



CONFLICT-RELATED SEXUAL VIOLENCE PROSECUTION NETWORK



Sepur Zarco, Guatemala – Case Brief

Case identification: Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01-2012-00021, Judgment, 26 February 2016; Appeals: Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente, C-01076-2012-00021 Of. 2º, Appeal of Heriberto Valdez Asig, 15 March 2016; Appeal of Moises Eduardo Galindo Ruiz, 17 March 2016; Appeal of Esteelmer Francisco Reyes Girón, 30 March 2016; Dismissal of the appeal by the High-Risk Crimes Appellate Tribunal, 28 November 2018.

Facts: In 1982, during the Guatemalan internal armed conflict, the fight of the Maya Q’eqchi’ community to obtain legal titles to the lands they had lived in and worked for years became even more sensitive. As a result, the Maya Q’eqchi’ community faced accusations of supporting guerrillas. In response, the Guatemalan military attacked the Mayan community of Sepur Zarco, initially resulting in the disappearance, torture and killing of male Q’eqchi’ leaders, as well as the burning of their houses, destruction of their belongings, and razing of their crops and livestock. The military established the Sepur Zarco detachment, which operated as a military base for over six years, where women and young girls were left very vulnerable and endured physical and mental coercion, rape as well as forced domestic and sexual servitude.¹ Esteelmer Francisco Reyes Girón was a lieutenant colonel and commander of the Sepur Zarco military base. He ordered women to be brought to the base, where they were subjected to sexual violence and forced to take turns every few days cooking, washing clothes, and cleaning for soldiers. Heriberto Valdez Asig was a military commissioner and commander of civil patrols in the Sepur Zarco area, who directed soldiers to residences in Sepur Zarco and was present in some cases while women were raped and ordered some of the women to cook for the soldiers.²

Charges:

- Esteelmer Francisco Reyes Girón: Reyes Girón was charged with sexual violence, sexual and domestic slavery as well as humiliating and degrading treatment all as “crimes against the duties of humanity”

¹ Claudia Martin & Susana SáCouto, *Access to Justice for Victims of Conflict-Related Sexual Violence: Lessons Learned from the Sepur Zarco Case*, 18 J. INT’L CRIM. JUST. 243, 245-46 (2020); SUSANA SÁCOUTO, ALYSSON FORD OUOBA & CLAUDIA MARTIN, AM. U. – WASH. C. OF L. & U.N. WOMEN, DOCUMENTING GOOD PRACTICE ON ACCOUNTABILITY FOR CONFLICT-RELATED SEXUAL VIOLENCE: THE SEPUR ZARCO CASE 4 (2022).

² SÁCOUTO, OUOBA & MARTIN, *supra* note 1, at 11-12.



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under art. 387 of the Guatemalan Penal Code (GPC).³ He was also charged with murder of one woman and her two daughters under art. 132 of the GPC.⁴

- Heriberto Valdez Asig: Valdez Asig was charged with sexual violence as “crimes against the duties of humanity” under art. 387 of the GPC.⁵ He was also charged with the forced disappearance of seven husbands of the victims under art. 201TER of the GPC.⁶

Modes of liability: the defendants were charged as direct perpetrators and accomplices, under art. 36 of the GPC.⁷

Key procedural and judicial developments:

Investigation

- On 30 September 2011, 15 female survivors, with the support of the Alianza Rompiendo el Silencio y la Impunidad (La Alianza), a civil society alliance,⁸ filed a criminal complaint for the crimes committed in Sepur Zarco, pursuant to arts. 116 and 303 of the Guatemalan Code of Criminal Procedure.⁹
- Upon filing the claim, two civil society organisations, Mujeres Transformando el Mundo (MTM) and Unión Nacional de Mujeres Guatemaltecas (UNAMG), requested and were recognized the status of civil claimants (*querellantes adhesivos*) in the case.¹⁰ Later, in 2014, the Jalok U Collective,

³ In the CÓDIGO PENAL [CÓD. PEN.] [Criminal Code], “crimes against the duties of humanity” can encompass both war crimes and crimes against humanity: CÓD. PEN., art. 378; SÁCOUTO, OUOBA & MARTIN, *supra* note 1, at 11.

⁴ CÓD. PEN., art. 132.

⁵ CÓD. PEN., art. 378.

⁶ CÓD. PEN., art. 201 TER.

⁷ Impunity Watch, Alliance to Break the Silence & Impunity, ECAP, MTM & UNAMG, *Changing the Face of Justice: Keys to the Strategic Litigation of the Sepur Zarco Case*, at 42 (March 2017), (citing Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos Contra el Ambiente [First Trial Court for Criminal, Drug-Trafficking and Environmental Offenses] febrero 26, 2016, Sentencia C-01-76-2012-00021 of 2º, p. 492 [hereinafter Sepur Zarco Trial Judgment]); CÓD. PEN., art. 36(1), (3).

