Chapter 5 Case Study - *Plan de Sánchez v Guatemala*: Genocide in Guatemala

5.1 Introduction

Guatemala was the site of one of the longest running non-international armed conflicts in history, spanning a terrible 36 years from 1960 to its formal conclusion with the peace accords of December 1996. Under the rationale of depleting the guerilla support base by '*quitando el agua al pez'* (removing the water from the fish), hundreds of massacres were committed against rural, predominantly indigenous communities in the late 70s and especially the early 1980s. One of these massacres took place in the small *aldea* of Plan de Sánchez, during which 268 indigenous villagers lost their lives in one morning, on 18 July 1982.

From the mid-1990s I worked for the 'Centre for Legal Action in Human Rights in Guatemala' (Centro para Acción Legal en Derechos Humanos, CALDH) on a range of human rights issues and litigation, predominantly preparing and presenting cases to the Inter-American system. Over time I focused my work on the massacres, representing the community of Plan de Sánchez before the Inter-American Commission on Human Rights (IACommHR/ the Commission). The case progressed from there to the Inter-American Court on Human Rights (IACtHR/ the Court) which handed down the *Plan de Sánchez v Guatemala* judgment in 2004.[1]

This case study considers the strengths and weaknesses of that litigation process, its possible impact and its limitations. It first provides the context of the litigation - the background to the massacres, broader conflict and transition in Guatemala - , and looks at the various types of human rights litigation that were undertaken at different stages, of which the *Plan de Sánchez* case was an early example (5.2).The next section sets the *Plan de Sánchez* case within this context (5.3), while the one that follows the heart of the study, considers the ways in which the case may have contributed to change on multiple dimensions (5.4). While fully recognizing the impossibility of establishing the specific contribution that this very process may have made, it offers my perspective on its possible significance, as formed by my own experience and research and discussions with other researchers and activists involved in or affected by this work more recently.

This study is intended to encourage consideration of the impact of the process from several temporal perspectives. The significance of such processes is often considered in terms of the broader struggle against impunity - and for accountability - in Guatemala. Indeed, this case has been cited as belonging to the 'foundational phase' of important, on-going, criminal accountability processes for genocide in Guatemala.[2] One might also evaluate its contribution to developments in domestic investigation and prosecution practices more generally in Guatemala today. Alternatively, we may consider the significance of the case by reference to

[1] IACtHR, *Plan de Sánchez Massacre v Guatemala*, Judgment (Merits), IACtHR Series C No 105 (29 April 2004).

[2] See below sec 5.4.3 for legal impact, as well as prosecution of low level officials and the historic, if frustrated, trial of Ríos Montt. See also H Bosdriesz, 'The Contribution of the Inter-American Court of Human Rights to Domestic Accountability Efforts for Serious Crimes: Fact or Fiction?' (Human Rights Integration Network Conference, The Global Challenge of Human Rights Integration-Towards a Users' Perspective, Ghent, December 2015) available at www.hrintegration.be/conferences.

the IACtHR's comprehensive reparations judgment over a decade ago.[3] The impact of that judgment, and its gradual implementation, for victims, for subsequent policy, legislation and practice and for the whole process of transition, are all, unquestionably, a key part of the picture. I would suggest, however, that to appreciate the full significance of the case, we must cast our eye further back in time, to the very earliest days of the preparation of case. In this way we will not lose sight of the informational and mobilizing power that the process had - from its very inception, throughout the research, preparation and participation phases, and including its multiple consequences - right up to the present day. Such a comprehensive view is often missing from post-process analyses of impact.

5.2 Background

The 36-year Guatemalan armed conflict carried an estimated death toll of around 200.000. According to the UN truth commission set up following the accords ('Comisión d'Esclaricimiento Historico,' Commission for Historical Clarification, CEH), 93 per cent of those deaths were attributable to the armed forces and 83 per cent of the victims were indigenous Maya.[4] The Guatemalan army reportedly razed 626 villages across the country, and left an estimated 1.5 million displaced.[5] One such village was the small *aldea* of Plan de Sánchez, Baja Verapaz department, in the Guatemala mountains. On the morning of 18 July 1982, the army and local 'volunteer' civil patrols, 'Patrullas de Autodefensa' (PACs), murdered, raped, razed crops, dwellings and infrastructure, wiping out 268 indigenous villagers and Plan de Sánchez itself. Survivors fled, forced off the land they would return to and try to rebuild years later.

Although the Guatemalan conflict itself came to an end in 1996, the massacres ceased earlier, with the return to civilian rule following the military coup of 1983, which would be marked in 1985 by the adoption of a strong, rights-friendly constitution. That notwithstanding, political transition was never very solid: the twin forces that had supported the dictatorial regimes of the late 70s and early 80s - the military and a powerful private sector representing a tiny economic elite known as the 'Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras' (CACIF) - continued to dominate Guatemalan politics.[6] This could be seen most strikingly in the re-emergence and political success of General Efraín Ríos Montt, who had been head of the military during the worst period of massacres, and founded the 'Frente Republicano de Guatemala' (Guatemalan Republican Front, FRG) in 1989. Unsurprisingly, during the 90s complete secrecy continued to shroud the military policies pursuant to which the massacres had unfolded ('Plan Victoria 82' and 'Sofía'). Nevertheless, a painstakingly slow process of enquiry by journalists and NGOs did get underway in the early 1990s[7] that would eventually bear fruit and provide

