

## Policy Brief:

# Transformative Reparations for survivors of sexual violence in post-conflict societies

### Introduction

The use of sexual violence as a weapon of war is one of the cruelest and most perverse international crimes, which generates terror among women and communities affected by violence. The recent armed conflicts of Rwanda, the Balkans, Guatemala, and Colombia have proved the gravity of the events and the sequels for victims and society altogether. Similarly, the struggles of women have demonstrated the urgency of fighting impunity for these types of crimes, of guaranteeing the right to rehabilitation and reparation for survivors, a well as stopping sexual abuse against girls and women today. This is a particularly difficult challenge for post-conflict societies in which institutions remain dominated by men, and in which strong prejudice and social stigma against victims of sexual violence prevail.

In the United Nations Security Council's Resolution 1325 (2000) and related, on women, peace and security, and especially in Resolution 1820 (2008), sexual violence is acknowledged as a war crime, a crime against humanity, or an act of genocide,<sup>1</sup> when it is used intentionally or systematically for military or political goals, or when used opportunistically for cultural reasons. Similarly, the set of Resolutions on women, peace and security, highlight the rights of girls and women victims of sexual violence in conflicts, and considers specific measures of reparations for the victims, prevent sexual violence and guarantee the participation of women in security, justice, and peacebuilding policies.<sup>2</sup>

<sup>1</sup> United Nations. *S/RES/1820 (2008). Security Council Resolution 1820*. Subsection 4. p. 3

<sup>2</sup> United Nations. *S/RES/1889/2009. Security Council Resolution 1889*. Subsection 2 and 3. p. 2

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In this public policy document, Impunity Watch presents a brief analysis of the impact of sexual violence during the armed conflict in Guatemala and the limited measures of reparation offered by the State to the survivors of this scourge. We intend to approach reparation measures from an integral and transformative perspective, which guarantees a significant participation of women and generates institutional and social changes in order to prevent this crime. In general, reparation measures do not address the real needs of victims and focus solely on compensation for damages, and they do not seek to transform the structural causes that provoke the violation. This analysis is based on reparation measures offered by the National Reparations Program and the measures that have been dictated by Guatemalan courts; it analyzes, in particular, the reparations sentence for the case of sexual and domestic slavery of indigenous Maya Q'eqchi women in the community of Sepur Zarco, and it is complemented by other reparations experiences in Colombia and Tunisia.

This document is organized in four sections. The first describes how sexual violence was used as a weapon of war during the internal armed conflict of Guatemala and its effect in the post-conflict period. The second presents the mechanisms of reparation offered by the State of Guatemala in the administrative and judicial areas. The third examines the transformative focus of reparations and analyzes the reparations measures of the Sepur Zarco case. The fourth presents two novel reparations proposals with a transformative focus, presented by the Miriam Project Association and by Women Transforming the World. The final section of the document lays out a series of recommendations for the incorporation of a gender and transformative focus in the current reparations policies of Guatemala.

We are grateful for the contributions of the Miriam Project Association and of Women Transforming the World to this Policy Brief. The Policy Brief was developed within the frame of the *“Tackling violence against women beyond borders: Burundi, Guatemala and Liberia”* program implemented in consortium between Oxfambis and Impunity Watch.

### **1. Sexual violence as a weapon of war and a mechanism of dominance over women.**

The Commission for Historical Clarification –CEH for its initials in Spanish—registered, during the internal armed conflict, a total of 1,465 cases of sexual violence, and points out that sexual violence was a common practice at the areas in which there were military installations, in prisons, and during forced displacements. It also establishes that the perpetrators were mostly members of the military, military commissioners, and members of the Civilian Self-Defense Patrols. It also establishes that the massacres were planned: they left evidence of the sexual violence perpetrated, killed with excess cruelty and brutality, exerted even against corpses.

The military used sexual violence as a weapon of war because its humiliating and demoralizing impact in the cultural sphere, upon the men, their families and communities, is well-known, as well as the breakage in the social and community fabric that it causes. It was a strategy planned and designed with the purpose of winning the war. In other words,

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“the female body is conquered for the same reason that territory is and (as) (...) a victory that is within reach”<sup>3</sup>. Radika Coomaraswamy, former U.N. Special Rapporteur on violence against women, explained in her 1998 Report: “More than the honor of the victim, it is the perceived honor of the enemy that is targeted in the perpetration of sexual violence against women; ... it is a message of castration and mutilation at the same time. It is a battle among men fought over the bodies of women”<sup>4</sup>.

Women who participated in politics were doubly punished: first, because they were considered as enemies of the State and, second, because they were infringing upon gender norms by having “dared” to intervene in the political sphere, a traditionally “masculine” sphere. According to testimonies received by the CEH, many women, especially those who belonged to Mayan groups, experienced a whole series of violations during the conflict, including extrajudicial executions, illegal arrests, disappearances, torture, internal displacement, rape, sexual slavery, forced labor, and forced unions with their captors. The women suffered a series of grave consequences as a result, including unwanted pregnancies and loss of their reproductive capacity as a result of rape; orphanhood, loss of material goods, loss of ties with their community and family, post-traumatic stress disorder, widowhood, exile, and isolation for having been victims of sexual abuse. Selective sexual violence was used as a torture method in military bases or in clandestine prisons; they were generally accompanied by interrogations, and physical and psychological torture.

In Guatemala, selective violence was applied to movement leaders or to key individuals with the purpose of sending a message to the whole social movement. Later, the violence was executed massively, against whole populations which allegedly supported the insurgency. Cases such as those of Emma Molina Theissen, Rogelia Cruz, and Diana Ortiz, among many others, illustrate how sexual violence was used to punish women who were members of the revolutionary movement or who sympathized with it. It was also used as a communication medium by which the bodies of women were inscribed with the message meant to paralyze the population.

In various armed conflicts, such as in the former Yugoslavia and in Rwanda, sexual violence has been used as a way to dominate women and destroy a people, because it impedes biological reproduction, impedes social reproduction, produces mass displacement and maintains long-term the effects caused by the destruction of the social fabric. One of the specific effects of sexual violence is that there is always doubt concerning the victim; in

<sup>3</sup> Terrasson, Brigitte, “Las violaciones de guerra y las mujeres en Francia durante el primer conflicto mundial: 1914-1918”. En: *Las mujeres y las guerras. El papel de las mujeres en las guerras de la Edad Antigua a la Contemporánea*. Mary Nash y Susana Tavera (eds.), Icaria Antrazyt, Barcelona, 2003. p. 315

<sup>4</sup> Coomaraswamy, Radhika. (2003). “A question of Honour: Women, Ethnicity and Armed Conflict”, en *Feminists under Fire: exchanges across war zones*, Wenona Giles, Malathi de Alawis, Edith Klein, Neluka Silva (co-editors), Canada.

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*The most emblematic case is that of Sepur Zarco, in which 15 indigenous Q’eqchi women denounced they were forced into sexual and domestic slavery by military commissioners and soldiers from the military base in the community of Sepur Zarco in the 1980s.*

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some communities, the women we expelled, in other cases the women were victims of new sexual aggression because they were deemed as “women who may be raped”.