⁸ La Alianza is made up of three organizations: El Equipo de Estudios Comunitarios y Acción Psicosocia (ECAP), Mujeres Transformando el Mundo (MTM) and La Unión Nacional de Mujeres Guatemaltecas (UNAMG): see Impunity Watch, Alliance to Break the Silence & Impunity, ECAP, MTM & UNAMG, *supra* note 7, at 7 (March 2017).

⁹ CÓDIGO PROCESAL PENAL [CÓD. PROC. PEN.] [CODE OF CRIMINAL PROCEDURE] art. 116 and art. 303; SÁCOUTO, OUOBA & MARTIN, *supra* note 1, at 11, 53, 59, n. 433.

¹⁰ Guatemalan law provides that victims or their representatives can initiate or join criminal prosecution, they can also aid the prosecutor in investigating the case by requesting evidence and other necessary actions, and they





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a group organized and formed by the Maya Q'eqchi' survivor-complainants, was requested and granted the same status.¹¹ This status allowed them to prompt the investigation and collection of evidence, along with the Prosecutor's office, resulting in exhumations and identification of seven members of the community, including the husband of one of the claimants.¹² Two more exhumations were carried out later, through which an additional 51 remains were found.

- In 2012, following the discovery of these additional elements, and at the request of the prosecutors and MTM and UNMAG, the case was transferred to a High Risk Tribunal with specialized judges.¹³ In September 2012, given the high risks of the abuelas to disappear, and in order to preserve the evidence, their testimonies were pre-recorded for trial.¹⁴
- On 13 June 2014, the First Instance Court of Major Risk B issued arrest warrants against Lieutenant Reyes Girón and Hernandez Asig.¹⁵ They were placed in preventive detention the next day.

Confirmation of Charges/Pre-trial

- In October 2014, the case transitioned to the intermediate stage, during which the intermediary Judge reviewed and confirmed the charges against both accused.¹⁶ Following a request from the victims, and ultimately by the Ministerio Publico, based on arts. 116, 117 and 303 of the Criminal Procedural Code, the charges against the accused were modified to explicitly include domestic

can appeal to the Judge of First Instance if they disagree with the prosecutor's decisions in the proceedings, See: Cód. PROC. PEN., arts. 116, 118, 303 TER.

¹¹ Cód. PROC. PEN., art. 116.

¹² SACOUTO, OUOBA & MARTIN, *supra* note 1, at 11.

¹³ Case initially filed before the Criminal Court of First Instance for Drug Trafficking and Crimes Against the Environment of the Municipality of Puerto Barrios, Izabal and transferred to the High-Risk Court. The latter were established in 2009 to provide greater safety for judges as well as witnesses, prosecutors and lawyers, in complex cases including organized crime and corruption and human rights abuses. Impunity Watch, *Cambiando el rostro de la justicia: las claves de litigio estratégico del caso Sepur Zarco* (Guatemala, March, 2017) 1, https://www.impunitywatch.org/wp-content/uploads/2022/08/ResearchReport_Cambiando_Rostro_Justicia_Sepur_Zarco_2017_spanish-1.pdf.

¹⁴ According to the Guatemalan Code of Criminal Procedure this is allowed when the evidence cannot be presented during the oral debate, is a measure that is generally used to reduce the re-victimization of victims of gender violence or sexual violence, mainly children: Cód. PROC. PEN., art. 348; Impunity Watch, *Cambiando*, *supra* note 13, at 20.

¹⁵ SACOUTO, OUOBA & MARTIN, *supra* note 1, at 12, the arrest warrant was issued on June 13, 2014. See also Mujeres Transformando el Mundo "Ordenes de captura en contra Esteelmer Francisco Reyes Girón y Heriberto Valdez Asij", <https://mujerestransformandoelmundo.org/ano-2014-ordenes-de-captura-en-contra-esteelmer-francisco-reyes-giron-y-heriberto-valdez-asij/>.

¹⁶ The intermediary judge in Guatemala has the duty to confirm and determine modes of responsibility of the charges, who undertakes the "Audiencia Intermediaria": Cód. PROC. PEN., arts. 82(6), 332.





