

Transitional Justice in the Aftermath of Civil Conflict



Lessons from Peru, Guatemala and El Salvador

Author

Jo-Marie Burt

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Preface

This report is based on the findings culled from a two-year project, “Lessons Learned and Best Practices in Latin America’s Experience with Transitional Justice: Information Exchanges and Capacity Building to Strengthen Civil Society Efforts to Address the Legacy of Civil Conflicts in Peru, El Salvador and Guatemala,” implemented by the Due Process of Law Foundation (DPLF) and funded by the Bureau of Democracy, Human Rights and Labor at the United States Department of Justice. The project was designed and implemented by Leonor Arteaga, Senior Program Officer for Impunity and Grave Human Rights Violations at DPLF, and Jo-Marie Burt, associate professor of political science at George Mason University and expert on transitional justice in Latin America, and DPLF consultant.

Transitional justice consists of judicial and non-judicial measures implemented in order to redress the legacy of grave violations of human rights. These measures include truth commissions, reparations programs, criminal prosecutions, programs to search for disappeared persons, memorialization and other commemorative practices, and vetting, among others. Various kinds of institutional reforms are also typically associated with transitional justice, including judicial reform and security sector reform. While these are usually long-term processes, they are fundamental to the promise of non-repetition. Typically, transitional justice measures are adopted after a country has gone through a process of political transition from a period of repressive authoritarian rule and/or internal armed conflict, towards elected democratic rule. Transitional justice is predicated on the perceived need to rebuild social trust and repair fractured social relations, democratize the justice system and ensure peaceful coexistence, and build a democratic system of governance based on the rule of law.¹

The project proposed three broad sets of activities: 1) the organization of trips to study each country’s transitional justice process, in which individuals from the partner organizations in each country, in addition to other identified partners, participated in four-day workshops in each country to learn about and analyze in depth the transitional justice experience of the host country and promote information exchanges and skill-sharing amongst partner organizations from all three countries; 2) the organization of workshops with victims in each of the three countries with the objective of targeted capacity building; and 3) the collection and analysis of data about transitional justice criminal investigations and prosecutions in collaboration with civil society organizations to produce actionable information about transitional justice successes, challenges, and bottlenecks, to identify needed institutional reforms, and for use in advocacy campaigns, with the overall objective of strengthening dialogue between civil society and judicial operators and enhancing justice delivery.

I. INTRODUCTION: TRANSITIONS AND TRANSITIONAL JUSTICE

1. Latin America: The Workshop of Transitional Justice

Transitional justice emerged, both conceptually and in practice, in Latin America. The transitions to democracy that followed brutal military dictatorships and internal armed conflicts coincided with the growing visibility and legitimacy of the global human rights movement. Campaigns to “name and shame” abusive governments were replaced with demands for truth and justice for the victims of grave human rights abuses. In many ways, Latin America was the frontline of experimentation for grappling with difficult pasts.

The boldest of these early experiments was Argentina. The first successful truth commission in the world, Argentina’s National Commission on the Disappearance of Persons (CONADEP), created in 1984 after a brutal military dictatorship (1976-83), revealed the power of official investigations into past abuses as a mechanism not only for learning the truth about the fate of individual victims of state terrorism, but also for the construction of broader social understandings of what happened and why.² In the Argentine case, trials of the military leadership followed the truth commission report. Five of nine generals from the military juntas were convicted after a public trial that captured national and international attention, and set a precedent for the centrality of accountability to transitional justice processes.³ This was a sharp contrast to neighboring Uruguay and Brazil, where pacted transitions led to political deals that shielded the military and other actors from criminal responsibility through amnesty laws, and where no official truth commission was established to examine the past.⁴ Instead, the dominant narratives of denial prevailed for years, though decades later, new movements emerged to challenge both amnesty deals and denial narratives.⁵

However, the Argentine model, which linked truth-seeking to criminal justice, was severely tested after a series of military uprisings that sought to end prosecutions of military officials who, in their view, had saved the country from communism. The government passed a series of amnesty laws (the Final Stop Law, 1986; the Due Obedience Law, 1987; 1989 presidentially decreed pardons) that brought an end to criminal prosecutions for dictatorship-era crimes.⁶ In the absence of criminal trials, other transitional justice measures acquired renewed relevance, including truth-telling processes for individual cases through “truth trials” (*juicios de la verdad*), reparations programs, memorials and commemorations, and civil-society led efforts to prevent the

promotion of military and other officials who were found to be responsible for human rights violations. Virtually all of these measures were the result of the persistent efforts by victims' associations and human rights organizations. Legal processes continued in some cases of children of the detained-disappeared, who had been appropriated by military families, as they were not covered by the amnesty laws.⁷ In 2005, the Supreme Court ruled that the amnesty laws were unconstitutional, opening up a new phase in Argentina's transitional justice process and resulting in a new wave of criminal prosecutions for dictatorship-era crimes.⁸ As of September 2016, more than 650 perpetrators have been convicted and sentenced for these crimes.⁹ Along with this renewed effort to hold perpetrators accountable, memory initiatives, both official and civil-society based, emerged with the objective of educating new generations about state terrorism in Argentina.¹⁰

The experience of Chile was quite different from that of Argentina. After 17 years of a military dictatorship led by General Augusto Pinochet (1973-90), the incumbent regime negotiated a carefully managed transition to democracy with the opposition. Pinochet stepped down as president, but he retained significant power as head of the armed forces, even publicly warning newly elected president Patricio Aylwin that he would not tolerate efforts to hold members of the security forces accountable for serious human rights abuses. Under such constraints, the Aylwin government kept the 1978 self-amnesty law in place. At the same time, he established a truth commission to investigate deaths and enforced disappearances committed during the Pinochet dictatorship and a reparations program for victims of extrajudicial execution and enforced disappearance, and to facilitate the return of exiles. Only in a few exceptional cases were criminal prosecutions pursued, most notably the case of the head of army intelligence, retired general Manuel Contreras, who, along with another military officer, was convicted for the murder of Orlando Letelier and Ronni Moffit in Washington, D.C., in 1978.¹¹

Other truth commissions, from South Africa to El Salvador, followed a similar logic to that of Chile: negotiated transitions with the *ancien régime* faced serious constraints and resulted in compromises in which transitional governments established official truth commissions to investigate (some of) the crimes of the past, but eschewed criminal trials, which were viewed as impossible given the continued power of former elites.¹² However, this conventional wisdom was soon turned on its head. The 1998 arrest of General Pinochet in London, based on the concept of universal jurisdiction, which holds that crimes against humanity can be prosecuted in any place and at any time, shifted the terms of the debate in Latin America.¹³ Spanish judge Baltazar Garzón was seeking Pinochet's extradition so that he could prosecute him in Spain on several counts of torture. The Law Lords' decision to approve the extradition request helped

reignite efforts in Latin America to pursue accountability for grave human rights violations, even though in the end Pinochet was allowed to return to Chile based on humanitarian grounds.¹⁴ It also opened new space for victims in Chile to demand new forms of truth-telling.¹⁵

Since these early experiments in transitional justice, the international human rights regime has shifted considerably. The creation of international ad hoc tribunals to investigate the genocides in the former Yugoslavia and in Rwanda, followed by the signing of the Rome Statute in 1998 and the creation of the International Criminal Court in 2002, ushered in a new era in which criminal responsibility became a central part of both the discussion and practice of transitional justice.¹⁶ Theorists and practitioners of transitional justice began to advocate for an integral concept of transitional justice, in which truth and justice were not antagonistic, but rather, complementary elements.¹⁷ Integral notions of redress would include not only truth recovery, but also criminal sanction of those responsible as well as symbolic and material reparations for the victims. They would as well include guarantees of non-repetition, which seek to alter the dynamics of violence to prevent new atrocities from occurring in the future. These may include the demobilization and disarmament of armed groups, vetting processes, and institutional reforms, among others. Peru, which transitioned to democracy after 20 years of internal armed conflict and authoritarian rule, was one of the first countries to adopt such an integral or holistic approach to transitional justice.

2. Transitional Justice in Peru, Guatemala and El Salvador

As transitional justice has become both a global idea and a global practice, there is an increasing need to better understand not only the design and implementation of transitional justice mechanisms, but their impact and significance as well. Any such effort requires an examination of the specific mechanisms of transitional justice, as well as the broader political context that gives shape to these mechanisms and their implementation. This report seeks to respond to this need by analyzing the experience of transitional justice in three countries that have been relatively understudied: Peru, Guatemala and El Salvador. This report draws upon research and workshops conducted over the course of eighteen months in each of these three countries, to better understand the transitional justice processes in each country and from a comparative perspective. The project workshops were organized in close collaboration with in-country partner organizations: the Institute for Legal Defense (IDL) in Peru; the Center for Human Rights Legal Action (CALDH) in Guatemala; and the Foundation for Applied Legal Studies (FESPAD) in El Salvador.

These three countries were selected for a number of reasons. First, the transitional justice literature on Latin America has focused primarily on the experience of repressive military rule in the Southern Cone of the region (Argentina, Chile, Brazil, Uruguay). While Peru, Guatemala and El Salvador all experienced authoritarian and military rule, they also experienced prolonged internal armed conflicts. The dynamics of post-conflict countries pose distinct challenges for transitional justice efforts.

Second, unlike the Southern Cone, where victims were in large part middle and working-class political activists, the vast majority of victims in Peru, Guatemala and El Salvador come from historically marginalized sectors of society: poor, rural farmers. In the case of Peru and Guatemala, the majority of victims are also indigenous: 75% in the case of Peru, 80% in the case of Guatemala. The history of racism and socio-economic exclusion in these countries has meant that victims have faced greater hurdles in having their demands for truth and justice heard, which inevitably impacts the outcome of transitional justice processes.

Finally, there have been significant changes over time in the transitional justice processes in each of these three countries that merit closer scrutiny. For example, in the cases of Peru and Guatemala, there have been important efforts to move away from situations of near-total impunity to greater accountability for crimes of the past. While truth commissions challenged official narratives of denial, many sectors of society, including some government officials, continue to deny that such abuses were committed. In the face of ongoing campaigns of denial, there have been significant efforts in each country to develop local memory sites and spaces of commemoration, to develop coalitions to strengthen the voices of victims, and to implement national programs to search for persons who were forcibly disappeared.

This report seeks to identify the factors that have allowed for successful transitional justice processes as well as those that have hindered or undermined these processes in each of the three countries; to highlight innovative practices; and to discern key lessons from the transitional justice processes of these three countries that might be useful for other countries transitioning from a period of conflict and authoritarian rule.

II. TRANSITIONAL CASE STUDIES: PERU, GUATEMALA, EL SALVADOR

1. PERU

In 1980, as Peru transitioned to democratic government after more than a decade of military rule, the Shining Path launched an insurgency from the rural hinterlands of Ayacucho, with the objective of toppling the state and imposing a form of agrarian Communist rule. Inspired by Maoism, the Shining Path believed that violent revolution was the only possibility for achieving social change in a country marked by deep class and racial divisions. Led by philosophy professor Abimael Guzmán, the Shining Path demanded total allegiance from its followers. Those who engaged in legal political activities, including trade unionists, peasant federation and social movement leaders, and women community leaders, were seen as deviating from the “correct path” of violent revolution and faced punishment and often death at the hands of the Shining Path. A second insurgent movement, the Tupac Amaru Revolutionary Movement (MRTA), launched armed actions in 1984. The MRTA resembled the more traditional urban revolutionary movements inspired by the teachings of Ernesto “Che” Guevara.

In response to the insurgent threat, the State deployed massive and often arbitrary violence to combat the insurgents, resulting in massacres, forced disappearances, and other grave human rights violations. It was only toward the end of the 1980s that the state security forces reevaluated their counterinsurgency policy and began to focus more on intelligence gathering with an aim to dismantle the leadership of both insurgent movements. During the conflict, human rights organizations, survivors, and relatives of victims pressed tirelessly to document human rights abuses and defend the rights of victims.¹⁸ In 1985, the most prominent organizations united under the umbrella of the National Human Rights Coordinator (*Coordinadora Nacional de Derechos Humanos*, CNDDHH) in order to more effectively respond to the ongoing human rights crisis.¹⁹ The CNDDHH provided legal advice to victims, filed writs of habeas corpus in cases of enforced disappearance and publicly denounced the massacres that began filling the headlines on a near daily basis. While the human rights organizations sought to bring those responsible for the worst abuses to justice, the norm was impunity for state agents accused of committing abuses.²⁰

In the midst of a massive economic crisis and spiraling violence, a political outsider, Alberto Fujimori, was elected to office in 1990. In 1992, with the backing of the armed forces, he carried out a “self-coup” in which he suspended the Constitution, dissolved

Congress, and took over the Judiciary. Fujimori argued this centralization of power was necessary to combat corruption and the insurgent movements. Many Peruvians, exhausted by the war and fearful of the future, embraced Fujimori's heavy-handed measures. In September 1992, reflecting the shift in counterinsurgency strategy focusing on intelligence, Shining Path leader Abimael Guzmán was arrested by a special police counterterrorism unit. This marked a decisive turning point in the war.

Rather than use this opportunity to rebuild Peruvian democracy, the Fujimori government further centralized power, repressed perceived opponents, and co-opted the communications media. Corruption flourished in this context, and reinforced the regime's authoritarian tendencies, even as it retained the semblance of electoral democracy.²¹ In 2000, Fujimori was elected to a third term in office amidst massive charges of electoral fraud and massive social protests challenging the legitimacy and fairness of the elections. A few months later, the regime collapsed in the wake of a series of corruption scandals.²² To avoid criminal investigation, Fujimori fled to Japan, his parents' birthplace, in November 2000. From there, he faxed his resignation as president. Congress declared him unfit to be president, and appointed opposition leader Valentín Paniagua to lead an interim government to manage the transition to democracy and to convene new elections in 2001.

The Peruvian Truth and Reconciliation Commission. Victims' associations and human rights groups called upon the Paniagua government to create a truth commission to investigate the abuses of the past and provide redress for victims. After a series of consultations between the government and civil society organizations, Paniagua passed a presidential decree in June 2001 creating a truth commission empowered to investigate the crimes of the past 20 years. Alejandro Toledo reaffirmed his support for the truth commission after his inauguration as president a few months later. He renamed it the Truth and Reconciliation Commission (CVR) and sought to balance the presence of a member of Fujimori's party and a senior military official by expanding the number of commissioners to twelve. Among the new commissioners was executive secretary of the CNDDHH Sofía Macher, who had played a key role in challenging the worst abuses of the Fujimori regime and in the restoration of Peruvian democracy, and former Senator Rolando Ames, who led the Senate commission of inquiry into the 1986 El Frontón prison massacre.²³

The CVR adopted a comprehensive view of transitional justice resting on three pillars: truth-seeking to determine the extent of political violence and human rights violations during the internal armed conflict and to help locate and identify the victims of enforced disappearance; individual criminal trials, to the extent possible, to hold perpetrators

of grave human rights violations accountable for their acts and to end impunity; and meaningful reparations for victims.²⁴ Peru's integral model of transitional justice was a significant departure from prevailing models in places such as Chile,²⁵ El Salvador,²⁶ and South Africa,²⁷ where pacted or negotiated transitions left members of the *ancien régime* with significant quotas of power, and where truth commissions emphasized truth and reconciliation, with the more or less explicit understanding that justice was impossible in such unstable contexts. Victims' groups and human rights organizations championed the adoption of an integral model from the outset, but two external factors also played a critical role. In March 2001, the Inter-American Court of Human Rights ruled in the Barrios Altos massacre case, finding the Peruvian State responsible for the massacre and ordering it to investigate, prosecute and punish those responsible. The Court also determined that the 1995 amnesty laws lacked legal effect. This removed a key obstacle to retributive justice in Peru and led to the immediate reopening of the investigation in the Barrios Altos case.²⁸ The second factor has to do with the weakened status of the military due to revelations of its involvement in the Fujimori regime's corruption. Dozens of military officials were arrested and prosecuted for corruption, including General Nicolás de Bari Hermoza, who had served eight years as head of the armed forces during the Fujimori regime. The military's credibility was further undermined after the release of a video in April 2001 revealing a secret ceremony in which hundreds of senior military officials signed a loyalty pact to Fujimori and the 1992 'self-coup.' To mitigate the scandal, the armed forces issued a public statement apologizing for its past support of the Fujimori regime and pronounced its support for a truth commission.²⁹

After two years of work, the CVR presented its final report on August 28, 2003. According to the CVR, this was the longest and bloodiest conflict in Peru's history. It found that the immediate cause of the conflict was the decision, in May 1980, of the Shining Path to take up arms against the newly installed democratic regime in its effort to impose communism. The CVR noted that the indiscriminate and brutal response of the state prolonged the conflict, until the 1992 arrest of the senior leadership of both insurgent movements. However, the authoritarian exercise of power by the Fujimori government prolonged the climate of fear and intimidation, as the regime used repression to silence its opponents, and allowed corruption to expand exponentially.

The CVR determined that the conflict produced 69,280 politically motivated deaths, 8,000 cases of enforced disappearance³⁰, the forced displacement of 600,000, an estimated 5,000 cases of arbitrary detention, and the widespread practice of torture and sexual violence, especially against women. The CVR found that 54 percent of the victims were attributable to the Shining Path; 1.5 percent to the MRTA; and approximately 37

percent to state agents, including government forces, paramilitary groups, and civil defense patrols. Seventy-five percent of victims spoke Quechua or another native language as their mother tongue; only 16 percent of Peruvians share this characteristic, revealing the disproportionate impact of political violence on indigenous populations, the most historically excluded and marginalized populations of Peru.³¹ The CVR also noted the differentiated impact of the violence on women, the role women played in resisting violence during the conflict, and included a chapter specifically analyzing sexual violence against women.³²

The CVR called upon all Peruvians to reflect on the indifference with which the majority of society viewed the victims of the conflict and called for a series of measures, including symbolic and material reparations for victims, a national plan to search for the disappeared, the prosecution of grave human rights violations, and institutional reforms, to provide redress to victims and ensure non-repetition.³³ In addition to its report, the CVR produced an exhibit of over 200 photographs collected from photographers whose cameras chronicled the internal armed conflict. The exhibit, entitled “Yuyanapaq,” which means “to remember” in Quechua, “reveals the face of suffering” as “visible proof of the injustices committed” in Peru, while also serving as a way “to dignify the victims,” according to Salomón Lerner, the president of the CVR.³⁴ The CVR also held public hearings, where survivors and families of the victims were invited to share their stories with the nation. In a public ceremony, President Toledo accepted the final report and asked for forgiveness in the name of the Peruvian state. In 2004, following a recommendation by the CVR to create a mechanism to oversee implementation of the CVR’s recommendations, Toledo also established the High-Level Multi-Sectoral Commission (CMAN). Implementation of the CVR’s recommendations was slow to come, however.

Reparations. Two early laws addressed the demands of specific groups of victims: one law created humanitarian assistance programs for displaced persons, while another created the legal category ‘absence by enforced disappearance,’ which was meant to clarify the legal status of victims of enforced disappearance without a formal declaration of death. A law establishing the Integral Reparations Plan was passed in July 2005, but it would be another year before it was finally signed into law by President Toledo in July 2006, just before he was set to leave office.³⁵ The law identified the different categories of beneficiaries,³⁶ established that the CMAN would coordinate the reparations programs, and created the National Reparations Council and charged it with establishing a National Registry of Victims, which would be the basis for the later distribution of collective as well as individual reparations, including monetary reparations, health benefits, and education scholarships.

One controversial aspect of the reparations law was a provision that excluded individuals who were “members of subversive organizations” from being categorized as victims or receiving any benefits, even if they had been the victims of grave human rights abuses.³⁷ This was a notable departure from the CVR’s recommendations, which urged the state to provide reparations to all victims, regardless of whether the perpetrator was an agent of the state or one of the armed insurgent groups. This notion of state responsibility to provide reparations even for harm occasioned by private actors is derived from international human rights law, which holds the state responsible not only for criminal acts committed by its agents but also for failing to protect its citizens from criminal acts occasioned by third parties.³⁸ Several human rights advocates in Peru noted that applying this principle was politically impossible due to the extreme social stigma of armed insurgent groups. One advocate affirmed that the reparations law “would never have been approved” had it not incorporated the exclusion of presumed members of insurgent groups as potential beneficiaries of reparations. The National Reparations Council adopted this exclusion as it began registering victims, but it lacked clear criteria for determining membership in subversive organizations.³⁹

Implementation of the reparation programs fell to the government of Alan García (2006-2011), who was perceived as antagonistic to the CVR recommendations, in large part because of the massive human rights violations that occurred during his first government from 1985 to 1990. The continued demands by victims’ associations, human rights organizations, and other organizations, including the Ombudsman’s Office, forced the government to move forward on implementing collective reparations and initiating the process of registering victims. However, the collective reparations were criticized for being more akin to traditional social programs rather than reparations designed to benefit communities affected by the armed conflict,⁴⁰ and the National Reparations Council was faulted for being excessively slow and bureaucratic in registering victims and for a determination that no reparations would be paid out until all victims had been registered.

The García government finally passed legislation authorizing payment of individual economic reparations at the very end of its term in July 2011. The implementation legislation was sharply criticized, however. It limited benefits to one occurrence per individual, denying the reality that many victims suffered multiple violations. One elderly woman from Ayacucho explained that two of her sons were forcibly disappeared, but she only received reparation for one of them due to this rule. It also established December 31, 2011 as the last day for victims to register, which human rights groups criticized as arbitrary. Victims also questioned the amount the García determined would be paid to victims—10,000 *soles*, approximately US\$3,125—as insufficient

restitution for the life of an individual who was arbitrarily killed or disappeared by the state. They noted that individuals who participated in the civil defense patrols have received much more robust reparations, as much as 33,000 *soles* (approximately US\$10,000) per family.⁴¹

ANFASEP and other organizations staged protests, marches, and meetings with members of Congress during the following administration of Ollanta Humala (2011-2016) to overturn this ruling. During his electoral campaign, Humala promised to fully implement the Integral Reparations Plan. His government prioritized payment of individual reparations, and by January 2016, an estimated 100 million *soles* (US\$31.2 million) had been paid out to 30,000 registered victims.⁴² The Humala government implemented other reparations programs, most notably education scholarships to victims (*Beca 18*), and, after intense lobbying by victims' organizations, agreed to extend this benefit to their children. The limit of one occurrence per victim was later lifted, allowing victims to receive compensation for multiple violations suffered, and the cut-off date for registering as a victim was also lifted indefinitely.⁴³

In a significant recognition of the value of the work of both the CVR and the Reparations Council, and their value in consolidating peace and reconciliation in Peru, UNESCO incorporated the archives of both institutions into its "World Memory" Program in November 2016. As noted by Magaly Robalino Campos, UNESCO's representative in Peru: "Recovering the memory of the [conflict] is key for the construction of peace, and to ensure that similar [atrocities] never happen again."⁴⁴

Highlight: The National Plan to Search for Disappeared Persons

In its Final Report, the CVR recommended the creation of a national plan to search for the victims of enforced disappearance during the internal armed conflict. While the search for victims of enforced disappearance has been ongoing for years, it has been conducted on an ad hoc basis, with some results albeit limited. Current estimates suggest that there are over 15,000 victims of enforced disappearance.⁴⁵ To date, investigators have exhumed 3,202 human remains. Of these, 1,833 have been identified and 1,644 have been returned to their relatives.⁴⁶

In 2015, victims' organizations, in alliance with the Peruvian Forensic Anthropology Team (EPAF), the National Human Rights Coordinating Committee (CNDDHH), the Human Rights Ombudsman and international organizations, developed a working group to advocate for legislation to create a national plan to search for the disappeared. They also devised a public campaign to promote support for the proposed legislation called "*Reúne*" (Reunite).⁴⁷ After months of intense lobbying efforts by victims' organizations and civil

society groups, on June 22, 2016, the Executive promulgated the National Law to Search for Disappeared Persons during the Period of Violence 1980-2000.⁴⁸ In December 2016, in a first critical step in the implementation of the law, the Justice Ministry established the National Plan to Search for Disappeared Persons.⁴⁹

The law's main objective is to accelerate the process of searching, recovering, identifying and returning the remains of individuals who were forcibly disappeared during Peru's internal armed conflict to their families. The law mandates that the Justice Ministry establish a National Registry of Victims and Burial Sites as well as a national DNA database to store reference samples provided by victims' relatives. This is intended to facilitate the work of collecting, cross-checking, verifying, updating, and unifying the existing databases of public and private institutions of victims of enforced disappearance and of clandestine burial sites. It is estimated that there are more than 4,000 such sites in Ayacucho alone, and 6,400 throughout the national territory.

The law adopts a humanitarian focus, meaning that the location and restitution of remains is prioritized rather than the criminal responsibilities of perpetrators. This is not meant to replace or interfere with criminal justice initiatives, but under previous legislation, families of victims of enforced disappearance were required to present a formal complaint before the Attorney General's Office before the state would initiate a search process. If the perpetrators were unidentified, or if there was not sufficient evidence to prove that a crime had occurred, authorities could not commence the search process. With this humanitarian focus, the National Law to Search for Disappeared Persons allows for a new approach which prioritizes the right of the families of victims to find their missing loved ones and give them a dignified burial. Further, the law provides for psychosocial support for the relatives of the victims, material and logistical assistance to facilitate their participation in the different stages of the process and mandates the protection of clandestine graves and other burial sites from alteration.⁵⁰

Criminal Prosecutions. During the internal armed conflict, impunity for grave violations of human rights committed by state agents was the norm. Few cases were investigated by authorities, and even fewer were prosecuted in civilian courts. In those few instances in which cases came before the courts, the military routinely asserted jurisdiction, claiming that any human rights cases involving military personnel were function-related crimes. Conflicts over jurisdiction would be resolved by the Supreme Court, which almost always ruled in favor of the military courts. As Human Rights Watch noted, such courts lacked “the most elementary guarantees of independence and autonomy,” and, unsurprisingly, routinely dismissed human rights charges.⁵¹ In 1995, this system of de facto impunity was formalized when Congress passed two laws that explicitly granted blanket amnesty to state agents allegedly involved in human rights violations. Shining Path abuses were prosecuted in civil and military courts, including the infamous “faceless” courts in which judges’ identities were kept hidden, presumably for security reasons. These courts came under harsh criticism for failing to uphold basic due-process guarantees.⁵²

In the face of institutionalized impunity, victims and human rights organizations sought redress in the Inter-American System of Human Rights. In dozens of cases, the Inter-American Court of Human Rights found the State of Peru responsible for human rights violations and ordered the investigation, prosecution and punishment of those responsible. The Court’s 2001 Barrios Altos ruling, which, as previously mentioned ruled that the amnesty laws lacked legal effect, proved critical to transitional justice efforts in Peru.

In its final report, the CVR recommended the criminal prosecution of 47 cases and called for the creation of a specialized system to investigate and adjudicate these cases. The majority of these cases involved members of government security forces, who had until this point enjoyed total impunity. Many of the crimes committed by Shining Path had already been prosecuted, and the organization’s principal leaders were either in prison or had been killed, though new cases continued to be brought before the courts as other members of the organization were detained.⁵³

In response to the CVR’s recommendation, the Public Ministry established specialized units to investigate human rights and terrorism cases, while the Judiciary established the National Criminal Court (*Sala Penal Nacional*, SPN), which was charged with adjudicating cases of human rights violations, crimes against humanity, and terrorism.⁵⁴ The special prosecutions unit and the SPN were designed to guarantee impartial and swift criminal trials in these cases, and to ensure that the proceedings conformed to international law and norms. Prosecutors and judges were to receive specialized training in international human rights law, and dedication to only these cases would ensure celerity in the investigation and adjudication of such human rights cases.

There have been important successes in Peru's criminal prosecution efforts. The most notable of these is without doubt the successful extradition, prosecution and conviction of former president Alberto Fujimori, who was sentenced to 25 years in prison for aggravated homicide, assault, and kidnapping in several human rights cases.⁵⁵ The Fujimori trial was a watershed in anti-impunity efforts in Peru, demonstrating that powerful political elites can be brought to account in a fair trial that fully respects due process rights and administers justice fairly and effectively.⁵⁶ Convictions have been handed down in a number of other emblematic cases, including the 1991 enforced disappearance of university student Ernesto Castillo Páez;⁵⁷ the 1991 Barrios Altos massacre;⁵⁸ and the 1986 massacre of 69 peasants in Accomarca.⁵⁹

Highlight: The Fujimori Judgment

The Fujimori judgment set a new precedent in the struggle for global justice. The conduct of the tribunal was widely lauded by international observers for maintaining impartiality, adhering to the rule of law, and upholding the defendant's due process guarantees. The judgment relied on national and international law and contributed to human rights jurisprudence by demonstrating that it is possible to hold to account not only the material authors of grave human rights crimes, but also the intellectual authors of such crimes.⁶⁰

The evidence showed that the crimes were perpetrated by the Colina Group, consisting of officers of the Peruvian Army and created by the high command in an official though secret manner. The Colina Group operated clandestinely, but it was under the orders and control of the army high command, which itself was commanded by Fujimori. The court determined that the military members of Colina Group were the direct authors of the 1991 Barrios Altos massacre, in which 15 people were killed and four gravely wounded, the enforced disappearance and killing of nine students and a professor from La Cantuta University, and the kidnapping of journalist Gustavo Gorriti and businessman Samuel Dyer. The court found Fujimori criminally liable under a specific form of indirect or intellectual authorship (*autoría mediata*, sometimes translated as perpetration by means): the commission of crimes through the use of an organized apparatus of power.⁶¹

The court also established that in complex human rights cases such as this, where direct orders and evidence may have been destroyed or may have been only verbal in nature, a preponderance of circumstantial evidence may be sufficient in determining criminal responsibility. The judges found Fujimori guilty of the crimes of aggravated homicide, assault and aggravated kidnapping, crimes outlined in the Peruvian criminal code. At the same time, the judges clearly state in their verdict that these crimes were part of a generalized pattern of

human rights violations during the Fujimori regime that constituted state policy, and that in international law these constitute crimes against humanity.⁶²

The court also ordered Fujimori to pay reparations to the victims and established that the victims from Barrios Altos and La Cantuta were not members of any terrorist organization. This was a particularly significant gesture towards reparation for the families of the victims, who for years had endured the stigma of being repeatedly associated with terrorist organizations in an attempt to delegitimize their demands for truth and justice.