[3] See *Plan de Sánchez Massacre v Guatemala*, Judgment (Reparations) IACtHR Series C No 116 (19 November 2004).
[4] See CEH, 'Guatemala: Memory of Silence', *Report of the Commission for Historical Clarification – Conclusions and Recommendations* (25 February 1999) p 34, para 82, available at www.aaas.org/sites/default/files/migrate/uploads/mos_en.pdf.
[5] Internal Displacement Monitoring Centre, 'Guatemala: Internal Displacement in Brief - As of December 2011' (2011) available at www.internal-displacement.org/americas/guatemala/summary.
[6] This elite is often seen as represented by "CACIF" agricultural and financial association; see www.cacif.org.gt.
[7] Many collaborators with CALDH in the preparation of cases included the Instituto de Estudios Comparados de Ciencias Penales/Guatemala (ICCPG), the Fundación de Antropología Forense de Guatemala (FAFG) and internationally e.g. the American Association for the Advancement of Science in the US.

evidence for legal action. That litigation would in turn help uncover more information, paving the way for future legal and political action.[8]

Guatemalan civil society groups grew out of the harsh repression of the 1980s in an effort to provide protection and support.[9] Threats against them and against judges and lawyers involved in human rights cases have long impeded human rights work,[10] and have been a feature of the cases concerning the massacres in Guatemala specifically.[11] Guatemalan civil society also suffered itself the effects of a long and divisive conflict, wherein divisions within the armed and political opposition contributed to fragmentation among NGOs too. This made broad-based, coordinated civil society work on the genocide or other issues challenging, notwithstanding pockets of intense and fruitful cooperation on particular cases or groups of cases.

The economic inequality and injustice that had underpinned the conflict in the first place had of course not been resolved by the 1990s, and the implications of privilege, power and prejudice were never far beneath the surface. (This remains the case today). Weighty obstacles to justice invariably emerge in a context in which the most disenfranchised seek to call to account the most powerful economically, politically and militarily.[12]

Unsurprisingly then, by the time I moved to Guatemala, in January 1995 - on the 10-year anniversary of the scintillatingly progressive constitution - there had been no reckoning with the past, little public discussion and hardly any real attempt to secure truth, justice or reparation for the thousands of victims of the massacres. At the same time, it was a moment of real opportunity and considerable optimism: the negotiations between the government, military and the guerrilla (represented by the high command of the 'Unidad Revolucionaria Nacional Guatemalteca' (URNG), an umbrella organization in which the various guerrilla

[8] Eg during the criminal trials for genocide, the Justice and Reconciliation Association ('Asociación Justicia y Reconciliación', AJR) demanded that the Guatemalan Army hand over the campaign plans dubbed 'Victoria 82' (Victory 82) and 'Firmeza 83' (Firmness 83) and for an operation labeled 'Sofía'. The Army gave the Courts of Justice the first two (in a more complete form than they had given to the CEH), but claimed that the file on Operation Plan 'Sofía' had been lost. At the end of 2009, US based analyst Kate Doyle received one of the original copies of that plan; available in Spanish at www.alainet.org/es/active/52081.

[9] See 'Grupo de Apoyo Mutuo' (later 'Asociación de Familiares de Detenidos y Desaparecidos de Guatemala,'), said to be inspired by 'Madres' and 'Abuelas de la Plaza de Mayo' in Argentina (cited in the Argentina case study in chapter 7). It was set up in the 1980s and followed by other human rights groups to seek information on the disappeared, and later to pursue justice.

[10] The killing of a judge and a police officer in the course of the investigation of the extrajudicial execution of anthropologist Myrna Mack in the early 1990s, or of Bishop Gerardi following the Archbishop's report noted below (n 24), were notorious examples. For more information on ongoing threats to prosecutors and judges who years later would dare to prosecute senior military/political figures such as Ríos Montt, see eg US Department of State, 'Guatemala 2016 Human Rights Report', *Country Reports on Human Rights Practices for 2016* (2016) available at www.state.gov/documents/organization/265802.pdf; and Human Rights Watch, 'Guatemala: Events of 2015' (2015) available at www.hrw.org/world-report/2016/country-chapters/guatemala.

[11] Judges involved in the high level prosecutions of those responsible for the massacres were subject to threats and to precautionary measures from the IACommHR on 28 June 2013. The Commission considered that they were 'at risk as a result of their judicial activities in various processes related to organized crime, cases against soldiers accused of serious violations of human rights, as the massacre of Plan de Sánchez and Las Dos Erres among others;' see IACommHR, 'Precautionary Measures in favor of Judges Iris Yassmín Barrios Aguilar, Patricia Isabel Bustamante García and Pablo Xitumul Paz, judges on the First Criminal Sentencing Court for matters relating to Drug Trafficking and Major Crimes against the Environment, responsible for trying José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez, for the crime of genocide', PM 125/13, *Iris Yassmín Barrios Aguilar et al, Guatemala* (28 June 2013).