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slavery, sexual violence and sexual slavery as crimes against the duties of humanity under article 378 of the Criminal Code.¹⁷ This adjustment was sought by the victims, and ultimately by the Ministerio Público.¹⁸

Trial

- The trial began in February 2016. The Tribunal heard the pre-recorded testimonies from 19 witnesses, which was, at first, a way to preserve the evidence but which became a protective measure, preventing the victims to be interrupted by the defense when telling their stories, or to repeat them over and over.
- Along with live testimony from over two dozen witnesses and 18 expert witnesses, including gender, forensic and linguistic anthropologists, a forensic architect, an economist, an expert who performed physical and psychological evaluations of witnesses, ballistics experts, military and historical experts.¹⁹ Expert testimony was essential for the determination of guilt and responsibility as they confirmed the pre-recorded testimonies of the victims.²⁰
- Protective measures implemented during the trial included permitting witnesses to give in-court testimony from behind a curtain, in the presence of an interpreter and psychologist, and the use of shawls to cover the victims' faces during the trial to protect their identities,²¹ maintaining the

¹⁷ Reliance on international law was key to the establishment of the charges, the intermediary judge identified that article 378 of crimes against the duties of humanity was an “open or blank penal law” meaning that although it does not describe in detail the conduct proscribed, it makes reference to other sources of law. Therefore, the judge’s interpretation under art. 378 enabled him to qualify the acts under customary or conventional international law, especially the 1949 Geneva Conventions, encompassing war crimes and crimes against humanity including sexual violence and sexual and domestic slavery. See also, Impunity Watch, *Cambiando*, *supra* note 13, at 22.

¹⁸ According to an interview with the MTM lawyers including the concept sexual violence and sexual and domestic slavery was the best way to make victims suffering visible and generate a political impact. Impunity Watch, *Cambiando*, *supra* note 13, at 22. Likewise, according to Marin and SáCouto the characterization of the crimes as CRSV had significant effects: i) it underscored the systematic nature of sexual violence, demonstrating it was part of a broader military plan rather than isolated acts; ii) highlighted the coercive circumstances, which allowed victims to redirect blame from themselves to the perpetrators, aiding their healing and community reintegration; iii) it also challenged the narrative on sexual violence during Guatemala's conflict: see, Martin & SáCouto, *supra* note 1, at 256.

¹⁹ Martin & SáCouto, *supra* note 1, at 258-59.

²⁰ *Id.* at 259.

²¹ SÁCOUTO, OUOBA & MARTIN, *supra* note 1, at 22, 24, 62.



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abuelas' privacy during the public evidentiary hearings. Decisions about these measures were made jointly with the survivors and civil society organizations.²²

- The three-judge panel of the High Risk Tribunal found Reyes Girón and Valdez Asig guilty of all charges as direct perpetrators and accomplices, under art. 36 of the GPC.²³ Reyes Girón was sentenced to 120 years in prison, while Valdez Asig was sentenced to 240 years.²⁴ A year later, the High-Risk Crimes Appellate Court confirmed the judgment, which became final in September 2018.²⁵
- The Court granted a total of 16 measures for reparations to the victims, which included economic compensation and “dignified reparations.”²⁶ The majority of the reparation measures were ordered against state institutions and are being carried out by those authorities.²⁷

Victims' participation:

During the trial, three organizations were recognized as civil claimants: MTM, UNAMG and the Jalok U Collective.²⁸ This status gave the victims several opportunities to collaborate alongside the public prosecutor throughout the trial. In particular, it allowed them to:

- initiate criminal proceeding before the judge, who then assigned the claim to a specialized Human Rights Unit of the Public Prosecutor's Office;
- identify and propose evidence, and collaborate with the public prosecutor to obtain such evidence;

²² *Id.* at 22.

²³ Impunity Watch, Alliance to Break the Silence & Impunity, ECAP, MTM & UNAMG, *supra* note 7, at 42 (citing Sepur Zarco Trial Judgment, *supra* note 7, at 492; Cód. PEN., art. 36(1), (3)).

²⁴ Martin & SáCouto, *supra* note 1, at 246 (citing Sepur Zarco Trial Judgment, *supra* note 7, at 507-08).

²⁵ SÁCOUTO, OUOBA & MARTIN, *supra* note 1, at 12.

²⁶ Martin & SáCouto, *supra* note 1, at 261-62 (citing Sepur Zarco Trial Judgment, *supra* note 7, at 508-511). According to Cód. PROC. PEN. art.124, “dignified reparations” involve restoring “the right affected by the criminal act, which begins with recognizing the victim as a person with all their circumstances as a subject of rights against whom the criminal action occurred, up to the available alternatives for their social reintegration in order to enjoy or use the affected right as soon as possible, to the extent that such reparation is humanly possible, and, if applicable, the compensation for damages and harm resulting from the commission of the crime.”