On December 24, 2017, President Pedro Pablo Kuczynski granted Fujimori a humanitarian pardon. Fujimori is ineligible for a regular presidential pardon because Peruvian law prohibits those convicted of aggravated kidnapping from receiving such a benefit. The decision was immediately criticized, as evidence mounted that Kuczynski had granted the pardon as part of a political deal to save himself from impeachment. As of this writing, the families of the victims are seeking to have the pardon revoked.

At the same time, human rights groups have pointed to a number of concerns with Peru's criminal justice process. The special investigations units at the Attorney General's Office remained under resourced, so investigations take an exceptionally long time. The CVR envisioned that the system would focus on the 47 cases it had recommended for criminal prosecution, but individuals and victims' associations began filing charges in hundreds of other cases. To date, only a fraction of cases of human rights violations denounced before the Public Ministry have gone to trial. Over half of the 3,000 complaints filed by victims have been dismissed by prosecutors, due to lack of evidence or lack of an ability to identify a perpetrator, while hundreds of other cases languish in the Attorney General's Office.⁶³ The Defense Ministry has steadfastly refused to turn over official documents that might assist these investigations, even when ordered to do so by competent judicial authorities.⁶⁴

Further complicating the situation, the mandate of the National Criminal Court was expanded beyond human rights and terrorism cases to include drug trafficking, organized crime, money laundering, and a host of other crimes. This loss of specialization and subsequent increase in the Court's caseload has had nefarious consequences for human rights prosecutions. The system has been overwhelmed by these other cases, with human rights cases now constituting less than ten percent of the National Criminal Court's overall caseload. Hearings are held sporadically—two hours every week or every ten days—leading to lengthy, drawn-out proceedings. For example, the public trial in the Accamarca case, a 1985 massacre by the army of 69 indigenous

peasants, lasted five years and ten months. The case of Los Cabitos 1983 (a military base in Ayacucho that was a clandestine center of detention, torture, sexual assault, extrajudicial execution, and forced disappearance) started in May 2011, and the verdict was handed down more than six years later, in August 2017.⁶⁵ Such delays are highly problematic on procedural grounds, and they also undermine the reparative nature of criminal trials for victims. These changes in the Court's mandate came at a time when there were intense public smear campaigns against those pursuing accountability in Peru, often by the highest authorities in the land. Human rights groups believe that the intention is to obstruct the criminal justice process in these cases.⁶⁶

Human rights advocates have also been critical of several sentences handed down by the National Criminal Court, saying they diverge from international human rights standards of evidence and of theories of intellectual authorship, such as command responsibility, superior responsibility, and perpetration by means (*autoría mediata*).⁶⁷ A review of sentences handed down between 2005 and 2016 shows that defendants in human rights cases are twice as likely to be acquitted than convicted. (See Table 1.) Human rights lawyers have also denounced efforts on the part of military officials to persuade or intimidate judicial operators in certain human rights cases. In one case, a leaked email exchange revealed that a National Criminal Court judge had agreed to guarantee an acquittal for a general accused in the Matero massacre case, in exchange for gifts and money.⁶⁸ In another case, the 1997 hostage rescue operation known as Chavín de Huantar, the trial court found in 2012 that one of the MRTA hostage-takers, Eduardo Nicolás Cruz Sánchez, alias "Tito," had been extrajudicially executed after he had surrendered, but acquitted the three officials charged as the intellectual authors of the murder (one other was fugitive). In 2013, an audio recording was released revealing a conversation in which the president of the Supreme Court, the minister of justice, and the government representative before the Inter-American Court, instructed the trial court judge in the case to acquit the three military officials charged and provided advice about how to discount forensic evidence presented by the prosecution.⁶⁹ While there were investigations into allegations of improper interference in the case, no one was charged.⁷⁰ These examples raise serious questions about the level of political interference in transitional justice cases in Peru and the ability of the courts to remain independent in the face of pressure and perhaps intimidation.

This scenario has been further complicated by a sometimes hostile political environment for transitional justice. Particularly during the García administration, government officials, former military officers, and conservative politicians attacked human rights lawyers and government prosecutors in these cases of "political persecution" of the military. They also frequently questioned the motives of judicial operators and human rights advocates engaged in justice processes, at times accusing them of harboring

“terrorist sympathies.”⁷¹ During this period, there were renewed attempts to impose amnesty laws.⁷² Since 2006, the state has assumed the financial costs of legal counsel for military and police officials accused of human rights violations, even though many victims lack legal representation as well as adequate witness protection. In 2010, the Peruvian Army published the report *En Honor a la Verdad* (In Honor of the Truth), in which it provides its viewpoint on Peru’s internal armed conflict. The army report fundamentally challenges the findings of the CVR, asserting that while there may have been “excesses” in the course of implementing the military’s counterinsurgency strategy, in no way could these be considered systematic violations of human rights, much less official state policy.⁷³

Table 1. Sentences in Cases of Grave Human Rights Violations in Peru, 2005-2016

CASE	Year of Sentence	Number Prosecuted	Number Convicted	Number Acquitted	Crime (1)	Status (2)	Second Instance
Delta Pichanaki (4)	2005	10	10	0	H	Conviction	Ratified
Moisés Carvajal Quispe	2005	1	0	1	H	Acquittal	Ratified
Rafael Salgado	2005	3	0	3	H, AOA	Acquittal	Nullified. New trial.
Ramírez Hinojosa	2005	1	0	1	K	Acquittal	Ratified
Benito Céspedes y otros 1	2006	1	0	1	H, K	Acquittal	Ratified
Ernesto Castillo Pérez	2006	16	4	12	FD	Mixed	Ratified
J.C. Alcides and A. Sandoval Flores	2007	1	0	1	FD	Acquittal	Ratified
Benito Céspedes y otros 2	2007	1	0	1	H, K	Acquittal	Ratified
Chuschi 1, 2	2007 / 2014	7	2	4	FD	Mixed	2007 sentence nullified. New trial, mixed sentence.
Eladio Mancilla Calle	2007	3	0	3	FD	Acquittal	Ratified
Hugo Bustíos	2007	2	2	0	H	Conviction	Ratified
Cantuta 1	2008	14	11	0	H, FD, K	Conviction	Ratified
Pedro Haro	2008	5	0	5	FD	Acquittal	Ratified
Zulema Tarazona	2008	1	0	1	H, AA	Conviction	Ratified
Barrios Altos, La Cantuta (A. Fujimori)	2009	1	1	0	H, K	Conviction	Ratified
Constantino Saavedra 1	2009	4	0	4	FD	Acquittal	Nullified. New trial
Desaparición Autoridades de Acocro	2009	5	1	3	K	Mixed	Ratified
Adrian Medina	2010	2	0	2	H	Acquittal	N/A
Barrios Altos, Santa y Pedro Yauri	2010	30	18	12	H, IA, AH, K	Mixed	Ratified

Continues

CASE	Year of Sentence	Number Prosecuted	Number Convicted	Number Acquitted	Crime (1)	Status (2)	Second Instance
Felipe Huaman Palomino	2010	1	0	1	FD	Acquittal	N/A
Cantuta 2 y 3 (09-2008)	2008 / 2010	2	2	0	FD, H, K	Conviction	Appeal pending of one convicted.
Indalecio Pomatanta 1 y 2	2009 / 2011	4	1	3	H	Mixed	Appeal pending
Jeremías Osorio 1 y 2	2008 / 2011	1	0	1	FD	Acquittal	Appeal pending
Jorge Gutierrez Quintero	2011	2	1	1	FD	Mixed	Appeal pending
Pucayacu	2011	3	2	0	H	Conviction	N/A
Walter Castillo Cisneros	2011	1	0	1	FD	Acquittal	N/A
Bernabé Baldeón García	2012	1	1	0	AA	Conviction	N/A
Constantino Saavedra 1 y 2	2009 / 2012	4	0	4	FD	Acquittal	Ratified
Efraín Aponte Ortiz 2	2007 / 2012	4	3	1	H	Mixed	Appeal pending
Gualberto Chipana Wayra	2012	1	0	1	AA	Acquittal	Nullified. New trial.
Luis Manrique Escobar	2012 / 2017	1	0	1	FD	Acquittal	2012 Acquittal nullified. Acquitted in second trial.
Santa Barbara 2	2008 / 2012	8	1	7	FD	Acquittal	Appeal pending
Aucayacu o del capitán Carlos Esparza	2013	1	1	0	FD	Conviction	N/A
Cantuta 4	2013	3	3	0	H, FD, K	Conviction	Ratified
Curgos	2013	4	0	4	FD	Conviction	Nullified
Lircay	2013	2	0	2	FD	Conviction	2013 conviction nullified. Rather than order a new trial, the SCJ acquits the 2 defendants.
Los Laureles 1 y 2	2009/2013	7	0	7	FD	Acquittal	Ratified

CASE	Year of Sentence	Number Prosecuted	Number Convicted	Number Acquitted	Crime (1)	Status (2)	Second Instance
Manyacc o Santiago Antezana	2013	1	1	0	FD	Conviction	Ratified
Marcelino Valencia y Zacarías Pasca 1 y 2	2009 /2013	6	0	5	H	Acquittal	N/A
Matero 1, 2 y 3	2008 / 2010 / 2013	5	0	5	FD	Acquittal	Ratified
Navarrete	2013	1	0	1	T	Acquittal	Nullified
Parcco y Pomatambo 1 y 2	2010/2013	6	0	5	FD	Acquittal	Appeal pending
Testigos del caso Bernabé Baldeón	2013	1	1	0	T	Conviction	Ratified
Agente Carrión	2014	8	0	8	H	Acquittal	Appeal pending
Hilario Ayuque Zuniga	2014	2	0	2	FD	Acquittal	Appeal pending
Javier Tineo	2014	1	1	0	FD	Conviction	Nullified. New trial.
Lucmahuayco (5)	2014	30	0	30	H, T	Acquittal	Appeal pending
Pucará 1 y 2	2010 / 2014	16	2	9	H	Mixed	Mixed. Two convictions ratified, 8 nullified.
Universidad Nacional del Centro 1 y 2	2010 / 2014	2	0	2	H, FD	Conviction	Nullified. SCJ acquits 2 defendants.
Pachaconas	2015	1	1	0	H	Conviction	N/A
Gutierrez Quinteros	2015	1	0	1	FD	Acquittal	N/A
Marco Barrantes 1,2,3 y 4	2007 / 2010 / 2013 / 2015	5	2	3	FD	Conviction	N/A
Chillititira 1 y 2	2011/2015	2	1	1	H	Conviction	N/A
Parccocucho	2016	2	0	2	FD, H	Acquittal	Appeal pending
Accomarca	2016	26	10	5	H, FD, K	Mixed	Appeal pending

Continues

CASE	Year of Sentence	Number Prosecuted	Number Convicted	Number Acquitted	Crime (1)	Status (2)	Second Instance
Sótanos SIE	2016	4	3	0	FD	Conviction	Ratified
MMMMB	2016	10	3	7	SV, K	Mixed	Ratified
Chavín de Huantar 1 y 2	2012/2016	4	0	4	H	Acquittal	Appeal pending of one convicted
TOTAL		298	91	182			

KEY

*Some cases have been litigated more than once, either because the Supreme Court of Justice nullified the verdict and ordered a new trial; or because a separate trial was opened for the same crime but with different defendants. In the case of the former we list the case one time and each trial is listed 1, 2, 3, and so on. Where different defendants are being prosecuted for a case in which others have been prosecuted for the same crime, the case is listed separated, but we still include a numeral annotation to indicate that the same events are being prosecuted involving different alleged perpetrators. The number of prosecuted is often higher than the number of convicted and acquitted because some defendants fail to appear before court.

(1) CRIMES: H=Homicide; FD=Forced disappearance; T=torture; K=kidnapping; AA= aggravated assault; AOA= abuse of authority;

SV= Sexual Violence; IA= illicit association; AH= attempted homicide

(2) Status: refers to first-instance sentence. Conviction=all defendants convicted; Acquittal=all defendants acquitted; Mixed=at least one defendant convicted and at least one acquitted.

(3) Second instance: The Supreme Court of Justice (SCJ) rules on appeals of first-instance verdicts. The SCJ can ratify or nullify, partially or totally, a first-instance sentence.

(4) All of those convicted are civilian members of civil defense patrols.

(5) Five of those convicted are civilian members of civil defense patrols.

SOURCE: Peru Human Rights Trials Project, Jo-Marie Burt, Director.

Memorials, Commemoration and Collective Memory. Memorials and other forms of commemoration may be seen as informal transitional justice mechanisms, but they are an important way that post-conflict societies acknowledge past harm and dignify victims. These may take the form of ad hoc commemorations, memorial sites, and museums, be these local or national in nature. Increasingly, some of these sites are considered to be a key element of the symbolic reparations that states are obliged to provide to restore the dignity of the victims of grave human rights violations. Often, such memory spaces and sites are born of civil society initiatives. There are sometimes also state-sponsored memorialization projects. In both instances, such sites are often the subject of bitter controversy. This is especially true in countries such as those examined here, where competing narratives about what happened during the internal armed conflict and who is responsible continue to circulate in the public sphere.

In Peru, victims' associations and local communities have created memorials, museums, and other sites to commemorate the victims of the conflict. One of the first such spaces was the Memory Museum created by the National Association of Families of the Kidnapped, Detained and Disappeared of Peru (ANFASEP), the first and most important association of victims of the conflict. The museum is located on the third floor of ANFASEP's building in the city of Huamanga, the capital of Ayacucho and epicenter of the political violence that wracked Peru between 1980 and 2000. The ANFASEP Memory Museum presents the victims' view of the conflict, and highlights the abuses committed by government forces as well as the Shining Path. One of its most controversial aspects is a replica of a prison cell where the visitor can peek through a small window to witness an ongoing torture session. Clothing and other belongings of individual victims, donated by their families, are on display at the museum, as are several pieces of art depicting a variety of scenes from the conflict period. At the end of the exhibit is an informative timeline of events related to the conflict, and a powerful collage of photographs of the members of ANFASEP, almost all of them indigenous Quechua.

Because of the contentious nature of memory in Peru, memorials and other memory spaces are often fraught with controversy. The *Ojo que Lloro* (the Eye that Cries) is a memorial space designed by artist Lika Mutal and created with support from human rights organizations and the municipality of Jesus María in Lima. Inaugurated in August 2005, it sits in a corner of the Campo de Marte park, and consists of a labyrinth of circular pathways paved with smooth, grey stones, each of which is inscribed with the name of the victims of the conflict. A large stone block at the center emits a slow stream of flowing water, simulating tears. The memorial site became a subject of intense controversy in 2007, when conservative politicians and media figures warned that

the memorial was “a monument to terrorism,” and sought its removal.⁷⁴ Though the monument had been in existence for more than a year, it drew the ire of conservative politicians after a ruling of the Inter-American Court of Human Rights that ordered the Peruvian State to inscribe onto the stones of the memorial the names of the victims of the Canto Grande massacre, all high-ranking members of Shining Path killed after a government raid on the high-security prison in the days after the April 5, 1992 ‘self-coup.’ Ironically, all the victims named by the CVR were already inscribed on the stones, including those killed at Canto Grande. In response to the backlash, Mutal and the civil society groups that oversee the site agreed to revise the names on the stones to conform to the list developed by the National Registry of Victims, hence erasing the names of hundreds of people who, though they were victims of human rights violations, were not included in the Registry because of their presumed membership in subversive organizations. There have also been frequent vandal attacks against the memorial, including one incident shortly after the extradition of Alberto Fujimori to Peru in September 2007. Dozens of stones were broken or destroyed, and the stone block where the “eye that cries” is located was defaced with orange paint—the color of *fujimorismo*.⁷⁵

In 2016, eight years after its inception, the Peruvian government inaugurated the Place of Memory, Tolerance and Social Inclusion (*LUM, Lugar de la Memoria, la Tolerancia y la Inclusión Social*), with a permanent exhibit chronicling the internal armed conflict, a library, and an auditorium for public events. The LUM was controversial from the start; then-president García rejected an initial donation offer of two million euros by the German government to create a memory museum, stating Peru had no need for such a museum, but that he would gladly accept the money to build roads. After a sharp rebuke by Nobel Laureate Mario Vargas Llosa, García agreed to accept the donation, and asked Vargas Llosa to lead the initiative.⁷⁶

After long delays and several leadership changes, the LUM project advanced steadily under the stewardship of renowned jurist and former judge of the Inter-American Court of Human Rights, Diego García Sayan. García Sayan appointed a professional curatorial team and tasked them with developing the LUM’s permanent exhibit and the narrative script that would guide visitors through it. As part of the decision-making process, the team engaged in country-wide consultations with people and communities affected by the violence, collecting valuable insights about what ordinary Peruvians wanted to see in a memory space.

The long delay in opening the LUM was at least in part related to intense discrepancies over what its core message should be. María Eugenia Ulfe, an anthropologist who has specialized on the topic of art and memory in Peru, noted that some believed that the LUM should reflect the vision of the internal armed conflict laid out by the CVR

and that it should include the Yuyanapaq photography exhibit produced by the CVR, which chronicles the conflict and its consequences.⁷⁷ This was, of course, the exhibit that motivated the original donation by the German government. Yet others saw the LUM as an opportunity to develop a distinct narrative that is far less critical of the role of the armed forces than the CVR report. The LUM admits that the military committed some abuses, which are referred to in the permanent exhibit as “excesses.” The CVR report, however, fundamentally challenges the “excesses” thesis, stating instead that the Peruvian armed forces engaged in systematic violations of human rights that rise to the level of crimes against humanity.

Yet there are important, innovative elements of the LUM that are of great import, including life-size screens that loop the videotaped testimonies of 16 individuals affected by the violence, including survivors of army massacres and of Shining Path violence, members of the clergy and armed forces, among others. One of the most powerful testimonies is that of José Carlos Agüero, who talks about his parents, both Shining Path militants, who were killed by government forces in separate incidents (his father is one of the 200 alleged Shining Path militants killed during the 1986 Fronton prison uprising; his mother was the victim of extrajudicial execution a few years later). He claims his status as a victim, since his parents were both killed unlawfully by the state, but he notes that the broader society does not consider him a victim, and in many ways, extends its reprobation of his parents to him by association. It should be noted that the Yuyanapaq photography exhibit is not housed at the LUM; instead it is now a permanent exhibit at the more remote National Museum in San Borja.⁷⁸

Highlight: La Hoyada “Sanctuary of Memory” in Ayacucho

The CVR documented dozens of cases of enforced disappearance, extrajudicial execution, torture, and sexual violence at the “Los Cabitos” military base in Huamanga, Ayacucho between 1983 and 1985. During this period, the armed forces had virtually total political and administrative control of Ayacucho and surrounding departments that had been declared “states of emergency” by the government.⁷⁹ Victims’ organizations, including ANFASEP, denounced the arbitrary detention of hundreds of individuals at Los Cabitos, many who remain disappeared to this day. Individuals who were detained at Cabitos but were subsequently released have testified that they were tortured while in detention.⁸⁰ Women survivors have testified that they were sexually violated while detained at Los Cabitos.⁸¹

In 2004, journalist Ricardo Uceda published the confession of a military officer who told him that he and others were ordered by their superiors to build ovens to dispose of hundreds of bodies of former detainees who had been killed and were buried at the

Los Cabitos military base.⁸² Between 2006 and 2009, investigators exhumed 109 bodies and approximately 100 kilos of ashes in the area surrounding the military base known as La Hoyada, which served as a training area for the military. They also found the ovens that were allegedly used to cremate the remains of an unknown number of victims. In 2014, the remains of three individuals detained and disappeared at Los Cabitos were positively identified using DNA and returned to the families.⁸³ According to legal advisor to ANFASEP Yuber Alarcón, investigators have not been granted access inside of the military base to conduct exhumations.⁸⁴

In the aftermath of the exhumations, ANFASEP launched an initiative to create a memory space in La Hoyada. The members of ANFASEP view La Hoyada as “a sacred place, because of the people who were buried here,” says former president of the organization Adelina García, whose husband was forcibly disappeared. The Sanctuary of Memory La Hoyada “will be a place for the families of the disappeared to be able to visit to remember their missing loved ones, to leave them flowers, to leave them some fruit,” says García.⁸⁵

After much negotiation, and the intercession of the Ombudsman’s Office and civil society organizations, the regional government of Ayacucho designated six hectares of land for the Sanctuary of Memory in 2014. However, construction of the memorial has been delayed as a group of people invaded a portion of the assigned land plot.⁸⁶ A judged approved an injunction filed by ANFASEP to have the squatters removed, but the scheduled removal has been repeatedly delayed. In the meantime, construction of the memorial remains on hold. A similar and larger invasion occurred shortly after ANFASEP proposed the Sanctuary of Memory. Many of the squatters are army veterans, and many human rights observers believe that they were encouraged to invade the land to prevent further exhumations. These have been legally recognized as formal settlements, making it highly unlikely that further exhumations will take place.⁸⁷

The Sanctuary of Memory remains to date an empty field, marked only by a traditional cross on one end and, on the other, a cement structure in the middle of the field that fueled the crematories. More than three decades after the atrocities at La Hoyada, the victims are still waiting for this important initiative of symbolic reparation to become a reality.

2. GUATEMALA

Guatemala endured a 36-year internal armed conflict between 1960 and 1996, when peace accords were signed between the Guatemalan government and the Guatemalan National Revolutionary Unity (URNG) guerrilla movement. The armed conflict took shape in the aftermath of the overthrow of democratically elected President Jacobo Arbenz in 1954 by the military, in close alliance with landed elites and the U.S. government.⁸⁸ In 1960, a group of young military officers organized an insurgent movement in opposition to extensive government repression. In the following years, other guerrilla organizations appeared, mostly in the capital city and in eastern Guatemala, but they were eliminated after intense government repression.

A new wave of guerrilla organizations emerged in the 1970s in northern and western Guatemala, regions primarily populated by indigenous Maya, while urban organizing against successive military governments also became more intensive.⁸⁹ The military government of Romeo Lucas García (1978-1982) attacked the urban political opposition with a policy of selective assassination of moderate politicians, union organizers, academics, students and community leaders. In June 1980, prominent social democrats Manuel Colom Argueta and Alberto Fuentes Mohr were assassinated, and 27 leaders of the National Workers' Confederation (CNT) were forcibly disappeared.

As the army began to identify the indigenous communities as allies of the guerrillas, the state campaign of terror was extended to rural areas and continued under General José Efraín Ríos Montt, who overthrew Lucas García in a coup d'état in March 1982.⁹⁰ Between 1981 and 1983 the army's scorched-earth campaign against the indigenous population in the western highlands resulted in brutal massacres that left tens of thousands dead and hundreds of communities destroyed. This provoked the massive displacement of indigenous populations.⁹¹ Many fled to the capital or the coast, while others hid in the mountains, or left the country altogether.⁹² Those who remained in their communities were forced to submit to Army control and surveillance. The military forced all men between the ages of 15 and 60 to participate in the Civil Defense Patrols (PACs), which fostered deep divisions within rural communities as many civil patrol members committed abuses against the villagers.

Ríos Montt was overthrown in a coup by Oscar Mejía Víctores in August 1983. Death squad activity in the city continued and even intensified under Mejía Víctores. Victims' organizations began to organize public protests of military repression, but they were victimized as well. One of the most notorious cases is that of Rosario Cuevas, who co-founded the Mutual Support Group (*Grupo de Apoyo Mutuo*, GAM), after her husband,

Carlos Ernesto Cuevas Molina, was forcibly disappeared in May 1984. The government publicly accused GAM of being a guerrilla front and a threat to national security. In April 1985, Rosario Cuevas was found dead, along with her 21-year old brother and her two-year old son. The autopsy showed that the victims had been brutally tortured, and Rosario Cuevas sexually violated, prior to their deaths.⁹³

By 1985, the insurgency had been severely weakened by the policy of state terror and selective assassinations. Military power over society was near-total, and fear was widespread. Under these conditions, the Mejía Victores government promoted the transition of power from military to civilian government. The military oversaw the drafting of a new Constitution and the 1986 election of Vinizio Cerezo as president. The military retained significant power and privileges, however. A blanket amnesty law passed in 1986 shielded military officers from prosecution for human rights and other crimes.

In 1990, under international pressure, the Guatemalan government began peace negotiations with the URNG. In 1996, with oversight from the United Nations, a peace agreement was signed.⁹⁴ The accords consisted of twelve agreements on substantive issues for the transformation of the country, including respect for human rights, socio-economic rights and the agrarian situation, governmental reforms, rights of indigenous peoples, military reform and the creation of a new police force, and the creation of the Commission for Historical Clarification (CEH). The international community supported the peace process and the implementation of the accords through the United Nations Guatemala Mission (MINUGUA), which operated between 1994 and 2004.

Two Truth Commissions. The CEH conducted its inquiry between 1997 and 1999. It visited 2,000 communities, interviewed 20,000 people, and took the testimonies of 7,338 victims. The CEH's 1999 report examined the historical and structural factors contributing to the violence, and determined that in the course of Guatemala's armed conflict more than 200,000 people were killed, 45,000 were forcibly disappeared, and a million people were driven from their homes.⁹⁵ The CEH noted that during the conflict the distinction between combatant and non-combatant was not respected, resulting in the killing of unarmed civilians, including women, children, members of the church, and indigenous leaders. The CEH documented 626 massacres and determined that at least 400 villages were completely destroyed in the course of state-sponsored counterinsurgency operations. The CEH also documented the extensive sexual violence suffered primarily by women during the armed conflict.

According to the CEH, 93 percent of abuses were committed by government forces, three percent by the guerrillas, and four percent was undetermined. Four out of five victims were members of Guatemala's indigenous Maya groups, leading the CEH to

conclude that the Guatemalan state had committed ‘acts of genocide’ against Maya groups in five regions of the country between 1981 and 1983. The period of greatest violence occurred under the regime of General José Efraín Ríos Montt (March 1982-August 1983)⁹⁶ and included widespread massacres, the forced displacement of populations, targeted attacks against indigenous Mayan communities, and widespread and systematic sexual violence against women.⁹⁷

The Human Rights Office of the Archbishop’s Office (ODHAG) launched its own commission of inquiry in 1995, prior to the signing of the peace accords, known as the Interdiocesan Project for the Recovery of Historical Memory (REHMI).⁹⁸ Dioceses throughout the country collaborated with the REHMI project. Some 600 members of affected communities were trained to conduct interviews with survivors and families of victims, usually in their native languages, a process that was designed not only to collect testimonies but also to create spaces for dialogue within local communities about the nature and impact of the violence.⁹⁹ Over the course of three years, REHMI collected, coded and analyzed 5,180 testimonies. These testimonies, along with other sources, including official military documents, declassified U.S. government documents, and perpetrator testimonies, served as the basis for the REHMI’s final report, *Guatemala: Nunca Más*.

Two days after Bishop Juan Gerardi presented REHMI’s final report in a public ceremony on April 21, 1998, he was assassinated on order of the Presidential High Command (*Estado Mayor Presidencial*).¹⁰⁰ Gerardi’s murder, which occurred as the CEH was in the midst of its investigation, underscored the extreme difficulty of collecting victim testimony and speaking publicly about the atrocities committed during Guatemala’s internal armed conflict, given the continued power of the very actors responsible for the crimes.

In its final report, aptly titled “Memory of Silence,” the CEH identified the key factors underlying the conflict and outlined a number of recommendations designed to provide redress for victims and to strengthen peace and a democratic political system based on respect for human rights. The Commission affirmed that one of the causes of the internal armed conflict was the Guatemalan State itself. The State’s authoritarian and exclusionary policies, based on the marginalization of the indigenous majority, served to protect the interests of a small group of powerful elites who deployed direct violence against any effort to alter the status quo. The CEH thus recommended a series of measures to provide redress for victims as well as to change the underlying structure of the Guatemalan State. The CEH called upon the state to provide integral reparations for victims, including economic reparations and restoration of material possessions;

to investigate all cases of enforced disappearance and create a national plan to search for the remains of the victims; and to take measures to preserve the memory of the victims. The CEH also recommended reforms of the electoral system, the judiciary, and the armed forces to strengthen the democratic system, as well as a series of measures designed to consolidate the peace, including fiscal reform and policies to overcome racism and the historic oppression of the indigenous Maya population.

Even as the international community praised the CEH for its report and recommendations, in Guatemala, conservative politicians, economic elites and the armed forces balked at the Commission's report and recommendations. Then President Álvaro Arzú publicly rejected the report and refused to sign it. A decade would pass before a Guatemalan president officially acknowledged the veracity of the CEH report and its findings. In a public ceremony in 2009, then President Álvaro Colom recognized the CEH report and issued a formal apology to victims of the armed conflict for abuses committed by the Guatemalan State. However, his successor, Otto Pérez Molina, a retired general who was an active-duty commander in the Ixil region during the Ríos Montt government, returned to a policy of denial of the abuses of the past.

Victims' associations, human rights groups, and allied organizations have continued to demand implementation of the CEH's recommendations, but for years the indifference of the State to their demands was overwhelming. Even so, as will be discussed below, a combination of factors has allowed Guatemala to make some progress in its transitional justice process, though the road has been fraught with difficulties and there have been significant setbacks along the way.

Highlight: The Struggle to Access Military Archives

The Guatemalan military has steadfastly resisted handing over official documents to facilitate human rights investigations. The Law of National Reconciliation of 1996 mandated that all state entities "provide the Commission of Historical Clarification the support it requires."¹⁰¹ Yet, the state repeatedly denied the CEH access to official documents, particularly the files of the military and intelligence services, based on the claim that documents were protected by military or national security exemptions,¹⁰² or that the requested information never or no longer existed due to the irregular nature of the armed conflict.¹⁰³ The State has also asserted that the irregular nature of the conflict meant that records were not produced, or were not preserved, that otherwise would have been.