[12] Notably, just one year after the peace accords, the elections were won by the FRG, founded by the former general and dictator Efraín Ríos Montt, who became president of the Guatemalan Parliament.

movements active in Guatemala had come together) had been ongoing since the mid-80s and were well underway.[13] (To be sure, details of how questions of justice, impunity or amnesty would be handled - or the indigenous accords, had not yet been fully fleshed out).

In this respect, the timing of the original filing of the massacres cases was significant:[14] the *Plan de Sánchez* petition was lodged in July 1996, six months before the peace accords were signed. It therefore had the opportunity both to reflect and to feed into live political issues of the moment.[15] To some extent the petition became a means to underscore and publicise the international obligations set out in the brief, and to give a voice to the victims and petitioners in the wider political context as well as before the Commission itself.

The timing was also relevant, for the wave of movements for accountability that was just gathering steam, at the same time, elsewhere in the world.[16] There was a growing alertness internationally to getting the interrelationship between peace and justice right, and to the perils of pursuing the former at the expense of the latter, experiences in Argentina and elsewhere in the region, as well as developments beyond it.[17] The political and legal uncertainty of the moment effectively enhanced the potential significance of legal action. The context was an outward-looking Guatemala in which a long-suffering civil society movement was armed with a series of legal and political tools, on both national and the international levels. There was reason to be optimistic as we prepared the *Plan de Sánchez* case in 1995 and presented the petition in 1996.

While the genocide litigation was still in its infancy, the landscape changed again. First, the negotiation of an amnesty law led to the passing of the 'National Reconciliation Law' in 1996 as part of the peace accords.[18] Ultimately, although the potential for misinterpretation and application of the amnesty remained matters for concern (and indeed the law was later challenged),[19] the amnesty was certainly far narrower, and more reflective of the State's international obligations, than previous amnesties in the region had been. It 'extinguished criminal responsibility' for crimes committed during the civil war by members

[13] The negotiations started in the late 1980s as part of the larger process to bring peace to Central America, and the UN became more actively involved when the UN Mission for the Verification of Human Rights and Compliance with the Comprehensive Agreement on Human Rights in Guatemala (later UN Verification Mission in Guatemala, MINUGUA) was established through UNGA Res 48/267 (19 September 1994) UN Doc A/RES/48/267; see www.un.org/en/peacekeeping/missions/past/minuguabackgr.html for more information.

[14] Some reports suggest that the case was filed after frustration with the peace accords and the Reconciliation law, but in fact it began earlier, six months before the accords, based on the de facto impunity in Guatemala. This was controversial among some who felt that litigation should not 'interfere' with the peace process.

[15] Discussions as to the nature and limits of international legal obligations to investigate had particular political significance and currency in the context of the negotiations of the amnesty laws.

[16] See K Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York, Norton, 2011).

[17] The conflict having drawn to end in the former Yugoslavia, and the genocide in Rwanda had just led to the establishment of international tribunals ICTY (through UNSC Res 827 (25 May 1993) UN Doc S/RES/1373), and ICTR (through UNSC Res 955 (8 November 1994) UN Doc S/RES/955).

[18] Ley de Reconciliación Nacional, Decreto No 145-1996, Diario de Centro America No54 (27 December 1996).

[19] This law would later be challenged domestically, unsuccessfully, as noted below in s 5.4.3.1; the incompatibility of amnesty for serious crimes under international law would be key to the Guatemalan Constitutional Court's decision in October 1997 to uphold the law as capable of interpretation and application 'in a way consistent with international law"' and therefore constitutional; see Corte de Constitutionalidad de la República de Guatemala (Guatemalan Constitutional Court), Decision *Nos 8-97* and *20-97*, 7 October 1997, IV. The amnesty is now at the heart of another case pending before the IACommH.

of the insurgency and the State forces,[20] but it notably enshrined exceptions for genocide, enforced disappearance, torture and other crimes in respect of which responsibility cannot be 'extinguished' under international law.[21] Of concern to some of us however - though given much less attention, were the existing amnesty laws that (were not repealed and) provided blanket amnesty. As we feared, these would come to be invoked later on.[22] But discussions about the nature and limits of the international legal obligation to investigate had greater significance and currency in the context of the negotiation of the peace accords. Consequently, questions with regard to the interpretation of the new amnesty (or 'reconciliation') law - now in tension with the existing amnesty laws - disappeared below the radar.

Meanwhile, other legal developments were providing tools for subsequent litigation, in particular, the growing number of ratifications by Guatemala of human rights treaties, which under the stellar terms of the new constitution, had the highest rank in the legal order. In turn, in 1996, shortly after massacres cases including *Plan de Sánchez v Guatemala* were first lodged before the IACommHR, the CEH was established under the 1996 peace accords - a crucially important, although limited, endeavor. It reached significant findings and uncovered important information, but it could not 'name names' (identify those responsible) and its limited dissemination and endorsement by the state has been said to have 'flouted the peace accords' on which its establishment was based.[23] An unofficial parallel truth enquiry was established through the Archbishop's human rights office - an important NGO in Guatemala - under the leadership of Bishop Gerardi, in part to address these limitations.[24] In a detailed report (entitled '*Nunca Mas'*, suggesting again the influence of the earlier Argentinian commission by the same name, as noted in the Argentina case study[25]), it did the naming and shaming that the official commission could not. Both made a contribution towards the search for the truth and, seen from the perspective of litigation that followed, both provided invaluable sources of information and evidence. The fact that, two days after the report was published, Bishop Gerardi was murdered sends a chilling reminder of the challenges of working for justice in Guatemala that are an inescapable part of the context. Some of the challenges facing those seeking to work on justice in Guatemala at that time persist, if in changed form, to the present day.[26]

It was in this changing and challenging landscape that the *Plan de Sánchez* case was prepared and brought in the mid 1990s - one of a number of legal steps, within a broader faltering movement towards truth and justice in Guatemala.