²⁷ Martin & SáCouto, *supra* note 1, at 261-62 (citing Sepur Zarco Trial Judgment, *supra* note 7, at 508-11).

²⁸ Under Guatemalan law, the civil claimant, or *querellante adhesivo*, status is granted to the victim and/or their representatives. It can also be granted to any citizen or association of citizens when the claim is brought against any public official who has committed human rights violations: Cód. PROC. PEN. art. 116.





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- request that the prosecutor take specific measures, such as “preliminary evidence” (for example, the civil claimants co-led the exhumation of the remains of seven husbands and the pre-recording of the victims’ trial testimony);²⁹
- make their own submissions as to explicitly including domestic slavery, sexual slavery and sexual violence in the charges,³⁰ and
- actively participate in the reparations proceedings.³¹

Case highlights:

The impact of victim participation

The active involvement of the civil claimants throughout the litigation was an essential aspect of the case and its success:

- The evidence collection was “built from the ground up,” initiated by a coalition of civil society organizations. The latter engaged with the women of Sepur Zarco at personal, familial and community levels, offering psychological support. This process built trust among the victims, helping them to overcome feelings of stigmatization and empowering them.³²
- The civil claimant status was considered a critical form of empowerment to survivors, enabling them to play a proactive role within the criminal proceedings.
- By making extensive use of the procedural rights granted under by the civil claimant status, the civil society organisations and victims ensured a more comprehensive, victim-centred and trauma-informed process of evidence collection (e.g. exhumation; pre-recording of testimonies) as well as ensuring the charges were revised in order to reflect the systematic use of sexual violence and different forms of slavery.³³

External support to advance the case

The Prosecutors of the Ministerio Publico gradually developed a close collaboration with the civil claimants, enabling them to complement each other’s actions, jointly ensuring victim-centered justice.

²⁹ SÁCOUTO, OUOBA & MARTIN, *supra* note 1, at 11.

³⁰ CÓD. PROC. PEN. art. 116.

³¹ See Martin & SáCouto, *supra* note 1, at 81 (“Since the victims of crimes can participate in the criminal proceedings as civil claimants, they are authorized to claim the reparations within such proceedings, once the accused has been convicted.”); CÓD. PROC. PEN. art. 124 (regarding reparations).

³² *Id.*

³³ Impunity Watch, Alliance to Break the Silence & Impunity, ECAP, MTM & UNAMG, *supra* note 7, at 16; Martin & SáCouto, *supra* note 1, at 254-55.





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Amicus briefs were crucial for the case to advance and for the victims' testimonies to be corroborated. Indeed, several amicus briefs were submitted to the Court, either directly or through civil claimants' submissions, regarding the status of sexual violence crimes under international law, including in international tribunals. This external support was key to defining the elements of the "crimes against the duties of humanities" established by article 378 of the Criminal Code.

Additional external support was also provided to the Chief Prosecutor and the prosecutors in the Internal Armed Conflict Unit of the Ministerio Publico through technical guidance from the Legal Team of Partners in Justice International (PJI) as well as other international and local experts. This collaboration enabled the prosecution team to place victim and witness evidence at the heart of the case presentation, and to seek procedural measures to safeguard and empower victims.

Expert testimony

The case highlights the importance of adducing expert testimony at trial to support the victims' credibility. The expert testimony also enabled the Court to understand the evidence holistically and to find that conflict-related sexual violence had been used as a weapon of war. In this case, the expert testimony helped the Court to link the actions of the accused with the crimes suffered by the victims.³⁴ This kind of evidence is critical in a trial that took place 29 years after the events occurred, specifically when the forensic evidence that could be collected was minimal.

Precedent setting

This case was the first national case that recognized sexual violence as an international crime perpetrated as part of a policy implemented by the State of Guatemala. The case, as well as the involvement of the victims during the trial, set precedent for future criminal cases in Guatemala. In 2018, in the Maya Achi case, five officials from the armed forces were sentenced to 30 years in prison for sexual violence as crimes against humanity.³⁵

³⁴ For example, Martin and SáCouto reference how an architect's testimony an description of the military base proved the officials in charge were aware and had knowledge of the acts. Martin & SáCouto, *supra* note 1, at 259; Sepur Zarco Trial Judgment, *supra* note 7, at 491-92.

³⁵ *Id.* at 14, n.75, 93; SáCouto & Martin, *supra* note 1, at 264; *Maya Achi Women Achieve Justice after 40 years*, GUAT. HUM. RTS. COMM'N/USA (Jan. 31, 2022), <https://www.ghrc-usa.org/2022/01/maya-achi-women-achieve-justice-after-40-years/>.