Nevertheless, several official documents have come to public light and have been important in helping families discover the truth about the fate of their missing loved

ones. For example, the Military Diary, a logbook that revealed the fate of scores of Guatemalan citizens who were forcibly disappeared by security forces during the mid-1980s, was leaked in 1999 to National Security Archive researcher Kate Doyle.¹⁰⁴ The logbook revealed that the Guatemalan military kept detailed records of its death-squad operations. It included photographs of 183 people who were forcibly disappeared and coded references to their executions. To date, the Guatemalan Forensic Anthropology Foundation (FAFG) has identified seven of the Military Diary victims using DNA evidence. All of the remains were found in clandestine graves on military bases.¹⁰⁵

A major breakthrough in accessing official documents came in 2005, when millions of pages of National Police files were discovered in an abandoned warehouse. The National Police Historical Archive (AHPN) was created to organize the documents, which include administrative police documents for the National Police, a state entity in operation from 1882 to 1996 that was implicated in numerous human rights violations. The records include identification cards, vehicle license plates, photographs, police logs, as well as loose files on kidnappings, murders and assassinations. The Police Archives are now public in their entirety, digitized and partly accessible online.¹⁰⁶

The executive and state security forces have sought to limit access to AHPN. However, the engagement of civil society, the financial support of international actors, and the oversight of the Human Rights Ombudsman, have allowed it to remain operative and open to the public.¹⁰⁷ Documents from the archive have been used to assist families in the search for the disappeared, and in numerous judicial investigations by government prosecutors and human rights lawyers. In 2009, the AHPN established an Access to Information Office to provide families a way to easily access information in the Archive. The AHPN's website states that hundreds of family members of victims have visited the Archive seeking information about their disappeared relatives.¹⁰⁸

Reparations. Four years after the publication of the CEH report, the government created the National Reparations Program (PNR). The PNR was the result of a government resolution, rather than a law passed by Congress, as requested by victims' groups.¹⁰⁹ As a result, the PNR, which is functionally dependent on the Peace Secretariat, is highly contingent on the priorities and political will of the incumbent government. Some administrations have approached reparations policy as a source of clientelistic handouts, whereas others that give low importance to acknowledging the state's obligations to the victims of the internal armed conflict have virtually abandoned the reparations program. Such was the case, in particular, with the government of retired army general Otto Pérez Molina (2012-15). Victims' associations continue to demand that Congress pass legislation establishing the PNR as official state policy. They say that this would reduce the uncertainty that has characterized the reparations program to

date, as it would give the PNR functional autonomy, guarantee that it has an annual budget, and cushion it from the political vagaries of different administrations.¹¹⁰

The 2003 resolution establishing the PNR includes reparations for victims of enforced disappearance, extrajudicial execution, torture, forced displacement, and sexual violence. The crime of genocide is not included, despite the fact that the CEH highlighted “acts of genocide” in its report.¹¹¹ The reparations program includes four different types of reparations: material, individual economic, psychosocial, and symbolic reparations. Material reparations aim to address material losses suffered during the armed conflict, including land restitution, housing, and productive projects. Individual economic reparations provide a specific sum to victims or their families, and represent official acknowledgment of the moral, physical, and material harm caused. Psychosocial reparations and rehabilitation measures seek to address the mental and physical health issues among affected individuals and communities. Symbolic reparations seek to acknowledge victims and promote historic memory, including the creation of museums and monuments, commemorating National Victims’ Day, and supporting the exhumation and reburial of victims of the internal armed conflict, among others.

The PNR has 15 regional offices in areas affected by the internal armed conflict, though decision-making has remained centralized in the Guatemala City office.¹¹² In practice, the integral focus laid out in the design of the reparations program has not been respected. Instead, the PNR has focused on small, individual payments to victims. Still, many victims have been denied compensation because they are not able to comply with all the legal requirements of the PNR. This is especially the case for indigenous victims who lack identification documents, are not familiar with the state bureaucracy, and do not speak Spanish. Victims’ associations also criticize the PNR for not implementing programs to promote moral, cultural and psychosocial reparations as well as scholarships for the children of the victims of the conflict.¹¹³

Under the Pérez Molina administration, the PNR’s budget was cut by half and reparations payments to victims virtually ceased.¹¹⁴ This state of affairs has continued under the government of Jimmy Morales, who was elected president in 2015 with the National Convergence Front (FCN), a party founded by senior military officials linked to the counterinsurgency war. In fact, the PNR appears to have collapsed entirely. According to Impunity Watch, the Congress allocated 25 million *quetzales* (approximately \$3.3 million) to the PNR for 2016, less than 10 percent of the 300 million (\$40 million) it should receive.¹¹⁵

Another source of reparations for victims emanates from the rulings handed down by the Inter-American Court of Human Rights. In numerous cases, such as the Plan de Sánchez massacre and the enforced disappearance of Marco Antonio Molina Theissen,

the Court has found the State of Guatemala responsible for grave human rights violations and has ordered the State to deliver economic and symbolic reparations to victims. However, implementation of the full range of Court-ordered reparations has been uneven. The Guatemalan State has been more likely to implement the symbolic reparations measures ordered by the Court, such as publication of the Court's ruling; public apologies to the victims; and commemorative measures. For example, in the Molina Theissen case, the sentence was published, a public apology was made to the victims, and a public school was named after Marco Antonio.¹¹⁶

However, the state has obviated its obligation to implement other measures ordered by the Court. The state has not pursued its obligation to search for and return the remains of Marco Antonio and other victims of enforced disappearance, nor has it created a mechanism to facilitate the search for all the disappeared as ordered by the Court. Toward that end, victims' groups have sought passage of legislation that would establish a National Commission to Search for Victims of Enforced Disappearance and other forms of Disappearance (Law 35-90).¹¹⁷ To date, Congress has not approved this legislation. Even as the State has failed in its obligation to search for the disappeared, civil society organizations, most notably the Guatemalan Forensic Anthropology Foundation (FAFG), have taken the lead in the search for the disappeared in Guatemala. Since the mid-1990s, the FAFG has conducted hundreds of exhumations. It also established a DNA bank and laboratory to help identify the remains of the victims in order to return them to their families for proper burial. (See Highlight: Civil Society Leads the Search for the Disappeared.)

Finally, in virtually all the cases dealing with the internal armed conflict, the Inter-American Court has also outlined the obligation of the Guatemalan State to investigate, prosecute and punish the perpetrators. For many years the Guatemalan State failed to fulfill this obligation, but since 2008 there have been important efforts to investigate and prosecute several cases, which will be discussed further below.

Highlight: Civil Society Leads the Search for the Disappeared

The Guatemalan countryside is riddled with clandestine and unmarked graves from the conflict period. As elsewhere, the absence of a body to mourn and a gravesite to remember and honor their loved ones is a particular source of anguish for the families of victims, especially in indigenous communities for whom burial rituals are a constituent element of their religious and culture practice. One of the most important forms of reparation sought by families of victims is to know the truth about what happened to their loved ones, to recover their remains, and to bury them with dignity. The process of exhuming the remains of victims and returning them to their communities where they are laid to

rest has become an integral part of the process of reconstructing local memories of the recent past and dignifying the victims.

The FAFG began forensic investigations at the request of surviving victims and the families of victims of enforced disappearance. Since 1992, the FAFG has carried out hundreds of multidisciplinary forensic investigations toward this end. Investigations start with interviews with survivors and families of the victims, and continue with forensic archaeology, anthropology, and genetics to locate, recover, document, analyze, and preserve forensic physical evidence of human rights violations committed during the armed conflict. Violations investigated by the FAFG include mass killings, extrajudicial executions, enforced disappearances, and other unlawful killings. Families of victims take on an active role in the exhumation process, sometimes even helping with the physical labor of digging for remains.

The FAFG has contributed decisively to truth-recovery in Guatemala. As of December 2016, FAFG reports conducting 1,273 exhumations, in which 5,935 individuals were exhumed. A total of 2,179 individuals have been positively identified using DNA and other scientific methods.¹¹⁸ The FAFG has presented 1,350 expert reports to the Attorney General's Office, including six expert reports demonstrating patterns of human rights violations. The FAFG also assists the families of the identified victims through psycho-social support and by helping arrange burials of their loved ones' remains.

Through its forensic work, the FAFG was able to locate and identify seven of the 183 victims listed in the Military Diary, as noted above. The identifications were critical in corroborating the authenticity of the logbook and the information contained therein.¹¹⁹ In 2012, the Inter-American Court of Human Rights found the Guatemalan State responsible for several of cases of enforced disappearance registered in the Military Diary, and ordered the investigation, prosecution and punishment of those responsible. The case is currently under investigation by the Attorney General's Office for possible adjudication in Guatemala's domestic courts. In 2016, the pretrial judge in the case, Miguel Ángel Gálvez seized military documents he deemed pertinent to his investigation into the disappearances described in the military logbook.¹²⁰

FAFG has also worked closely with victims' associations in their efforts to promote accountability for grave crimes. In collaboration with the Attorney General's Office and Families of the Disappeared in Guatemala (FAMDEGUA), the FAFG used DNA to help locate and identify two children survivors of the Dos Erres massacre, in which 201 people were killed in 1982. The two survivors became key witnesses in later trials that ended in convictions of several elite soldiers (known as Kaibiles).¹²¹ In addition, a judge determined in April 2017 that former dictator Efraín Ríos Montt should stand trial for his role as intellectual author of the massacre.¹²² Forensic evidence produced by the FAFG was also used in the genocide trial against Ríos Montt.

The forensic evidence gathered by the FAFG is at the center of another major case, known as the CREOMPAZ case. Eight officers, including the former head of the army Benedicto Lucas García, are accused of criminal responsibility for numerous cases of enforced disappearances, torture, sexual violence, and extrajudicial execution carried out between 1981 and 1987 in Military Zone 21 (MZ21), in Cobán, Alta Verapaz. MZ21 is currently a center for training UN peacekeepers known by its acronym CREOMPAZ. Investigators from the FAFG exhumed 565 bodies from 85 mass graves at the former military base. To date, they have identified 143 of the victims.¹²³

As these examples suggest, the synergistic relationship between the FAFG, victims' associations, and prosecutors has galvanized the search for truth and justice in Guatemala.

Criminal Prosecutions. As part of the peace process, the Guatemalan Congress passed the Law of National Reconciliation in 1996.¹²⁴ The law nullifies the 1986 amnesty law, put in place by the outgoing Mejía Victores regime, which was intended to guarantee immunity from prosecution for all crimes committed during his government as well as that of his predecessor, Ríos Montt, in which he served as defense minister. While the 1996 law does grant amnesty for those who had taken part in the war, it explicitly excludes from the amnesty provisions the international crimes of genocide, enforced disappearance, torture and other crimes against humanity. In theory, therefore, criminal prosecutions could be pursued in post-accord Guatemala. However, the persistence of de facto arrangements favoring impunity for those who ordered and committed such atrocities meant that judicial authorities were reticent to criminally investigate these and other crimes, save a few high-profile cases, including the 1990 murder of anthropologist Myrna Mack and the 1998 murder of Bishop Juan Gerardi.¹²⁵

In the face of this institutionalized impunity and official denial, victims' associations and their allies in civil society persisted in their demands for accountability. They continued to work at the national level collecting evidence, including witness testimonies, physical evidence, and official documents, among others, to document grave human rights violations. In light of inaction by domestic courts, they also began to press their claims for truth and justice before regional and international courts.¹²⁶ One of the earliest cases to come before the Guatemalan courts was the Plan de Sánchez massacre. When the case was dismissed, CALDH, the civil complainant, brought it before the Inter-American Commission on Human Rights, which in turn brought the case before the Inter-American Court of Human Rights. In 2004 the Inter-American Court found the Guatemalan State responsible for the massacre and ordered it to investigate, prosecute and punish the perpetrators.¹²⁷ This ruling, along with a number of other rulings by the

Inter-American Court against the State of Guatemala, including the Molina Theissen enforced disappearance case, the Dos Erres massacre, and the Military Diary case, created pressure on the domestic justice system to pursue criminal prosecution in cases of historic human rights abuses.¹²⁸

International courts have also played a critical role in pressuring the Guatemalan State to prosecute human rights cases in domestic tribunals. In 1999, invoking the principle of universal jurisdiction (not long after Chile's Pinochet had been arrested in London on this principle), indigenous rights activist and Nobel Peace Laureate Rigoberta Menchú Tum filed charges before the Spanish National Court against eight senior Guatemalan government officials, including former heads of state Fernando Romeo Lucas García, José Efraín Ríos Montt and Óscar Humberto Mejía Víctores.¹²⁹ The case remained inactive until 2005, when the Spanish Constitutional Court ruled in favor of Spanish jurisdiction in the Guatemala genocide case. The case came before Judge Santiago Pedraz, who in 2006 requested the extradition of Ríos Montt and others named in the case. The Guatemalan Constitutional Court rejected the extradition request.¹³⁰ Pedraz nevertheless continued to investigate the case, taking witness and expert testimony in 2008 and 2009. But, without a defendant, he could not render a verdict. Even so, says Juan Francisco Soto, Executive Director of CALDH, the extradition request and the unfolding proceedings in Spain galvanized international attention and created pressure on the Guatemalan State to pursue domestic prosecution in the genocide case.¹³¹

Back in Guatemala, the creation of the International Commission Against Impunity in Guatemala (CICIG) in 2007 was prompting a series of shifts within the domestic justice system. A UN body established to strengthen the capacity of the legal system to combat illegal groups and clandestine security structures that continued to operate in postwar Guatemala, the CICIG works side by side with the Attorney General's Office and has played a critical role in strengthening the justice system.¹³² CICIG helped establish new procedures to select the attorney general and senior judges, as well as in the creation of a specialized court system, the High Risk Tribunals, to adjudicate complex criminal cases. The High Risk Tribunals would become a critical element in strengthening the judicial system's capacity to adjudicate complex cases such as organized crime and international crimes cases, including the Ríos Montt genocide case. As one international study noted: "Since 2009, all major cases of organized crime and human rights abuses have used these specialized courts, ensuring greater judicial independence, heightened expertise, and greater protection for the judges and other participants."¹³³ The CICIG also helped strengthen the technical capacities of the Public Ministry to investigate complex cases of organized crime and grave human rights violations.¹³⁴

In the context of these changes within the Guatemalan justice sector, reform-minded legal professionals took positions in the Public Ministry and in key leadership roles in the Judiciary. The then-president of the Criminal Chamber of the Supreme Court of Justice, César Barrientos Pellecer, supported the creation and subsequent implementation of the High Risk Tribunals, and worked diligently to ensure the independence and effective operation of these tribunals.¹³⁵ Within the Public Ministry, independent attorneys general, including Amílcar Velásquez Zarate (2008-2010), Claudia Paz y Paz (2010-2014) and Thelma Aldana (2014-2018), have spearheaded investigations aimed at combatting Guatemala's dismal impunity rate for serious crimes, including grave crimes related to the internal armed conflict.¹³⁶ Claudia Paz y Paz oversaw a reorganization of the Human Rights Section within the Public Ministry, appointing experienced prosecutors to head and spearhead investigations in the Section's unit on human rights violations during the armed conflict.

As investigations into past human rights cases began moving forward, public prosecutors began to work more closely with civil society actors in their investigations. Individual victims, victims' associations, and human rights organizations representing them can act as civil complainants to the cases (*querellante adhesivo*), facilitating this collaborative relationship. Victims' associations and human rights groups have played a critical role in collecting witness testimony and other evidence that has been central to legal cases. This combination of factors contributed to a new wave of prosecutorial activity for past human rights crimes, culminating in several convictions for cases of forced disappearance, massacres and extrajudicial execution.

Critical to this process was a long-term process of alliance-building among civil society actors and sectors within the state, and specifically within legal institutions, committed to challenging impunity for past human rights crimes. The fruits of these new prosecutorial efforts can be seen in the number of cases brought to trial and resulting in convictions between 2008 and 2013, the period in which Zarate and Paz y Paz were at the helm of the PPO. As can be seen in Table 2, aside from the genocide case, ten convictions were handed down between 2008 and 2013, with a total of 26 individuals convicted. This is a relatively small number, and those convicted were primarily low-ranking officers and soldiers. Nevertheless, these convictions breached the wall of impunity in Guatemala, illustrating the capacity of the country's legal system to investigate and adjudicate complex human rights cases and laying the groundwork for the prosecution of senior military officials in several cases, including the celebrated Maya Ixil genocide case, in which former dictator José Efraín Ríos Montt was prosecuted and convicted of genocide and crimes against humanity. Unlike previous convictions, the genocide trial triggered a massive backlash by conservative military and economic elites, who successfully lobbied the Constitutional

Court to intervene. It partially suspended the proceedings, effectively vacating the ruling. After several failed attempts, the case is being retried in court as of this writing.¹³⁷ (See Highlights: The Genocide Trial.)

Table 2. Human Rights Convictions in Guatemala, 2008-2016

Case	Year of Sentence	Number Convicted	Crime*
Rio Negro ¹³⁸	2008	5	H, CAH
Chuatalum	2009	1	FD
El Jute	2009	4	FD
Edgar Fernando García	2010	2	FD
Dos Erres	2011	4	H, CAH
Plan de Sánchez	2012	5	H, CAH
Dos Erres (2nd trial)	2012	1	H, CAH
Edgar Enrique Sáenz Calito	2012	1	FD, CAH
Paredes Cheguen Chiquimula	2013	1	FD
Ixil Genocide**	2013	1 (1 acquitted)	G, CAH
Edgar Fernando Garcia (2nd trial)	2013	2	FD
Burning of the Spanish Embassy	2015	1	H, CAH
Sepur Zarco	2016	2	CAH, FD, H

* H=Homicide, CAH=Crimes against humanity; FD=Forced disappearance; G=Genocide

** Sentence vacated after Constitutional Court decision of 20 May 2013.

Source: Attorney General's Office; table created by author.

Highlight: The Genocide Trial

When Ríos Montt's legislative mandate expired on 14 January 2012, so too did his parliamentary immunity.¹³⁹ This created a new opportunity for the justice system to act on the complaint presented by the Association for Justice and Reconciliation (AJR), an association of 22 communities in the five regions affected by government violence, and CALDH more than a decade earlier.¹⁴⁰ Indeed, within days, presiding judge Carol Patricia Flores ordered Ríos Montt to appear before the court to respond to the charges against him. Ríos Montt complied, and he was placed under house arrest. His lawyers filed dozens of legal motions, including a recusal against Judge Flores, effectively delaying the start of the trial by more than a year. In January 2013, the new judge presiding over the case, Miguel Ángel Gálvez, found sufficient evidence to bring the case to trial. The start date for the trial was set for 19 March 2013.

On 10 May 2013, before a packed courtroom, a Guatemalan court found Ríos Montt guilty of genocide and crimes against humanity.¹⁴¹ The conviction was handed down for crimes committed against Guatemala's Maya Ixil indigenous population during Ríos Montt's 17-month rule between March 1982 and August 1983, the bloodiest period of Guatemala's 36-year armed conflict.¹⁴² The 86-year-old Ríos Montt was sentenced to 80 years in prison—50 years for genocide and 30 years for crimes against humanity. His house arrest was revoked, and he was immediately transported to Matamoros Prison. Retired General Manuel Rodríguez Sánchez, the former head of military intelligence under Ríos Montt, was acquitted. The judgment against Ríos Montt came 30 years after the crimes and more than a decade after survivors first brought a complaint to the Attorney General's Office.

The Ríos Montt trial marked the first time a former head of state was prosecuted in a domestic court for the crime of genocide, representing a milestone in the annals of global justice. For Guatemala, while a number of domestic prosecutions for human rights violations had taken place, this was the first time that a former head of state and senior military officials were prosecuted for grave human rights violations. By holding a former head of state responsible for crimes committed on his order and demonstrating that these were crimes of state rather than 'excesses' committed by individual soldiers or rogue military units, the Ríos Montt verdict struck at the heart of the institutionalized impunity surrounding grave crimes cases in Guatemala.

The trial and verdict held specific significance for Guatemala's historically marginalized and excluded indigenous population. Some 100 Maya Ixil survivors and families of victims testified at the genocide trial, recounting for the first time in public the atrocities they, their families, and their communities endured. Women who were victims of sexual violence also gave wrenching testimony about the multiple rapes they endured at the hands of soldiers. For the victims, the guilty verdict represented both an acknowledgment of the grave abuses suffered at the hands of the state and a recognition of their rights as citizens to legal and moral redress.¹⁴³

However, powerful forces mobilized against the genocide trial from day one. As the proceedings unfolded, conservative politicians and pro-military groups challenged the legitimacy of the trial and accused those promoting it of being guerrilla sympathizers and using the justice system to exact revenge on the military. Sitting president Otto Pérez Molina —himself a retired army general who had been a commander in the Ixil region during the Ríos Montt period—asserted publicly, before, during and after the proceedings, that no genocide had occurred in Guatemala.¹⁴⁴ This amounted to outright interference by the Executive in judicial matters, and no doubt provided cover for the intimidation campaign conservative sectors were waging against judicial operators, human rights organizations and victims' associations. Army veterans staged a public

protest the day after the verdict was handed down. The powerful business association, the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF), held a press conference at which it decried the verdict as a stain on Guatemala's international reputation and called for its reversal.¹⁴⁵

Ten days after the verdict was handed down, in a split decision, the Constitutional Court (CC), arguing procedural violations, partially suspended the genocide proceedings, effectively undoing the verdict against Ríos Montt. Human rights activists denounced the CC for bypassing the normal appeal process and asserted that the ruling was illegal.¹⁴⁶ (Two judges wrote dissenting opinions further elaborating this argument.) As a result of the CC decision, Ríos Montt was released from custody, though he remained under house arrest. Rodríguez Sánchez, who had been freed, was returned to a military hospital.

The undoing of the genocide verdict revealed profound vulnerabilities within Guatemala's justice sector and the ability of de facto powers to circumscribe transitional justice efforts. Survivors and families of the victims who celebrated the verdict now felt vulnerable, and some feared for their physical safety. A new tribunal was appointed to hear the case. After several failed attempts to restart the genocide trial, in October 2017, the High Risk Tribunal B began hearing testimony in the case, but with the defendants in separate proceedings. This is because Ríos Montt has been diagnosed to be mentally unfit to stand trial and is therefore being prosecuted under special proceedings in which he is not required to be present and which are not open to the public.¹⁴⁷ After his death in April 2018, the case against Ríos Montt was dismissed. The proceedings against Rodríguez Sánchez are open to the public.¹⁴⁸

Despite their continued participation in the retrial proceedings, victims and their civil society allies continue to uphold the 10 May 2013 verdict as legitimate. They filed a petition before the Inter-American Commission on Human Rights asserting that the Guatemalan State has failed to fulfill its obligation to guarantee victims their right to justice, given that after more than 30 years no one has been held responsible for the human rights violations suffered by thousands of victims.¹⁴⁹

Beyond the legal process, the victims and their allies in civil society emphasize the political and historic victory that the genocide trial represents, despite the undoing of the verdict and the long delays in moving forward in the retrial proceedings. As Juan Francisco Soto, executive director of CALDH, states, "We demonstrated in a court of law that there was genocide in Guatemala. The verdict was vacated, but this was done using procedural arguments—questionable ones at that—rather than substantive ones."¹⁵⁰

The Constitutional Court's undoing of the genocide verdict, along with a series of other incidents, raised concern among human rights activists that a backlash from conservative sectors might undermine Guatemala's transitional justice process. For example, Ricardo Méndez Ruiz, president of the Foundation Against Terrorism (FCT), a group that staunchly opposes prosecutions of military officials, filed numerous lawsuits against judicial operators and human rights advocates involved in the genocide case, including presiding judge Yassmín Barrios, Attorney General Claudia Paz y Paz, lead prosecutor Orlando López, and Fredy Peccerelli, executive director of the FAFG. In May 2014, Paz y Paz was removed from her post six months early and left the country for fear of reprisals. Méndez Ruiz has filed frivolous charges intended to dissuade and intimidate others active in transitional justice litigation, including human rights lawyers¹⁵¹ and judges.¹⁵²

With Claudia Paz y Paz no longer at the helm of the Attorney General's Office, no new indictments in human rights cases were filed for the remainder of 2014 and all of 2015. Only two cases already in advanced stages of the investigation process moved forward in the courts: the enforced disappearance of Edgar Fernando García and the Spanish Embassy massacre. In September 2013, two police officers, including the former chief of the National Police, Héctor Rafael Bol de la Cruz, were convicted to 40 years in prison for the 1984 disappearance of García.¹⁵³ In January 2015, Pedro García Arredondo, former head of the Sixth Command unit of the now defunct Guatemalan National Police, was found guilty of murder, attempted murder and crimes against humanity for ordering the setting of the fire that engulfed the Spanish Embassy on January 31, 1980, killing the 37 students and peasants who were staging a protest to call attention to human rights violations in the Quiché department, including murders, kidnappings, rapes and torture.¹⁵⁴ These convictions held great symbolic importance, given the high visibility of the victims. Edgar Fernando García was a well-known labor activist. After he was disappeared, his wife, Nineth Montenegro de García, co-founded the Mutual Support Group (GAM), the first victims' association in Guatemala. The Spanish Embassy massacre was also a highly visible case given the diplomatic strain it caused between Guatemala and Spain, and also because Víctor Menchú, the father of Nobel Peace Laureate Rigoberta Menchú, was among those killed.

Things changed dramatically in 2016, when key developments brought transitional justice back to the forefront of public debate. On January 6, the Attorney General's Office arrested 18 senior military officers on charges of criminal responsibility for dozens of cases of enforced disappearances and massacres committed between 1981 and 1988.¹⁵⁵ Four of those arrested were charged in the enforced disappearance of fourteen-year old Marco Antonio Molina Theissen and the illegal detention, torture and sexual

assault of his sister Emma Guadalupe Molina Theissen in 1981, while the other 14 were charged in relation to the mass graves found at Military Base No. 21 in Cobán, Alta Verapaz, currently known as CREOMPAZ. Among the accused are military officials long believed to be untouchable, including former Army Chief of Staff Benedicto Lucas García and Manuel Callejas y Callejas, former head of military intelligence and reputed head of the “*Cofradía*” crime syndicate.¹⁵⁶ Both of these cases have been sent to trial.¹⁵⁷

Just a few weeks later, the Sepur Zarco sexual violence case came to trial, after many years in preliminary proceedings. After four weeks of intensive public hearings, on February 26, 2016, a court found two former senior military officers guilty of crimes against humanity in a case involving murder, sexual violence, sexual slavery and other atrocities committed at the Sepur Zarco army base in 1982 and 1983.¹⁵⁸ Presiding judge Yassmín Barrios said that rape had been deliberately used at Sepur Zarco as a weapon aimed at destroying the local indigenous Maya Q'eqchi' community. The military officials were sentenced to 120 and 240 years in prison. These new and significant cases indicate that, despite continued obstacles, the institutional reforms within the Attorney General's Office and within the judicial system have created the impetus for transitional justice cases to continue to move forward.

Memorials, Commemoration and Collective Memory. Memory debates are highly contentious in Guatemala. As already discussed, Bishop Gerardi was assassinated after publicly presenting the findings of the REHMI report, and it took the Guatemalan State a decade to finally acknowledge the final report of the Commission for Historical Clarification and apologize to victims. Even so, subsequent governments have returned to a narrative of denial that grave violations of human rights took place during the internal armed conflict, instead reviving the old discourse about the military saving the country from communism and impugning the motivations of those pursuing historical truth and justice, claiming that they are motivated by vengeance or financial gain.

It is not surprising that in this context, most memorials and commemorations are local in nature and at the initiative of victims' groups and civil society organizations. These initiatives are quite varied. Communities across the country have constructed local memorial spaces to commemorate the victims of massacres and enforced disappearance.¹⁵⁹ In the Ixil region, community leaders developed an oral history project to reconstruct the events of the past and understand their impact for the present. Community members created the Monument for Peace and Tolerance near the site of the 1978 Panzós massacre. With Maya and Christian alters, the space is frequently used by the community and has become an integral part of community life that connects the history of past violence to present struggles.¹⁶⁰ Murals are another common way local

communities remember traumatic events and commemorate those lost to the violence, as evident in Rabinal, where a series of murals depict the Rio Negro massacres, and in numerous other massacre sites throughout the country. These memorialization initiatives have fulfilled a number of objectives: they have served to document and to denounce the atrocities committed, to dignify and honor the victims, to recover the histories of heroism and resistance of the survivors, and to promote community organization and the rebuilding of the social fabric. They also serve to inform and educate the new generations. And in some cases, these initiatives have worked to demand justice and reparations.

Civil society organizations have also developed initiatives that seek to have national reach, such as the interactive exhibit “*Why Are We the Way We Are?*” on the inequality and racism throughout Guatemalan history organized by the Mesoamerican Regional Research Center (CIRMA). Originally an itinerary exhibit, it is now a permanent exhibit in Guatemala City and is open to the public. The exhibit aims to encourage visitors to challenge their own assumptions and stereotypes as a way of dismantling the racism and discrimination that has characterized Guatemala since Independence. The internal armed conflict is only tangentially mentioned in this exhibit, however. In 2014, the Center for Human Rights Legal Action (CALDH) inaugurated the Memory Museum *Kaji Tulam*, a memory space that depicts the internal armed conflict from the perspective of the victims. (See Highlight: The *Kaji Tulam* Memory Museum).

Highlight: The *Kaji Tulam* Memory Museum

In 2014, CALDH opened the doors of the *Kaji Tulam* Memory Museum, which translates as four cosmic points or elements in K’iche’. Located in downtown Guatemala City, the museum’s main objective is painted on the wall at the entrance in large, bold letters: “*Para no olvidar*” (So that we do not forget). CALDH’s executive director, Juan Francisco Soto, says that CALDH worked in close consultation with different victims’ organizations to create the Memory Museum, which they view as “a space for young people to learn about the history of struggle and resistance, as a way to help transform the country.”¹⁶¹

The museum consists of several rooms, dating from the Maya civilizations and the Spanish Conquest, to the “democratic spring” of 1944 to 1954, when reformist governments sought to break the hold of military dictatorship and oligarchic rule, strengthen democratic governance and overcome inequality through land reform, the abolition of labor laws that virtually enslaved indigenous populations, and education reform, to the period of the internal armed conflict. One room evokes the painful absence that the repressive strategy of enforced disappearance imposes on the families of the victims and their communities.

Another depicts the scorched-earth policies of the Guatemalan army and the hundreds of massacres that destroyed lives, villages, and entire ways of life. A room at the end of the exhibit displays hundreds of cotton squares upon which individual survivors and families of victims have written their memories of their loved ones: “Pedro Cruz Maaz was killed by the army in the massacre of the villages of T’zuncoc on June 22, 1982, leaving behind his adoring daughter, Concepción Cuz Cac.”

The Memory Museum is also a vibrant cultural space, where public events, including concerts, theater performances, photography exhibits, workshops, and book readings are held. The museum directors encourage public school teachers to bring their students to view the museum, and many young people have joined the volunteer team of museum guides.

The lines from a poem by Humberto Akabäl greet visitors at the main entrance of the museum and capture the essence of this memory space: “Sometimes I walk backwards; that is my way of remembering. If I walked only forwards, I could only tell you what forgetting looks like.”

The memorialization process has taken place within an adverse environment. Politically and economically powerful groups have continuously manifested their opposition to remembering the past and have insisted that the country ought to focus upon resolving the problems of the present. In general, the governments that came to power after the signing of the peace accords have maintained a policy of silence with respect to the past. However, there have been some official initiatives, particularly during the Colom administration, including commemorative events, public apologies, and support for the creation of local monuments.¹⁶² It is not surprising, therefore, that there is no official memory museum, as in the Peru case.