---

[20] See also E Braid and N Roht-Ariazza, 'De Facto and De Jure Amnesty Laws: The Central American Case' in F Lessa and LA Payne (eds), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (Cambridge, Cambridge University Press, 2012) 185.

[21] National Reconciliation Law Art 8, above n 18.

[22] See H Duffy, 'Las Amnistías Vigentes en Guatemala; el Arma Secreta de la Impunidad en las Negociaciones de la Paz', *Revista el Debate*, November 1996 (in Spanish). They would later be invoked by defendants when the National Reconciliation Law was denied.

[23] Impunity Watch/ Convergencia por los Derechos Humanos, 'La Persistencia de la Verdad: A diez años del informe de la CEH' (25 February 2009) 17-20, available at www.impunitywatch.org/docs/La_persistencia_de_la_verdad-CEH.pdf (in Spanish).

[24] Proyecto Interdiocesano de Recuperación de la Memoria Histórica, 'Guatemala: Nunca Más' (24 April 1998) available at www.derechoshumanos.net/lesahumanidad/informes/guatemala/informeREMHI-Tomo1.htm (in Spanish).

[25] See Chapter 7 on Argentina.

[26] See above n 11 on precautionary measures resulting from threats to judges and civil society.

Litigation in relation to the massacres unfolded at different stages before various fora - domestic Guatemalan courts, foreign courts exercising universal or extra-territorial jurisdiction, and supranational courts, especially the Inter-American system. This was not so much part of a highly coordinated and multi-faceted long-term legal strategy, as a largely uncoordinated but broadly complementary set of legal actions, by different actors working on different cases in different contexts. Nonetheless, the diversity and multiplicity of litigation is relevant to its overall impact, because a particular piece of litigation can benefit from the dynamic that arises between different approaches to similar facts, that could not have arisen from any one in isolation.

The first type of legal action of relevance involved fruitless attempts, during the mid-1990s, to impel the Guatemalan authorities to investigate and ensure accountability for the massacres. This was the focus of efforts when I joined CALDH in 1995, which had been formed five years previously by Guatemalan former labour lawyer Frank Larue, supported at that time by US and later by several other international colleagues.[27] They set up office in Guatemala City in the early 90s and developed relationships with local civil society groups, political actors and communities who had suffered in various ways from the repression of the early 1980s - including through the massacres - and began discussions about justice and accountability. The legal work described below had its roots in these connections and conversations. By 1995, requests to the authorities to investigate and prosecute had been made, but had fallen on deaf ears.[28] I joined colleagues in sitting in public ministry waiting rooms and on hold, to find that files were 'missing' that day. Relevant officials were always on a break. If you proved obstinate, trips got longer and excuses more elaborate. It was clear that little would move regarding the massacres in Guatemala without serious external pressure and support.

This inertia provided the impetus for the cases to be taken to the Inter-American system, including the *Plan de Sánchez v Guatemala* case presented to the IACommHR in July 1996, and ultimately decided by the IACtHR in 2004. While it is this case that is the subject of this study - and it will be discussed in more detail below[29] - it should be noted that it unfolded alongside other important cases, related to other massacres, in other regions of the country, presented at roughly the same time, namely the *Dos Erres v Guatemala* case brought by the Center for Justice and International Law (CEJIL), which led to a 2009 judgment of the Court.[30] While this dual approach may have had less to do with strategic planning than with a lack of coordination and communication between NGOs, the parallel cases actually created a useful dynamic, each benefitting from advances and responding to setbacks in the other, as noted further below. Much more recently, cases have gone to the Commission and Court on other massacres, building on previous decisions and pushing forward for more comprehensive and effective implementation.[31]

---

[27] The original US lawyers were Anna Gallagher and Wallie Mason.

[28] Perhaps the first was made in relation to Rio Negro in 1993, and others including Plan de Sánchez had followed, but met with little results.

[29] See s 5.3.

[30] See IACtHR, *Las Dos Erres Massacre v Guatemala*, Judgment (Preliminary Objections, Merits, Reparations, and Costs) IACtHR Series C No 211 (24 November 2009).

[31] See eg *Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v Guatemala, No 12.588,* referred to the Court by the Commission on 16 September 2014; See for details IACtHR Press Release No 100/24 (17 September 2017) available at http://www.oas.org/en/iachr/media_center/preleases/2014/100.asp.

