in the next few years the compensation will end and development projects in the communities will continue<sup>120</sup>.

## 5. Reparation in the judgments of the Inter-American Court of Human Rights

Until May 2019, the Inter-American Court of Human Rights has handed down 29 judgments in cases of human rights violations in Guatemala, of which 15 correspond to events that occurred in the framework of the internal armed conflict in Guatemala.<sup>121</sup>

Judgments of the Inter-American Court of Human Rights in Cases of the Internal Armed Conflict in Guatemala

117 Interview with the victim representatives, G02, Rabinal, May 2018.

118 Consolidated Appropriations Act, 2014.

119 Empresa Eléctrica de Guatemala S.A. (n.d.). “Chixoy Settlement Would Clear Restrictions” <https://eegsa.com/noticia/Acuerdo-por-Chixoy-despejara-restricciones/>

120 According to COPREDEH information, provided in December 2017.

121 Inter-American Court of Human Rights. [http://www.corteidh.or.cr/cf/jurisprudencia2/casos\\_en\\_etapa\\_de\\_supervision.cfm](http://www.corteidh.or.cr/cf/jurisprudencia2/casos_en_etapa_de_supervision.cfm)

## Reparation in the judgments of the Inter-American Court of Human Rights

No.	Case name	Legal representative of the victims	Year of sentence
1	<i>Blake v. Guatemala</i> - The kidnapping and murder of Nicholas Chapman Blake.	International Human Rights Law Group	1999
2	<i>Guatemala</i> - Kidnapping, arbitrary detention, inhumane treatment, torture and murder against Paniagua Morales and others (White Panel).	Center for Justice and International Law (CEJIL), Human Rights Watch/ Americas y Mark Martel.	2001
3	<i>Bámaca Velázquez v. Guatemala</i> - Forced disappearance, torture and extrajudicial execution of Efraín Bámaca.	CEJIL	2002
4	<i>Myrna Mack v. Guatemala</i> - Extrajudicial execution of Myrna Mack Chang.	Helen Mack, Georgetown University, Lawyers Committee for Human Rights, bufete Hogan & Hartson y CEJIL.	2003
5	<i>Maritza Urrutia v. Guatemala</i> - Arbitrary detention and torture of Maritza Urrutia.	Center for Legal Action on Human Rights (CALDH)	2003
6	<i>Molina Theissen v. Guatemala</i> - Forced disappearance of child Marco Antonio Molina Theissen and illegal detention of his sister.	CEJIL	2003
7	<i>Guatemala</i> - Murder of more than 200 indigenous people near the Rabinal area.	CALDH	2004
8	<i>Carpio Nicolle et al. v. Guatemala</i> - Extrajudicial execution of Jorge Carpio et al.	Martha Arrivillaga de Carpio, Karen Fischer, CEJIL, Human Rights Office of the Archbishopric of Guatemala (ODHAG), Human Rights Watch/ Americas and International Human Rights Law Group	2004
9	<i>Guatemala</i> - Forced disappearance of María TiuTojín and her daughter Josefa.	CALDH	2008
10	<i>Guatemala-Asesinato</i> , torture, rape, among other acts to the detriment of numerous people living in the plot of Las Erres, La Libertad.	ODHAG, CEJIL and Asociación de Familiares de Detenidos-Desaparecidos de Guatemala (FAMDEGUA).	2009

## Reparation in the judgments of the Inter-American Court of Human Rights

11	<i>Guatemala-Forced Disappearance of Florencio Chitay Nech et al.</i>	Astrid Odete Escobedo Barrondo and Carlos María Pelayo Möller	2010
12	<i>Gudiel Álvarez and others ("Diario Militar") vs. Guatemala</i> - Forced disappearance, torture and extrajudicial execution against Gudiel Álvarez and others.	Myrna Mack Foundation and International Human Rights Law Clinic of the University of California in Berkeley.	2012
13	<i>Rio Negro vs. Guatemala</i> - Five massacres perpetrated against members of the <i>Guatemalan military</i> community of Río Negro, as well as the persecution and elimination of its inhabitants members.	Asociación para el Desarrollo Integral para las Víctimas de la Violencia en las Verapaces (Association for Integral Development for Victims of Violence in the Verapaces) (ADIVIMA)	2012
14	<i>Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal vs. Guatemala</i> - Forced disappearance, extrajudicial execution, massacres and other crimes against the inhabitants of the village of Chichupac, Baja Verapaz.	Rabinal Human Rights Office	2016
15	<i>Coc Max and others (Xaman Massacre) vs. Guatemala</i> - Murder of 11 people, including one girl and two boys, and personal injury to 29 others	Mutual Support Group (GAM)	2018

Source Prepared by the authors based on information from the IACHR Available at: <http://www.corteidh.or.cr/>

**The judgments of the Inter-American Court contemplate reparation measures to compensate the rights of the victims who have been violated, among them:**

Medical and psychological care for victims, in order to address the consequences and impact of the violations.