The Guatemalan courts have tried several cases of grave sexual violence against women. The most emblematic case is that of Sepur Zarco, in which 15 indigenous Q’eqchi women denounced they were forced into sexual and domestic slavery by military commissioners and soldiers from the military base in the community of Sepur Zarco in the 1980s. In the case of genocide of the Ixil People, it was proved that the military used sexual violence against women as a weapon of war and a way to destroy the communities. In the Molina Theissen case, it was proven that the young woman, Emma Guadalupe, was a victim of torture and sexual violence perpetrated by members of the military during her arbitrary detention and that, afterwards, the military forcibly disappeared her 14-year-old brother Marco Antonio, in reprisal for Emma Guadalupe’s escape from the detention site. Moreover, other cases of sexual aggression against women are under investigation, such as the Achi, CREOMPAZ, El Jute, and Military Diary, among others.

The Inter-American Court of Human Rights –IDH for its initials in Spanish—has also sentenced the State of Guatemala for cases in which sexual violence crimes have been proved, such as the Plan Sánchez massacre, in which 268 people died, the Dos Erres Massacre, the Molina Theissen case, the Río Negro massacre, Military Diary, and the village of Chichupac. In several cases, the Court ordered the State to investigate the instances of sexual violence. The sentences of both courts, the national and international one, have set an important precedent for proving the use of sexual violence as a weapon of war, and to open the road to justice and reparations for the victims.

However, sexual violence is not limited to the armed conflict; it continues to be practiced in the post-conflict period. Even after the armed conflict ended, girls, female adolescents, and women continue to be victimized by forms of violence in their family and community environments. The end of the conflict did not mean the end of violent practices associated with the it, especially as pertains to the private and domestic sphere. The reasons for this are various and, as pertains to gender violence, it is mainly related to the stigma and the roles in which women victims have been categorized. And, in other cases, to violent and hegemonic masculinities, as well as the patriarchal society that absorbs the militarized practices and attitudes inherited from the conflict. In Guatemala, the numbers for sexual abuse against girls and adolescents are alarming. In 2017, the National Institute of Forensic Sciences of Guatemala –INACIF for its initials in Spanish—performed 2,979 medical exams for sexual crimes on girls aged 0-to-14 years. During the first semester of 2018, the Observatory on Sexual and Reproductive Health –OSAR for its initials in Spanish—reported 1,475 pregnancies in girls aged 10-to-14 years. The Law against Sexual Violence, Exploitation and Human Trafficking (Decree 09-2009) stipulates that all pregnancies in girls and adolescents younger than 14 years of age is a crime of rape, given that the Law does not acknowledge their consent as valid. Furthermore, in 2014, the Human Rights Ombudsman –PDH for its initials in Spanish—determined that 84% of perpetrators were a close relative of the girls and adolescents, of which 30% were the biological father.

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The situation is worse among the populations with indigenous majority, in which women and adolescents do not seek help nor report the abuse for fear of being censured by the community and condemned to isolation within the family, or, expelled without any survival resources. Finally, when they manage to overcome these barriers, the response from public officials is permeated by sexist and racist stereotypes, myths, patriarchal stereotypes that blame women and, if the victim is a minor, an adult-centered view prevails; all this in addition to the State’s legal system that does not take into consideration multiculturalism and indigenous law.

To summarize, during the armed conflict, the Guatemalan State used sexual violence as part of its counterinsurgent policy, to punish women and communities that questioned the military regime or who sympathized with the guerrillas. Women represented an easy target for sowing humiliation and terror in communities and cities. Therefore, it is important that the truth be known, that perpetrators be punished, and that women survivors receive reparations. To the extent that justice is not applied in these cases, sexual violence against girls, female adolescents and women continues to be tolerated today. Following, we present a brief analysis of the main cases of sexual violence in Guatemala and reparations measures for survivors.

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## **2. Reparations measures for survivors of sexual violence in Guatemala**

Three institutional mechanisms exist formally in Guatemala for victims of grave violations of human rights during the internal armed conflict to access reparations measures. The first one is the National Reparations Program –PNR for its initials in Spanish—established in 2003 as a result of the Peace Accords and by recommendation of the CEH. Its purpose is to provide “individual and/or collective reparations to civilian victims of human rights violations and of crimes against humanity, perpetrated during the internal armed conflict”<sup>5</sup>. The PNR’s reparations policy considers five reparations measures that include financial compensation, material restitution, psychosocial reparations and rehabilitation, dignification measures, and cultural restitution. However, the policy does not include a gender focus nor specific reparations measures for women victims of sexual violence. For instance, the material restitution measures do not take into consideration women’s right to property and, in general, land, housing, and productive projects are granted to men. As pertains to psychosocial reparations and rehabilitation, the PNR has no protocols or handbooks to attend, specifically, to sexual violence victims, or those widowed by the armed conflict, even though abundant evidence exists of the use of sexual violence as a weapon of war by the military and that the women were subjected to domestic and sexual slavery<sup>6</sup>.

On many occasions, the PNR denies reparations to victims of sexual violence arguing that the events are difficult to prove and that “the women lie”, which not only re-victimizes the

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<sup>5</sup> Government Accord 258-2003

<sup>6</sup> A clear example of this is the Sepur Zarco sentence, February 26, 2016

women, but also violates their rights.<sup>7</sup> Furthermore, the PNR rarely implements cultural restitution measures and does not take into account, for reparations, the cosmovision of indigenous people, even though over 80% of the victims are indigenous.

In its 15 years of existence, the PNR has only compensated 33,094 victims, from a total of 200 thousand dead and disappeared, as established in the CEH report, which amounts to barely 16.5% of the victims. According to the PNR's official data, it has compensated 20,850 women, without specifying the type of violation they suffered nor the type of compensation they received<sup>8</sup>. As pertains to reparations measures, the PNR has prioritized financial compensation, housing restitution, and support for burying the victims that have been exhumed.

Nevertheless, up to now, the PNR has not been able to implement measures in an integral manner nor to promote specialized attention for victims of sexual violence. It does not own a manual or protocol specifically for the care of sexual violence survivors, nor does it count with an adequate registry of victims and reparations, even though these aspects have been highlighted repeatedly in reports by the PDH and other human rights organizations. Reparations measures continue to be implemented in an isolated manner and lacking a gender focus and cultural perspective.

The PNR's depends, administratively, on the Peace Secretariat and counts with an annual budget of just 28 million quetzales (3.7 million U.S. dollars). It is suffering a progressive weakening due to a constant change of authorities and expert personnel, and the precariousness of the regional offices. The situation has worsened during the last three governments of military tendency, which deny the atrocities of the past and resist compensating the victims<sup>9</sup>.

The second mechanism for accessing reparations is through a court sentence. The Guatemalan Penal Code considers reparations for victims of crime, and the legal process stipulates a dignified reparation hearing after adjudication of a verdict. The law establishes that a dignified reparation

“includes the restoration of the right affected by the crime, which begins from acknowledging the victim as a person with all of his or her circumstances as a subject of rights against which the criminal action was perpetrated, to the available alternatives for his or her social reinsertion, with the goal of enjoying or using as soon as possible the affected right, to the extent that such reparation is

<sup>7</sup> Impunity Watch. *Creating a space for the voices of all victims: Towards processes of truth, justice, reparation and non-repetition sensitized to gender in Guatemala*. Impunity Watch: Guatemala, 2012.