In turn, while both of these cases were pending before the Commission, other NGOs took different types of litigation transnationally. This included ventures to seek investigation and prosecution of Guatemalan perpetrators by Spanish courts under its universal jurisdiction laws.[32] The effects of these, like other universal jurisdiction claims brought in Spain and elsewhere, are difficult to pinpoint. Although ultimately unsuccessful, these initiatives did generate international attention and spark discussion at a formative stage in Guatemala, as to where and how justice should best be done, and about the reality and implications of impunity in Guatemala. These actions have also been described as 'lending legitimacy to the demands of victims groups' and are particularly significant in Guatemala where threats and intimidation, and the ongoing power of those responsible, has undermined and thwarted civil society.[33]

Finally, and most important of all, has been legal action within Guatemala, especially a growing number of low-level prosecutions and - most recently - the prosecution of the former president, Ríos Montt, and other high-level officials. Several processes have unfolded before Guatemala's courts since the bleak period of the filing of the *Plan de Sánchez* petition, when there was plainly no prospect of justice at home. These have tested the limits of the amnesty laws, clarifying the relevance of international standards on investigation and accountability - relying strongly on Inter-American standards. What emerges from this longer-term impact on justice in Guatemala, is how a dynamic exchange between cases, nationally and internationally, has gradually helped to move justice forward.

5.3 The Plan de Sánchez Case

In January 1995, when I joined the CALDH legal team, the focus was on collecting information, and on community relations and seeking criminal investigation. The need to seek greater international engagement was clear and we had naively optimistic discussions about a possible case before the International Court of Justice, the potential and relative merits of UN bodies and other fora, before settling on proceeding to the IACommHR as the most realistic forum before which to present – as soon as possible - the case against Guatemala.

5.3.1 Developing Community Relations

As a young and relatively inexperienced lawyer working on these issues in Guatemala, I not infrequently look back and shudder at my naïve faith in the legal process, and all that I would now do differently to engage more effectively the tools at our disposal. But one thing we did right was the amount of time we spent on meetings and workshops with communities. While we lacked training and preparation, we did intuitively what we could to develop relationships and trust, seeking out ways to have difficult conversations that were nevertheless open, honest, safe and meaningful, and mindful of cultural, political and security challenges along the way. The composition of the team as it was, consisting of committed Guatemalans and internationals, with people who spent considerable time with communities, was an essential aspect of making those conversations feasible.

Over a period of just over a year, during multiple trips, workshops and meetings in the community and outside, we discussed whether they would be interested in pursuing justice in

[32] The first of several attempts was brought by the Menchu Foundation in 1999, while the *Plan de Sánchez* case was pending. Several others have been brought since but have not prevailed.
[33] See eg L Skeen, 'Universal Jurisdiction: Spain Steps Down' Comment on Global Policy Forum (24 August 2009) available at www.globalpolicy.org/international-justice/universal-jurisdiction-6-31/48104.html.

some form or another. We tried to explain the possibilities and limitations of a completely alien international system. With the benefit of hindsight, and considering ideal conditions (neither of which ever exist) we should have had psycho-social support for the victims and communities who were being asked, indirectly, to confront - and were beginning to speak up about, traumatic experiences and ongoing terror, for the first time.

A related challenge, as always, was how to handle community representation while ensuring so far as possible that all had a voice.[34] Informal community support and representation groups were formed by community members, facilitating the case preparation and providing a crucial form of mutual support. In time, some of the same survivors and community members would form part of an effective Justice and Reconciliation Association ('Asociación Justicia y Reconciliación', AJR)[35] active in the criminal prosecutions of some of those responsible for the massacres many years later.[36]

5.3.2 Researching and Preparing the Case

Challenges arose from the outset in advising clients in a context in which our knowledge and ability to predict what could go wrong, or right, was limited. We could not know about possible negative implications, including for security, that might flow from bringing the case, and we could offer no real protection. We did not know either what they really stood to gain from the process. At that stage in the development of the Inter-American system, jurisprudence was less developed on impunity issues or reparations than it is today, and in the context of a Commission that was a political operator and therefore somewhat unpredictable, it was particularly difficult to know what we could expect. The approach was therefore to err on the side of caution, in a way that made international litigation sound distinctly unrewarding. As noted below,[37] when we were asked if the claimants could secure socio-economic support as an outcome, I was highly skeptical and advised that they most likely would not. I was pleased to be wrong many years later, when the *Plan de Sánchez* judgment would turn out to include far-reaching socio-economic measures. As lawyers we are often are pressed to predict the future; we must ensure that we *advise* rather than predict, and do so cautiously, while being aware that impact may well go beyond what we could possibly have foreseen.

An early area of focus in the preparation of the *Plan de Sánchez* case was on securing better access to information, to enhance our own, and, more importantly, the community's understanding, of what had happened in 1982. This was crucial, given that at this point there was no truth commission as yet, and secrecy and repression were the rule. The research involved Guatemalan experts carrying out basic investigative work, but given the challenges noted above in a context where access to files was extremely limited and difficult within Guatemala, it required international support from journalists, NGOs and solidarity networks. Piecing together available information on different massacres, a pattern emerged that showed how the Plan de Sánchez massacre unfolded in the context of a broader systemic State policy.