- ▶ Economic compensation for survivors and their families for both moral and pecuniary damages.
- ▶ Measures for the recognition of facts, which implies that the State must publicly acknowledge the truth of what happened and be held publicly responsible for the violations committed. In some cases the Court orders that the sentences be included in the education curriculum of the police, military and other public institutions. Also measures to remember events, such as building monuments, naming streets in memory of victims, building museums, etc.

- ▶ Measures to promote justice, such as the investigation of human rights violations and the strengthening of justice institutions such as the Public Prosecutor’s Office and the judiciary. The Court has also ordered the removal of obstacles that do not permit the progress of investigations into the facts, such as amnesty laws or normative provisions that provide for imprescriptibility with respect to human rights violations. The Court has also ordered the reform of some legal tools that have been used to obstruct the right to an effective judicial remedy, such as the remedy of *amparo*.
- ▶ Measures that ensure non-repetition, that are targeted at society as a whole in order to reform or attack the structural problems that allowed or facilitated human rights violations.

In the case of Guatemala, the implementation of reparation measures dictated by the IACHR is the responsibility of the Presidential Commission to Coordinate Human Rights Policy (COPREDEH), which coordinates with other State institutions the implementation of specific measures. The implementation of the Court’s orders continues to face major obstacles. In fact, all Inter-American Court judgments involving reparations for victims of the armed conflict are still pending and the Court continues to monitor their execution, although in some cases such as *Myrna Mack* or *Molina Theissen*, more (but not all) forms of reparations have been completed than in other cases.

The lack of compliance with the measures responds to various causes such as the lack of financial resources to do so, the rampant corruption that exists in the country as well as the lack of institutional and political will to compensate the victims. Guatemala continues to be an eminently polarized country where the military and the social sector that supports them still maintain great power. An example of how this lack of institutional and political will affects implementation is the 2014 resolution of the Inter-American Court of Human Rights, which declares the State of Guatemala in contempt for its failure to comply with eleven judgments and Guatemala’s observations, ignoring and questioning the Court’s orders.<sup>122</sup>

More recently, in February 2019, following the imminent adoption by the Guatemalan Congress of the reform of the National Reconciliation Law, it allowed the adoption of an amnesty for the perpetrators of genocide and serious human rights violations. The Inter-American Court summoned the State to a public hearing in the *Molina Theissen* case where the point was analyzed<sup>123</sup> and also granted provisional measures for the victims ordering Guatemala to immediately suspend the processing of said bill in Congress since it would go against the Court’s orders in several sentences, thus seriously and imminently affecting the victims in the various cases. At the time of writing, the amnesty proposal continues in Congress even though the speed

122 Inter-American Court of Human Rights, Resolution of 21 August 2014, Supervision of compliance with the sentence in 11 cases against Guatemala. Available at [http://www.corteidh.or.cr/docs/supervisiones/11\\_Casos\\_21\\_08\\_14.pdf](http://www.corteidh.or.cr/docs/supervisiones/11_Casos_21_08_14.pdf)

123 Inter-American Court of Human Rights, Resolution of 14 March 2019, Supervision of Compliance with Judgment in the Case of *Molina Theissen v. Guatemala*.

of its approval has been slowed by the multiple international criticisms and provisional measures ordered by the Court.<sup>124</sup>



The memorial church in the community of Plan de Sanchez with the names on the wall of all the victims of the massacre - The people in the photo are two of the surviving victims.

Photograph by: Luke Moffett

## 6. Conclusions

Since the signing of the Peace Accords, the State of Guatemala has done little to repair the damage caused to the victims of the internal armed conflict, despite the commitments it made in those Accords. After more than 15 years, the National Reparations Program has only served approximately 32,000 victims out of a total of 200,000, which represents only 16% of the victims, and reparations have been limited to providing small financial compensation, modest housing, or a simple act of public recognition. Moreover, in practice there are no reparation or land restitution programmes for more than 1.5 million internally displaced persons who lost their property during the war.