<sup>8</sup> The data pertaining to women are included in: Impunity Watch. (2016). *Monitoring of United Nations Resolution 1325 (2000): The Situation of Guatemala*. p. 94. They are compared against the general data in Impunity Watch. (2018). *Advances and Obstacles of Transitional Justice in Guatemala: Monitoring Report 2014-2017*. p. 101.

<sup>9</sup> Impunity Watch. (2018). *Advances and Obstacles of Transitional Justice in Guatemala: Monitoring Report 2014-2017*. pp. 101-106.

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humanly possible and, given the case, the compensation for damages caused by the crime” and includes measures such as “the compensation, the restitution and, given the case, the damages in accordance with to the rules of evidence”.<sup>10</sup>

Nevertheless, there are no clear mechanisms for the implementation of reparations’ sentences, or to verify their compliance and execution; there is no compliance to date with most of the measures granted in this way. “If the sentence is a guilty verdict, the Penal Code regulates the execution process as pertains to the penalty, the procedure to pay the fine, but there is no procedure for the execution of compensation or Dignified Reparation.”<sup>11</sup> The National Institute of Victims and the Secretariat against Sexual Violence, Exploitation and Human Trafficking –SVET for its initials in Spanish—were established in 2016 for cases of violence against women (in all its diverse forms), to provide support and legal counsel, including for reparations’ processes. The laws and regulations of both institutions acknowledge the right to restitution and reparations. However, they continue to lack clear procedures to ensure the implementation of reparations adjudications.

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In cases of transitional justice, Dignified Reparations’ hearings have taken place in only four cases: Ixil Genocide, Sepur Zarco, Molina Theissen, and the Spanish Embassy. The first three include cases of sexual violence. All reparations’ sentences have included measures focused on guarantees of non-repetition, which constitute an important pillar for transformative reparations. These measures center around actions aimed at modifying or changing the conditions that generated the events and at establishing preventive actions. They include, for instance, actions for truth, dignification, memory, forgiveness, education, strengthening of justice, human rights education and of women in security forces.<sup>12</sup>

However, there have been many stumbling blocks in their implementation. In the case of the Ixil genocide, it was not possible to implement reparation measures because the Constitutional Court -CC ordered the trial’s repetition due to alleged procedural errors<sup>13</sup>. Efraín Ríos Montt died during the second trial and on September 26, 2018, the Court absolved Mauricio Rodríguez Sánchez, despite acknowledging that the military committed genocide against the Ixil people. Given that there was no guilty verdict issued in this case, there were no measures for reparations either. In the case of the Spanish Embassy, the court accepted only compensation measures and rejected memory and dignification measures for the victims. In the Molina Theissen case, the court ordered 11 measures that

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<sup>10</sup> Decree Number 7-2011. *Reforms to Decree Number 51-92 of Congress, Penal Procedure Code.* Consulted in: <https://goo.gl/NTk6SU>

<sup>11</sup> Asociación Ixoqib’ MIRIAM. (2018). *Analysis of the application of Guatemalan legislation in the dignified reparations sentences for women survivors of violence.* Guatemala.

<sup>12</sup> For a complete list of reparations measures for these cases, see *Advances and Obstacles of Transitional Justice in Guatemala: Monitoring Report 2014-2017* in: <http://goo.gl/gSfASJ>.

<sup>13</sup> On May 2013, the Constitutional Court adjudicated a complaint plea in favor of Ríos Montt and decreed “the annulation [of] all that has proceeded during the oral debate phase and the public phase of the penal process ... starting from the nineteenth of April of two thousand and thirteen...”in other words, the whole trial. Impunity Watch, op. cit. p. 74

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*In the case of Dos Erres, the Inter-American Court of Human Rights “considers that the lack of investigation of grave acts against personal integrity, such as torture and sexual violence in armed conflict and/or within systematic patterns, constitutes non-compliance with duties of the State in the face of grave violations of human rights”*

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have not yet been implemented, given that it was issued on May 2018 and the verdict has not yet been confirmed. The Sepur Zarco case is the only one that has achieved some advances; for instance, a mobile health clinic opened in the community of Sepur Zarco, even though the sentence decreed a health center; learning material about the case was created for high school students, a photographic exhibit about the case, among other actions<sup>14</sup>. These advances have been achieved thanks to the follow-up by co-plaintiff organizations of the case and the persistence of the victims.

These examples show that the Guatemalan justice system does not count with specific reparations measures for cases of sexual violence nor does it have clear mechanisms to verify the compliance of reparations sentences. It is equally important that the prosecutors, judges and magistrates be educated and sensitized to gender. In Colombia, for instance, the female magistrates of the Chamber of Peace and Justice of the High Court of Bogota evidenced higher sensitivity to the needs of women and in various cases, they ordered rehabilitation and restitution measures pertaining to health and education, symbolic reparations and public policies for attention to victims, which may contribute to help women deal with the structural problems they face in health and education, for example.<sup>15</sup> The Colombian case also illustrates the challenges related to procedures; for instance, the Supreme Court suspended orders given for rehabilitation, arguing that the jurisdiction of the High Court of Bogota, as a penal court, is different than other national and international courts, such as the Inter-American Court of Human Rights, and that “a criminal judge cannot impose obligations to the executive”<sup>16</sup>.

The third mechanism to access reparations is through sentence issued by the Inter-American Court of Human Rights. To date, the IACHR has issued reparations sentences in 15 cases linked to the internal armed conflict of Guatemala, six of which include instances of sexual violence. Furthermore, it has issued sentences for three cases of femicide and violence against women during the post-conflict period<sup>17</sup>.

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<sup>14</sup> Other advances include establishing dialogue tables in communities to follow-up with the reparations measures with women survivors, community leaders, and authorities of the stakeholder ministries; Dialogues with the Ministry of Culture and Sports to establish a memorial site; presentation of a law initiative to establish February 26 as “Victims of Sexual Violence, and Sexual and Domestic Slavery Day”; Dialogues for the purchase of land.

<sup>15</sup> The sentences issued are the following: Sentence issued on June 29, 2010 on the case of a massacre and mass displacement of over 1000 people in the villages of Las Brisas, San Cayetano, and Mampujan; Sentence issued on December 2, 2010 in the case of 170 selective assassinations, tortures and forced displacements in the northeastern city of Cucuta and its surroundings; Sentence issued on December 16, 2010 on the illegal recruitment of over a 100 girls and boys by the parliamentary structure led by aka “The German” in a very poor province on the Colombian Pacific coast populated mainly by people of African descent. Catalina Diaz and Iris Marin. (2014). *Reparations in Colombia, Advancing the women’s rights agenda; Women and Transitional Justice, The Experience of Women as Participants*, Edited by Lisa Yarwood, Routledge, pp 157-183.

<sup>16</sup> Ibidem.