Alongside gaining this historical and political contextual overview, the evidence of those affected was critical. Many witnesses' testimonies were taken from communities and

[34] This was done through smaller and larger meetings, an effort to draw in men and women, while trying to ensure that questions of representation were made by the right people, in consultation, and not by us.
[35] See above n 8 for more information.
[36] See below s 5.4.1.3.
[37] See s 5.4.2.2.

eye witnesses. Survivors and others affected shared their personal experiences. This process, which again, ideally would be done with a greater level of support, was moving and for some cathartic. The collection of witness statements, which would (as would all the evidence) be developed for criminal cases, spoke powerfully, recording for the first time the real personal impact of the massacre of 28 July 1982.

5.3.3 Filing the Case

The *Plan de Sánchez* petition was filed before the IACommHR on 25 October 1996. We argued violations of multiple rights, committed as part of a policy of genocide against the indigenous population. The massacre was described in detail through the voices of victims. Placing their accounts in the context of the broader state policy brought to light, despite limited available evidence, the widespread and systematic nature of the massacres. We argued that the State was obliged to investigate, prosecute, punish and provide reparations, which it had woefully failed to do, and that there was no available and effective domestic remedy in Guatemala at that time.

The filing itself had few public reverberations. This was partly due to what was, with hindsight, an unduly limited public strategy at the time. This reflected a lack of experience and a different sense than now of the significance of publicity in effecting change. But there was also a degree of fear and ambivalence among some involved, as to whether the sensitivity of the case was such that publicising it would help or hinder, strengthen or render vulnerable those in whose name the case was brought. On reflection, these questions were among the key questions to resolve prior to filing and would have deserved greater strategic clarity. Easy to say and less easy to do when so much is uncertain as to the implications of the case on people's lifes.

As was typical, the case took years to conclude. But already in the first year, through preliminary (private) hearings and direct channels of communication with the government (through the 'Comisión Precidencial Coordinadora de la Política Ejecutivo en Materia de Derechos Humanos' which represented the State before the Commission and Court), the case generated discussions internally within government and an opportunity to engage with it, in a conversation on responses to the massacres. It was not until 11 March 1999 that the IACommHR would decide on admissibility.[38] Its report on the merits, and recommendation to transfer the case to the Court, followed a few years later.[39]

5.3.4 Judgment and Implementation

The judgment itself handed down on 2004 found multiple violations and called on the State to take a broad range of measures of reparation, in a landmark judgment on reparations in the Inter-American system, including individual measures for identified victims and collective reparations, as outlined in the following section. It gave rise to a long (and on-going) process of interaction between survivors, civil society, the State and the Inter-American system, through the implementation procedure before the Court.[40] More broadly it fed into a

[38] Decision adopted by the IACommHR during its 102nd Regular Session, Admissibility Report No 33/99, *Case 11.763* (Plan de Sánchez Massacre) (11 March 1999).
[39] IACommHR, Petition against the Republic of Guatemala in Relation to *Case No 11.763* (Plan de Sánchez Massacre), 31 July 2002; see also *Plan de Sánchez* Judgment (Merits), above n 1, at para 9.
[40] See eg IACtHR, *Plan de Sánchez Massacre v Guatemala*, Monitoring Compliance with Judgment, Order of 1 July 2009, available at www.corteidh.or.cr/docs/supervisiones/sanchez_01_07_09_ing.pdf; *Plan de Sánchez*

conversation around the nature of the wrongs in Guatemala, and necessary responses, including accountability and coming to terms with the past. It was followed by, and to some degree reflected in, ensuing domestic processes, including challenges to amnesty laws, and ultimately the long awaited criminal cases against individual perpetrators described below.

5.4 The Impact of the *Plan de Sánchez* Litigation?

5.4.1 The Power of the Process Itself

5.4.1.1 Research, Preparation, Confronting the Truth

When we think of impact we tend to focus on judgment day, or on how the implementation of judgments changed lives or influenced law, policy or practices. Like other cases though, the *Plan de Sánchez* case shows the power of the process itself, even from the very earliest days of the preparation of the case. The processes of discussion with the communities described above,[41] provided a vehicle for victims' stories to be heard, and collected, for the first time.

The research on the pattern of massacres that had swept the country - however imperfect and incomplete at that point - proved powerful in discussions with the community. Information pulled together indicated the nature of the sweeps across the country, bringing a very different perspective on the massacre to those most affected by it. It was chillingly apparent, as conversations began to open up, how many of the community harboured doubts about who had been responsible. Were family or personal conflicts to blame for triggering this terrible onslaught of violence? The information gathered and shared helped to dispel some of the myths and uncertainties about what had befallen them and why. This was particularly helpful in a context where illusions and recriminations were not uncommon and fear and suppression widespread. The great importance of this part of the process was that it encouraged members of the community to share their own stories and hear those of others, in most cases for the first time, revealing to them that they were not 'responsible for their own misfortune'.[42]

5.4.1.2 Setting the Record Straight

The research and consultation phase served an important restorative purpose, but provided as well as, of course, an evidentiary base for the case itself. The case preparation effectively created the beginnings of a historical record, which would be developed by subsequent legal and political action, by truth commissions and by the unfolding litigation process and judgments themselves. The litigation process was a catalyst to important specific revelations from the State's side, when, within the framework of the criminal trials for genocide in the country, long-standing efforts to access military plans finally resulted in the Army giving the Guatemalan Courts of Justice the first two [military] plans in a more complete form than they had given to the CEH.[43]

The refusal of the State to share information was - as it often is - illuminating, and exposed the fallacy of official positions: the government claimed for example, before the

---

Massacre v Guatemala, Monitoring Compliance with Judgment, Order of 21 February 2011, available at www.corteidh.or.cr/docs/supervisiones/sanchez_21_02_11_ing.pdf (only in Spanish).