Unlike in Peru, where the military has sought to consolidate its version of the conflict through memorials, commemorations, publications, films and the like, in Guatemala the military has not spent much time on such initiatives. Instead it and its supporters have created organizations, such as the Association of Military Veterans of Guatemala (AVEMILGUA) and the Foundation Against Terrorism, that seek to reinforce denial narratives and challenge other understandings of Guatemala’s recent past. These groups became especially active in recent years, when the criminal justice system started to prosecute senior military officials. Members of these organizations write op-ed columns, give radio and television interviews, organize public demonstrations and protests, and engage in social media including Facebook and Twitter. They also have filed tendentious lawsuits against human rights defenders, as noted previously, which human rights groups view as an effort to intimidate them and undermine their efforts.

Memory debates in Guatemala are highly contentious, as competing narratives about what happened during the internal armed conflict—and who is responsible—continue to circulate in the public sphere. At the same time, there is a broad understanding in Guatemala that the long struggle for memory and memorialization has contributed to a shift in the way victims of the armed conflict perceive themselves. Whereas those affected by state violence once saw themselves as passive victims of state violence, by recovering their own local histories, locating and burying their dead, holding commemorations and building memorials, they have come to see themselves as survivors who resisted state repression.¹⁶³ Memorialization has served as a process of empowerment for many victims, who now have a clear understanding of themselves as citizens who actively demand their rights to truth, justice, reparation and memory.

3. EL SALVADOR

El Salvador's history has been marked by extreme inequality and cycles of government-sponsored violence against groups seeking social, economic and political change. A small group of powerful landowners, known as the "Fourteen Families," ruled the country through a series of military dictatorships. A major peasant revolt in 1932 led by Agustín Farabundo Martí was crushed in a military assault known as *la matanza*: the slaughter. An estimated 30,000 civilians were massacred, the majority of whom were indigenous people. Military control was consolidated in the aftermath of the uprising. Reformist efforts to take power at the ballot box were met by fraud and repression. In this context, death squads emerged and were soon centralized under the control of Major Roberto D'Aubuisson and the intelligence sectors of the military. Death squads became a central element of the state's repressive apparatus, murdering thousands of union leaders, activists, students and teachers suspected of sympathizing with the left. The repression led to growing criticism by the Catholic Church, whose members also became victims of repression.

In 1979 a civil-military Revolutionary Government Junta deposed the military dictatorship, promising limited reforms to ease mounting tensions. The United States, wary after the overthrow of the Somoza regime in neighboring Nicaragua, began providing massive economic and military assistance to the junta government. The reformist initiative was short-lived, however: a hard-right faction within the armed forces, in alignment with conservative landowners, pressured the civilians to resign, and repression began anew. Archbishop Oscar Romero called upon the U.S. Government to cut off all military aid to the Salvadoran government; a month later, on March 24, 1980, he was gunned down while celebrating mass. Many see this as the opening act in a twelve-year civil war that would leave tens of thousands of innocent civilians dead.

In May 1980, disparate opposition groups unified to form the Farabundo Martí National Liberation Front (FMLN), with the express intent of overthrowing the existing government. In the meantime, Major D'Aubuisson—widely believed to be responsible for Romero's assassination¹⁶⁴—sought to consolidate his role as leader of the extreme right, founding the Nationalist Republican Alliance party (ARENA) in September 1980. He remained a key leader of the right-wing death squads throughout the war. D'Aubuisson lost the elections in 1984 to centrist José Napoleón Duarte—El Salvador's first elected president in 50 years—but government repression continued unabated, worsening further after Alfredo Cristiani of the ARENA party was elected in 1989.

Despite its atrocious human rights record, the Salvadoran government retained the financial and political backing of the United States, which was determined to prevent

“another Nicaragua,” in reference to the successful 1979 Sandinista Revolution against the Somoza dictatorship. The Salvadoran government launched a ferocious counterinsurgency campaign that included scorched-earth policies meant to “drain the sea”—eliminate the rural civilian population—in order to “kill the fish”—the guerrilla insurgency. The result was countless large-scale massacres of unarmed civilians. In a single operation carried out in December 1981, the U.S. trained Atlacatl Battalion of the Salvadoran Army killed an estimated 1,000 peasants in El Mozote and surrounding villages, the largest known massacre in modern Latin American history. In urban areas, individuals perceived by the state to be political opponents were forcibly disappeared and tortured by the armed forces and/or the death squads. This included members of the FLMN but also trade unionists, religious leaders, teachers, students, and social movement leaders.¹⁶⁵ The FMLN was responsible for acts of sabotage, selective assassinations, and some instances of violence against civilians, but the bulk of abuses were committed by state and state-sponsored agents. Estimates put deaths at 75,000 and enforced disappearances at 8,000; hundreds of thousands of people were subjected to torture, sexual violence, and forced displacement.

One of the most prominent cases was the government killing of six Jesuit priests, their housekeeper and her daughter in 1989. The murders, widely believed to be in retaliation for an FMLN offensive on the capital city, helped spur international pressure for a negotiated settlement to the conflict.¹⁶⁶ The United Nations brokered a peace agreement between the Salvadoran government and the FMLN, which was finally signed in Chapultepec, Mexico, on January 16, 1992. The agreement signed by the parties to the conflict sets forth the overarching objectives of the peace process: demobilization and demilitarization of the country; democratization and respect for human rights; and the reconciliation of Salvadoran society. A key pillar for achieving such objectives is overcoming impunity for past human rights violations. However, in the case of El Salvador, a series of legal and political obstacles were put in place to make accountability a near impossibility. Successive governments instead encouraged society to “forgive and forget” the crimes of the past as necessary to building the peace.

The UN Truth Commission. The peace agreement included provisions for the creation of a truth commission tasked with investigating the “serious acts of violence” that had occurred since 1980 whose “impact on society urgently demands that the public should know the truth.”¹⁶⁷ The Salvadoran truth commission, which was established in July 1992, operated under serious constraints. It was given only six months to complete its investigation, though this was extended for two additional months. Elites connected to the military were openly hostile to the truth commission’s work. In an effort to ensure objectivity, the truth commission was led and staffed by foreigners.¹⁶⁸

The truth commission took the testimony of some 2,000 victims and witnesses and documented more than 7,000 cases of massacres, extrajudicial executions, enforced disappearances, torture, and sexual violence. It documented 20,000 additional victims based on secondary sources. The truth commission found that the security forces, state-sponsored paramilitary groups, and death squads were responsible for the great majority of human rights violations that occurred during the armed conflict. In its final report, entitled *From Madness to Hope: The 12-Year War in El Salvador*, the truth commission focused on 32 emblematic cases of grave human rights violations.¹⁶⁹

The truth commission was under intense pressure to soft-peddle its findings.¹⁷⁰ It did not succumb to those pressures, however, producing a hard-hitting report that not only provided detailed information about dozens of cases, but also named over 40 senior members of the military, judiciary, and armed opposition for their role in the atrocities. The commission concluded that 85 percent of the abuses were committed by government forces, and five percent by the FMLN.¹⁷¹ The report also stated that “it is impossible to blame this pattern of conduct on local commanders and to claim that senior commanders did not know anything about it.”¹⁷²

While the truth commission recommended criminal investigations into the paradigmatic cases of grave human rights violations included in its report, it did not believe that the judicial system would be able to do so in a fair and impartial manner, given the close collusion between the authoritarian government and the judiciary.¹⁷³ The report therefore emphasized other forms of reparation and guarantees of non-repetition, including a recommendation to pursue structural reforms of the judiciary. The truth commission report also called for banning from public services the individuals it had identified as key perpetrators of gross human rights violations.¹⁷⁴ This included several members of the judiciary.

The truth commission report was sharply criticized by the military high command and by sitting ARENA president Alfredo Cristiani.¹⁷⁵ Three days after the report was presented publicly, President Cristiani proclaimed that it was necessary to “erase, eliminate, and forget the past in its entirety,” and appealed for “a general and absolute amnesty, to turn that painful page of our history and seek a better future for our country.”¹⁷⁶ Two days later, on March 20, 1993, the ARENA-controlled legislature passed a blanket amnesty law, which effectively precluded investigation into conflict-era crimes. Human rights organizations criticized the law and challenged its constitutionality, but the Constitutional Chamber of the Supreme Court upheld the amnesty, saying it represented “an eminently political act.”¹⁷⁷ The FMLN was focused on the process of demobilization and creating a new political party, and there were reported divisions within its ranks over whether to oppose the amnesty law or not. As Margaret Popkin

notes: “Concerned about the fact that some of their leaders could be prosecuted in a justice system they did not trust, the FMLN leadership decided to look forward.”¹⁷⁸

The Inter-American Commission on Human Rights and different bodies of the United Nations system of human rights protection repeatedly called upon the Salvadoran government to modify or nullify the amnesty law, since it impedes victims of grave human rights violations from accessing their rights to truth, justice and reparation.¹⁷⁹ Another challenge to the law brought by victims in 1998 was dismissed by the Constitutional Chamber, which asserted that the amnesty law was consistent with the Salvadoran Constitution. This interpretation was upheld for more than two decades, effectively preventing any real accountability for human rights violations in El Salvador.

Some perpetrators were removed from their posts (most with full military honors) and banished from holding public office in the future. But impunity for the crimes of the past has been a permanent feature of post-war El Salvador.¹⁸⁰ Despite the implementation of judicial reforms, the vetting of judges called for by the truth commission was never carried out.¹⁸¹ No independent prosecutions have taken place for grave human rights violations. On the contrary, political leaders across the political spectrum repeatedly affirmed that the amnesty law is the bedrock of El Salvador’s successful peace process and that it is a requisite for national reconciliation. This gave rise to a culture of silence and intimidation that has undermined victims’ capacity to organize and press for mechanisms of legal and symbolic reparation.¹⁸² Only recently, in 2016, after several years of deliberation, did the Constitutional Chamber declare that the amnesty law was unconstitutional, opening the possibility of criminal prosecutions and challenging the narratives of denial and silence. This decision and its impact will be discussed further below.

Thus, despite the signing of the peace agreement and the effective end of the war, the structure of political, social and economic power in El Salvador has changed precious little. Though El Salvador transitioned from authoritarian rule to representative democracy, the elites who ruled El Salvador during the conflict years have retained power in the post-war period. The conservative ARENA party continued to rule post-war El Salvador for more than a decade and a half after the signing of the peace, controlling not only the Executive but also Congress.¹⁸³ ARENA and their allies in the business community, landed oligarchy, and military leadership, frequently asserted that challenging the amnesty law would cause a backlash. In large part because of this overall climate of denial of the grave nature of the crimes of the past, until relatively recently, there has been no comprehensive reparations program for survivors and the families of victims, nor effort to search for victims of enforced disappearance, and no accountability for international crimes.

Reparations. The system of institutionalized impunity has endured in El Salvador, but cracks have emerged, particularly after 2009, when the opposition FMLN was elected to the presidency for the first time. In 2010—18 years after the peace accords were signed—the State of El Salvador officially acknowledged its responsibility for the human rights violations. On January 16, 2010, the government of President Mauricio Funes convened a massive public gathering that brought together the two forces that fought during the conflict, as well as representatives of victims’ organizations.¹⁸⁴ Addressing the crowd, Funes acknowledged that state agents, including the armed forces and other public security forces, as well as paramilitary organizations, committed grave violations of human rights and abuse of power. He also acknowledged that state agents engaged in the illegitimate use of violence, disrupted the constitutional order, and violated basic norms of peaceful coexistence. “For all of this,” he said, “in the name of the state of El Salvador, I ask forgiveness.”¹⁸⁵ Former ARENA presidents Alfredo Cristiani and Calderón Sol were highly critical of Funes’ statements. Cristiani lambasted Funes for apologizing only for the abuses committed by the state. Calderón Sol said that the state had nothing to apologize for, as it acted only in response to the guerrilla threat.¹⁸⁶

Funes announced a series of measures to address the legacy of the conflict, including the creation of a commission that would provide reparations to victims. It was not until near the end of his administration in 2013 that Funes signed a presidential decree creating the reparations council.¹⁸⁷ Funes’ successor, President Salvador Sánchez Cerén, oversaw the implementation of the program in 2014. It was important to give continuity to the reparations program, he said, because “we have a historic debt to overcome” with the victims of the armed conflict.¹⁸⁸ While the proposed program emphasizes comprehensive reparations, to date it has focused primarily on monetary reparations.¹⁸⁹ Human rights groups have criticized the program, saying it is overly bureaucratic and has insufficient resources. They have also criticized the program’s formula for paying reparations, consisting of a small monthly payment of \$15-50 per victim.¹⁹⁰ Despite the importance of this program, it has received little attention and oversight from national or international bodies.

Funes also promised to conduct a national search for the hundreds of children who are reported missing from the conflict years. This was a mandate of the Inter-American Court of Human Rights in the sentence handed down in 2005 in the case of Ernestina and Erlinda Serrano Cruz, sisters who, at the ages of seven and three, were separated from their family while fleeing an army incursion into their village in 1982 and have never been seen again.¹⁹¹ (See also: Highlight: Seeking Justice in International Courts.) The Serrano Cruz sisters are among the more than 900 children estimated to have been “disappeared” during the internal armed conflict by *Asociación Pro-Búsqueda*, a human rights organization that brought the Serrano Cruz sisters case.¹⁹² In partial

fulfillment of the Court's ruling, Funes created the National Commission to Search for Disappeared Children in 2010.¹⁹³ According to the Commission's most recent report, between 2011 and March 2016, it had assisted in locating 284 children, and helped many of them encounter their biological families. It also provided psychological assistance to the victims and their families.¹⁹⁴

Criminal Prosecutions. For more than two decades, the 1993 Amnesty Law, combined with inaction at the level of the Attorney General's Office, meant that there were no meaningful criminal prosecutions in El Salvador. This did not change much under Funes: while his government addressed the issues of reparations and the search for disappeared children, he balked on the issue of criminal investigations for past human rights violations, despite the fact that the Inter-American Court of Human Rights clearly outlined the obligation of the Salvadoran State in its ruling in the El Mozote massacre case (2012) and in other sentences to investigate, prosecute and punish those responsible for these atrocities. Instead, Funes demurred, saying criminal investigations into crimes of the past would "open old wounds" and could undermine governability in El Salvador.¹⁹⁵

Victims, distraught by the persistent refusal of the government to address the pending issue of justice for past abuses, have pursued litigation in international courts (see Highlight: Seeking Justice in International Courts) and continued to seek to challenge the constitutionality of the 1993 Amnesty Law in domestic courts (see Highlight: The Legal Challenge to the 1993 Amnesty Law) as complementary strategies to overcome entrenched impunity in El Salvador.

Highlight: Seeking Justice in International Courts

As in Peru and Guatemala, in the face of institutionalized impunity, Salvadoran human rights groups sought to bring cases before the Inter-American Human Rights System.¹⁹⁶ There have been several key rulings in human rights cases from the Salvadoran civil war, though it is important to note that Salvadoran human rights groups have brought far fewer cases to the Inter-American system than their counterparts in Peru and Guatemala. This is likely due to the fact that civil society in El Salvador is not as well organized and networked in comparison to civil society in Peru and Guatemala. Among the most important judgments are the 2005 ruling in the Serrano Cruz case and the 2012 judgment in the El Mozote massacre case.

The first case centers on the disappearance of two children during El Salvador's civil war, Ernestina and Erlinda Serrano Cruz, seven and three years old respectively, who were

captured by soldiers of the Atlacatl Battalion of the Salvadoran Army during a military operation known as “Operación Limpieza” (Operation Cleansing) in 1982. The Court did not examine claims relating directly to the sisters’ disappearance as this occurred before El Salvador’s acceptance of the Court’s jurisdiction. However, the Court did find that an effective remedy had not been provided to the sisters’ family members in the years following the disappearance. Specifically, the Court found that the Salvadoran criminal courts’ lengthy delay in investigating the sisters’ disappearance was itself a violation of the right to a fair trial, denying the family members their right to know the truth of what happened and the opportunity to hold those responsible for the disappearance accountable for their actions. The Court ordered El Salvador to provide reparations to the victims, launch an effective investigation into the sisters’ disappearance, and establish a national commission to locate persons who disappeared during the armed conflict when they were children.¹⁹⁷

In 2012, the Court issued a ruling in one of the most emblematic cases of the Salvadoran civil war: the El Mozote massacre, in which some 1,000 Salvadorans were killed over the course of a few days in 1981. The Court found the Salvadoran State responsible and ordered it to investigate, prosecute and punish those responsible. Following its jurisprudence in other cases, the Court also determined that the 1993 amnesty law could not continue to obstruct the criminal investigation of the alleged perpetrators of the massacre. Finally, the Court ordered the State of El Salvador to identify and return the remains of the victims and to provide monetary reparations to the families of victims.¹⁹⁸

Victims, in alliance with international human rights organizations such as the Center for Justice and Accountability (CJA), have also brought civil suits in international courts. Using the Torture Victims Protection Act, victims and their lawyers have brought suits against senior military officials living in the United States, resulting in the deportation of several retired military officials to El Salvador.¹⁹⁹ Given the lack of judicial activity in past human rights cases, those deported did not face any legal action back in El Salvador. For example, when former minister of defense José Guillermo García was deported to El Salvador in January 2016, he faced no legal action for crimes he is alleged to be responsible for during the time he was in command of the armed forces. Now that the amnesty law has been declared unconstitutional, this may be changing. García, in particular, is now on trial in the El Mozote massacre case.

Victims have also sought to prosecute perpetrators of human rights violations in foreign courts, primarily Spain, by invoking the doctrine of universal jurisdiction, which allows a court in one country to prosecute egregious atrocities committed in another. In 2008, the Central American University (UCA) and CJA filed a criminal case against several

senior military officers before the Spanish National Court for the 1989 massacre of the six Jesuits, their housekeeper and her daughter.²⁰⁰ The attack was orchestrated by senior military commanders who targeted university rector Father Ignacio Ellacuría, who was among the six priests killed, in an attempt to derail the peace talks. UCA and CJA decided to file the case in Spain given the failure of the domestic courts to adequately prosecute it. After what most observers view to be a sham trial in 1991, the two individuals convicted were set free just two years later after the passage of the amnesty law in 1993.²⁰¹ Judge Eloy Velasco of Spain's National Court began investigating the case in 2008, and in 2011, he issued international arrest warrants against 20 military officers, including leaders of the Salvadoran high command in 1989, accused of planning, ordering, and carrying out the murders. Predictably, El Salvador has refused to act on Spain's extradition request. Velasco issued a new extradition request in early 2016, but again the government of El Salvador refused to cooperate.²⁰² In the meantime, the U.S. government prosecuted on immigration fraud one of the senior military officials implicated in the case, Colonel Inocente Orlando Montano, who was living in the United States. It also approved Spain's request to extradite him to stand trial in the case after completing his 21-month sentence. Victims' groups and local human rights lawyers are seeking to have the case reopened in domestic courts in El Salvador, now that the amnesty law has been declared unconstitutional.

The Constitutional Chamber's decision to overturn the 1993 Amnesty Law opens the legal door for criminal prosecutions and has brought new hope for the victims. It remains to be seen whether additional criminal investigations will move forward in El Salvador. The Attorney General's Office has been historically very weak and unwilling to challenge powerful sectors favoring continued impunity.²⁰³ Indeed, the Attorney General's Office defended the amnesty law before the Constitutional Chamber and has used it to avoid bringing charges in the past.

Moreover, conservative sectors remain staunchly opposed to criminal investigations into conflict-era human rights violations. This includes the leadership of the ARENA party as well as former military officials, who remain powerful in post-war El Salvador. Many in the FMLN also are opposed to following such a path. A few months before the Constitutional Chamber's decision, President Sánchez Cerén of the FMLN warned the court to be "careful" in its deliberations on the amnesty law so as to avoid a problem of governability.²⁰⁴ More likely, the FMLN leadership is concerned that if criminal investigations are opened against former military officers, then there will be pressure to investigate international crimes that may have been committed by members of the FMLN leadership.

Highlight: The Legal Challenge to the 1993 Amnesty Law

The 1993 amnesty law sealed the notion that to consolidate peace it was necessary to “forgive and forget” past human rights abuses. A prosecutorial model of transitional justice that could have brought human rights abusers before the courts to face justice was never implemented. Impunity remained the norm in El Salvador for the following two decades, though the amnesty law was challenged internationally by the United Nations and the Inter-American Court of Human Rights, and domestically by the Salvadoran Constitutional Chamber, which ruled in 2000 that the law should not stand in the way of criminal prosecution for grave crimes cases, and by the Salvadoran Ombudsman.²⁰⁵ In 2016, in a major shift, following a challenge brought by victims, the 1993 amnesty law was declared unconstitutional. This has given renewed hope to victims that there might be some forward movement on truth and justice efforts in El Salvador.

In March 2013, a group of human rights organizations filed a lawsuit before the Constitutional Chamber of the Supreme Court of Justice requesting that the Court re-examine the constitutionality of the 1993 Amnesty Law. After more than three years of deliberation, on July 13, 2016, the Constitutional Chamber of El Salvador’s Supreme Court ruled, in a 4-1 decision, that the 1993 amnesty law is unconstitutional and is thereby nullified.²⁰⁶ The judges based their decision on the victims’ rights to access justice, to judicial protection of fundamental rights, and to full reparations, and upon the jurisprudence of the Inter-American Court of Human Rights, particularly its 2012 ruling in the El Mozote massacre case.²⁰⁷ The Chamber clearly establishes that individual criminal responsibility applies to direct perpetrators as well as to those who gave orders or who were in a position of command and could therefore have prevented the crimes from occurring but did not do so. The Chamber also affirmed the now well-established jurisprudence that statutes of limitation are not applicable for war crimes and crimes against humanity.²⁰⁸

In response to the Constitutional Chamber’s judgment declaring the Amnesty Law unconstitutional, on September 30, 2016, at the request of the victims, a criminal court judge Jorge Guzmán Urquilla issued an order to reopen the investigation into the El Mozote massacre. This historic judicial decision, issued 23 years after the case was closed due to the Amnesty Law, is the first issued in accordance with the Supreme Court judgment declaring the Amnesty Law unconstitutional.²⁰⁹ In his resolution, Judge Guzmán ordered the investigation of the direct perpetrators and senior military officers who led the war effort during December 1981, when hundreds of soldiers under the command of the late Lieutenant Colonel Domingo Monterrosa murdered more than 1,000 people in eight townships in the northern part of the Morazán department, including the El Mozote village. Among the accused is former minister of defense between 1979 and 1983, José Guillermo García, who in 2016 was deported back to El Salvador from the United States.²¹⁰

Sectors affiliated with the military forcefully rejected both the amnesty decision and the order to open legal proceedings in the El Mozote case.²¹¹ Former minister of defense and retired army general Otto Romero referred to the international human rights organizations working with victims in the El Mozote case as “judicial mercenaries” and said that the Constitutional Chamber’s decision was a “disaster” that would result in a legal “ping-pong game.” He called upon the military to organize to defend those being investigated and to make certain society understand that “we are not the bad guys.”²¹²

This recalcitrance notwithstanding, the trial opened in March 2017. Twelve of the 18 former military officers indicted in the case, including García, stood before the court on March 28 and 29 and heard the nine criminal charges against them, including murder and aggravated rape. Judge Guzmán has called several survivor-witnesses to testify in court, but several have since passed away, including Rufina Amaya, whose testimony of the massacre was reported by journalists even as the government denied that anything had happened at El Mozote.

The case has advanced slowly. It is taking place under an old criminal system in which the judge leads the investigation and the prosecution and defense lawyers cannot directly interrogate the witnesses.²¹³ Still, the El Mozote massacre trial is unprecedented in El Salvador and is providing victims an opportunity to tell the country, and the world, what happened in El Mozote in December 1981. A second case, the El Calabozo massacre, in which the Atlacatl Battalion killed an estimated 200 people, has also been reopened.²¹⁴

Other factors could also result in continued inaction. Criminal prosecutions require substantial human and financial resources. Should new cases come to trial, security for prosecutors, judges and witnesses may be an issue, as has been the case in neighboring Guatemala. Elsewhere, serious investigations of complex crimes have required the creation of special investigative units, but whether such a unit will be established in El Salvador remains unclear. Moreover, civil society, which has played a crucial role elsewhere as advocates for justice, remains weak and divided, and has little experience in litigation.

Finally, those who stand to lose from such investigations remain powerful and will certainly be staunch opponents of war crime prosecutions. For example, Mauricio Ernesto Vargas, a member of Congress for the ARENA party and a retired general who represented the armed forces in the peace negotiations, said that trials would intensify political polarization in a country already suffering from gang violence, a migration crisis, and economic stagnation. “The country doesn’t have the economic and social conditions to add one more destabilizing ingredient to the mix,” he said.²¹⁵ It is of course true that El Salvador also faces massive criminal and gang violence, and there is intense pressure to focus investigations on “present” rather than “past” cases.

DPLF, in collaboration with FESPAD in El Salvador, collected information about cases of grave human rights violations that have been denounced before the Attorney General’s Office and in which there has been some level of investigation into the key facts of the case. We documented 60 cases, as noted in Table 3, that could become the subject of future criminal investigations.

Table 3. Human Rights Cases In El Salvador

Case	Location	Year	Number of Victims	Crime (1)	Current Status
Masacre de San Francisco Angulo	Tecoluca, San Vicente	1981	45	EE	Initial phase of investigation
Masacre de las Canoas	Textistepeque y Metapán, Santa Ana		30	EE	Initial phase of investigation
José Azucena Santos & 5 Others	San Salvador y Santa Tecla	1980-1983	6	FD	Initial phase of investigation
José Mauricio Zamora Tobar	Chalatenango		1	FD	Initial phase of investigation
José Orlando Zamora Tobar	Chalatenango		1	FD	Initial phase of investigation
German Rutilio Zamora Tobar	Chalatenango		1	FD	Initial phase of investigation
Carla Catalina Zamora Tobar	Chalatenango		1	FD	Initial phase of investigation
Douglas Zamora Tobar	Chalatenango		1	FD	Initial phase of investigation
Ana María Menjivar	Chalatenango		1	FD	Initial phase of investigation
Faustino Recinos Alas	Chalatenango		1	FD	Initial phase of investigation
Ana Mejía Ramírez, Carmelina Mejía Ramírez	San Francisco Gotera, Morazán	1981	2	FD	Initial phase of investigation
Emelinda Lorena Hernández	San Francisco Gotera, Morazán	1981	1	FD	Initial phase of investigation
José Adrián Rochac Hernández	San Martín	1980	1	FD	Initial phase of investigation
José Vicente, Juana Noemí & 2 Others	San Vicente	1982	5	FD	Initial phase of investigation
María Amparo Romero & Nine Others	Chalatenango	1982	10	FD	Initial phase of investigation
Masacre de El Río Sumpul	Chalatenango	1980	600	EE	Initial phase of investigation
Masacre La Quesera	San Agustín, Usulután	1981	376	EE	Initial phase of investigation
José Ovidio & Ten Others	Jiquilisco, Usulután	1981	11	FD	Initial phase of investigation
Masacre de San Gregorio	Sensuntepeque, Cabañas	1980-1981	30	EE	Initial phase of investigation
Mario Luis Reyes Ramos	NA		1	EE	Initial phase of investigation

Continue

Case	Location	Year	Number of Victims	Crime (1)	Current Status
Fermín Moreno Alfaro	Usulután		1	FD	Initial phase of investigation
Masacre de Santa María Ostuma (El Carrizal)	La Paz			EE	Initial phase of investigation
Edwin Rosabel Sibrián	Chalatenango		1	FD	Initial phase of investigation
Sofía García Cruz	San Vicente	1981	1	FD	Initial phase of investigation
Vilma García Cruz	San Vicente	1983	1	FD	Initial phase of investigation
María de los Ángeles Mejía Ortega	Suchitoto, Cuscatlán	1983	1	FD	Initial phase of investigation
Serapio Cristian, Gregoria Hermínia y Julia Inés Contreras Recinos	San Vicente	1982	3	FD	Initial phase of investigation
José Rubén Rivera	Tecoluca, San Vicente	1983	1	FD	Initial phase of investigation
Pastor Omar Ayala	Cuscatlán			FD	Initial phase of investigation
Santos Inés Salinas	San Vicente		1	FD	Initial phase of investigation
Manuel Bonilla Osorio y Ricardo Ayala Abarca	San Esteban Catarina, San Vicente	1980	2	FD	Initial phase of investigation
María de los Ángeles Mejía Ortega	Cuscatlán		1	FD	Initial phase of investigation
José Mauricio Zamora Orellana	Chalatenango			FD	Initial phase of investigation
Ana Lilian Ayala Serrano	Chalatenango		1	FD	Initial phase of investigation
Rafael Rivera Castillo, Israel Flores Ortega y Otros (6 children)	Chalatenango		8	FD	Initial phase of investigation
Masacre del Cantón Las Ánimas	San Antonio Nonualco, La Paz	1980	12	EE	Initial phase of investigation
Masacre los Almendros	Huizúcar, La Libertad	1981	5	EE	Initial phase of investigation
Masacre el Despertar	San Salvador		4	EE	Initial phase of investigation
Nelson Rutilio Castro	Chalatenango	1982	1	FD	Initial phase of investigation

Case	Location	Year	Number of Victims	Crime (1)	Current Status
Santos Ernesto Salinas	San Nicolas Lempa, San Vicente	1981	1	FD	Initial phase of investigation
Masacre de Tenango y Guadalupe	Suchitoto, Cuscatlán	1983		EE	Initial phase of investigation
Jorge Alberto Rodríguez Romero y Francisco Milton Romero Sequeira	Cuscatancingo	1981	2	NA	Initial phase of investigation
Douglas Zamora Orellana	Chalatenango		1	FD	Initial phase of investigation
Manuel de Jesús Franco Ramirez	San Salvador	1980	1	EE	Initial phase of investigation
Francisco Arnulfo Ventura Reyes y José Humberto Mejía	San Salvador	1980	1	FD	Initial phase of investigation
Felix Ulloa	San Salvador	1980	1	EE	Initial phase of investigation
Patricia Emilie, Mauricio Cuellar Cuellar, Julia Orbelina Pérez	San Salvador	1982	3	NA	Initial phase of investigation
Natividad de Jesús, Salvador, José Elí, Jorge Alberto Ramirez, Guadalupe Roble	San Salvador	1982	5	FD	Initial phase of investigation
Rolando Ernesto González Morales	San Salvador	1981	1	T	Initial phase of investigation
Carlos Ernesto Santos Menjivar	San Salvador	1983	1	T	Initial phase of investigation
José Ernesto Contreras García	San Salvador	1977	1	T	Initial phase of investigation
Roque Dalton	San Salvador	1975	1	EE	Initial phase of investigation
Julían, Felipe, y Domingo Bernal Martínez	Zacatecoluca, La Paz	1986	3	EE	Initial phase of investigation
María Teresa Guardado	Chalatenango	1991	1	EE	Initial phase of investigation
Víctor Hernández Vásquez	La Libertad	1988	1	EE	Initial phase of investigation
Masacre Sacerdotes Jesuitas y dos mujeres	Antiguo Cuscatlán, La Libertad	1989	8	EE	Currently on trial

Continues

Case	Location	Year	Number of Victims	Crime (1)	Current Status
Monseñor Oscar Arnulfo Romero	San Salvador	1980	1	EE	Currently on trial
Masacre de El Mozote y Sitios Aledaños	San Francisco Gotera, Morazán	1981	986	EE	Currently on trial
Ernestina y Eriinda Serrano Cruz	Chalatenango	1982	2	FD	Currently on trial
Masacre El Calabozo	San Esteban Catarina, Santo Domingo, San Sebastián, Santa Clara y San Lorenzo, San Vicente	1982	200	EE	Currently on trial

(1) **CRIMES:** EE=Extrajudicial Execution; FD=Forced disappearance; T=torture.
(2) **Initial phase of investigation:** cases under investigation by the Attorney General's Office; Currently on trial: cases currently being processed before a court.
SOURCE: Ombudsman's Office; human rights organizations. Research conducted by author, DPLE, FESPAD.