In recent years, the PNR has suffered a progressive weakening, due to the lack of institutional and political will to support its work, which is verified by the scarce budget, the constant institutional changes, and the insufficient and poorly trained personnel it has. In 2018, only 28 million quetzales (US\$4 million) of the 300 quetzales million (US\$40 million) established by the reparation policy were allocated to the program. In addition, more than 60 per cent of the budget is spent on operating costs. In the past three years, the Government has changed

124 Inter-American Court of Human Rights, *Case of Members of the Chichupac Village and neighboring communities of the Municipality of Rabinal, Case of Molina Theissen and 12 other Guatemalan v. Guatemala*, Provisional Measures and Compliance Supervision, Resolution of March 12, 2019.

the PNR president three times and several regional headquarters have remained closed or not functioning due to staff shortages and lack of basic services. This violates the victims' right to reparation, as established by the resolutions of the Human Rights Ombudsman and the Inter-American Commission on Human Rights. Likewise, this generates great re-victimization since reparation is never achieved and victims continue to expect to receive reparation, as their right, for the damage caused.

On the other hand, the PNR requires many administrative requirements and documents that victims are unable to collect, such as birth or death certificates of missing or dead relatives. In other cases, files are delayed for years without any justification, or simply paperwork is lost in the PNR offices, situations that are aggravated with each change of government. The agreement between the PNR and the National Registry of Persons, the institution in charge of issuing birth or death certificates, is not complied with in practice and victims do not have the means to prove the identity of their relatives. All of these barriers cause victims wear and tear, hopelessness, and frustration.

The reparation policy (blue book) does not have an adequate gender or differential approach or cultural belonging. The PNR does not have specific programs for women, for example, many victims of sexual violence are not adequately attended to and their testimony is questioned on the grounds that the fact cannot be proven, which represents a serious violation of their rights and provokes their re-victimization. Cultural reparation measures are practically non-existent and the cultural vision of indigenous communities is not taken into account in commemorative and dignifying events.

The State has offered little support for the resettlement of returnee and internally displaced populations. The few productive projects delivered to uprooted populations were done in places where the land was impoverished and without the advice or technical and credit accompaniment to make it produce. Victims fear eviction due to lack of legal certainty.

For the victims the deepest problems of reparation are the lack of land, housing and resources to produce, since most of them are poor peasants who lost their land and property because they were forcible displaced. However, the State shows no willingness to comply with the commitments established in the Peace Accords, particularly in relation to the Agreement for the Resettlement of Populations Uprooted by Armed Conflict.

Formally, the PNR does not offer redress to former civilian patrolmen, despite the fact that they were victimised and forced by the army to patrol in their own communities, because some of them participated in human rights violations. For this reason, in 2005 the Government created the Forests and Water for Concord Program to offer an economic compensation of 5,200 quetzales (US\$ 700) to each former patrolman. However, so far not all patrol members have received full compensation because the Government does not have sufficient funds.

It is extremely serious that the State does not comply with the reparation judgments of national or international courts. As indicated in this report, the Guatemalan courts have tried 21 cases of the internal armed conflict, 4 of which provide reparation measures for the victims. In addition, the IACHR has issued 15 judgments against the State of Guatemala for serious human rights

violations committed during the internal armed conflict. However, the State has not complied with the reparation measures.

It is important to note that the majority of Guatemalan society does not know the PNR or what happened during the armed conflict. This is largely due to the fact that the State of Guatemala has not promoted a consistent policy to disseminate historical truth or to introduce the contents of the CEH report into the educational curriculum. Currently 70% of the Guatemalan population is under 30 years of age and the worst atrocities of the war occurred between 1978 and 1982.



In addition, disinformation is given in part by the positions of extreme right-wing radical groups and ex-military personnel who constantly deny the facts and promote campaigns to distort the truth in order to confuse public opinion.

The future of the PNR is uncertain due to the fact that every day there is less willingness on the part of the State to make reparations, which undoubtedly generates deep disappointment and wear and tear on the part of the victims. On the other hand, the country is immersed in a crisis provoked by the fight against corruption and criminal proceedings against senior government officials, businessmen and former military personnel. In this context, the support of human rights organizations, civil society and the international community remains extremely important.

In addition to the above, it is necessary to have a protective legislative framework for the National Reparations Program. There is a need to give authority to the PNR by giving it, if possible, ministerial or similar rank so that its directives have the political power to implement the measures. Likewise, it is fundamental to create a registry of victims; the required granting of funds so that reparations can be complied with; and the adoption of a procedure that sees the victims as true owners of rights and that avoids, as much as possible, their re-victimization. In this sense, it should be emphasized that victims should be consulted and have the right to participate in all instances related to the satisfaction of their right to reparation, as well as in the evaluation and monitoring of the implementation of reparation measures.

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Reparations, Responsibility



Victimhood in Transitional Societies

**A promise to be fulfilled:**

# **REPARATIONS FOR VICTIMS OF THE ARMED CONFLICT IN GUATEMALA**

**August 2019**

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**(Print): 9781909131910**

**(Digital): 9781909131927**