[41] See s 5.3.1.

[42] Malumud Goti, cited in Chapter 3.

[43] The applicants sought disclosure of the Guatemalan Army's military campaign plans 'Victoria 82,' 'Firmeza 83' and operation 'Sofía'; see above n 8 for more information.

Commission and Court, that one of the military plans - 'Operation Plan Sofía' - had been lost, whereas it was later uncovered by a US NGO. The gradual uncovering of erstwhile secret details, coupled with the sheer mass of testimony, contributed to a growing historical record of violations in Guatemala. This was particularly important before the complementary but much broader process by the CEH. By the time the *Plan de Sánchez* case proceeded from the Commission to the Court, the CEH would in turn feed into the evidence presented to the Court, as it would again in subsequent criminal cases within Guatemala. Litigation has been part of a gradual and ongoing process of uncovering the truth, and with time turning that information to evidence and to growing demands for justice.

5.4.1.3 Organization and Mobilization

Meanwhile, the community organized itself for the purposes of representation and support. The Justice and Reconciliation Association (AJR) was formed for the purpose of pursuing justice in domestic courts;[44] eventually, this would be supplemented by the 'Coordinación de Acompañamiento Internacional en Guatemala' (Coordination of International Accompaniment in Guatemala, CAIG).[45] The AJR has served to give a voice, visibility and profile to victims and communities, and to facilitate their participation in discussions relevant to justice, with benefits that go beyond the cases themselves. This is an obvious manifestation of the broader positive mobilizing impact that the search for justice in Guatemala has had on Guatemalan civil society. It has enhanced the international profile of key actors and organizations from within civil society, as well as of the prosecutor's office and to some extent the judiciary.[46] The beneficial effects of the search for justice on civil society, and in particular the organization of groups from within communities or survivors, was described by one interviewee - a lawyer involved in the cases - as perhaps the most important impact of the litigation on genocide in Guatemala.

5.4.1.4 Recognition and Apology

Recognition of wrongs is often considered a function of courts and an important impact of judgment. The *Plan de Sánchez* case shows how recognition by the State authorities themselves can arise during the litigation process, before judgment was rendered, prompted - as is often the case - by the impending public exposure of the hearing before the court. The State's movement toward recognition and expressions of regret unfolded incrementally, throughout the process. Firstly, the Guatemalan State withdrew its preliminary objections and accepted responsibility in writing before the hearing, and publicly during the first hearing in Court.[47] In due course, the judgment itself provided objective, judicial recognition of individual victims, identifying by name the 268 victims, one by one. The Court found multiple violations and provided detailed descriptions of the atrocities carried out against them on July 1982.

---

[44] See above n 8 for more information.

[45] This victim-based organization comprised, but went far beyond, the survivors and representatives of Plan de Sánchez. Several victims in the *Plan de Sánchez* case were witnesses in the *Montt* trial. See for more information in Spanish: www.acoguate.org/acompanamiento-internacional/.

[46] eg Claudia Paz y Paz has been honoured in various contexts for the importance of her role as independent and determined prosecutor of the genocide cases.

[47] *Plan de Sánchez* Judgment (Merits), above n 1, at paras 30-33.

Following judgment, and while the Reparations Judgement was pending, the State issued an apology.[48] As the Reparation judgment notes:

> The State expressed its profound regret for the events suffered by the Plan de Sánchez community on July 18, 1982, and apologized to the victims, the survivors and the next of kin, as an initial manifestation of respect, reparation and guarantee of non-repetition. In this regard, it requested the Inter-American Court to weigh the significance of the act of justice performed by the State in acknowledging its international responsibility. It also expressed its determination to repair the damage caused to the victims, survivors and next of kin for the suffering inflicted upon them by the violation of their human rights.[49]

The Court later recognized the importance of this as a 'contribution to the proceedings and to the development of the effectiveness of the Inter-American Convention'.[50] As the quote above shows, clearly such recognition was explicitly linked to an attempt to relieve its reparation obligations, which led some to question how 'genuine' such apologies really are. However, in *Plan de Sánchez*, the apologies were eventually linked with other steps, such as the public acts of recognition on-site, monuments to commemorate the dead and moves towards non-repetition, giving them credibility, and power, as restorative steps.