Memorials, Commemoration and Collective Memory. The Truth Commission made specific recommendations about the importance of memorials as a mechanism to redress the harm done to victims during the civil war, and to consolidate national reconciliation. In its Final Report, under the category ‘Moral Reparation,’ the Truth Commission recommended a series of actions in this regard: the construction of a national monument bearing the names of all victims; recognition of the victims and the serious crimes they suffered; and the creation of a national holiday to memorialize the victims of the conflict and to serve as a symbol of national reconciliation.

Official acknowledgement of state-sponsored violations is a critical element of truth-telling and of redress owed to victims. Until very recently, the government of El Salvador has not followed through on these recommendations. As noted earlier, between 1992 and 2009, the government, led by the conservative ARENA party, failed to acknowledge the state or military responsibility for human rights abuses. On the contrary, there are numerous memory sites as well as commemorations and tributes to senior military officials, including some who are accused of participation in grave violations of human rights. The Salvadoran armed forces regularly organize public homages to senior military officials who fought in the counterinsurgency war, such as the now deceased Coronel Domingo Monterrosa, who was identified by the U.N. sponsored Truth Commission as being responsible for the El Mozote massacre (see Highlight: Memories in Conflict: El Mozote and Monterrosa). In another example, in 2014, the mayor of San Salvador, Norman Quijano, announced that the City Council had voted to rename San Antonio Abad Street after the late Major Roberto D’Aubuisson. D’Aubuisson, who founded the ARENA party, of which Quijano is a member, is believed to be the intellectual author of the 1980 assassination of Monseñor Romero, and to have organized the death squads that terrorized the Salvadoran population in the 1980s.²¹⁶ Victims’ groups and other civil society organizations protested the decision and called for the name change to be dropped.²¹⁷

Highlight: Memories in Conflict: El Mozote and Monterrosa

The Salvadoran State denied the El Mozote massacre for more than a decade after its occurrence in 1981. In 1992, on order of a judge, the Argentine Forensic Anthropology Team (EAAF) began to investigate at the site of the massacre. EAAF exhumed the remains of 136 people; several years later an additional 250 remains would be found.²¹⁸ A year later, in its final report, the Truth Commission said that it had found a preponderance of evidence that Colonel Domingo Monterrosa, commander of the Atlacatl Battalion, and other military officials were responsible for the massacre at El Mozote. The investigating judge dismissed the case after the Legislative Assembly approved the amnesty law.

Monterrosa, who was killed in confusing circumstances in 1984, was viewed by the Salvadoran military as a hero. Years after his death, he continues to be revered in military

discourse and public ceremonies as a hero of the armed forces and of the Salvadoran nation. The army has organized annual commemorations of Monterrosa in Joateca, the location where his remains and those of his comrades were recovered in 1984. In 2008, for example, a plaque was erected at Joateca that states, “Here lie the heroes of Joateca. At all times and despite the risks, obey the superior officer who commands you, even at the cost of your lives. Yes, we swear! 23OCT1984 – 23OCT2008.”

It was not until 31 years after the El Mozote massacre, in a speech in January 2012 commemorating the 20th anniversary of the signing of the peace, that then President Funes acknowledged the role of the state in the El Mozote massacre and apologized to the families of the victims. He went further, however, noting that the Truth Commission had identified Coronel Monterrosa and other senior officials as responsible for the massacre, and called upon the Salvadoran armed forces to cease its policy of publicly revering Coronel Monterrosa. This was necessary, Funes said, to depoliticize the military and ensure their full integration into Salvadoran society, and also to contribute to national reconciliation and thereby strengthen democracy and peaceful coexistence. Funes stated further: “Precisely because 20 years after the Peace Accords, we have a different military, one that is professional, democratic, and obedient to civilian power, we cannot continue to revere and portray military leaders linked to serious human rights violations as heroes of the institution and of the country.”²¹⁹

Yet, the following year, in October 2013, in what *El Faro* deemed an act of open defiance of Funes’s instruction, the Salvadoran army organized yet another tribute to Coronel Monterrosa. The army deployed five units and about 200 troops to the site of Monterrosa’s death in Joateca. The troops were from the Third Brigade of San Miguel, which is named in honor of Coronel Monterrosa, and whose barracks contains a bust and a mural honoring him with the words, “Monterrosa Lives!” Commanders and troops from Military Detachment No. 3 of La Unión also attended; at their base, a mural is decorated with the coat of arms of the military detachment that bears Monterrosa’s name, with the phrase, “With the iron will to overcome.” The ceremony in honor of Monterrosa and his fallen comrades included demonstrations of equestrian skills and hand-to-hand combat.

As noted previously, it was only after the election of Mauricio Funes of the progressive FMLN party to the presidency in 2009 that the state acknowledged its role in past violence and made a series of historic apologies for state violence, along with a number of other initiatives intended to respond to the demands of victims and address the legacies of the conflict. Chief among these include the creation of a national commission to search for children who disappeared during the war as well as a reparations program. Though they have come late, these recent government acts are of great significance for victims.

Given the absence of official action in the sphere of memorialization, civil society actors have taken up the task of creating monuments, museums and other memory spaces to document the recent past, construct historical memory narratives that challenge official versions based on denial, and to commemorate victims. The *Monumento a la Memoria y la Verdad* (The Monument to the Memory and the Truth) was inaugurated in December 2003 as “an homage to the civilians who were killed or disappeared during the armed conflict in El Salvador (1980-1991). Erected in Parque Cuscatlán in the capital, San Salvador, the monument is composed of an 85-meter black granite wall etched with the names of more than 25,000 civilian victims, organized by year of death or disappearance. The message engraved on the monument refers to the memorial as “a space for hope, to continue to dream and construct a more just, humane, and equitable society.” Another portion of the monument contains colorful stucco reliefs depicting daily life as well as images of past struggle and violence. The monument was an initiative of victims’ groups and civil society organizations. There is also a website of the same name, where a complete list of the victims’ names can be viewed.²²⁰

Another notable civil society memorial initiative is the *Museo de la Palabra y el Imagen* (Museum of the Word and the Image, MUPI), located in downtown San Salvador. MUPI was created with the explicit objective of documenting the history of the Salvadoran civil war. The museum collects and exhibits photographs, manuscripts, audio recordings, and film, comprising what may be “the most comprehensive archive of the Salvadoran civil war.”²²¹ Its installation includes mention of several of the worst massacres of the civil war, including an entire exhibit about the El Mozote massacre. MUPI, a member of the International Coalition of Sites of Conscience, hopes that such exhibits help to dignify the victims of the conflict, particularly since justice in such cases remains, to date, elusive in El Salvador.

There have also been several local level efforts to preserve memory on behalf of the victims, their families and their communities. Local municipal governments have in many instances worked alongside survivors and families of victims to construct local memorials and organize commemorative events. Ana Mirian Abrego, a survivor of the 1981 massacre at San Francisco Angulo, in which 45 civilians, primarily women, children and elderly, were massacred by a death squad made up of members of the army and the local defense force of Tecoluca, described one such initiative. The San Francisco Angulo Committee, an organization led by survivors and families of the victims of the massacre, developed an alliance with the municipal government in Tecoluca to develop local initiatives to strengthen historic memory. This alliance was critical to the exhumations carried out in 2005 and 2006, in which the remains of 30 victims were recovered and returned to their families for burial. The initiative has also

developed a series of programs including psycho-social support for victims, a local reparations program, and a youth-led effort to interview survivors and families of victims that was the basis for a short pamphlet describing the massacre and its impact on the local community.²²²

Highlight: New Impetus to Search for the Disappeared

In the context of the dramatic changes in recent years in El Salvador, a new transnational victims' organization was established, the Mauricio Aquino Foundation, comprised of Salvadorans who came to live in the United States during the 1980s. Some of the Foundation members are children of victims of enforced disappearance, while others came to the United States having been adopted by U.S. families. In 2016, the Mauricio Aquino Foundation launched an international campaign entitled "Our Parents' Bones" (*Los Huesos de Nuestros Padres*), to call attention to the unresolved issue of the estimated 10,000 victims of enforced disappearance from the Salvadoran civil war. Alexandra Aquino-Fike, whose father was forcibly detained and disappeared in April 1981, is co-founder of the Mauricio Aquino Foundation. Her motivation in launching this campaign is simple, she says: "My dream is to give my father the sacred burial he deserves. I want to know. I demand to know: Where is my father? Where are my father's bones?"²²³

Between 2016 and 2017, the leaders of the Mauricio Aquino Foundation conducted a series of consultations with victims' organizations in different locations in the United States and in El Salvador, as well as with local and international human rights organizations, with the purpose of pressuring the Salvadoran government to create a national mechanism to investigate the fate of the disappeared.²²⁴ The Foundation hosted a series of meetings in El Salvador in January 2017 with victims' organizations, civil society groups, and an international delegation that included U.S. Representative Jim McGovern, as well as representatives of religious groups, universities, and local and international human rights organizations. This coalition of organizations, which included the Association for the Search of Disappeared Children (Pro-Búsqueda), the Center for Applied Legal Studies (FESPAD), the Central American University, the Due Process of Law Foundation (DPLF) and the Washington Office on Latin America (WOLA), called upon the government to establish a National Commission to Search for Disappeared Persons. This coalition, alongside associations of victims of the conflict, presented President Sánchez Cerén with a technical proposal, which emphasized that the Search Commission should be institutionally autonomous; have legal faculties to receive and request information about the disappeared; provide psycho-social support to victims; have specialized forensic and

genetic personnel; and have its own budget. In response to these demands, President Salvador Sánchez Cerén announced on January 27 that his government would establish a National Commission to Search for the Disappeared.²²⁵

Just a few weeks earlier, in the context of the 25th anniversary of the signing of the Peace Accords, Sánchez Cerén also called for a National Reconciliation and Integral Reparations Law that would provide economic reparations to victims of the Salvadoran civil war. “In the past, many civilians were victimized by the State, and today these men and women who suffered the war should be recognized,” stated the President.²²⁶ He added that improving the lives of the victims of the conflict will contribute to national reconciliation and help consolidate the peace.

III. LESSONS LEARNED FOR TRANSITIONAL JUSTICE PRACTICE

This section offers key lessons learned from the history of transitional justice processes in Peru, Guatemala and El Salvador. The lessons outlined here are derived from in-country workshops conducted with project partners, interviews with key stakeholders, and direct field research in each of the three countries, as well as a review of existing literature.

1. The central role of victims in transitional justice processes

1.1. *In societies that have experienced mass atrocities, victims are the driving agents of demands for truth, justice, reparation, and memory.* Survivors of human rights violations and the families of victims, alongside human rights organizations and associations that advocate on their behalf, are the key protagonists of transitional justice processes. The capacity of victims' associations to organize and mobilize public opinion in favor of transitional justice plays a key role in the success of different transitional justice mechanisms. Of course, there are other powerful factors at play in what is ultimately a contentious and long-term process.

In many transitional contexts actors associated with the previous regimes, including military officials, government authorities, business leaders, and sometimes religious authorities, have encouraged victims to “forgive and forget” the atrocities of the past, based on the premise that new challenges must be prioritized and that “opening old wounds” would undermine fragile democracies. Policies of “forgive and forget” exclude victims and denigrate their experiences and their suffering; they also deny their rights as citizens to redress for the abuses suffered.

Victims understand that as citizens they are endowed with the right to demand truth, justice and reparation for abuses committed by state agents against them and their families and communities. As those who directly suffered abuse at the hands of the state, they have a powerful moral claim to demand redress. However, the state is often unable or unwilling to respond to these demands. In the face of denial and impunity at the domestic level, victims have sought diverse ways to break the silence and demand truth, justice and reparation. Victims have denounced the abuses suffered domestically and internationally. They have sought out allies in domestic and international human rights organizations, the news media, progressive parliamentarians, and churches to

support their claims in the face of official indifference and, sometimes, repression. In the face of government inaction, they have brought their claims to the United Nations system and to the Inter-American Human Rights System to demand redress. This has contributed to the development of new legal regimes recognizing victims' rights to truth, justice, reparation, and guarantees of non-repetition, and has given victims in these and other cases new tools to press their demands within their domestic jurisdictions. The persistence of victims, and their resilience in the face of denial and institutionalized impunity, is the single-most important element of the transitional justice process.

1.2. Victims are not a monolithic group; they may have different demands, and these may change over time depending on shifting circumstances and opportunities.

There is an ongoing debate in the transitional justice literature about what victims prioritize in the transitional justice process. Some claim that victims primarily seek retributive justice, while others argue that victims are mostly interested in truth and reparations. This is an especially poignant question in our case studies, where victims are overwhelmingly from the most disadvantaged and historically marginalized sectors of society —rural, farmers, and indigenous peoples— for whom economic and other forms of reparation (health care, education scholarships) would have enormous consequences for improving their daily lives.

Our work with victims from diverse regions in each of the three countries represented in this project confirms our belief that victims are not a monolithic category and their demands cannot be pigeonholed into hierarchies or priority lists. Victims across the three countries expressed a desire for integral reparations, including truth, symbolic and economic reparations, justice and accountability, memorialization, and assurances that the abuses they suffered do not recur. But they are also rational actors who understand that their preferences may not be attainable in given political contexts. Victims may prefer to emphasize reparations given their dire economic situation, which often is exacerbated after the original human rights violation, which may have resulted in forced displacement, the loss of the family head of household, and other privations, occurred.

Victims may also desist from demanding justice because of a rational decision that seeking justice is costly, may expose victims to new forms of trauma, may be unsafe, and may be impossible if the perpetrators cannot be clearly identified, which is often the case given the state's unwillingness to declassify official records that would help investigators identify the military structures that carried out abuses as well as the individual material and intellectual authors of those abuses. Yet, our case studies reveal that victims' demands for truth, justice, reparations and memory remain present even

in the face of government indifference or inaction. Demands that have been silenced may be reactivated when new opportunities to promote them arise; in other instances, victims' groups and their allies may organize specific campaigns to push long-silenced demands.

At the same time, survivors and families of victims made clear that no transitional justice mechanism can fully repair the damage done, whether it is the loss of a loved one, the destruction of a home or a community, or the enduring scars of torture or sexual violence.

1.3. Leadership of victims' rights can take many forms: individual survivors or family members of victims may emerge as powerful interlocutors of victims' demands; at other times, local, regional and even national-level associations of victims may organize to articulate victims' demands and present them in the public sphere. In each country examined here, individual victims and local or regional associations of victims have emerged as active protagonists demanding government responses to their demands for truth, justice, reparations, memory and guarantees of non-repetition. During the conflict period, victims' groups were ignored, repressed, and stigmatized. The transitions created new opportunities for them to make their voices heard and to organize and press for their demands. Though national-level organizations (such as the Mothers of the Plaza de Mayo in Argentina) are rare in our case studies, the leadership of individual victims as well as local and regional associations of victims have national-level impact at both the symbolic and policy levels. While there are sometimes disputes in leadership, often rooted in political and other differences, our research suggests that victims' associations seek ways to complement each other's work, and that such collaborative networking makes their voices stronger and their role as advocates more effective.

There are numerous examples to draw from; here we highlight a few we have encountered in the context of our research. In Guatemala the Human Rights Law Clinic of Rabinal, Baja Verapaz has played a critical role mobilizing and working with victims, in the majority Maya Achi, of the Guatemalan military's scorched-earth counterinsurgency policies in the 1980s. The association was founded by Jesús Tecú Osorio, a survivor of the Rio Negro massacre, perpetrated by the Army on March 21, 1981, after he received the Reebok Human Rights Award in 1997. The Clinic, which represents victims in conflict-era human rights cases, land disputes, and domestic violence cases, is one of half a dozen organizations working collaboratively as civil party litigants in the Military Zone No. 21 case (also known as the CREOMPAZ case), currently awaiting trial. Another important organization is the Association for Justice and Reconciliation

(AJR), an organization of survivors and relatives of victims from 22 communities in five regions affected by the genocide during the Guatemalan internal armed conflict. AJR filed the case against Ríos Montt and other members of the Guatemalan High Command for genocide in 2000, along with CALDH, and was a civil party litigant to the 2013 genocide trial against Ríos Montt and his intelligence chief Mauricio Rodríguez Sánchez.

In Peru, the first association of victims, the National Association of Families of the Kidnapped, Detained and Disappeared of Peru (ANFASEP), was established in Ayacucho in 1983. The founders were primarily Quechua women, hailing from poor rural households, whose husbands, sons and daughters were forcibly disappeared by government forces in the context of the counterinsurgency war against the Shining Path insurgent movement. ANFASEP members suffered from major social stigmatization during the conflict period, in part because of their ethnic and social status, but also due to the widely held perception, which was encouraged by the government and some news media, that survivors or families of victims were guilty by association of involvement in armed insurgent movements. ANFASEP took on a critical leadership role after Peru's return to democracy, demanding creation of a truth commission, implementation of an integral reparations program for victims, accountability for the worst cases of human rights violations, and the creation of a national plan to search for disappeared persons. ANFASEP has also led efforts to create memorials in Ayacucho, which is especially important given that half of the victims of the conflict are from the Ayacucho region. These include the ANFASEP Memory Museum and the La Hoyada Sanctuary of Memory at the Los Cabitos military base in Ayacucho, the site of hundreds of extrajudicial executions and enforced disappearances during the conflict.

Individual victims have also evolved into powerful national actors speaking out on behalf not only of their own cases, but those of others as well. This has occurred in each of the countries under study in relation to highly visible emblematic cases. In El Salvador, for example, Rufina Amaya, the sole surviving witness of the El Mozote massacre, traveled the world giving testimony about the murder of some 1,000 villagers by the U.S.-funded Atlacatl battalion of the Salvadoran Army.²²⁷ Her testimony challenged the denial narratives of both the Salvadoran and the United States governments that the massacre did not occur, a truth borne out by the exhumations nearly a decade later of the human remains of more than 800 people. In the face of legal inaction in the El Mozote case in El Salvador, the case was brought by families of the victims, represented by Tutela Legal, to the Inter-American Human Rights system. In October 2012, the Inter-American Court found El Salvador responsible for committing the massacre, covering it up, and failing to provide justice to the victims. The Court ordered the

government to investigate the case, to prosecute and punish the perpetrators, and to compensate the victims' families. The Inter-American Court also ruled that the 1993 amnesty law could not continue to be an obstacle to criminal accountability in this case. The Court ruling galvanized a previously scattered community of family members to organize and meet monthly to continue to their fight for justice. They petitioned the Constitutional Chamber to review the constitutionality of the amnesty law, and after several years of deliberation, in July 2016, the Court declared the amnesty law unconstitutional. Thirty-six years after the events, the trial for the El Mozote massacre began in 2017.

Similarly, in Peru, the families of the nine students and a professor from La Cantuta University who were forcibly disappeared from the campus on July 18, 1992, organized immediately to search for their missing love ones, despite the fact that Peru was living under a *de facto* government at the time. The discovery of the partial remains of some of the victims a year later brought renewed national and international media attention to the case, and the families, especially Gisela Ortiz and Raida Córdor, whose brother and son were among those missing, became national spokespersons for the disappeared in Peru. They advocated tirelessly for truth and justice in their case, ultimately resulting in the extradition, trial and conviction of former president Alberto Fujimori for the La Cantuta case among others, as well as the conviction of several senior military officers associated with the Colina Group death squad found responsible for the killings. Gisela Ortiz remains a highly visible spokesperson for the victims of Peru's internal armed conflict. After the conclusion of the criminal trial against Alberto Fujimori, she joined the Peruvian Forensic Anthropology Team (EPAF), where she advocates on behalf of the missing across the country.²²⁸ EPAF, and Ortiz in particular, played a central role in the recent passage of the National Law to Search for Disappeared Persons, a long-delayed demand of families of victims of enforced disappearance.

In Guatemala, Aura Elena Farfán, who was drawn into human rights advocacy after her brother, Rubén Amílcar Farfán, was disappeared by government forces in 1984,²²⁹ has become a leading human rights advocate. Through the organization she helped found, the Association of Relatives of the Disappeared of Guatemala (FAMDEGUA), Farfán has actively worked on behalf of victims of the internal armed conflict. She has led human rights investigations into army massacres and other cases of enforced disappearance, especially of children, resulting in critical breakthroughs. Farfán played a central role, for example, in locating two former Kaibil soldiers who participated in the 1982 Dos Erres massacre, in which government forces killed over 200 civilians, a large number of them children.²³⁰ Their court testimony led to the conviction of four military officials in 2011 and another in 2012. Another ex Kaibil, who was deported to

Guatemala from the United States in August 2016, will be tried starting in August 2018. A court ruled that Ríos Montt would also be prosecuted in this case, but with his death in April 2018, the case against him was closed.²³¹ Farfán's investigation, conducted in close collaboration with the Attorney General's Office and the FAFG, also led to the identification of Oscar Alfredo Ramírez Castañeda, who at the age of three, was abducted after the massacre by the commanding army officer and given a new identity. Oscar's mother and eight siblings were killed in the massacre, but his father survived; they were reunited, in large part because of Farfán's investigation, in 2011.²³²

In none of the case studies examined here was there a national-level association that successfully integrated a broad-based membership of victims of different types of human rights violations and from different regions of the country. For several years, the Ombudsman in El Salvador sponsored annual meetings of victims, which helped victims socialize and develop stronger networks, but this has not yet resulted in a stand-alone national victims' movement or association. Such a national association of victims could provide a stronger platform for victims to interact as rights-bearing subjects vis-à-vis governments at the local, regional and national levels, and vis-à-vis international bodies. In Peru, there are a wide range of victims' organizations, from very local associations of specific massacres, such as the Association of Families Affected by Political Violence from the District of Accomarca (AFAPVDA), organizations based on the type of violation, such as the Association of Displaced Families in Lima (ASFADEL), and broader associations of victims of state violence including ANFASEP. The National Commission of Victims of Political Violence (CONAVIP) seeks to be this unifying body and has played an important role in advocating on behalf of victims of the violence, particularly in relation to the reparations program. It has not succeeded in integrating other organizations into its membership, which, for historic and other reasons, have sought to maintain their autonomy. CONAVIP has made important efforts to work collaboratively with other victims' organizations such as ANFASEP on specific issues, such as the creation of the National Law to Search for Disappeared Persons.

1.4. Consolidating victims' organizations through leadership and advocacy training is critical to ensuring victim participation and influence over transitional justice processes. When victims are organized, they are in a better position to mobilize for specific transitional justice mechanisms and policies and to oversee government implementation of those policies. The persistent activism of the victims and the organizations representing them has been decisive in truth-recovery processes, including the search for disappeared persons, in landmark criminal prosecutions (including the Fujimori case in Peru and the Ríos Montt case in Guatemala), and in pressuring governments to recognize victims' rights to comprehensive reparations. Victim participation and influence over the transitional justice process is also critical

to ensuring victims' sense of ownership over the process, which can contribute to rebuilding trust between victims and the state.

Long-term advocacy work may become hard to sustain due to a number of factors, including leadership and organizational challenges; the financial demands of sustaining long-term advocacy work; and burn-out, especially in the face of recalcitrant governments or pushback from the military or other sectors. This is particularly so in countries such as Peru, Guatemala and El Salvador, where the vast majority of victims come from poor rural areas and/or indigenous communities. In order to have a lasting impact on reducing levels of impunity, these organizations require leadership that is well-trained in advocacy and communications strategies. They also need to be more consistently and permanently networked, and to be able to monitor and influence relevant policies over a sustained period of time. Capacity-building and advocacy training are critical for the consolidation of victims' associations and to strengthen their ability to continue to organize and to participate on an equal footing in the transitional justice process.

1.5. *The role of the international community is critical in supporting victims' organizations.* Private foundations, governments, churches, and individual donors have helped sustain the work of victims' organizations such as FAMDEGUA, the Human Rights Law Clinic of Rabinal, ANFASEP, and the Victim's Association of El Mozote. Yet, victims' associations often have limited access to funding and often suffer from organizational precariousness. Some victims' organizations have sought to develop small self-financing projects that contribute to sustaining their work. ANFASEP, for example, charges a modest entry fee and offers weavings and other crafts for sale at the Memory Museum it constructed at its headquarters in Huamanga, Ayacucho. Such schemes are very modest, however. Philanthropy at the domestic level is simply not widely available, making international support of utmost importance.

International funding that provides direct support for victims' organizations can help contribute to the development of more stable organizational structures and therefore strengthen the capacity of such organizations to engage in sustained advocacy work and alliance-building. Alongside financial support, however, is the need for leadership trainings and other capacity-building activities to ensure transparency and good management of resources. Otherwise, management of external funds can become a source of conflict that further divides and alienates members of these organizations.

1.6. *Victims have been at the forefront of campaigns aimed at achieving specific goals, even in the face of recalcitrant governments.* Such campaigns are especially effective when they mobilize different sectors in support of a clear, identifiable goal. In all

three countries, victims' associations, in alliance with human rights organizations, have been the driving force in advocating for a holistic approach to transitional justice. Victims' groups demanded that their governments establish national commissions of inquiry into the nature of past violations, integral reparations for victims, including retributive justice, individual and collective reparations, and memorialization initiatives. Victims have also spearheaded campaigns to establish national programs to search for individuals who were forcibly disappeared during the internal armed conflicts. Governments in all three cases have been slow to respond to this latter demand, but there have been some positive developments that raise hope that there may be forward movement in specific cases and that this could spur other countries to follow suit.

In Peru, for example, after a year-long campaign spearheaded by victims' organizations, allied human rights organizations, and the Ombudsman's Office, Congress approved a law in June 2016 creating the National Plan to Search for Disappeared Persons, which now awaits implementation. In El Salvador, after many years of inaction, the persistent demands of victims entreating the state to pursue a nation-wide search for the estimated 900 children who went missing during the conflict period finally resulted in the creation of a national body dedicated to this effort, with important results to date, as noted previously. Most recently, victims' groups and allied human rights organizations spearheaded a campaign to pressure the government to pass the National Law to Search for Disappeared Persons, which was signed into law in February 2017.

In Guatemala, the country with the largest number of victims of enforced disappearance at 45,000, in the face of government inaction on this issue of the search for victims, FAMDEGUA, along with other victims' associations and local and international human rights organizations, established a working group. The group worked with legislators to put forth Bill 3590, which would establish a national level program to search for disappeared persons.²³³ The bill was presented to Congress in December 2006, but it was not approved in session in 2007, and remains stalled in Congress. In the absence of state action, civil society groups, most notably the FAFG, have made significant advances in the search for the disappeared, though much remains to be done. Victims' organizations have played similar roles in pressuring governments to adopt and implement other transitional justice mechanisms, such as reparations programs and criminal trials.

1.7. *Psycho-social support for individual victims, their families and communities is a critical element of the transitional justice process.* During the conflict period, violence was deployed not only against individuals but also against entire communities, with the aim of destroying or disrupting local forms of governance, reproduction and culture. Psycho-social support must integrate work with individual victims with an

approach that addresses the impact of violence on the community. This is critical in societies such as those studied here, in which communities and not just individuals are the targets of state violence, in order to rebuild community relations, trust, and resilience. This integration of the individual and collective dimensions of trauma aim to help the victims understand the violence they endured, foment rebuilding at the community level, and help victims understand their rights as citizens to demand comprehensive reparations from the state. Psycho-social support is often provided by specialized NGOs or independent professionals. Victims and experts vigorously highlighted the importance of psycho-social support at every level of the transitional justice process, particularly when survivors and families of victims provide testimonies to investigative bodies such as truth commissions or in criminal procedures; in the context of the search for the disappeared; and more broadly as a foundational element of individual and community healing.²³⁴

Guatemala is exemplary in the development of collaborative engagements between victim's associations and human rights organizations to develop ongoing programs to support not only the individual victims but also their families and their communities. In the Sepur Zarco case, the *Alianza Rompiendo el Silencio* coalition worked for years with victims, their families and their communities in Sepur Zarco, prioritizing individual and collective forms of healing and community rebuilding. Group work with the surviving women was deemed particularly important to helping women overcome their sense of shame and the societal stigma that they had endured for so many years. But it also required work with the broader community to help others understand that the women survivors were not to blame for what happened to them, and to facilitate their reintegration into the social fabric.²³⁵ This individual and societal healing was fundamental to the women's later decision to pursue their case in court. Because of this, the experience of testifying before a judge was difficult but not traumatizing and contributed to a process of transformation and empowerment. In our workshops, the women of Sepur Zarco reported that for them, bringing their case to court, testifying before a judge, and participating in the criminal trial in which they were able to confront the perpetrators face-to-face in a court of law, was a profoundly empowering process, helping to transform them from victims to citizens with rights and dignity.²³⁶

1.8. *Victims and their civil society allies continue to face serious risks even decades after the moment of transition to democracy.* Witness protection and security for human rights defenders must be a priority during the transitional justice process. Attacks against human rights defenders have been an ongoing feature of the post-transition period in the three countries, particularly when entrenched elites feel that their interests are at risk. This is in part due to the fact that many of the structures that

engaged in violence during the conflict periods remain operational. The impunity that accompanied postwar settlements in El Salvador and Guatemala in particular has made this an unsettling part of the post-conflict reality in each of these countries, fueling corruption and violence.