<sup>17</sup> The six transitional justice cases that include sexual violence: the Plan Sánchez massacre, Rabinal; Forced disappearance of the child Marco Antonio Molina Theissen; Massacre of the Dos Erres, La Libertad; Río Negro massacre; Forced disappearance, torture and extrajudicial execution

Most of the sentences against the State of Guatemala include the criminal investigation as a measure of reparations; in the case of Dos Erres, the IACHR

“considers that the lack of investigation of grave acts against personal integrity, such as torture and sexual violence in armed conflict and/or within systematic patterns, constitutes non-compliance with duties of the State in the face of grave violations of human rights, which infringe upon inviolable norms and generate duties for the States, such as the investigation and penalization of said practices, in conformity with the American Convention and in this case, in light of the [Inter-American Convention to Prevent and Punish Torture] CIPST and the Belém do Pará Convention”<sup>18</sup>

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*In 2015, the Court created a joint balance report of the implementation of the reparations measures relating to 12 cases, especially on investigation measures, which reflects the difficulties dealt with by the justice system to advance, and the continuous use of a discourse of amnesty by defense attorneys, or the refusal to declassify military or State files, for example.*

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Moreover, all cases in which sexual violence occurred stipulate medical and psychological care must be provided for the grave violations that took place, among these sexual violence, and the Court specifies that “upon providing said treatment, the specific circumstances and needs of each victim must be taken into consideration, so that collective, familial and individual treatment is provided, according to what is agreed with each person and after performing an evaluation”<sup>19</sup>. This measure is important given the specialized care required by sexual violence survivors. Other measures included in various cases is the education in human rights for the military, and the strengthening of judicial power, as guarantees of non-repetition.<sup>20</sup>

In the same manner, sentences for violence against women include measures of institutional strengthening for justice and security, such as the case of Véliz Franco et al versus Guatemala.

“A scheduled strengthening plan for INACIF, which includes an adequate provision of resources (...) to implement programs and courses for public officials in the Judiciary, Prosecutor’s Office, and National Civil Police, that are linked to homicide against women, on standards for the prevention, eventual sanctions, and eradication of women’s homicide, and to train them on the proper application of pertinent norms in the matter.”<sup>21</sup>

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of Gudiel Álvarez and others (Military Diary); Forced disappearance, extrajudicial execution, massacres and other crimes against the population of Chichupac, Baja Verapaz; the three cases of violence against women: the Véliz Franco and others case; the Velásquez Paiz and others case; the Gutiérrez Hernández and others case. Inter-American Court of Human Rights. *Cases in supervision stage*. Consulted in <https://goo.gl/r1f3Sj>

<sup>18</sup> Inter-American Court of Human Rights. *Case of Dos Erres Massacre vs Guatemala*. Sentence, November 24 2009. (Preliminary Exception, Fund, Reparations y Costs). Subsection 140. p. 42 Consulted in: <https://goo.gl/uxUSnz>

<sup>19</sup> Ibidem.

<sup>20</sup> Members of Chichupac Village Case; Myrna Mack Chang Vs. Guatemala Case; Bámaca Velásquez Vs. Guatemala Case. Consulted in: <https://goo.gl/r1f3Sj>

<sup>21</sup> Velásquez Paiz and others vs. Guatemala Case: reparations pending compliance. In: <https://goo.gl/kJgFBD>

In all these cases there has been partial compliance with measures, particularly financial, and in other cases, none. In 2015, the Court created a joint balance report of the implementation of the reparations measures relating to 12 cases, especially on investigative measures, which reflects the difficulties faced by the justice system in order to advance, and the continuous use of a discourse of amnesty by defense attorneys, or the refusal to declassify military or government files, for example.

All these mechanisms have contributed to the definition and standards for reparation, guided by the principle of the victims' dignity, and according to international standards for victims' reparations rights. However, in practice, these principles are not applied. The absence of political will continues and there is scant acknowledgement of the State's responsibility in granting reparations measures. Furthermore, there is no understanding among State officials about how reparations can help improve the lives of survivors, and they get stuck on limited measures such as compensation. The State is responsible for reparations and, as victims' organizations point out, in most reparations' measures or sentences, the topic of victim dignification has been neglected in its sociocultural and psychosocial aspects. It is necessary to break with the focus on assistentialism, and we must transcend the idea that reparations are limited to a financial or patrimonial compensation.<sup>22</sup> On the other hand, justice operators have no effective verification mechanisms nor is there enough auditing by victims' organizations and civil society.

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### 3. The transformative reparations focus

The right to reparations stems from the principle of restituting the victim for damages, or of restituting the *status quo ante* of the violation. However, a wide discussion has initiated recently at the international level, about the idea of restituting the *status quo ante* of marginal and vulnerable populations, and the need to transcend this idea in order to transform the structural *status quo* that oppresses these populations. In this sense, the reparation for marginalized groups should contribute to transform the structural conditions of poverty and oppression that enable the violation.

The transformative reparations focus for victims of crimes against humanity and war crimes, as well as for survivors of sexual violence, whose objective is the non-repetition of those acts, emerged with the *Nairobi Declaration on Women's and Girl's Right to a Remedy and Reparation*. It redefined the notion of reparations for victims of sexual violence, establishing that "reparation must drive post-conflict transformation of socio-cultural injustice, and the political and structural inequalities that shape the lives of women and girls"<sup>23</sup>. This was a civil society initiative that allowed the transformative focus to expand

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<sup>22</sup> Impunity Watch. (2018). *International Seminar Report, where are reparations going to in Guatemala?*

<sup>23</sup> Valérie Couillard. (1 December 2007). The Nairobi Declaration: Redefining Reparation for Women Victims of Sexual Violence, *International Journal of Transitional Justice*, (1) (3), pp 444–453, <https://goo.gl/aWXBmV>

to academic papers, reports and guidelines created by public policymakers, at the international level<sup>24</sup>. Continuing with this focus line, reparations are not limited to simply repairing the damage, but to changing the structural conditions that allowed these acts to occur. It addresses political, social, economic and cultural transformations, and allows women to transition from “victimhood to agency”, breaking with their initial marginal status<sup>25</sup>.

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*Resolution 1325 of the United Nations Security Council on Women, Peace and Security (2000), acknowledges that war affects women differently, and reaffirmed the need to increase the role of women in the adoption of the above-mentioned decisions on the conflict prevention and resolution.*

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The United Nations has established basic principles and guidelines on human rights victims’ right to reparations, among which are restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>26</sup> Resolution 1325 of the United Nations Security Council on Women, Peace and Security (2000), acknowledges that war affects women differently, and reaffirmed the need to increase the role of women in the adoption of the above-mentioned decisions on the conflict prevention and resolution. Resolution 1325 and subsequent Security Council resolutions represent a critical framework for improving women’s conditions in countries affected by violence<sup>27</sup>.

To change women’s situation requires their participation and exercising of citizenship, not limited to a conceptualization of them as vulnerable victims. As stated by Sanne Weber, “rather than treating women as dependents, or inferiors, reparations should reinforce the construction of citizenship with a perspective on gender, in the long term”<sup>28</sup>. In this sense, it is important that women participate in the design of reparations and sexual violence prevention policies. Participative focuses are a way to strengthen women’s security and provide adequate measures and forms of reparations in agreement with the demands of its beneficiaries. For example, the Tunisia Truth and Dignity Commission, which designed an exhaustive public policy on reparations, has opted for a national consultation on reparations as a road to victims’ participation.<sup>29</sup> Besides a national survey on reparations, over 6,000 individuals (including victims and civil society organizations’ representatives) participated in workshops and dialogues to help the Commission reach its objectives.

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<sup>24</sup> Margaret Urban Walker. (1 March 2016). Transformative Reparations? A Critical Look at a Current Trend in Thinking about Gender-Just Reparations, *International Journal of Transitional Justice*, (10) (1), pp 108–125, <https://goo.gl/rKFL97>

<sup>25</sup> Sanne Weber. (1 March 2018). From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions, *International Journal of Transitional Justice*, (12) (1), pp 88–107, <https://goo.gl/rGgEfp>

<sup>26</sup> Resolution 60/147, approved by the General Assembly on December 16, 2005

<sup>27</sup> Afterward, the United Nations Security Council adopted six additional resolutions on women, peace and security: 1820 (2008), 1888(2009), 1889 (2009), 1960 (2010), 2106 (2013) y2122 (2013).