The reactivation of these structures of impunity was evident during the Ríos Montt genocide trial, for example. Survivors and families of victims who testified in the genocide trial reported being harassed and threatened in their local communities. Victim-witnesses, human rights workers, and judicial operators were viciously attacked in the press, on social media, and through paid advertisements in the media and anonymous circulars. Human rights activists and judicial operators, including the judges and prosecutors in the genocide case, have also faced frivolous lawsuits that seek to silence them and limit their activities.

In Peru, victims' groups and human rights organizations have been frequently attacked in the press. Sometimes the attacks come from conservative politicians or media personalities, and sometimes from retired military officers, and even sometimes from government authorities. During the second administration of Alan García, for example, President García and his Vice President, former navy admiral Luis Giampetri, frequently attacked human rights defenders as being terrorist fronts and for "persecuting" the military.

This is highly retraumatizing for victims and generates stress among human rights workers who are often overworked and themselves affected by secondary forms of trauma due to their work with victims. In post-conflict settings, security and mental health programs for victims and human rights defenders must be a high priority for funders and the domestic and international organizations that support transitional justice processes.

2. Victim participation in transitional justice policies and processes

2.1. *Victim participation is key to achieving the main objectives of transitional justice.* In his initial report as United Nations Rapporteur for Transitional Justice, Pablo de Greiff wrote that victim participation is critical to providing victims with the recognition and trust that is indispensable for consolidating the rule of law.²³⁷

This finding was reiterated frequently in our study groups and workshops in Peru, Guatemala and El Salvador. Victims clearly expressed their desire to be involved in dialogue with government officials and agencies responsible for developing key transitional justice

policies, such as reparations programs. In the case of criminal trials, victims in Guatemala noted their satisfaction that new leadership in the Attorney General's Office has given them a greater role in the criminal justice process. Clear leadership that prioritizes respect and inclusion of the victims has been critical to making victims feel like their voices and concerns are being heard and has contributed to mending the frayed relations between victims and legal institutions in Guatemala. In El Salvador, by contrast, there have been limited opportunities for victim participation and oversight in criminal investigations, leaving victims feeling newly traumatized as a result.

Victims expressed discouragement at the fact that they are often not meaningfully engaged in these policy debates and especially during the implementation process. This generates a feeling of double victimization: in addition to the original abuse suffered, the failure of the state to engage victims in a meaningful way in the design and implementation of transitional justice policies contributes to feelings of resentment, isolation, and mistrust of government authorities. In our case studies, this is exacerbated by the fact that the victims come from historically marginalized and oppressed populations—rural, indigenous populations in Peru and Guatemala, and poor rural populations in El Salvador. Women who were victims of sexual violence especially felt excluded, as the crime of sexual violence was largely invisible during and after the conflict. This is deeply problematic given the fact that transitional justice processes, at their core, aim to address the legacies of violence and create mechanisms to integrate victims into society in order to lay the groundwork for peaceful coexistence.

The lack of victim participation in the transitional justice process is most pronounced in the case of El Salvador. While many victims were able to give their testimony to the Salvadoran truth commission, the short timeframe the commission was given to conduct its work, and the pervasive fear that continued to permeate the country at the time, meant that victim participation was necessarily limited. The blanket amnesty law promulgated just days after the publication of the truth commission report in 1993, along with a long-standing official policy of denial about the nature and extent of the human rights violations committed by the state during the internal armed conflict, fundamentally denied victims a role in postwar El Salvador. The state maintained this attitude for nearly two decades, during which victims were not recognized by the state and no meaningful policies were developed to address the legacies of the conflict. Victims' associations remained on the defensive and passive in the face of government indifference. This began to shift under the FMLN regimes that have been in office since 2009, when the government made some important efforts to acknowledge state responsibility for human rights violations and implemented programs to provide reparations and search for disappeared children. However, there is still very strong

resistance to acknowledge victims and their rights to truth, justice, reparation and memory. Victims' fundamental right to access justice, in particular, continues to be denied, though the overturning of the 1993 amnesty law has opened new opportunities for victims to pursue their cases in court.

The Peruvian experience offers a different model, in which victims played an important role in the transitional process, though the post-CVR policies that were adopted by successive administrations did not always adhere to the same spirit of including victims in the design and implementation process. The transitional government of Alejandro Toledo (2001-2006) made important efforts to acknowledge the victims of the internal armed conflict, both in terms of the process and the outcome of the CVR's work. In addition to taking the testimony of 17,000 victims, the CVR also invited victims to speak in several public forums in which their experience could be heard and acknowledged. The president of the CVR, Salomon Lerner, stated that these public forums were conceived as an opportunity to correct the societal indifference faced by victims for so many years: "This is a space and a time for the victims. It is an occasion for them to tell the difficult history of the experience they went through and for the rest of the country to offer them the acknowledgment that has so long been denied them."²³⁸ Such forums symbolized a shift in the state's response from one of indifference or hostility to one of acknowledgement and recognition.²³⁹ It is also important that President Toledo welcomed the CVR's Final Report, which he accepted from the hands of CVR president Salomón Lerner in a solemn ceremony in Lima on August 29, 2003. A second ceremony took place a few days later in Ayacucho, which was symbolically quite significant, since nearly half of the victims from the armed conflict were from that region. Toledo accepted the report and acknowledged its importance in moving Peru toward national reconciliation.

This represents a marked contrast from El Salvador and Guatemala, where the sitting presidents refused to accept, and openly criticized, the final reports of their truth commissions. One reason for this is that Peru's transition represented more of a rupture from the previous regime than was the case in El Salvador and Guatemala, which were negotiated transitions in which elements of the *ancien regime* retained significant power. This meant that in Peru, the transitional government had far more leeway to adopt transitional justice policies and incorporate victims' participation. Another factor is the relatively stronger organization of human rights groups in Peru. In 1985, in the face of intense polarization and attacks against human rights defenders from the government as well as from armed insurgent groups, human rights organizations and victims' associations such as ANFASEP decided to develop a coalition, the *Coordinadora Nacional de Derechos Humanos* (National Human Rights

Coordinator), to serve as a platform to develop more strategic interventions in the defense and promotion of human rights at the national, regional and international levels. The nature of the conflict in Peru was also quite different: whereas the state was overwhelmingly responsible for human rights violations in both El Salvador and Guatemala, Shining Path was responsible for more than half of the victims, according to the CVR. The fact that there were victims “on both sides” meant that there was less resistance to the CVR Final Report and implementation of some of its most important recommendations.²⁴⁰

At the same time, however, implementation of specific transitional justice policies to benefit victims not only took many years to bring to fruition, but also did not always incorporate victim participation. This is perhaps nowhere more evident than in successive governments’ handling of the Comprehensive Reparations Program. The Toledo government did not adopt the CVR’s recommendation to create a comprehensive reparations program until the very end of its term, leaving implementation to the more conservative government of Alan García (2006-2011).²⁴¹ The García government prioritized collective reparations over individual reparations. It did not consult with victims’ associations or human rights organizations in making this determination or in the subsequent implementation of the program. As a result, the García government treated the reparations program as a source of general economic assistance and even clientelistic handouts, distorting the nature of the reparations program.²⁴² Nor were victims included as active participants in the design or implementation of these projects. Peruvian anthropologist María Eugenia Ulfe describes a fish farm that was developed, presumably as a reparation program, in Lucanamarca, an Andean village that was hard hit by the violence, and which registered the first massacre committed by the Shining Path in 1983. The local mayor who proposed the fish farm saw it as “his project,” notes Ulfe. “There is no awareness that reparation is a right of restitution of citizens [who were victims during the violence]”²⁴³ and has instead come to be seen as a form of general economic assistance.

Reparations programs require documentation to verify individual claims of victimization, and a victims’ registry in principle is a valid mechanism for achieving such a goal. In the Peruvian case, however, the process was extremely bureaucratic, and it tended to be guided by political concerns rather than humanitarian ones. A review board consisting of seven members was set up to evaluate victims’ applications to be included in the registry. Not only did individuals have to provide proof of the violation suffered; they also had to demonstrate that they had no affiliation with armed groups, since the law prohibited anyone with such an affiliation from accessing reparations. Among the members of the review board during this initial period were two retired

military officials and a police officer, who effectively vetoed many applications on the basis of often unproven charges that the individual in question was involved in one of the two armed groups, Shining Path or the MRTA, which made them ineligible for reparations.²⁴⁴ During the conflict, the armed forces and government frequently failed to distinguish between illegal armed groups and members of the legal left and social movement organizations. This same logic resulted in the exclusion of many victims of grave violations from the National Victims' Registry who had no demonstrated affiliation with an armed insurgent group. This was the case of Doris Caqui, whose husband, Teófilo Rímac Capcha, a teacher, trade union leader, and member of the United Left who was disappeared by government agents in 1986, was excluded from the National Victims' Registry by the review board after one of its members claimed that he was a known militant of Shining Path. (Caqui successfully contested the decision and was later able to apply for reparations.)²⁴⁵ At the same time, many individuals who were forcibly recruited to participate in Shining Path and the MRTA, or were forced to collaborate under extreme duress, continue to be excluded from the reparations program; as do members of those organizations even if they suffered grave human rights violations such as sexual violence, torture, or enforced disappearance.²⁴⁶ Can reparations programs that prima facie exclude entire categories of people who were victims of violence promote national reconciliation?

Finally, the García government delayed authorization of individual economic reparations payments until July 16, 2011, twelve days before his term expired. The government did not consult with victims' associations or human rights organizations in drawing up its reparations plan, which imposed a December 31, 2011 deadline for victims to register for reparations, limited reparations to a single violation per individual, and established a maximum payment per violation of 10,000 *soles*, approximately US\$3,000. Victims' groups vigorously contested these limitations. ANFASEP and other organizations staged protests, marches, and meetings with members of Congress to change the ruling. More than five years later, the government finally lifted the deadline to register victims as well as the limitation on seeking reparation for only one violation. The amount offered per violation remains unaltered.

The rule excluding members of armed groups also remains in place. Female members of Shining Path who were sexually assaulted while in detention, for example, cannot access any monetary benefit or any of the health benefits that the reparations program offers. Nor can children who were orphaned when their parents, who were militants of the insurgent groups, were arbitrarily killed or forcibly disappeared by the state.²⁴⁷ Policies such as these that exclude victims from accessing reparations on the basis of politics may in the end undermine the desired outcome of national reconciliation.

2.2. In transitional justice criminal proceedings, it is of critical importance to ensure victim participation as well as the adoption of victim-centered approaches that seek to respect the dignity of victims and avoid traumatization during all phases. This is especially true in cases dealing with sexual violence. In any criminal proceedings in which individuals have been victimized, mechanisms and procedures must be put in place to ensure that the proceedings do not traumatize victims. This is especially important in transitional justice criminal proceedings, in which victims/survivors have often had to wait years if not decades to access the justice process, and in which the trauma suffered involves the loss of life or the enforced disappearance of loved ones and/or direct physical trauma, including torture and sexual violence, among others. A victim-centered approach seeks to minimize traumatization associated with the criminal justice process by providing victims with the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors and families of victims an opportunity to play a role in seeing justice done.

In each of the countries under study there are specific mechanisms allowing for victim participation in criminal prosecutions, via the *querellante adhesivo* (complementary prosecutor) system in Guatemala, the *querellante* system in El Salvador, and the civil party mechanism in Peru. These mechanisms, while not specific to transitional justice processes, have been key to ensuring victim participation in criminal investigations and prosecutions when they occur. The *querellante adhesivo* system in Guatemala allows victims to participate in judicial proceedings in a complementary prosecutorial role alongside the Attorney General's Office, while in Peru's civil party system, the victim participates in the judicial proceedings to ensure their rights to reparation for the harm caused by the alleged crime.

Even with such systems in place, this does not guarantee that the criminal proceedings themselves are victim-centered. Many factors work against victim-centered approaches in criminal justice processes. By definition, criminal trials are focused on demonstrating the culpability of alleged perpetrators. They thus must emphasize due process guarantees for the accused, which is often abused by defense lawyers, sometimes to the detriment of an expeditious judicial process. Heavy caseloads in prosecutor's offices can often take the focus off the victim's need for sensitive treatment and helping the victim understand what occurs during the prosecution of a case. Special attention is needed to ensure procedures that protect the rights of victims, prevent retraumatization, and ensure their access to justice throughout the process. Trainings and workshops in victim-centered approaches for law enforcement officials, public prosecutors, judicial operators, and other service providers is critical for ensuring respect for victims at all levels of the

justice process. Ideally, the legal institutions that engage with victims of human rights violations should adopt protocols to ensure respectful treatment of victims by their agents, from the moment of the initial investigation, to the taking of testimony, to the engagement with the victim during the criminal proceedings.

A powerful example of a “best practice” in this regard is the work of the Attorney General’s Office in Guatemala during the Maya Ixil genocide trial in 2013. The Attorney General’s Office constructed a litigation strategy that was respectful of the victims, and that sought not only to avoid their retraumatization, but to empower them through their participation in the legal process.²⁴⁸ The leadership role played by then Attorney General Claudia Paz y Paz was critical in this regard. As someone with years of prior experience in civil society organizations working on behalf of victims, she focused on developing protocols to ensure that victims were treated with dignity and to promote mutually respectful relations between the public prosecutors working on the case and the civil party and victim organizations. This allowed for the development of a collaborative relationship between prosecutors and victims and their legal representatives, creating institutional spaces that facilitated victims’ participation and minimized chances of retraumatizing victims.

The treatment of victims of sexual violence in the genocide case, and within the Attorney General’s Office more broadly speaking, provides a clear example of this. Sexual violence was widespread and systematic during the Guatemala internal conflict, yet in Guatemala, as elsewhere, it was rarely acknowledged, let alone investigated and prosecuted. Because of the intimate nature of sexual violence, and the social stigma involved, there are also enormous challenges to protecting the physical and emotional wellbeing of victims. During Paz y Paz’s tenure, the Attorney General’s Office developed a clear and specific strategy for identifying crimes of sexual violence committed during the internal armed conflict and pursuing criminal investigations against alleged perpetrators of those crimes. Paz y Paz issued a directive establishing the need to investigate and prosecute sexual violence cases and outlining a series of protocols for investigating crimes of sexual violence.²⁴⁹ It instructs prosecutors engaged in investigations of massacres, illegal detentions, forced displacement and extrajudicial executions to inquire whether sexual violence occurred in the context of these abuses, and to implement a protocol to ensure respect for the dignity of the victims and to prevent retraumatization.²⁵⁰ The protocol outlines the need to protect the identities of victims; to assist victims in obtaining psychological help; and encourages the use of different mechanisms, such as pre-recorded witness testimony, so that victims would not have to repeatedly testify about the abuses they suffered. Prosecutors were also instructed to determine whether victims felt fearful, whether the alleged perpetrators

lived in close proximity, and therefore whether the victims required protection and how to provide it as needed.

This careful approach to collecting different types of evidence and protecting the dignity and safety of victims was central to the ability of the Attorney General's Office to build a case that incorporated the testimonies of victims of sexual violence. The sensitivity displayed by the Attorney General's Office help build confidence between the women survivors and the prosecutors, and many of them agreed to testify. When the trial court made known that it would require the women to testify in open court rather than in private, as the Attorney General's Office had requested, the prosecutors explained the implications of this decision to the women and their legal representatives. They did not try to compel the women to testify, giving them the option to withdraw their testimony if they so chose.²⁵¹ They also petitioned the court to allow the women to cover their faces with their shawls, which the court allowed. While some of the women did withdraw their testimony, ten women decided to testify. This was the first time in Guatemala that female victims of sexual violence during the internal conflict testified in court about the abuses they suffered, effectively breaking the silence that had historically surrounded such crimes. Significantly, their testimonies were central to the court's determination that genocide had occurred during the Ríos Montt government. The women expressed their satisfaction with their decision to testify, saying they felt empowered that they were given the opportunity to tell a judge about what happened to them.²⁵²

Also significant is the fact that these protocols for ensuring victim participation and protecting the dignity of victims have become institutionalized in the Attorney General's Office. This was evident when, three years after the genocide trial, the first case focusing exclusively with the crime of sexual violence, along with sexual and domestic slavery, came to trial in February 2016. During the Sepur Zarco trial, 15 Q'eqchi' women testified about the sexual assault, sexual slavery, and domestic slavery they endured at the hands of the military for several years during the 1980s, resulting in the conviction of a retired coronel and a former military commissioner. While the investigation into the Sepur Zarco case began under Claudia Paz y Paz, the formal indictment was issued under her successor, Thelma Aldana. The survivors reported their satisfaction with the criminal justice process and particularly with the work of the head prosecutor in the case, Hilda Pineda, who was later promoted to be the head of the Human Rights Section within the Attorney General's Office. The protocols and mechanisms to protect victims and guarantee their dignity and their safety established during Paz y Paz's tenure were being used in the Sepur Zarco case. In addition, there was an important improvement in the way the women's testimonies were rendered: Pineda petitioned the pretrial judge, Miguel Ángel Gálvez, to allow the women's testimony in the preliminary proceedings

to be video recorded and admitted as evidence. Judge Gálvez agreed, and as a result, during the public trial, the women did not have to testify again; rather, their recorded testimony was played in court while they observed the proceedings, covered by their traditional shawls, alongside the public prosecutor.²⁵³ This helped protect the women's identities and prevented their retraumatization.

We had the opportunity to observe the Sepur Zarco proceedings and to speak with the women who testified in the case after the verdict was handed down. They expressed their satisfaction at being able to testify publicly about what happened to them, about the sensitivity of the judicial operators involved in their case, and about the outcome of the trial. They felt vindicated and empowered. "Now everyone knows we were not lying about what happened to us," one of the women told us during a workshop with the survivors from Sepur Zarco and four other regions of the country. Many of the women stated that they were motivated to testify about what happened to them in order to make people aware of the abuses they suffered so that it won't happen to other women. "What we want, what we ask of the tribunals, is that others do not suffer what we endured, so that our granddaughters do not suffer what we suffered."²⁵⁴ They also spoke of feeling empowered. During the workshop, one of them made a drawing of herself, which she described this way: "This is a drawing of a woman who has wings, who no longer is fearful, because she testified, and news of the verdict, and of the recognition of what happened during the armed conflict, reached the community, people heard about it on the radio."²⁵⁵

By testifying in court, the women survivors of Sepur Zarco helped to 'break the silence' that had surrounded sexual violence during the Guatemalan armed conflict. This speaks to the power of testimony not only to denounce past abuses but also to contribute to violence prevention by generating awareness of what happened and demanding punishment of perpetrators. The women survivors of Sepur Zarco reclaimed their dignity as individuals and their rights as citizens seeking access to justice and redress. Bringing their case to trial helped establish the truth about the sexual violation the women of Sepur Zarco and other regions of Guatemala suffered during the internal armed conflict, and by so doing, to help ensure that such abuse not recur in the future. Of course, to fully ensure such guarantees of non-repetition requires the engagement of the State, which must not only respond to the abuses suffered by the victims through different measures of reparation and restitution, but also by establishing programs and policies to ensure that state actors do not engage in similar behavior in the future.

From a comparative perspective, the strategies adopted by the Guatemalan Attorney General's Office in sexual violence cases were deliberate and methodologically sound.

The Attorney General's Office laid out a careful strategy to identify crimes of sexual violence, and also developed mechanisms to protect the physical and emotional safety of the victims. This is more extraordinary than one might think. Our interviews with victims in Peru and El Salvador made clear that prosecutors investigating historic human rights abuses do not always have an awareness of the magnitude of sexual violence, and lack protocols for incorporating questions about sexual violence into their investigations, for taking testimony of victims of sexual violence, and for protecting the physical and emotional safety of sexual violence survivors. The inevitable result is the retraumatization of survivors of sexual violence and limited access to justice for victims. We learned of at least one case in Peru in which a survivor of sexual violence who had been imprisoned in a military base in Ayacucho agreed to testify on the condition that her identity would remain confidential. Her husband did not know about the abuses she had endured, because of her previous experience with her first husband, who, upon learning she had been raped by soldiers, beat her and abandoned her because she was "tarnished." Due to a lack of protocols for protecting the identities of sexual violence survivors, the prosecutor's office unwittingly revealed to her spouse that she was a victim of sexual abuse by the military. Her husband, infuriated, left her. The woman, who felt betrayed and traumatized, said her faith in the public prosecutors had been broken and she asked to withdraw her testimony. Incredibly, rather than respect her wishes, the prosecutor in the case threatened to compel the woman's testimony. In this case, prosecutors prioritized their case over the needs of the victim, causing resentment and retraumatization. Far from feeling empowered by this experience, the woman felt bitter and regretted her decision to become involved in the court case in the first place.²⁵⁶ This experience highlights that especially in rural indigenous communities, victims of sexual violence suffer social stigmatization, and failure to understand the cultural dynamics at play can result in retraumatization of victims and undermine confidence in the legal institutions that are supposed to be working on their behalf.

Adopting a victim-centered approach in all transitional justice mechanisms should be a priority. This approach is defined as the systematic focus on the needs and concerns of a victim to ensure compassionate and sensitive engagement with victims that is respectful of their dignity and autonomy. A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in the justice process. A victim-centered approach plays a critical role in supporting victims' rights, dignity, autonomy, and self-determination, and is critical to a successful criminal case.

3. Human rights organizations play a critical support role on behalf of victims in transitional justice processes

3.1. *Human rights organizations have played a critical role supporting victims and victims' associations in advocating for transitional justice mechanisms.* Human rights organizations are nonprofit, nongovernmental organizations comprised of professionals—lawyers, psychologists, social workers and sociologists, among others—whose mission is to promote and defend human rights. In Peru, Guatemala and El Salvador, as elsewhere in Latin America, numerous human rights organizations emerged in the context of authoritarian rule and internal armed conflicts to accompany victims by documenting human rights violations, filing habeas corpus and other protective measures on behalf of victims, providing free legal aid and psychosocial support to victims and their families, and denouncing human rights violations nationally and at the international level. During the transition from conflict to peace, these organizations continued to work on behalf of victims by advocating for the creation of truth commissions, the implementation of integral reparations for victims, the establishment of national programs to search for disappeared persons, and representing victims before domestic, regional and international legal bodies in pursuit of retributive justice. Human rights organizations developed strategies in close collaboration with victims' associations to demand accountability, to challenge institutionalized impunity and overturn self-amnesty laws, and asserting the obligation of the state to investigate, prosecute and punish gross human rights violations.

Human rights organizations are most effective in advocating for transitional justice policies when they act in coordination with each other and with victims' associations, and in coordination with key partner civil society organizations within country and internationally. Alliances with individuals and agencies within the state apparatus are also of critical importance. Peru provides two excellent examples. The National Human Rights Coordinator (*Coordinadora Nacional de Derechos Humanos, CNDDHH*), a coalition of more than 80 human rights groups nationwide including victims' associations such as ANFASEP, played a critical role denouncing human rights violations during the conflict period and in the struggle against the Fujimori dictatorship, and was the leading advocate for the creation of a truth commission during the transitional government of Valentín Paniagua (2000-2001). The Paniagua government, which was not fully sold on the idea, created a working group consisting of the Minister of Justice, the Minister of Defense, and civil society organizations, to study the matter. The *Coordinadora* engaged in strategic lobbying with representatives of the Paniagua

government to promote the creation of a truth commission that embraced a holistic model of transitional justice, which sought to provide victims not only truth, but also justice, reparations, and guarantees of non-repetition.²⁵⁷ The Peruvian Truth and Reconciliation is considered a model truth commission precisely because it adopted that integral model of transitional justice.

Another example from Peru is the more recent *#Reune* (*#Reunite*) campaign, which was critical to the eventual passage of the National Law to Search for Disappeared Persons, which is described in greater detail above. The campaign was spearheaded by human rights and victims' organizations, in close collaboration with international organizations and the Ombudsman. The campaign organizers designed a clear communications strategy that was closely aligned with lobbying efforts to promote passage of legislation to create a national plan to search for disappeared persons. A critical lesson learned from this experience is that even in the face of long-standing government indifference and inaction, and clear resistance by military sectors, a campaign that has clearly defined objectives (in this case, the creation of a national law that would establish a mechanism to establish a national plan to search for the missing), a clearly defined strategy for lobbying key stakeholders (members of Congress), a purposeful communications strategy (strategic use of new social media for example), and that is able to mobilize multiple actors to serve its objective (in addition to the immediate stakeholders, they mobilized other civil society organizations such as trade unions and the national press association, some of whose members are among the disappeared, as well members of Congress and domestic and international human rights organizations), can be successful. A similar campaign in early 2017 in El Salvador, spearheaded by the now adult children of victims of the internal armed conflict or who were orphaned by the war and now live in the United States, secured passage of a similar law to search for the disappeared in El Salvador, as discussed above.

An example from Guatemala is the coalition *Alianza Rompiendo el Silencio y la Impunidad* (*Alliance to Break Silence and Impunity*), which brought together human rights organizations, women's rights and feminist organizations, and victims' rights organizations, in support of the women of Sepur Zarco, who brought the first criminal case of sexual violence, sexual slavery and domestic slavery before the Guatemalan domestic courts, and resulted in a landmark conviction of two military officials.²⁵⁸ The *Alianza* coalition developed a careful strategy to work at the local level with victims to address the mental and physical health needs of individual victims, as well as strategies to promote community healing and rebuilding, which they saw as the first step prior to any possible future litigation. The *Alianza* worked for several years with the women of Sepur Zarco and their families, friends and neighbors in the community. Once

the victims and the community members reached a decision to pursue litigation, the coalition sustained its actions by implementing local development projects, providing ongoing psycho-social assistance to victims, and legal assistance. This was later complemented by a vigorous media and outreach campaign to support the women of Sepur Zarco once the case went to trial. The media campaign focused not only on the violence these women suffered during the war, but also the current violence women in Guatemala today face (one of the highest rates of femicide in the Hemisphere). The *Alianza* generated broad levels of social support for the victims and the proceedings, as evident in the wide media coverage and the presence of women survivors of sexual violence from other regions of the country, of school children from high schools, and other organizations, during the course of the proceedings. The women of Sepur Zarco told us that they were very grateful, and felt supported, by the interest in their case, expressed in the extensive national and international press coverage of the proceedings, and the presence in the courtroom of diplomats (including United States Ambassador Todd Robinson), international human rights advocates, and Nobel laureates Rigoberta Menchú and Jody Williams.

3.2. Human rights organizations, in close collaboration with victims' groups, have developed different strategies to challenge denial narratives that persist from the conflict period, or that have been revived in post-conflict contexts. Closely allied to this work, human rights organizations have helped develop different types of memory "work" and memory sites that seek to commemorate the victims, visually document past violations, and contribute to establishing a fuller understanding of the causes and consequences of past human rights violations among broad sectors of society.

In El Salvador, for example, victims' associations and human rights organizations worked together to create a memorial to the victims of the El Mozote massacre. In the absence of a national memory museum or other memory space, these organizations have also worked closely with local municipalities to develop memory sites that document past abuses, commemorate victims, and create public spaces that contribute to a broader understanding of what happened during the conflict.²⁵⁹

In Guatemala, CALDH created a memory museum that is open to the public, and that has been visited by numerous student delegations since its opening in 2014. The *K'aj T'ulam* Memory Museum (which means "the four cosmic spaces" in K'iche') traces the origins of the Guatemalan conflict to the Conquest, when indigenous populations were colonized and subjugated by the Spanish invaders, outlines the importance of the 1954 coup d'état against the Arbenz regime that, with CIA-sponsorship, ushered in more

than three decades of military rule and resistance that resulted in the death of 200,000 people.²⁶⁰

Similarly, in Peru, the Pro-Human Rights Association (APRODEH) worked with victims' groups to create the *Ojo que Lloro* (Eye that Cries) memorial, an outdoor space granted by the municipality of Jesús María in Lima, consisting of a labyrinth made up of stones inscribed with the names of the victims of Peru's internal armed conflict. Such spaces are sometimes, however, the site of conflict and controversy. The *Ojo que Lloro* memorial, for example, has been attacked on several occasions by Fujimori supporters who have defaced the memorial.²⁶¹ Victims groups have worked together to restore and clean up the memorial.

This work goes beyond support for specific memorials and memory sites, however. Human rights organizations support commemorative acts that occur throughout the year that serve as important gathering points for victims' associations and their allies in civil society, where they can renew their commitment to the pursuit of truth, justice and reparations, and seek to influence public opinion in relation to specific objectives.

3.3. Human rights organizations have played a critical role developing strategic litigation to access formal justice for victims, but also to challenge the mechanisms of institutionalized impunity, contribute to the dismantling of the structures that perpetrated grave human rights violations, and engage the entire society in a national dialogue about the causes and consequences of human rights violations that occurred during the periods of conflict. Strategic litigation in this context is an integral strategy to accessing justice, pursued with the objective of producing broader social impact through application of the law in a particular case or cases; strengthening judicial institutions; promoting public debate and education; and strengthening the role of victims in the transitional justice process. Strategic litigation is a method that seeks to bring about significant changes in the law, practice or public awareness. As far as transitional justice goes, strategic litigation may involve taking emblematic cases of grave human rights violations to court; pursuing litigation of leadership cases, as in the Ríos Montt and Fujimori cases; or litigating so as to access key official documents, or to find assets. Human rights organizations in each of the countries studied here have pursued strategic litigation, in pursuit of justice, comprehensive reparations for victims, and guarantees of non-repetition at the domestic and international levels.

In strategic litigation focusing on emblematic cases of grave human rights violations, a key component is developing a clear communications strategy that positions human rights violations committed during periods of internal armed conflict as crimes of international importance that are not subject to statutes of limitations, and which

states have the obligation to investigate, prosecute and punish. This is necessary to build public support for the criminal justice process, reduce the space for spoilers, and ensure support for victims. A strategy to assess and address the risks and vulnerabilities associated with litigation is also a necessary component of strategic litigation. Finally, strategic litigation in transitional justice cases foresees the need to generate capacities to address the psychosocial effects of violence for individuals, families and communities and promote healing at each of these levels, develop mechanisms to prevent retraumatization during the litigation process, and to strengthen the leadership and community involvement of victims in the defense of their human rights.

There are numerous examples of successful strategic litigation in each of the three cases examined here. One critical example is the litigation surrounding the case of the Barrios Altos massacre. On November 3, 1991, a clandestine military unit known as the Colina Group assassinated 15 people they believed to be members of Shining Path, including an eight-year-old child. The case was under investigation in domestic courts in Peru when the 1995 amnesty laws shuttered the case. Human rights groups representing the victims took the case to the Inter-American System, and in 2001, the Court ruled that the Peruvian state was responsible for the massacre and ordered it to fulfill its international obligation to investigate, prosecute and punish the perpetrators. In addition, in response to a request by human rights groups to address the 1995 amnesty laws, the Court stated that those laws were in violation of the American Convention on Human Rights and lacked legal effect. In a subsequent ruling, the Court determined that this was applicable to all amnesty laws whose objective is to shield perpetrators of grave human rights abuses from punishment. This ruling was a game-changer, not only for Peru—where ten days later a judge reopened the Barrios Altos investigation, and later a former president, as well as dozens of senior military officials were convicted in relation to this case—but for human rights defenders throughout the region, who invoked the Barrios Altos ruling in their efforts to challenge existing amnesty laws in their domestic jurisdictions.²⁶²

There are several other examples that we could point to. In the case of El Salvador, to date such litigation has played out primarily in regional and international courts: the Jesuits case in Spain, or the El Mozote massacre case in the Inter-American system. Perhaps most significantly, however, is the successful litigation of two leadership cases in Peru and Guatemala: the trial against former head of state Alberto Fujimori for grave human rights violations in Peru, which resulted in a conviction in April 2009; and in Guatemala, the 2013 conviction of former head of state José Efraín Ríos Montt for genocide and crimes against humanity. In both cases, these complex trials were respectful of due process guarantees and consistent with international standards of fair

trial, though the genocide verdict against Ríos Montt was vacated by an illegal ruling based on spurious arguments.²⁶³ Both trials were televised, broadcast on local and national radio stations across the country, and live streamed on the Internet, which gave broad swaths of society access to view the proceedings and learn about the systematic violations of human rights that occurred under their governments.

These landmark decisions are important because they challenge impunity for long-standing abuses by upholding—or at least seeking to uphold—the fundamental democratic norm that no one, even the most powerful authorities, is above the law. They are part of a global trend of increasing accountability for former heads of state, but they stand out because in contrast to many other situations, the Peruvian and Guatemalan national court systems demonstrated the will, capacity, and independence to try a former president. These leadership trials are excellent examples of strategic litigation because they have helped open new pathways for other transitional justice cases—despite momentary setbacks, as we saw in the case of Guatemala—and create political momentum for change. The international dimensions of both cases—Fujimori was extradited from Chile; Spain sought the extradition of Ríos Montt—also sent a strong signal that the world is a less hospitable place for high-level leaders accused of committing international crimes.

3.4. In the face of amnesty laws and other obstacles to domestic prosecutions, human rights organizations have adopted strategic litigation strategies in regional and international courts that have played a key role in opening spaces for criminal prosecution in domestic courts. Regional and international bodies, especially the Inter-American Human Rights System, have played a critical role in transitional justice processes throughout the region, though the impact varies country to country. The Inter-American Commission on Human Rights has served as an alternative arena in which victims who are unable to bring cases in their domestic jurisdictions, due to amnesty laws or other obstacles to criminal prosecution, can bring complaints both in specific cases and in relation to general trends regarding human rights in their home countries. The Inter-American Court of Human Rights has developed a progressive jurisprudence on a state's duty to combat impunity, and on the rights of victims to truth, access to justice, and to reparations, that has directly or indirectly promoted transitional justice throughout the region.

In cases brought by human rights organizations throughout the region, the Inter-American Commission on Human Rights and the Inter-American Court have asserted a proactive and autonomous right of victims to truth.²⁶⁴ Victims not only have the right to know the truth about the events that led to serious violations of human rights, as well

as the identity of those responsible for those violations. The right to truth creates an obligation upon States to clarify and investigate the facts, and to prosecute and punish those responsible, and to guarantee access to official information that would help clarify the circumstances surrounding serious human rights violations. This has been a critical tool for activists demanding access to official documentation that would help clarify the events surrounding specific cases of past violence, identify perpetrators, and reconstruct a more historically accurate version of the past than the official narratives deployed under authoritarian regimes. The Court has also established that states are obligated to provide victims with integral reparations, including access to justice, symbolic reparations, and monetary and other forms of restitution, such as health care, scholarships, and housing.²⁶⁵

On the question of accountability, the Court has played a critical role establishing victims' rights of access to justice, and the obligation of states to investigate, prosecute and punish grave human rights violations. A critical element of this has been the Court's position on self-amnesty laws designed to shield alleged perpetrators from criminal liability. The Court's position has evolved from statements declaring the inapplicability of self-amnesty laws, which are deemed to violate the American Convention on Human Rights, to a proactive decision in the *Barrios Altos* case (2001) that declared that existing amnesty laws lacked legal effect, thereby opening the way for criminal prosecutions in Peru and beyond.²⁶⁶

This principle has been upheld in subsequent rulings, though it has not always had immediate effect, as the case of El Salvador demonstrates so clearly.²⁶⁷ This highlights that amnesty laws are not the only obstacles to criminal investigations and prosecutions in domestic jurisdictions. On the contrary, amnesty laws are best conceived as one element of systems of impunity that are created and supported by coalitions of actors and institutions interested in preventing criminal investigation into the crimes of the past. In this sense, the absence of independent legal institutions is a sure-fire way to guarantee that impunity systems remain in place. Our case studies all highlight the critical importance of strengthening the independence and autonomy of the Attorney General's Office and the Judiciary, and to ensure that individuals assigned to work in these institutions are professionals of integrity and good character who will honorably fulfill the duties and obligations of their office.

There is a notable disparity in the number of cases brought by human rights organizations in Peru and Guatemala to the Inter-American Human Rights System (IAHRS) compared to the case of El Salvador. In fact, Peru and Guatemala are among the countries with the highest number of sentences from the Inter-American Court. This disparity in accessing the IAHRS can be at least partly explained by the more robust development of human rights organizations in Peru and Guatemala. It does

not seem at all coincidental that the countries that have pushed more aggressively for redress in the IAHRS have had greater success in pursuing accountability efforts in domestic courts. This suggests that while the IAHRS is an absolutely critical component in the advancement of victims' rights to truth, justice, reparation, and memory in Latin America, its impact in domestic jurisdictions is directly related to the capacity of local organizations to engage the IAHRS.

Transnational litigation has also played an important role in the transitional justice processes in the three countries examined here. In the case of El Salvador and Guatemala, criminal complaints based on universal jurisdiction have been brought before the National Court (*Audiencia Nacional*) in Spain, though to different effects in each country. In the case of Guatemala, the ongoing investigation by Spanish Judge Santiago Pedraz into the genocide case, and especially Pedraz's request to extradite Ríos Montt and other members of the military high command, put pressure on local authorities to prosecute the case domestically.²⁶⁸ In the case of El Salvador, the Central American University (UCA) and the U.S.-based Center for Justice and Accountability brought the case of the 1989 murder of six Jesuit priests and their cook and her daughter to Spain's National Court. As in Guatemala, the Salvadoran authorities refused to extradite the accused to Spain, but the case has been one more pressure point challenging the failure of the government to investigate this and other grave crimes cases.

In all three countries, U.S. immigration courts and civil complaints linked to the Alien Tort Statute have also played a role. Foot soldiers and high-ranking military officials allegedly involved in human rights violations from all three countries under study have been found living in the United States. The U.S. immigration courts have pursued cases against these individuals for immigration fraud, resulting in their removal from the United States and their return to their countries of origin or, in a smaller number of cases, in the prosecution of that individual in U.S. courts. International human rights organizations have also pursued civil suits against these individuals in U.S. courts using the Alien Tort Statute, giving victims an alternative to pursue their cases in a court of law. In a particularly hopeful development, the U.S. courts have allowed the extradition of Coronel Inocente Orlando Montano, who is accused of being one of the intellectual authors of the 1989 murder of the Jesuits, and who had lived illegally in Boston since 2001, to stand trial in Spain in the Jesuits case.²⁶⁹

3.5. Human rights organizations have made important contributions to the diffusion of human rights law and jurisprudence through educational workshops and trainings for public prosecutors and judges. This has been especially true in Peru and Guatemala, where judicial operators have been more open to such trainings than in El Salvador. Human rights organizations have provided trainings on international

human rights and humanitarian law; on the diverse regional and international instruments in human rights protection; in international and regional jurisprudence on international human rights, among others. This training and information-sharing function is a critical one that has helped strengthen the capacity of judicial operators in these countries to address cases they are investigating using the tools of international human rights law. These trainings are less effective when they are one-off, abstract presentations of information than when they are ongoing, iterative engagements and when they are based on specific problems and scenarios facing judicial operators.

International human rights organizations have played an important complementary role to the role played by domestic human rights organizations on behalf of victims' rights. Organizations such as the Center for Justice and International Law (CEJIL) and the Due Process of Law Foundation have focused much of their work at the level of the Inter-American Human Rights system. CEJIL has played a critical role working collaboratively with domestic human rights organizations in bringing cases before the Inter-American system, both in thematic hearings before the Inter-American Commission of Human Rights, and litigation of specific cases before the Inter-American Court. As we have seen, the successful litigation of cases before the Inter-American Court has resulted in several rulings that led to the nullification of self-amnesty laws in Peru and El Salvador, and, in all three countries, has established the obligation of the state to provide comprehensive reparations for victims and to investigate, prosecute and punish those responsible for grave violations of human rights. In addition, workshops led by DPLF and other groups have focused on sharing regional best practices and jurisprudence on prosecutions, court selection criteria, and other topics.

4. Independence of the Attorney General's Office and Judicial Institutions and Specialization in Human Rights Norms and Jurisprudence

4.1. *The formation of special units to investigate and adjudicate cases of human rights violations is critical to successful criminal prosecutions.* So too is the provision of the necessary knowledge and expertise on the applicable legal framework and the application of relevant international human rights law and jurisprudence for prosecutors and judges. Both Peru and Guatemala saw the creation of special investigative units within the Attorney General's Office and special courts within the Judiciary that were critical for the advancement of independent criminal investigations in grave crimes cases in those countries. In the case of El Salvador, in the aftermath of the nullification of the 1993 amnesty law in 2016, the Attorney General appointed a small team of prosecutors to conduct investigations of past human rights violations from the civil war period.²⁷⁰

Prosecutors in these specialized units received training in human rights, international criminal law and international human rights law, and were focused exclusively on these types of cases. They acquired specialized knowledge of the contexts that gave rise to human rights violations and of international norms and concepts. They also acquired specialized knowledge and experience that allowed them to develop stronger investigative skills. Specialization also facilitated the fostering of synergistic relationships between public prosecutors and victims. Prosecutors came to understand the importance of working collaboratively with victims and the human rights lawyers and organizations representing them in building cases.

Similarly, the creation of special courts to adjudicate human rights cases is of utmost importance. Assuring the existence of independent judges, with relevant levels of specialization in international human rights law, is critical to the success of these processes. Special courts that guarantee heightened security also assure greater protection for judges and other stakeholders engaged in complex and sensitive cases. The creation of these specialized systems has been fundamental for the development of effective strategies of investigation and prosecution that have resulted in important convictions in Peru and Guatemala, as detailed above.

4.2. The sustainability of specialized prosecutorial units and courts requires political support to ensure adequate financial and human resources and to protect judicial operators from external interference. The experience of Peru and Guatemala make abundantly clear that these specialized human rights systems to investigate and prosecute grave human rights violations are vulnerable on many fronts. They require political support to continue their work. Human rights investigations are time-consuming and costly. Specialized prosecutorial units require sustained financial and human resources to conduct investigations into complex crimes and mount viable criminal cases. Prosecutor's offices should have access to resources to travel to remote areas to collect witness testimony, to provide for witness protection and to hire experts to testify on specific matters (such as sexual violence against women, command responsibility, etc.).

Such specialized units may be vulnerable to political pressure from conservative sectors, which seek to undermine their work by attacking them publicly and accusing them of engaging in partisan behavior. There may also be behind-the-scenes efforts to pressure, bribe or intimidate those working within these special units. The court systems remain vulnerable to malicious litigation, influence peddling, and physical and other forms of intimidation.

The cases of Peru and Guatemala illustrate both the critical importance of independent, specialized prosecutorial and judicial institutions to successful transitional justice

cases, and the vulnerability of these institutions when charges are brought against powerful actors or are perceived to affect corporate interests, particularly of the armed forces or the business community. The advances seen in transitional justice trials underscore the importance of collaboration between victims' groups, human rights organizations and victims' advocates, and legal institutions, especially the prosecutor's office. Even under circumstances where national government officials continue to deny the existence of systematic human rights violations, independent judicial institutions may have the capacity to move forward on criminal investigations into human rights cases. This was nowhere more evident than in Guatemala under both the Pérez Molina administration and the current Morales administration. Despite continued denial of genocide by then President Pérez Molina, the trial against former dictator José Efraín Ríos Montt moved forward thanks to the independence of prosecuting authorities at the Attorney General's Offices and the judges in the High Risk Tribunals. Similarly, while Morales came to office with the backing of former military officials linked to the counterinsurgency years who staunchly oppose criminal prosecutions, this did not deter investigations into grave human rights violations, and in January 2016, 18 senior military officials were arrested in two separate cases and 12 of them await trial.

5. Addressing Wartime Sexual Violence

5.1. Wartime sexual violence is often ignored or justified; deliberate strategies and protocols must be adopted by government officials to investigate sexual violence, provide integral reparations to victims of these crimes, and prosecute and punish those responsible in ways that are respectful of the victims and that guarantee their emotional and physical safety. In Peru, Guatemala and El Salvador, sexual violence was used as a weapon of war, deployed primarily by state security forces to intimidate, threaten and undermine women and their families and communities of origin, though it was sometimes also used by insurgent groups, particularly in the case of Peru.²⁷¹ The impact of sexual violence persists well past the conflict period, including trauma, unwanted pregnancies, sexually transmitted diseases, and stigmatization, not to mention the impunity enjoyed by perpetrators. Meeting the needs of survivors—including medical care, HIV treatment, psychological support, economic assistance and legal redress—requires resources that most post-conflict countries do not have.

Wartime sexual violence is intimately linked to gender inequality that preexisted the conflicts, and which is strongly influenced by inequalities based on race and class. This is clearly evident in our three case studies, which are societies highly segmented by race and class. Victims of violence in each of these cases are from the most historically marginalized and excluded sectors of society; in Peru and Guatemala, 75% and 80%

of victims came from poor, rural indigenous populations. In El Salvador, the majority of victims are from poor rural populations. In such highly stratified systems, gender-based violence is often overlooked, as was the case in each of these countries during the conflict period. And because these inequalities persist into the post-conflict period, victims of gender-based violence are often left out of the conversation about truth, justice and reparation in periods of transition.

Shifts in the way wartime sexual violence is perceived in domestic and international jurisdictions is changing this, however. The Rome Statute of the International Criminal Court recognizes wartime rape as a crime against humanity, and several international courts and domestic tribunals have handed down judgments in wartime sexual violence cases. As stated by Zainab Hawa Bangura, the UN Special Representative on Sexual Violence in Conflict, “Sexual violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as an unfortunate collateral damage of war.”²⁷²

Nonetheless, in many transitional contexts it remains rare that such crimes are investigated, and the perpetrators prosecuted and punished. Traditional views that see such crimes as a normal part of warfare—the “boys will be boys” mentality—are pervasive among judicial operators. Domestic legal codes may also not reflect the understanding of sexual violence during wartime as a crime against humanity. The result is that wartime sexual violence is explained away, in some cases justified, and too often not treated as an international crime that imposes specific obligations on the state.

In El Salvador, sexual violence against women during the conflict has hardly been addressed. In Peru and Guatemala, important steps have been taken toward addressing wartime sexual violence. The truth commissions in Peru and Guatemala adopted a gender perspective in their investigations, and their final reports helped to pierce the veil of silence that surrounded the crime of sexual violence. In both countries, some, but not all, victims of sexual violence have received economic reparations and other restitution mechanisms such as health care. Each country has also seen an effort to criminally prosecute sexual violence cases to court. While there have been some positive results, huge limitations remain.

5.2. *The prosecution of sexual violence cases faces unique challenges.* Protocols can help direct investigators to identify such crimes and can provide clear frameworks for how to take victim testimony in ways that respect victims’ dignity and assure their physical and emotional safety. Sexual violence against women in wartime often occurs in the context of other violations, such as massacres, enforced disappearance, and illegal detention. However, prosecutors often fail to distinguish sexual violence against women as a crime that requires investigation. Susanna Navarro, executive director of

the Team of Community Studies and Psychosocial Action (ECAP), which works with victims of conflict and postwar violence in Guatemala, explained that this was common in Guatemala, until recently: *“It was as if the prosecutors, having two ears, only used one: they heard about the disappearances and massacres that took place, but they didn’t use the other ear, to hear what had happened to the women. It was a huge challenge to get the prosecutors to listen to the victims using both ears.”*²⁷³

This observation could easily be applied to Peru, as well. We met with survivors and families of the victims from the 1985 Accomarca massacre, in which 69 people, including 21 children, were killed by soldiers. Dozens of women were raped before they were killed, as attested to by numerous witnesses. The case came to trial in November 2010, with charges brought against 29 military officers for aggravated homicide and torture, but not for the crimes of sexual violence committed against the women.

Another issue is that victims of sexual violence, whether in wartime or in peacetime, face massive social stigmatization. This is especially true in rural and indigenous societies. Victims of sexual violence in Peru and Guatemala told us that they were seen as “the soldiers’ women” and were shunned by their communities. One mechanism for addressing this problem adopted in both Guatemala and Peru is to protect the identities of victims who wished to testify about the abuses they suffered, but who did not want members of the family and community to know what had happened to them. In Guatemala, human rights organizations have adopted a different approach, seeking to transform local understandings of sexual violence. As Paula Barrios, director of Women Transforming the World and member of the *Alianza Rompiendo el Silencio*, which represented the victims in the Sepur Zarco case, stated, “We sought to transfer the guilt associated with sexual violence from the victim to the perpetrator.” The criminal trial in the Sepur Zarco case, which concluded with the conviction of the two military officials accused, succeeded in doing this, says Barrios.²⁷⁴

The changes outlined earlier in this report under Claudia Paz y Paz’s term as Attorney General of Guatemala help explain how a deliberate institutional strategy to change the way problems were addressed resulted in new practices. Protocols instructed prosecutors to ask about whether sexual violence occurred in the context of other human rights violations, provided prosecutors with guidelines for protecting victims’ identities, and instructed them to determine whether psychological assistance and security measures were necessary to protect the physical and emotional safety of the victims. Such protocols provide judicial operators with the tools to engage with victims in ways that are respectful of women’s dignity and can help empower victims by giving them a safe space to testify about the abuses they endured. These strategies were central

to the successful prosecution of the genocide case in 2013, and the successful conviction in the Sepur Zarco sexual violence/sexual slavery case in 2016 demonstrate that these strategies were institutionalized over time.

Developing institutional protocols to investigate and prosecute cases of sexual violence against women in ways that are culturally sensitive, respectful of women's dignity, and guarantee women's emotional and physical safety, is an example of a "best practice" in transitional justice that can be usefully applied elsewhere.

6. Impunity is the mother of illegality, corruption and political instability. Transitional justice promotes more just, peaceful and democratic nations.

When grave human rights crimes are unacknowledged and left unpunished, and impunity is allowed to flourish, new forms of illegality and criminality may easily take root, undermining democratic governance, allowing corruption to flourish, and threatening peace and reconciliation. Transitional justice processes are long, protracted and contentious, but they hold the promise of creating more just, more peaceful, and more democratic nations.

Transitional justice provides a series of tools for societies dealing with mass atrocity to address the legacy of violence; it seeks to provide recognition to victims, foster civic trust, strengthen the rule of law, and promote reconciliation. Failure to acknowledge the abuses endured by victims undermines trust, hampers reconciliation, and foment social fragmentation and possibly violence. Failure to dismantle authoritarian enclaves and the impunity that shielded perpetrators from having to answer for their crimes erodes citizens' faith in new structures of governance and emboldens perpetrators to engage in new forms of illegal activity.

This is nowhere more evident than in Guatemala, where actors who enjoyed impunity after the peace accords were signed organized new clandestine structures to defraud the state and engage in other illicit activities. The WOLA report "Hidden Powers in Post-Conflict Guatemala" carefully documents the evolution of criminal structures connected to the Guatemalan counterinsurgency into organized crime networks that have operated freely in the context of the country's fragile democracy and weak legal institutions.²⁷⁵ This is one of the key reasons that human rights organizations began to lobby for international action to combat impunity in Guatemala, which ultimately resulted in the creation of the International Commission Against Impunity in Guatemala (CICIG). CICIG has made important strides in strengthening legal

institutions and combating illegal structures in Guatemala, but much remains to be done. Senior military officials implicated in grave violations of human rights have been arrested for involvement in massive corruption schemes, including former president and retired army general Otto Pérez Molina, while others remain active behind the scenes trying to influence the political process to guarantee impunity for past human rights violations as well as current crimes.

The connection between past and present is visible in other ways in our three case studies. Though each of these countries are defined as post-conflict societies, violence has not disappeared; on the contrary, El Salvador and Guatemala (along with neighboring Honduras) have clocked among the highest homicide rates per capita in recent years in the world, at numbers that at times have exceeded the conflict period. The nature of violence has certainly changed, being more localized, less political (though political violence can and does persist), and in some instances privatized. Yet experts have noted that this violence is rooted in the same structural conditions of poverty, inequality, and limited opportunities especially for young people, that gave rise to revolutionary movements in the 1970s and 1980s.²⁷⁶ This volatile scenario has been exacerbated by the U.S. government's deportation policies, which fueled the formation of violent gangs in El Salvador.²⁷⁷

The state's response to gang violence has largely mirrored the strategies deployed by previous authoritarian regimes of repression and arbitrary violence.²⁷⁸ The language of counterinsurgency is often deployed in discussions about how to combat current challenges such as drug trafficking, organized crime, or gang violence. Instead of developing more effective police forces, the government has sought to deploy the armed forces to combat gang violence, further fueling the flame of violence. Authoritarian understandings of law and order have come to dominate state and social responses to these challenges and in many ways has fueled a backlash against human rights. This is why it is so important for countries to fully examine the failures of past institutional responses to violence, in order to modify legislation, policing practices, and understandings of citizenship to be more fully democratic and inclusive.

In the aftermath of mass atrocities, it is essential that there is an official acknowledgement of the harms inflicted upon victims. This is critical to helping (re)construct the moral trust that underlies the social contract, essential for any community; that there are shared rules by which we live and which we can count on to protect and guide us. Transitional justice can thus play an instrumental role in restoring the normative foundations of a society. Similarly, holding perpetrators of the worst abuses responsible for their crimes shows that justice systems are able to function as they should, and

helps restore the understanding that in a democracy, all citizens are equal before the law, and no individual, no matter how powerful, is above the law. This is also critical to establishing the foundations of a modern, democratic society. Thus, the process of reckoning with the past through transitional justice is intimately connected to the process of constructing a more solid democratic future.

IV. CONCLUSION: TRANSITIONAL JUSTICE AND THE LEGACY OF CIVIL CONFLICTS

The debate about transitional justice in Latin America has heavily emphasized the experience of the Southern Cone countries that led the first wave of transition away from military authoritarian rule to democratic government in the early and mid 1980s. We can identify a second wave of transitions that occurred in countries that experienced both repressive military or civil-military rule as well as protracted internal armed conflicts in which armed guerrilla movements sought to overthrow the state. This encompasses the cases of El Salvador, Guatemala and Peru, spanning the early 1990s through 2000. The nature of protracted civil conflict in these second wave transitional countries raises a series of challenges that are worthy of separate study and consideration. In particular, though the nature of each insurgent movement(s) in each country varied, in terms of ideology, strategy, and levels of popular support, the very dynamic of armed conflict creates different challenges and limitations for transitional justice efforts and long-term peace building in those societies.

Each of these countries inherited a legacy of exclusionary, repressive government and has faced enormous challenges in constructing solid democratic institutions. Each of these countries also experienced massive human rights violations and institutionalized impunity. Government forces were found responsible for 93 percent of human rights violations in Guatemala; 85 percent in El Salvador, and 37 percent in Peru. Insurgent groups were also found responsible for a series of abuses in each of these cases, though in the case of Peru the percentage is significantly higher. Insurgent groups were found responsible for five percent of abuses in El Salvador and three percent in Guatemala; in the case of Peru, Shining Path was found responsible for more than half—54 percent—of violations documented by the Truth and Reconciliation Commission. The polarization that characterizes civil conflict in societies such as these does not disappear magically after the transition to democracy, and often reemerges in complex ways that constrain and complicate the transitional justice process.

Another issue to consider is the way in which the conflicts were ended. In El Salvador and Guatemala, the conflicts were ended via peace agreements, in which armed actors were demobilized and allowed to reincorporate into political life; in both cases insurgent groups formed political parties though with much more electoral success in the case of El Salvador. In Peru, the conflict proper was ended when the top leadership of Shining Path and the MRTA were arrested, signaling their political and military defeat. The perception of military victory in Peru gave the armed forces a much stronger platform

from which to assert their demands for guarantees of impunity, which they obtained as a result of their alliance with the Fujimori government. But when the Fujimori government collapsed, that alliance became a handicap for the military. The balance between persistent military power, military claims of having successfully defeated terrorist or communist insurgencies, and political jockeying in the post-conflict period, have all played a role in shaping the possibilities for transitional justice in these countries.

In each of these three countries, victims and their allies in civil society have persisted in their demands for truth, justice and reparations. That persistence, combined with alliance building with local civil society organizations, international human rights groups and institutions, and actors in key state institutions, that has been the driving force in the transitional justice processes in each of these countries. And in several instances, victims have moved beyond a focus on their individual cases and have become human rights defenders advocating for broader process of truth recovery, criminal accountability, reparations, and memorialization. The Inter-American system of human rights protection has played a critical role as an institutional arena in which victims have been able to seek redress in the face of state inaction or obstruction, and which has contributed to breaking down mechanisms of impunity such as amnesty laws so that criminal investigations in specific cases can advance in domestic jurisdictions. The Inter-American system has also played a vital role consolidating the rights of victims to truth and reparations. All told, the Inter-American system has helped victims of grave human rights violations reclaim their status as rights-bearing citizens and consolidate their identities as human rights defenders and, more broadly, as change-makers.

Each of the three countries has engaged in important processes of truth recovery, provision of reparations for victims of human rights violations, legal accountability efforts, and memorialization, but with significant differences. In Peru, there have been substantive steps forward in truth-recovery, integral reparations, and achieving justice in specific human rights cases, such as the conviction of former president Alberto Fujimori, as well as high-ranking military officials responsible for numerous cases of massacres, enforced disappearance, and torture. The defeat of the Shining Path and MRTA insurgent movements in the early 1990s, followed by the collapse of the authoritarian Fujimori regime in 2000, created an opportunity for a newly elected democratic government to institute important democratic reforms, prosecute officials accused of corruption (and later human rights violations), and pursue a transitional process that was victim-centered. However, as noted above, the return to power of politicians implicated in grave human rights violations, such as Alan García, who was elected to a second term in 2006, ushered in a period in which conservative politicians

and sectors of the armed forces sought to roll back some of the advances made. While efforts to impose full blown amnesty laws have faltered, other mechanisms have been employed to reduce the effectiveness of judicial proceedings, as noted above. Trials take an unusually long time, in some cases up to five or even six years, taxing the resources and energies of all involved parties. Victims' associations and human rights groups have tended to focus on individual cases rather than the systemic problems that result in questionable sentences and the overturning of convictions on appeal.

Following the recommendations of the Truth and Reconciliation Commission, the Peruvian government created a National Reparations Law guaranteeing integral reparations for victims. However, some categories of victims were excluded by design and in practice, and the system for registering victims has been overly bureaucratic, resulting in a long, drawn-out and ultimately frustrating process for victims. Indeed, as described above, victims expended enormous energy organizing protests and meeting with government officials to pressure the government to implement the program of integral reparations. They have had to combat bureaucratic lethargy and an absence of political will to implement the different reparations programs, including monetary benefits as well as programs focusing on health care and educational scholarships, despite being enshrined by law in 2005. A similar lethargy is evident in the long delays in finally approving in 2016—13 years after the CVR's recommendation—the creation of a National Plan to Search for Disappeared Persons. Though it now has a functioning office, it has not yet devised a clear plan of action.

Ultimately, the backtracking in the justice sector and the bureaucratic delays in implementation of the reparations program and the search for disappeared persons are reflective of the ambiguity with which elite groups view the transitional justice process. Peru continues to be sharply divided, with some sectors denying up front the right of victims to truth, justice and reparations. Some of these sectors continue to talk in the language of the conflict, conflating all victims with terrorism and all efforts to seek justice with persecution of the armed forces. The armed forces apologized in 2001 for its close association with the Fujimori regime, but it has never apologized for its involvement in systematic human rights violations, which it continues to deny. In this context, transitional justice has become a key arena in the battle over how to understand the past and how to apportion blame for the atrocities that occurred.

Like Peru, Guatemala, has seen some important progress in terms of criminal accountability, including convictions in emblematic cases, such as the convictions in the Las Dos Erres massacre and the conviction of former dictator Jose Efraim Rios Montt. However, the backlash evident as the genocide trial unfolded, the heightened

security risks that ensued, and the undoing of the genocide verdict through a legally questionable process signals the challenges that this Central American country faces in its ongoing transitional justice efforts. The new wave of transitional justice cases in Guatemala in 2016, including the conviction in the Sepur Zarco sexual violence/sexual slavery case, suggests that the Attorney General's Office has acquired significant capacity and autonomy in the pursuit of criminal accountability. But at the same time, the reparations program has been gutted, the government has failed to adopt a national program to search for disappeared persons, and security issues remain a real concern for victims, human rights advocates, and judicial operators.

Of particular importance here is the persistence of structures of impunity from the conflict period. The failure to prosecute any of the individuals responsible for gross violations of human rights in the immediate post-war period allowed those individuals to retain power and restructure their alliances. Many of them became powerful politicians (Ríos Montt himself, who was elected to Congress; and Pérez Molina, a commander in the army in the Ixil region during the Ríos Montt administration who was elected president in 2011) while others reportedly became involved in organized crime syndicates. This issue became especially relevant in early 2016, when it came to light that several retired military officials who were arrested in relation to two major human rights cases were likely to be named as cabinet members in the incoming administration of Jimmy Morales.²⁷⁹ Morales himself was elected with the backing of the National Convergence Front (FDN), a party created by former counterinsurgency military officers. The head of the FDN at the time of Morales' election, Edgar Justino Ovalle, was impeached and faces charges in the CREOMPAZ enforced disappearance case, but he went into hiding and remains a fugitive.