<sup>28</sup> Sanne Weber. (February 27, 2018). Blog: LSE Latin America and Caribbean Center *Are reparations transforming Colombian women? Gender dynamics of the Victims’ Law*. Consulted in: <https://goo.gl/xfMRfb>

<sup>29</sup> The consultation took place between July and September 2017. Results were presented in 2018, and the Truth and Dignity Commission is drafting a comprehensive reparation policy to be included in the final Commission’s final report.

Thirty-two percent of participants were women and a special section was dedicated to women and gender violence.

Transformative reparations include just and corrective criteria, which transcend from a restoring the victim, not to the precarious state in which she was before; but to the responsibility of the State for transforming those circumstances that could have been one of the crime's causes, overcoming these conditions of exclusion and inequality. It is about an integral and interdisciplinary focus, that establishes the bases for guarantees of non-repetition and that has, at its center, the notion of rights' restitution. Rights are restituted when victims become the subject of rights and a dignified life project is guaranteed. Dignity also includes breaking with the social stigma that sexual violence places on women.

In Colombia, after different attempts to grant just reparations, and of judicial measures that proved ineffectual in creating real change in the social and institutional conditions that allowed the violence, a Victims Law (Law 1448) was adopted in 2011. This law includes individual and collective reparations, as well as land restitution. This law is transformative in the sense that it allowed the participation of victims at different steps of the reparations process, but most importantly, it considers land ownership jointly for women and men. Given that land ownership titles are usually in the men's name, this disposition is considered as transformative for gender relations, given that it leads to changes in the patriarchal conception of land ownership<sup>30</sup> and improves the condition of women by way of economic empowerment.

To achieve change when designing a public policy or when issuing reparation sentences, it is important to analyze the context and root causes, such as social inequality, poverty, and the marginalization of large sectors, which led to the perpetration of violence against a specific group, such as women, indigenous people, Afro-descendants, the differently-abled, etcetera. As well as the circumstances that led to a violation, such as militarization, exacerbated machismo, homophobia, and others.

The IACHR underscores that the State has the duty to act with the due diligence required to prevent, sanction, and repair acts of sexual violence against indigenous women, creating the conditions necessary so that their demands and legal cases are processed exhaustively and promptly, taking into consideration their cosmovision and cultural and community perspective.<sup>31</sup> It also points out that an adequate consideration of an integral reparation requires a system of justice administration that develops a set of non-isolated actions. It implies, as well, guaranteeing reparations free of all forms of re-victimization, while guaranteeing the victims the full enjoyment and exercise of their rights. This process

<sup>30</sup> Sanne Weber. (March 20158). From Victims and Mothers to Citizens: Gender-Just Transformative Reparations and the Need for Public and Private Transitions. *International Journal of Transitional Justice*, (12)(1) pp. 88–107, <https://goo.gl/vPFIWh>

<sup>31</sup> *Access to justice for women victims of sexual violence in Meso-America*. Report approved by the Inter American Commission on human rights on December 9, 2011. Paragraph 306

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*The IACHR underscores that the State has the duty to act with the due diligence required to prevent, sanction and repair acts of sexual violence against indigenous women, creating the conditions necessary so that their demands and legal cases are processed exhaustively and promptly, taking into consideration their cosmovision and cultural and community perspective.*

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must also be joined by a proper articulation of State institutions to provide an adequate dignification of the injured individuals.<sup>32</sup>

As has been stated, violence against women occurs in contexts of structural discrimination against them. The IACHR acknowledges its structural character in its sentence for the Cotton Field Case [*Campo Algodonero*]

“it stands out that reparations should not consider only the compensation part with economic compensations, but these must also have a transformative view of the situation; that is, they must integrate a restitutive as well as a corrective effect. Therefore, reparation measures that do not assume this transformative spirit, and that leave women in the same situation of violence and discrimination in which they were before, are not acceptable to this Court”.<sup>33</sup>

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*The Sepur Zarco Case sets an important precedent in relation to the reparation measures for survivors of sexual violence. The sentence includes access for women to education and health, and the recovery of historic memory and dignification for victims, the education of the military in human rights, the recovery of land and measures to prevent violence against women*

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In Guatemala, as indicated previously, the Sepur Zarco case sets an important precedent pertaining to reparation measures for survivors of sexual violence. The sentence includes access for women to education and health, and the recovery of historic memory and dignification for victims, education of the military in human rights, recovery of land, and measures to prevent violence against women. The sentence is novel because not only does it include reparation measures for survivors and their families, but also for the Sepur Zarco community and neighbor communities, as well as for society in general.

The survivors in this case are members of the Jalok U Collective and have played a central role in the design and implementation of reparation measures. Women presented a petition for reparations to the Court jointly with the female lawyers of the Breaking Silence Alliance<sup>34</sup>, plaintiffs in the case.

Working tables have been established, for its implementation, with different State institutions and community leaders, in which women participate. Important advances have taken place at the community level, such as the installation of a mobile clinic, attended by a nurse, which counts with basic medications and an ambulance, but it requires of donations to cover for fuel. In the sphere of education, there have been improvements to the primary education school and materials to include the case in the curriculum have been approved, and a summary of the sentence has been translated. In relation to land restitution, this measure is fundamental for the women of Sepur Zarco, being that the fight for land was the reason for their husbands’ disappearance and, afterwards, that they too became victims of violence. On the other hand, Q’eqchi’ women hold a special tie to the land and holding title to the land grants them greater independence and strengthens them financially. It is one of the measures with the most

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<sup>32</sup> *Access to justice for women victims of sexual violence in Meso-America*. Report approved by the Inter American Commission on human rights on December 9, 2011. Paragraph 112.

<sup>33</sup> OHCHR. (2015). *Tool for the incorporation of a human rights focus and gender perspective in the creation of sentences for femicide and other forms of violence against women*. Guatemala.

<sup>34</sup> Formed by Women Transforming the Word - MTM, National Union of Guatemalan Women - UNAMG, and the Community Team of Psycho-Social Action were also plaintiffs in the case.

difficulties, because the community of Sepur Zarco and other surrounding communities are set within large farms. This requires that the state purchase the lands from the individuals who own the legal titles, to then grant them to the communities. Negotiations have begun with the Land Fund—FONTIERRA for its initials in Spanish—and the Presidential Agricultural Matters Secretariat—SAA for its initials in Spanish<sup>35</sup>. The political will of officials in the institutions that have assumed the reparations sentence as a commitment have been fundamental for these advances, as well as the persistence of Jalok U Collective and the Breaking the Silence Alliance.

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*As stated by Sanne Weber, “rather than treating women as dependents, or inferiors, reparations should reinforce the construction of citizenship with a perspective on gender, in the long term”. p. 11*

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#### **Sepur Zarco Measures of Reparation**

The Prosecutor’s Office shall continue with the investigation to determine the location of the individuals disappeared in Sepur Zarco and its surrounding areas.

The State shall continue with the land procedures initiated by the disappeared individuals, in the institution to which it corresponds. The Executive shall provide housing for the victims and basic services to the communities around Sepur Zarco.

The Ministry of Health shall build a health center in the community of Sepur Zarco, stocked with all necessary medications.

The Executive shall improve the infrastructure of schools in the communities of Sepur Zarco, San Marcos, Poombaac and La Esperanza. Install a bilingual middle school that guarantees the right to education of girls, female adolescents and women. Grant scholarships for three educational levels for the population of Sepur Zarco. Include in the study curricula, textbooks on the Sepur Zarco women’s case.

The Ministry of Culture and Sports shall develop cultural projects directed to the women of Sepur Zarco and its communities. Create a document about the case. Translate the sentence in 24 Mayan languages.

Process the nomination of February 26 as the Day for Victims of Sexual Violence, and Sexual and Domestic Slavery. Process the necessary actions in Congress pertaining to the Law of Forced Disappearance.

The Ministry of Defense shall include, in military education, courses on women’s human rights and legislation to prevent violence against women. The Governance Ministry shall coordinate security measures for the members of the plaintiff organizations, victims, and their relatives.

The sentenced defendant, Esteelmer Reyes Girón, must pay Q500 thousand (US\$66,000) to each of the 11 victims. The sentenced defendant, Heriberto Valdez Asig, must pay Q200 thousand (US\$26,000) to each victim.

The sentence of the Molina Theissen case also includes important reparations measures, mainly in relation to truth and the search for the disappeared, and the dignification of

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<sup>35</sup> FONTIERRA was created in 1999 as a result of the Peace Accords, to facilitate the access to land and create conditions for integral and sustainable rural development, through productive, agricultural, forestry and hydro-biological projects. Law Decree 24-99, article 2. The SAA was created in 2002 and is responsible for following-up on the duties of the Executive in agrarian and rural development issues in the country, as established in the Peace Accords, in government policies. Government Accord No. 136-2002, subsection 3.



victims, for example with the creation of a National Registry of Victims of Forced Disappearance, approval of law initiative 3590<sup>36</sup>; establishing a scholarship in name of Marco Antonio Molina Theissen; and actions to promote respect for human rights in the military<sup>37</sup>. These measures are complementary to those already dictated by the CIDG for the same crimes; thus, the family decided not to include compensation measures, but rather, request that the sentenced parties reintegrated to the State the compensation amount they had been granted as part of the CIDH sentence. In the matter of reparations for the sexual violence suffered by Emma, the CIDH sentences acknowledges that Emma was a victim of sexual violence during her illegal detention; however, it did not issue any specific reparation measure for this. However, it does request that the State “investigate effectively the facts of the present case, with the purpose of identifying, trying and sanctioning the authors and intellectual authors of the forced disappearance”<sup>38</sup>. As a result of the trial, four retired high-ranking military officers were sentenced for the crime of aggravated sexual violation, as well as for forced disappearance. One of the measures of reparations included was the creation of a monument in honor of Emma Molina for her what she suffered in the military base.

#### **4. Proposals for reparations for girls and female adolescents victims of sexual violence**

Recently, the Ixoqib’ MIRIAM Association<sup>39</sup> and Women Transforming the World -MTM for its initials in Spanish--, organizations that accompany girls and female adolescents victims of sexual violence presently, have created three reparations proposals with a transformative focus. The Ixoqib’ Miriam Association created an integral reparation model with cultural pertinence, which it is promoting with public officers and local authorities in indigenous communities. Meanwhile, MTM created a law initiative for the protection of girls and female adolescent victims of sexual violence, as well as a public policy proposal.

##### *a. Transformative reparation model for cases of sexual violence against Maya adolescents*

The Ixoqib’ MIRIAM Association seeks to “contribute to the integral development of indigenous female adolescents so that they reach a full live, in harmony and equilibrium, free of racism and gender violence, through professionalization, participation, and

<sup>36</sup> Initiative on the creation of a National Commission for the Search of Disappeared Persons

<sup>37</sup> Create an award with the names Molina Theissen, in the National Defense Ministry, for members of the military that have accomplished humanitarian work or have excelled in abiding by human rights. Offer an award by the Ministry of Governance for those who offer true information about the sites of clandestine cemeteries from the internal armed conflict.

<sup>38</sup> Secretariat of the Inter American Court of Human Rights. *Molina Theissen vs. Guatemala: reparations pending compliance*. Recovered from: <https://goo.gl/zvctYM>

<sup>39</sup> Its full name is Ixoqib’ Miriam Association for the Intellectual Promotion of Women -chak reck uk’iyem uwach kinojib’al kech ixoqib’

empowerment.”<sup>40</sup> They have identified that, to achieve this, it is necessary to create the basic conditions so that they may effectively build a successful life project, among them formal education, work training, education for citizenship, and healing of trauma. The main causes hindering the development of a full life for girls and female adolescents is racism, sexism, and discrimination. Many of them are victims of sexual violence. Furthermore, a culturally-pertinent administration of justice is necessary and, also, that reparations measures granted in cases of sexual violence are truly transformative.

The objective of the model is to protect the rights of adolescents to health, development, education, security and liberty to maintain them in healthy and safe contexts. It seeks to empower and reaffirm the adolescents’ life journey with a transformative perspective, not only for them as well as for their environment, and to minimize the situations of exclusion, discrimination, and subordination that originated the violence. Up to now, the Ixoqib’ Miriam Association has begun to make this model known among justice operators and Maya authorities. If it is possible to spread this integral model, it would contribute to the prevention of violence against girls and adolescents in the communities.

The model identifies various key actors for effective and transformative reparations, firstly, the female adolescents’ families and communities, State institutions of the Executive branch at the local level, ancestral authorities, and institutions of the Judiciary.<sup>41</sup> Each of these institutions provides some service to the survivors, and the model proposes a holistic conception of the relation of the individual with the community. Its objective is to promote an inter-institutional coordination to attend to survivors and that State and community entities provide an integral and timely response to adolescents, in order to reconstitute their lives fully and in such harmony that it allows the restoration of individual and collective rights and complete their personal, academic and emotional development.

One of the important aspects of this model is that it acknowledges the role that ancestral authorities play in the resolution of local problems, among them violence against female adolescents. Among the State institutions, the contributions of Maya authorities tend to be disregarded and, being that this is a model for attention to girls and adolescents of Indigenous Peoples, it is fundamental that the attention stem from a standpoint of their culture and cosmovision.

The model has four areas or strategies that guide the acts of the key actors mentioned previously.

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<sup>40</sup> Asociación Ixoqib’ MIRIAM. (2018). *A model for dignified and transformative reparations for cases of sexual violence against Maya adolescents of Guatemala*. p. 29.

<sup>41</sup> The model proposes the following entities be in charge of implementing the model: Executive Ministries (particularly township units), courts, ancestral institutions (midwives, guides, auxiliary mayors), the Indigenous Women’s Defense -DEMI for its initials in Spanish- Guatemalan Indigenous Development Fund -FODIGUA for its initials in Spanish- Presidential Commission Against Racism -CODISRA for its initials in Spanish- National Forum of Women, organizations of indigenous women and peoples, youth groups and community leaderships.