Civil society organizations in Guatemala have gained experience operating in a hostile environment and have developed an impressive capacity to develop new, strategic alliances to move cases forward. They have gone further than Peru or El Salvador in promoting gender justice, and several organizations have shown particular concern for promoting a grassroots process of organization and participation in the transitional justice. Of the three countries, human rights organizations in Guatemala are also the most adept at promoting integral and multidisciplinary forms of intervention and are especially careful in promoting individual and community healing in the context of their litigation strategies.

Impunity has been more entrenched still in El Salvador. Denial narratives about the role of the military in human rights violations remain predominant, though the official recognition of state responsibility since 2009 and a formal apology to victims

marked a turning point that may signal new hope for policies that address the needs and demands of the victims of human rights violations. For more than two decades, the 1993 amnesty law and inertia in the Attorney General's Office and criminal courts prevented effective prosecutions in human rights cases. The 2016 Constitutional Court's decision declaring the amnesty law unconstitutional opens new possibilities for accountability in El Salvador. However, several challenges remain: the Attorney General's Office remains reticent to work on past crimes cases; judges have had no specialized training in international human rights law and jurisprudence or in victim-centered approaches to transitional justice; and civil society organizations have limited experience litigating human rights cases.

Transitional justice is a dynamic process. Numerous actors interact and engage in this process, and their positions and alliances can change and shift over time. Support for different mechanisms can be constructed at different points in time, but that support can erode or even vanish. Victims' associations and human rights organizations play a critical role in moving this process forward, but these organizations must address challenges of institutional precariousness, the need to sustain their advocacy work over time, and in the face of dwindling international support for transitional justice in Latin America. They also must address the recomposition of conservative sectors who seek to slow down or obstruct transitional justice. Victims and their allies remain vulnerable even decades after the moment of transition to democracy, particularly when entrenched elites feel that their interests are at risk. Attacks against human rights defenders have been registered in each of the countries examined here, ranging from character assassination to overt or more subtle forms of intimidation, as well as frivolous lawsuits that seek to distract energy, resources and time. Our case studies also demonstrate that even when victims are successful in obtaining recognition for their demands in the form of public policy, there is often a significant time lag in implementation. This is most often the result of wavering political will on the part of governing elites.

Despite some forward movement, impunity persists in all three countries. The failure to adopt early on robust transitional justice policies that ensure integral reparations for victims —truth, justice, economic and symbolic reparations, and guarantees of non-repetition— weakens citizens' trust in government, undermines the consolidation of the rule of law, and makes national reconciliation an elusive goal. Weak implementation of transitional justice gives cover to pro-impunity sectors who seek to retain power to preserve their privilege, which undermines the rule of law and threatens instability, as we see especially in the cases of El Salvador and Guatemala.

Adopting an integral model of transitional justice, that takes into account the rights of victims to truth, to access justice, reparations, and memory, is the gold standard

to which all post-conflict governments should aspire. Victims can more effectively promote their needs by developing solid organizations that are inclusive and able to construct strategic alliances with domestic and international human rights organizations, leveraging regional and international institutions and courts in support of their cause, and engaging in outreach to diverse publics, including young people, to build a societal consensus about the benefits of transitional justice for repairing the harms born of the conflict era and for building a more robust democracy based on the rule of law and peaceful coexistence.

V. RECOMMENDATIONS

1. National and international human rights organizations as well as international foundations provide critical support to victims' associations. Such support should seek to develop the institutional strength and autonomy of victims' associations, and to develop better networking and advocacy capacities of victims' associations.
2. Psycho-social support for victims should be provided early and broadly to address the long-term impacts of the human rights violations suffered by survivors, families of victims, and the communities affected. Ideally the state should implement a broad social program of psycho-social care for all victims of the conflict, and private organizations, including human rights organizations, churches and universities may serve as alternative providers.
3. Governments should adopt integral programs of reparation for victims, which includes programs that ensure truth-recovery, individual and collective forms of reparation that may include monetary reparations but should not be exclusively about such forms of reparation. Other forms of reparation are also highly valued by victims, including access to health care, psychological support, educational trainings and scholarships, housing, access to land, no-interest loans, etc. The bodies charged with the design and implementation of such programs should be granted functional and financial autonomy to avoid being used or abandoned based on political considerations.
4. Of special humanitarian concern is the search for disappeared persons. Governments should prioritize the creation of national mechanisms and plans to search for disappeared persons, determine their identities and the circumstances in which they were disappeared, and return their remains to their families for proper reburial. The bodies charged with the design and implementation of such programs should be granted functional and financial autonomy to avoid being used or abandoned based on political considerations. Governments should work collaboratively with private providers, including non-profit organizations specializing in forensic work, in the process of searching for, identifying, and returning the remains of victims to their families. Victims should receive psychological counseling during all aspects of the search process. The support of the international community for government and independent forensic teams engaged in the search of disappeared persons is critical.

5. Special systems to investigate and prosecute cases of grave human rights violations should be established, guaranteeing prosecutors and judges access to specialized training in international human rights law and jurisprudence, including training on transitional justice so that they are aware of the international obligations of states to fulfill victims' rights to truth, justice, reparation, and guarantees of non-repetition, and on the importance of adopting victim-centered approaches in their work. These systems should be provided sufficient resources to guarantee independence in conducting their investigations and to guarantee efficiency and expediency in judicial proceedings. The international community should support international trial monitoring and other systems to monitor the behavior of judicial operators to ensure that it is in compliance with international norms and law.
6. Strategic litigation has proven to be useful for prosecuting human rights violations in domestic and international jurisdictions, as well as pursuing other objectives, such as gaining access to official information. Strategic litigation is predicated not only on legal strategy, but also a political and communications strategy to develop a broader social understanding of the nature of human rights violations and the rights of victims to integral forms of reparation. Strategic litigation also incorporates methods to address the psycho-social and security needs of victims.
7. Independence of legal institutions, especially the Attorney General's Office and the Judiciary, must be assured. This may require legal and judicial reforms, more robust processes of selection of judicial authorities, mechanisms to monitor the behavior of judicial authorities, and other related measures.
8. The creation of memory sites, such as museums, memorials, commemorative events, and artistic productions including film, photography, and visual arts, can play a critical role in supporting social repair for victims of gross human rights violations, and can play an important role in consolidating victims' role as change-makers. When the state pursues the creation of a memory museum or other memory site, it should involve representatives of victims' organizations and civil society in all decision-making aspects, and it should adopt specific measures to ensure transparency in decision-making as well as administrative and financial decisions. Local and international artists, universities, and foundations should be encouraged to contribute to this process in close collaboration with victims' associations.
9. Transitional justice is a long-term process that is subject to setbacks and backlashes, but also important and sometimes unexpected breakthroughs. International funders should develop multi-year programs to help sustain the anti-impunity work of victims' associations and human rights advocates. International funders

should also provide guidance and economic support to governments to ensure that they are meeting their obligations to victims of grave human rights violations.

10. Transitional justice processes must necessarily take into account the specificities of the local context, and especially different impacts on the most vulnerable sectors of society, including children, women, and indigenous populations.
11. Transitional justice is about the past, but it is also, fundamentally, about the present and the future. The survivors of human rights violations and the families of victims have immediate needs that must be addressed for society to move forward. The families of the disappeared, in particular, continue to live in the anguish of not knowing the fate of their missing loved one. More systemically, until institutions that permitted human rights violations and shielded perpetrators with amnesty laws or other mechanisms of impunity are fundamentally transformed, the ghosts of the past will haunt the present and impede a more peaceful, prosperous future for all.

Specific recommendations

For the donor community:

- Invest in data and research on transitional justice processes. The behavior of the government institutions involved in transitional justice processes should be monitored, using baselines and databases, to ensure effective policy and program development and implementation. Such tools are also important to assess the impact of transitional justice policies on the victims.
- Support civil society organizations by providing resources to strengthen and sustain their legal teams and personnel involved in the accompaniment of victims. Given that transitional justice processes are long-term investments, consider providing institutional support for these organizations.
- Support victims' associations by providing resources to strengthen their organizations and develop new, strategic networks, as well as their capacity to articulate and communicate their demands and to influence government policy and programs more effectively.

For civil society:

- Strengthen strategic litigation by developing multidisciplinary capacities that integrate the legal sciences, as well as the sciences of anthropology, archival science, social psychology, strategic communications, among others.

- Build alliances with different strategic actors, including victims' associations, other civil society organizations, international organizations and foundations, and government agencies as appropriate. Develop networks to more effectively promote your message and execute your campaigns. The construction of consensus and unity among human rights and victims' organizations should be encouraged, with an eye toward prioritizing strategic action and engagement.
- A gender perspective must be incorporated in the work with victims, in its different dimensions. This implies hiring more female staff; gender training of staff and personnel; and implementing support processes that include a gender perspective. Priority should be given to work focusing on gender violence and sexual violence, and on developing alliances with civil society organizations that specialize in women's rights.

For governments:

- Acknowledgment of state responsibility for grave violations of human rights should be done in public ceremonies, taking into consideration the needs and expectations of victims. Such acknowledgment should include a clear commitment to non-recurrence and, above all, should exclude any attempt to justify the crimes. It is more restorative if one includes the institutions that directly participated in the atrocities (such as the armed forces) and if these acknowledgments of responsibility are coherent with other transitional justice measures.
- Create and implement integral reparations programs and national plans to search for the disappeared shortly after the transition to democracy. Establish agencies to carry out these programs and grant them functional autonomy and provide them with sufficient human and financial resources.
- Amnesties, pardons, and other mechanisms designed to ensure impunity for grave human rights violations are contrary to international human rights law and should be avoided. States should encourage a robust process of accountability and provide adequate financial and human resources to the Attorney General's Office and to the Judiciary.
- Establish a functionally autonomous institution to monitor the recommendations of the truth commission and implementation of an integral model of transitional justice, including truth-recovery, retributive justice, collective and individual reparations, and memorialization.

Endnotes

- 1 United Nations, *Guidance from the General Secretary: United Nations Approach to Transitional Justice*, March 2010. Available at: https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf. See also, Pablo de Greiff, *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence*, Human Rights Council 30th Session, United Nations General Assembly, September 7, 2015. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/202/04/PDF/G1520204.pdf?OpenElement>; and Pablo de Greiff, “Theorizing Transitional Justice,” *Transitional Justice* 51 (2012), pp. 31-77.
- 2 See Emilio Crenzel, *Memory of the Disappearances: The Political History of Nunca Más* (New York: Routledge, 2012).
- 3 For discussions of the early efforts to prosecute dictatorship-era crimes, see Carlos Santiago Nino, *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1998); Jaime Malamud-Goti, *Game without End: State Terror and the Politics of Justice* (Kansas, OK: University of Oklahoma Press, 1996); and Elizabeth Jelin et al., *Vida cotidiana y control institucional en la Argentina de los 90* (Buenos Aires: Nuevohacer, 1996).
- 4 In the face of official truth commissions, the human rights group SERPAJ in Uruguay, and the Archbishop’s Office in Brazil, engaged in important truth-recovery projects. See Lawrence Wechsler, *A Miracle, A Universe: Settling Accounts with Torturers* (University of Chicago Press, second edition, 1998).
- 5 J.M. Burt, “Challenging Impunity in Domestic Courts: Human Rights Prosecutions in Latin America,” In Felix Reategui, ed., *The Transitional Justice Handbook for Latin America* (Brasilia and New York: The Brazilian Amnesty Commission, Ministry of Justice and the International Center for Transitional Justice, 2011), pp. 285-311.
- 6 Human rights organizations continued to pursue accountability efforts, however. In 1997, Abuelas de la Plaza de Mayo filed charges against several senior military officials for the illegal appropriation of children, a crime that was not covered in the amnesty laws. Former junta member Jorge Videla was arrested in this case in 1998. Horacio Verbitsky, “Videla es Mundial,” *Página 12*, June 10, 1998. Available at: <http://www.archivo.pagina12.com.ar/1998/98-06/98-06-10/pag03.htm>.
- 7 For example, in 1995, Carmen Lapacó, Emilio Mignone and Marta Vázquez presented a legal complaint demanding to know the truth about what happened to their children, who were forcibly disappeared during the dictatorship. Given that the cases could not move forward in the Argentine judiciary, they brought their case to the Inter-American system, eventually leading to a friendly settlement in which the Argentine state acknowledged the relatives’ right to truth and promised to convene “truth trials” to that effect in federal courts.
- 8 The 2005 Supreme Court decision upheld the earlier 2001 ruling by federal judge Gabriel Cavallo declaring the amnesty laws unconstitutional. Cavallo based his decision on the argument of Poblete’s lawyers from the Center for Legal and Social Studies (CELS) that it was a violation of international law that the courts could investigate Poblete’s illegal appropriation, but not the enforced

disappearance of her parents due to the amnesty laws. Judge Cavallo found that the amnesty laws interfered with the Argentine state's international duty to investigate and prosecute crimes against humanity and declared them unconstitutional. See, CELS, "Pedido de inconstitucionalidad de las leyes de punto final y obediencia debida - Caso Poblete," no date. Available at: <http://www.cels.org.ar/agendatematica/?info=detalleDocF&ids=11&lang=es&ss=41&idc=592>.

- 9 Center for Legal and Social Studies (CELS), Blog: Juicios: Procesos de justicia por crímenes de lesa humanidad. Available at: <http://www.cels.org.ar/blogs/estadisticas/>.
- 10 This includes official memory sites such as the Espacio Memoria y Derechos Humanos (Center for Memory and Human Rights), which is based at the former detention center known as ESMA (<http://www.espaciomemoria.ar>), and civil society initiatives such as Memoria Abierta, http://www.memoriaabierta.org.ar/wp/?page_id=778, which includes efforts to preserve the archives of the dictatorship period.
- 11 Juan Jesus Aznarez, "Supremo de Chile condena a los dos ex jefes de la policía política de Pinochet por el 'caso Letelier,'" *El País*, May 31, 1995. Available at: http://elpais.com/diario/1995/05/31/internacional/801871207_850215.html.
- 12 See for example, Robert I. Rotberg and Dennis Thompson, *Truth v. Justice: The Morality of Truth Commissions* (Princeton: Princeton University Press, 1995). See also, Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (New York: Routledge, 2010, 2nd Edition); and the collection of essays edited by Thomas Miller Klubock and Greg Grandin, "Truth Commissions: State Terror, History, and Memory," in *Radical History Review*, No. 97 (2006).
- 13 Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Pittsburgh: University of Pennsylvania Press, 2005).
- 14 See Naomi Roht-Arriaza, *The Pinochet Effect*. On the Chile case, see Cath Collins, *Post-transitional Justice: Human Rights Trials in Chile and El Salvador* (University Park, PA: The Pennsylvania State Press, 2010).
- 15 For example, victims demanded investigations into dictatorship-era crimes that had not been investigated by the first truth commission (illegal detention and torture), leading to the creation of a second truth commission, the Valech Commission. This, in turn, led to new demands for reparations for political prisoners and torture victims, and in 2015, the Chilean government authorized a one-time payment to the 38,000 torture victims recognized by the Valech Commission.
- 16 Ruti G. Teitel, *Transitional Justice* (New York: Oxford University Press, 2000).
- 17 Naomi Roht-Arriaza and Javier Mariezcurrena, *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (New York: Cambridge University Press, 2006).
- 18 Coletta Youngers, *Violencia política y la sociedad civil en el Perú* (Lima: Instituto de Estudios Peruanos, 2003).
- 19 For a history of the Coordinadora Nacional de Derechos Humanos, see Coletta Youngers, *Violencia política y sociedad civil en el Perú: historia de la Coordinadora Nacional de Derechos Humanos* (Lima: Instituto de Estudios Peruanos, 2003).

- 20 During the conflict period, the few cases of human rights violations that came before Peruvian courts were transferred to military courts, where those implicated were set free or given minimal administrative sanctions. In 1995, two laws were passed that granted a blanket amnesty to alleged perpetrators for human rights violations. In 2001, the Inter-American Court of Human Rights ruled in the case of the Barrios Altos massacre that the amnesty laws violated the American Convention on Human Rights and lacked legal effect.
- 21 According to one study, the Fujimori government was the most corrupt in Peruvian history. See Alfonso Quiroz, *Corrupt Circles: A History of Unbound Graft in Peru* (Woodrow Wilson Center Press, 2008).
- 22 There is an extensive literature on the Fujimori regime. See for example: Carlos Iván Degregori, *La década de la antipolítica. Auge y huida de Alberto Fujimori y Vladimiro Montesinos* (Lima: Instituto de Estudios Peruanos, 2001); Julio Carrión, Ed., *The Fujimori Legacy: The Rise of Electoral Authoritarianism in Peru* (Pennsylvania State Press, 2006); and Jo-Marie Burt, *Political Violence and the Authoritarian State in Peru: Silencing Civil Society* (New York: Palgrave Press, 2007).
- 23 For an analysis of the CVR, see Eduardo González-Cueva, “The Peruvian Truth and Reconciliation Commission and the Challenge of Impunity,” in *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice*, edited by N. Roht-Arriaza and J. Mariezcurrena (New York: Cambridge University Press, 2006), 70–93. Also see L. J. Laplante and K. Theidon, “Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru,” *Human Rights Quarterly* 29, no. 1 (2007): 228–50.
- 24 Javier Ciurlizza and Eduardo González, ‘Verdad y Justicia desde la óptica de la Comisión de la Verdad y Reconciliación,’ in *El legado de la verdad. La justicia penal en la transición peruana*, edited by Lisa Magarrell and Leonardo Filippini (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).
- 25 Rettig Commission, Final Report, February 1991. Available at: <https://www.usip.org/publications/1990/05/truth-commission-chile-90>.
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- 27 South African Truth and Reconciliation Commission, Final Report, 1998. Available at: <http://www.justice.gov.za/Trc/report/index.htm>.
- 28 Inter-American Court for Human Rights, *Barrios Altos v. Peru*, Judgment of March 14, 2001. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.pdf. This ruling has since been upheld in various legal proceedings in Peru, including in a ruling by the country’s Constitutional Tribunal. The Peruvian state attempted to assert that the nullification was valid only for the Barrios Altos case. In response to a petition by the human rights community, the Inter-American Court issued a second ruling in September 2001 affirming that it applied across the board. Inter-American Court for Human Rights, *Barrios Altos* Case, Judgment of September 3, 2001, (Interpretation of the Judgment of the Merits). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_83_ing.pdf. For a useful discussion of the role of the Inter-American system of human rights in Peru, see Susana Villarán, “Peru,” in *Victims Unsilenced: The Inter-*

- American Human Rights System and Transitional Justice in Latin America (Washington, D.C.: Due Process of Law Foundation, 2007), pp. 95-126.
- 29 The three recently named heads of the armed forces were among those who had signed the loyalty pact, giving Paniagua no choice but to fire them. See J.M. Burt, "Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori for Grave Violations of Human Rights," *International Journal of Transitional Justice* 3, No. 3 (2009): 384-405.
 - 30 Forensic organizations later estimated the number to be much higher, at 15,000 cases of enforced disappearance, the majority at the hands of government forces.
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 - 32 Julissa Mantilla Falcón, "La Comisión de la Verdad y Reconciliación en el Perú y la perspectiva de género: principales logros y hallazgos," *Revista IIDH*, No. 43 (2006), pp. 323-365.
 - 33 Comisión de la Verdad y Reconciliación, *Informe Final*.
 - 34 Salomon Lerner, Inauguration of the Yuyanapaq Photography Exhibit, Lima, Peru, no date, <http://cverdad.org.pe/apublicas/p-fotografico/discurso.php>.
 - 35 Decreto Supremo No. 015-2006-JUS, July 5, 2006. Available at: http://www.ruv.gob.pe/archivos/Reglamento_de_la_Ley__28592.pdf. For an extensive analysis of Peru's reparations programs, see Christian Correa, *Reparaciones en Perú: El largo camino entre las recomendaciones y la implementación*, International Center for Transitional Justice (2013). Available at: <https://www.ictj.org/sites/default/files/ICTJ-Report-Peru-Reparations-Spanish-2013.pdf>.
 - 36 The categories included victims of extrajudicial execution; enforced disappearance; and arbitrary arrest, torture, rape and kidnapping. Members of the military, police and self-defense committees injured as a result of the conflict were also included. Other victims included: children born as a result of rape, children recruited by self-defense committees, and those unjustly accused on charges of terrorism or treason.
 - 37 This exclusion has been criticized by international organizations as undermining the concept of human rights as inalienable and making national reconciliation much more difficult. See Correa, *Reparaciones en Perú*, pp. 5-6.
 - 38 "Por lo tanto, y en cuanto garante del orden social y público, el deber de reparar de los Estados se extiende a las violaciones de los derechos humanos a manos de actores privados, incluyendo grupos subversivos y terroristas. Consecuentemente, la Comisión de la Verdad y Reconciliación y su Plan Integral de Reparaciones (PIR) recomiendan establecer un trato igual para todas las víctimas, ya sean víctimas por hechos cometidos por agentes del Estado o por grupos subversivos terroristas." Comisión de la Verdad y Reconciliación, "Programa Integral de Reparaciones," *Informe Final* (2003). Available at: <http://www.cverdad.org.pe/ifinal/pdf/TOMO%20IX/2.2.%20PIR.pdf>.
 - 39 Correa, *Reparaciones en Perú*, p. 6.
 - 40 María Eugenia Ulfe Young, *¿Y, después de la violencia qué queda? Víctimas, ciudadanos y reparaciones en el contexto post-CVR en el Perú* (Buenos Aires: CLACSO, 2013), pp. 60-65. Available at: <http://biblioteca.clacso.edu.ar/clacso/becas/20130628122643/Ydespuesdelaviolencia.pdf>.

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- 43 These changes occurred under the subsequent government of Pedro Pablo Kuczynski (2016-).
- 44 UNESCO: “CVR y Registro Único de Víctimas subrayan importancia de la memoria y la verdad,” *Buletín de UNESCO Lima*, No. 2 (December 2016). Available at: <https://www.scribd.com/document/335224839/Unesco-Boletin-N-2>.
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- 47 The Ministry of Justice and Human Rights did not play a significant role in the development or passage of this legislation.
- 48 Ley No. 30490, Ley de Búsqueda de Personas Desaparecidas Durante el Período de Violencia 1980-2000, *El Peruano*, 22 Junio 2015. Available at: <http://www.elperuano.com.pe/NormasElperuano/2016/06/22/1395654-1.html>.
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- 50 Several graves and burial sites have been destroyed or altered, seriously obstructing the search process. One notorious example is the Los Cabitos military base, the center of military operations in Ayacucho during the civil conflict. Thousands of Peruvians, including women and children, were held in detention at Los Cabitos, where many of them were tortured and sexually violated; others were forcibly disappeared or extrajudicially executed. The journalist Ricardo Uceda reported, based on an interview with a former army commander, that in an effort to eliminate any evidence of wrongdoing, in 1985 the head of the Los Cabitos military base ordered the installation of two ovens and had army personnel dig up the remains of victims who had been buried in the fields surrounding the military base and dispose of them by cremation. Investigators exhumed the remains of some 100 individuals between 2006 and 2008, as well as several tons of ashes. To date, four of the bodies have been identified as victims of enforced disappearance during the early years of the war. Further exhumation in the area has been impossible, however, following a wave of land invasions that many informed observers in Ayacucho say were promoted by the military precisely to prevent further exhumations in the area. See J.M. Burt, “Militares en juicio por el caso Los Cabitos: ¿Héroes o amnésicos?” *La Mula*, August 23, 2011. Available at:

<https://lamula.pe/2011/08/23/militares-en-juicio-por-el-caso-los-cabitos-heroes-o-amnesicos/jomarie/>; and “The Bones Tell the Story: The Search for Peru’s Missing,” *Al Jazeera*, March 30, 2013, Available at: <http://www.aljazeera.com/indepth/opinion/2013/03/2013330141926998582.html>.

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- 52 Human Rights Watch, “Peru: Torture and Political Prosecution in Peru.” The Inter-American Court of Human Rights found that the faceless and military courts violated due process guarantees and ordered Peru to prosecute hundreds of terrorism cases in the ordinary justice system.
- 53 After an Inter-American Court ruling that the military courts violated due process, hundreds of terrorism suspects, including Abimael Guzmán, were subsequently retried. See Luis E. Francia Sánchez, ‘Los procesos penales contra las organizaciones terroristas,’ in *El legado de la verdad. La justicia penal en la transición peruana*, ed. Lisa Magarrell and Leonardo Filippini (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).
- 54 Some cases involving crimes of the Fujimori-Montesinos period, such as the Barrios Altos and La Cantuta cases, were adjudicated in specially constituted courts.
- 55 The conviction was ratified by the Supreme Court of Justice on December 30, 2009. On the Fujimori trial, see J.M. Burt, “Guilty as Charged.”
- 56 Fujimori was also convicted on several other charges of corruption and abuse of authority. In February 2017 the Supreme Court of Chile authorized his extradition for six cases of enforced disappearances in Pativilca, and on corruption charges.
- 57 This was the first ruling in Peru to acknowledge the crime of enforced disappearance. The Court determined that cases of enforced disappearance in which the body of the victim(s) has not yet been found constitute continuing crimes and affirmed the inapplicability of statutes of limitation in such cases. See Carlos Rivera Paz, *Una sentencia histórica: La desaparición forzada de Ernesto Castillo Páez* (Lima: Instituto de Defensa Legal, 2006).
- 58 Carlos Rivera, “Barrios Altos: el fracasado intento de hacer retroceder la justicia,” *Aportes DPLF*, 18:6 (2013), pp. 55-57.
- 59 Exemplary Sentences for Accomarca Massacre,” *The Peruvian Times*, September 2, 2016. Available at: <http://www.peruviantimes.com/02/exemplary-sentences-for-accomarca-massacre/27369/>. See also: J.M. Burt and M. Rodriguez, “Justicia, verdad y memoria: el proceso penal para el caso de la masacre de Accomarca,” in *Políticas en justicia transicional: miradas comparativas sobre el legado de la CVR*, edited by P. del Pino and L. Huber (Lima: Instituto de Estudios Peruanos, 2015), pp. 135-168.
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- 61 In Peruvian law *autoría mediata* is attributed to those who have the power to create and direct an organized “power apparatus,” and order those who participate in it to commit crimes—in this case, human rights violations. (Shining Path leader Abimael Guzmán was also convicted using this same legal concept.) See J.M. Burt, “Guilty as Charged.”

- 62 J.M. Burt, "Guilty as Charged."
- 63 J.M. Burt, "The Paradoxes of Accountability: Transitional Justice in Peru," in *The Human Rights Paradox: Universality and its Discontents*, Edited by S.J. Stern and S. Strauss (Madison: University of Wisconsin Press-Critical Human Rights Series, 2014), pp. 148-174.
- 64 See J.M. Burt and C. Cagley, "Access to Information, Access to Justice: The Challenges of Accountability in Peru," in *Sur International Journal on Human Rights* 18 (2013), pp. 75-95.
- 65 Valeria Reyes, "Justicia para las víctimas de Los Cabitos: Un análisis del fallo," Instituto de Democracia y Derechos Humanos de la Universidad Católica del Perú (IDEHPUCP), August 21, 2017. Available at: <http://idehpucp.pucp.edu.pe/notas-informativas/justicia-las-victimas-los-cabitos-analisis-del-fallo/>.
- 66 Carlos Rivera, "Corrupción en la Sala Penal Nacional," *Revista ídeele*, No 251 (2015). Available at: <http://revistaideele.com/ideele/content/corrupción-en-la-sala-penal-nacional>. See also Carlos Rivera, "Balance del proceso de justicia."
- 67 In recent years, in a number of cases, convictions have been overturned on appeal by the Supreme Court. Carlos Rivera, "Balance del proceso de justicia en los casos de crímenes contra los derechos humanos," *Justicia Viva*, December 19, 2014. Available at: <http://justiciaviva.org.pe/notihome/notihome01.php?noti=1521>.
- 68 J.M. Burt and M. Rodríguez, "La jueza Mirta Bendezú: reina de la impunidad," *La Mula*, July 14, 2015. Available at: <https://redaccion.lamula.pe/2015/07/14/la-jueza-mirta-bendezu-reina-de-la-impunidad/albertoniquen/>.
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- 80 J.M. Burt and M. Rodríguez, “‘Ya te fregaste, estás en el cuártl.’ Juicio por el caso Los Cabitos. Crónicas de las audiencias en Ayacucho (II),” *Noticias SER*, August 29, 2012. Available at: <http://www.noticiasser.pe/29/08/2012/contracorriente/ya-te-fregaste-estas-en-el-cuartel>.”
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- 241 The new president, Alan García, had been president between 1985 and 1990. The CVR found that he had political responsibility for the systematic abuse of human rights during his regime

but stopped short of holding him criminally responsible for such abuses, saying this should be determined by the courts in specific cases.

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As transitional justice has become both a global idea and a global practice, there is an increasing need to better understand not only the design and implementation of transitional justice mechanisms, but their impact and significance as well. Any such effort requires an examination of the specific mechanisms of transitional justice, as well as the broader political context that gives shape to these mechanisms and their implementation. The **Transitional Justice in the aftermath of Civil Conflict: lessons from Peru, Guatemala and El Salvador** report seeks to respond to this need by analyzing the experience of transitional justice in three countries that have been relatively understudied: Peru, Guatemala and El Salvador.

Due Process of Law Foundation (DPLF) is a regional organization comprised of professionals with a variety of nationalities, which promotes the Rule of Law in Latin America through the use of analysis and recommendations, cooperation with private and public organizations and institutions, exchanges of experiences, and advocacy efforts.

DPLF works with local organizations, provides legal technical assistance, promotes dialogue with government representatives and creates opportunities for exchange of information and experience. DPLF also conducts research and publications to analyze and discuss, in the light of international law, some of the major challenges for the respect of human rights in the region, through our four program areas: a) Judicial Independence, b) Human rights and extractive industries, c) Inter-American System, and d) Impunity and Grave Human Rights Violations.

The Impunity and Grave Human Rights Violations Program, which is responsible for the production of this report, seeks to strengthen criminal prosecutions, truth processes, reparation, and preservation of memory in Latin America. It also promotes compliance with international standards and the use of Inter-American and International law to improve legislation, policies and practices.



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