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*Furthermore, a culturally-pertinent administration of justice is necessary and, also, that reparations measures granted in cases of sexual violence are truly transformative.*

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- *Development of the adolescents' citizenship.* This strategy stems from acknowledging the importance of female adolescents' exercising their citizenship and rights. It seeks to promote empowerment, the self-determination of their life project, and participation in decision-making in their own community space. This strategy considers engaging in consciousness-raising activities for and with the adolescents and their environment, with the purpose of strengthening their skills in identifying acts of violence; as well as to unpack the stigmas towards sexual violence survivors, pregnancy and forced maternity.
- *Affirmative actions in attending to Maya adolescents:* Affirmative actions seek to prioritize individuals who require greater attention for the obstacles and violence they have faced. This strategy stems from acknowledging that sexual violence survivors require reparation measures and specialized attention according to the harm that they have suffered. The model states the institutional changes needed so that adolescents may continue their schooling and full development as women. An example might be to grant scholarships to adolescent girls and provide support for the children that have been product of rape. The model emphasizes the importance of the adolescents' opinion in order to determine these measures. This strategy also includes the education of public officers and Maya authorities for the early identification of sexual violence against adolescents.
- *Interculturalism in the attention and application of justice:* In all measures and forms in which attention is provided, it is important to include the cosmovision of the people, the ancestral authorities, and the institutionality derived from the Peace Accords. This includes the guarantee of sworn translation for Mayan languages, respect for the spirituality, attire, and customs of Maya adolescents, as well as the promotion of actions of prevention and overcoming of racism.
- *Quality standards in attention and reparation:* In order to achieve high quality in attention and measures of reparation for adolescents with a human rights focus, and ethnic and cultural pertinence, it is necessary to strengthen the existing normative frameworks, the protocols and mechanisms of public institutionality.

This model is a first step that helps justice operators, Maya authorities and public officers identify some criteria for the attention to adolescent survivors of sexual violence and considerations for reparation measures design. It emphasizes the importance of inter-institutional coordination, as well as coordination with family and community. The voice of adolescents is fundamental to determine the appropriate steps that will ensure for them a safe space, and families that guarantee it. To achieve this, it is important to establish follow-up and support links for the families of the adolescents, such as defining

the joint actions of families, communities and institutions from their multicultural perspective.<sup>42</sup>

*b. Law initiative for the protection of girls and adolescents victims of sexual violence*

Law initiative 5376, *Law for the integral protection, access to justice, dignified and transformative reparation for girls and female adolescents victims of sexual violence, sexual exploitation and human trafficking*, was proposed by congresswoman Sandra Moran and congressman Enrique Alvarez<sup>43</sup> with the expert support of MTM. It was presented to Congress on November 3, 2017. The proposal is part of the childhood protection duties of the State, as well as an acknowledgement of pregnancies of girls younger than 14 years of age as a crime. The Law has, as its goal, “to contribute to the State’s protection of life, dignity, liberty, equality, and integrity of all girls and adolescents [victims of sexual violence, sexual exploitation and human trafficking] to guarantee their life project”<sup>44</sup>. It is an initiative that complements another existing law in Guatemala, such as the Law of femicide and other forms of violence, the Law of protection of childhood and adolescence, among other.

As previously explained, the sexual violence experienced by girls and adolescents in Guatemala is alarming. Therefore, prevention measures are crucial. Moreover, so that girls and adolescents who have been victims of sexual violence may recommence a dignified life project, it is crucial to count with measures of dignified and transformative reparations of those conditions that generate violence. The initiative includes measures of primary, secondary and tertiary protection. The first is directed towards the prevention of violence, the second towards public policy actions at the local and community level, and the third towards restitution of rights to victims. For instance, it establishes that “The Secretariat against Sexual Violence, Exploitation and Human Trafficking, shall create an integral protection strategy, to prevent the risk factors and, at the same time, to strengthen the institutions that are part of the attention route, so that they may provide an effective response to cases of sexual violence, sexual exploitation and human trafficking of girls and adolescents”<sup>45</sup>. It considers education measures for public officers, establishes the prioritization of the nuclear or extended family as a space of protection for girls and families, before sending them to State Homes, which should be temporary. Furthermore, it includes reforms to the Basic National Curriculum so that it incorporates an orientation and information module on self-protection for girls and adolescents. It also considers the

<sup>42</sup> Asociación Ixqib’ MIRIAM, *A model for dignified and transformative reparations for cases of sexual violence against Maya adolescents of Guatemala*, Guatemala, May 2018, Iximulew, Julajuj Tz’i’

<sup>43</sup> Both were elected by the Convergencia CPO-CRD (Council of the Maya People and Convergence for the Democratic Revolution) party. Morán is the first congresswoman to identify openly as a lesbian.

<sup>44</sup> Initiative 5376. <https://goo.gl/7Zzuhq>

<sup>45</sup> Ibidem. Article 7

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*In all measures and forms in which attention is provided, it is important to include the cosmovision of the people, the ancestral authorities, and the institutionality derived from the Peace Accords.*

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supply of a second medication kit for the interruption of an unwanted pregnancy during the first 12 weeks of gestation.

Sadly, the initiative was not approved by Congress due to the opposition of conservative groups to the item that proposes the interruption of pregnancy in cases that endanger the life of a girl or adolescent. This point was used by religious and fundamentalist groups to raise rejection against the initiative through the media, obscuring the other items in the initiative.

The initiative also considers the implementation of a public policy on the same issue. MTM, in consultation with other organizations, including Ixqib' MIRIAM, created the policy proposal. Interinstitutional work was done with the institutions in charge of "implementing standardized measures nationwide, which impact and guarantee the continuation of the life project of girls and female adolescents victims of sexual violence."<sup>46</sup> These proposals start by recognizing that each condition (sexual violence, forced pregnancy, and forced maternity), require specific standards that take into account the context of the girls and adolescents, and their specific state of vulnerability. These measures can be immediate action, temporary security and protection, dignified and transformative reparation, and guarantees of non-repetition. It includes an integral vision for the recovery of the life project of the girls, with measures for health, education, food, housing, recreation, justice and strengthening of State institutions that complemented Law Initiative 5376. The Presidential Women's Secretariat adopted the law initiative; however, after making a public pronouncement in favor of the law, it was dismissed by the State.

### Recommendations

Following we shall present a series of recommendations to address reparation measures for cases of sexual violence, from an integral and transformative focus, according to the crimes tried in court or the violations perpetrated during the armed conflict or against girls and female adolescents in the post-conflict period. The proposals are presented to facilitate access for women of reparation mechanisms; strengthen the education and sensitization of public officials in charge of reparation programs; improve the mechanism for implementation and supervision of reparations programs; guarantee a significant participation of survivors, especially indigenous women, in the design and implementation of reparations measures; and strengthen sexual violence prevention programs.

1. The National Reparations Program must design and implement a program specifically for reparations of sexual violence survivors with an integral and transformative focus. The program must be designed with the participation of victims' organizations and women expert in the topic. In the design and implementation, they must take into consideration international standards in the matter, the victims' real needs based on

<sup>46</sup> MTM. (2016). *Public Policy for a Dignified and Transformative Reparations for cases of sexual violence, forced pregnancy and forced maternity in girls and female adolescents, and its action plan for 2016 – 2026*. Consulted in: <https://goo.gl/NiRdn6>

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*The Nairobi Declaration establishes that "reparations must drive post-conflict transformation of socio-cultural injustice, and the political and structural inequalities that shape the lives of women and girls" .p.10*

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their ethnicity and culture, and must promote the knowledge, in all society, of the severity of the crime of sexual violence.

2. The institutions responsible for defining and implementing reparations measures—the National Reparations Program, the Prosecutor’s Office, the Judiciary, the Presidential Human Rights Commission, among others—must strengthen the education on gender and human rights of all public officers and justice operators. This will contribute to improving the quality of attention to victims, their families, and communities.

3. The Prosecutor’s Office should create a specific reparations guideline for victims of violence. The guideline should include the following elements:

- a. Start from the needs of victims and survivors. The participation of women survivors is fundamental, in order to determine reparation actions and measures. For instance, the restitution of land is important to the women of the Sepur Zarco case, because it was the fight for land which caused the disappearance of their husbands and the sexual violence against them. In this sense, it is important to analyze the context and conditions that generated the violence, in order to contribute to their modification.

- b. Apply international reparations standards in a holistic way. *The Basic Principles and Guidelines on the Rights of Victims of Violations Manifest in International Norms of Human Rights and Grave Violations to International Humanitarian Right to Reparations*, establishes five criteria. In practice, most reparations measures have focused on one or two of the following principles. However, they lose their reparative capacity if they are not applied in an integral manner:

- Restitution: Reestablishing Liberty, the enjoyment of human rights, identity, family life and citizenship, the return to the place of residence, the reintegration at work and the return of goods.
- Rehabilitation: it includes medical and psychological care, as well as legal and social services.
- Satisfaction: it includes measures for the search for truth, dignification and divulgation.
- Compensation: it must be given in a manner appropriate and proportional to the gravity of the violation and the circumstances of each case, for all the damages economically appraisable that are a consequence of the violations.
- Guarantees of non-repetition. This principle includes preventive public measures, in the areas of security, education, health and justice. From the focus of transformative reparations, this principle is

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*The United Nations has established basic principles and guidelines on human rights victims’ right to reparations, among which are restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. p. 11*

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the widest and it has the possibility of designing measures that generate changes in the conditions of gender inequality.

- c. Focus on gender with cultural pertinence. Reparation measures must be oriented towards the modification of gender inequality. Violence against women, particularly sexual violence against indigenous women, is the result of patriarchy and racism that generate inequality. When measures are promoted that place girls, adolescent women and women in traditional roles, it runs the risk that they may become victims of violence again. This requires the strengthening of analytical skills of prosecutors, judges, justice operators and the organizations of women, children and human rights.
- d. Dignification of survivors, without re-victimization. Sexual violence is one of the crimes that cause most stigma against its victims, and not the perpetrators. It is important to return dignity to the victims; this may be done through acknowledgements, divulgation of sentences through diverse media (radio, videos, publications), creation of memorial sites, for instance. However, it is necessary that survivors feel that these actions dignify them and that they do not position them as victims; in this sense, it is important to strengthen local and community support and consider opposite sectors. That is, if the context is not favorable, it is best not to place the victims in a vulnerable position.

This guide must be shared with the judges and other justice operators in order to count with a unified instrument on the mechanisms of reparations for the justice system.

- 4. The execution judges must supervise the implementation, effectively and periodically, of reparations sentences adjudicated by Guatemalan courts, and not limit themselves to controlling the execution of penalties. In the same manner, the justice system must impose administrative and judicial sanctions on officers and institutions that do not comply.
- 5. The State of Guatemala must create effective mechanisms to execute and supervise the implementation of reparations sentences, individual as well as collective, ordered by the Inter-American Court of Human Rights, which are compulsory in character.
- 6. The State of Guatemala must create an integral policy, with cultural pertinence, in order to attend to girls and female adolescents victims of sexual violence. It is necessary to strengthen the Secretariat against Sexual Violence, Exploitation and Human Trafficking, and secure the funds for reparations for girls and adolescents that the law grants in Decree Number 9-2009. In this respect, the proposals from MTM and Ixoquib' Miriam presented in this document may serve as a basis for said policy.
- 7. The sexual violence prevention programs must be strengthened and coordination mechanisms between the ministries of Education, Governance, and Health; the Women's Secretariat, Secretariat against Sexual Violence, Exploitation and Human

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*Participative focuses are a way to strengthen women's security and provide adequate measures and forms of reparations in agreement with the demands of its beneficiaries. p. 11*

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Trafficking; the National Institute of Victim and the Human Rights Ombudsman, must be improved. The teaching of internal armed conflict cases must be encouraged, as well as of the rights of girls and women. Also, the age, socio-economic and cultural context of the new generations must be taken into consideration, so that the programs are pertinent and effective.

One of the pillars of transformative reparation is through the voice and decisions of victims and survivors. In this sense, it is important to strengthen the work of victim empowerment that women and human rights organizations do through training workshops, human rights education, and psychosocial care.

Finally, it is important to highlight that reparation is a human right when crimes and damages have been perpetrated against at the individual or collective level. Transformative reparations may be the medium by which the structural conditions that allow violence against women are changed. However, reparation responds to the individual rights of victims of grave violations of human rights and must not be understood as a replacement for the social programs nor for the economic development policies that Guatemala needs.

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*Reparation responds to the individual rights of victims of grave violations of human rights and must not be understood as a replacement for the social programs nor for the economic development policies that Guatemala needs.*

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### Initials and Acronyms

|           |   |
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| CC        | Constitutional Court  |
| CEH       | Commission for Historical Clarification                                 |
| IACHR     | Inter-American Court of Human Rights                                    |
| CPP       | Penal Code  |
| ECAP      | Community Psychosocial Action Team                                      |
| FONTIERRA | Land Fund   |
| INACIF    | National Institute of Forensic Sciences of Guatemala                    |
| MP        | Prosecutor's Office   |
| MTM       | Women Transforming the World  |
| OACNUDH   | Office of the United Nations High Commissioner for Human Rights         |
| OSAR      | Observatory on Sexual and Reproductive Health                           |
| PDH       | Human Rights Ombudsman  |
| PNR       | National Reparations Program  |
| SAA       | Presidential Secretariat of Agricultural Issues                         |
| SEPAZ     | Peace Secretariat   |
| SEPREM    | Presidential Women's Secretariat  |
| SVET      | Secretariat against Sexual Violence, Exploitation and Human Trafficking |
| UNAMG     | National Union of Guatemalan Women                                      |

Impunity Watch is an international non-profit organization that promotes accountability for serious human rights violations in countries that emerge from a violent past. We conduct research on the root causes of violence and impunity, monitor compliance with the international obligations of States and formulate public policy recommendations based on research. In addition, we promote a comprehensive approach to address violence, gender inequality and impunity; Our goal is to assist civil society organizations, particularly victims and women, to have a greater impact on transitional justice policies and to combat impunity.

The publication is part of the programme “Tackling Violence against Women beyond Borders: Burundi, Guatemala & Liberia” is implemented by a consortium composed of Oxfam-Ibis and Impunity Watch. It aims to promote a life free from violence and as active citizens for women, adolescents and girls. By empowering women as change agents, fostering greater awareness of gender equality and women’s rights, while enhancing the prevention and response to violence against women by public institutions and regional and international authorities, it seeks to address unequal gendered power relations through a transformative approach. The programme is financed by the “Funding Leadership and Opportunities for Women” (FLOW) fund set up by Ministry of Foreign Affairs of the Netherlands.

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