Such apologetic engagement by authorities with communities has not always taken place elsewhere in Guatemala. It is an illustration of the impact of the process that this did happen in Baja Verapaz. However, in that case it seemed to operate to limit further impact, in that it was not rolled out into a broader programme of apology or acknowledgement.[51] A level of dejection by some of these other community members has been reported by one researcher.[52] As noted next below, the scope of this recognition and apology and their impact were also somewhat tempered by the refusal of the State to categorise the massacres in Guatemala as cases of genocide.[53]

5.4.1.5 Acknowledging the Nature of the Wrongs: Naming Genocide in Guatemala

The *Plan de Sánchez* process contributed to an appreciation of the egregious violations in Guatemala as genocide. The sensitivity surrounding the label of genocide, 'the mother of all crimes', is borne out by the State's persistent objection, throughout the process, even after it acknowledged the massacres themselves and its responsibility. When I started on these cases in the mid-90s there had been no recognition in political contexts at all - neither by the government or the URNG in the peace negotiations for example, nor by international bodies - of the genocide and its impact on the indigenous population of Guatemala. In this context, the

---

[48] See IACommHR, Press Release No 12/00, 17 August 2000, available at www.cidh.org/Comunicados/English/2000/Press12-00.htm.
[49] IACtHR, *Plan de Sánchez* Judgment (Reparations), above n 3, at para 92.
[50] *Plan de Sánchez* Judgment (Merits) above n 1, at para 50.
[51] Research by Lieselotte Viaene suggests that in other communities investigated by her, there has been a lack of engagement by the State – by those responsible for perpetration: one victim complained that 'we […] have a cross with all the names of our deceased. And the government has never come to look at this cross, even though it is standing there. There they would see the names of our dead mothers, of the parents, the elders, our grandfathers and grandmothers who were murdered' in L Viaene, 'Life Is Priceless: Mayan Q'eqchi' Voices on the Guatemalan National Reparations Program' (2010) 4 *International Journal of Transitional Justice* 4, 21.
[52] ibid.
[53] IACommHR Country Report, *Situation of Human rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II/Doc. 43/15* (31 December 2015) para 3.

legal debate as the case was being prepared, and the eventual presentation of substantiated legal claims of genocide, had particular significance.

I took the view that the evidence emerging pointed to these massacres as properly amounting to genocide.[54] Intense discussions unfolded within and between NGOs, and I recall the controversy and the appropriate seriousness with which NGOs and activists discussed the classification question. I believe that it was in the *Plan de Sánchez* petition that genocide was formally alleged for the first time. Over time, the conversation opened out and a number of authorities gradually lent their weight to it, but for some people this very early framing of the narrative and legal understanding of the Guatemalan crimes, and its impact on the impetus towards justice in Guatemala, is one of the most significant indirect contributions of this process.[55]

The IACommHR's report found that the massacre was committed 'within the framework of a genocidal policy of the Guatemalan State, carried out with the intention of totally or partially destroying the Mayan indigenous people'.[56] The Commission has adapted this approach in subsequent cases in relation to the massacres.[57]

The State objected to the Court's consideration of the genocide claim on jurisdictional grounds. The Court warily agreed. Nervous about its mandate and allegations of jurisdictional over-reach in other contexts,[58] the Court held it could not find that the violations amounted to genocide on grounds of its limited competence.[59] It did however refer to 'the issue of genocide' mentioned both by the IACommHR and by the representatives of the victims and noted:

> 'facts such as those stated, which gravely affected the members of the Maya Achí people in their identity and values and that took place within a pattern of massacres, constitute an aggravated impact that entails international responsibility of the State, which this Court will take into account when it decides on reparations'.[60]

While less clear than the Commission therefore, it implicitly recognized the nature of the wrongs and the gravity of what had happened in Guatemala and its impact on forms of reparation. The reference to genocide as a relevant argument resonated in other cases coming to the Court later, even where genocide had not been presented as a key dimension of those cases.[61] It provoked debate around the Court's willingness to look to broader international law

[54] The controversy revolved around whether the indigenous victims should be seen as 'political groups', not covered by the convention, as well as issues of subjective intent. It is now well recognized that there was genocide in Guatemala, and IACommHR processes made an important contribution.
[55] Discussions with eg Frank la Rue and Mario Maldonado.
[56] IACommHR, Petition, above n 39, at para 3.
[57] See *Village of Chichupac and Neighboring Communities Case,* above n 31.
[58] See eg the *Abella* decision of the Commission (*Juan Carlos Abella v Argentina,* Case 11.137, Report No 55/97**) f**inding violations of international humanitarian law, criticism thereof and the more conservative approach to interpretation of the American Convention in light of broader international law by the Court in *Las Palmeras* case of 6 December 2001 (IACtHR Series C No 90).
[59] *Plan de Sánchez* Judgment (Merits), above n 1, at para 50: 'With respect to the issue of genocide mentioned both by the Commission and by the representatives of the victims and their next of kin, the Court notes that in adjudicatory matters it is only competent to find violations of the American Convention on Human Rights and of other instruments of the inter-American system for the protection of human rights that enable it to do so.'
[60] ibid.
[61] IACtHR, *Las Dos Erres Case* (Merits), above n 30, Concurring Opinion of Ad Hoc Judge Ramón Cadena Rámila, para 3. Although the facts were different and the community affected in the Petén region was not an indigenous community, ad hoc Judge Cadena Rámila, however, expressed a view in which genocide, although

as an interpretative tool in the future, including as an aggravating factor in finding violation of the American Convention on Human Rights, as was reflected in more detail in a separate opinion in the *Plan de Sánchez* case.[62]

5.4.2 Judgment and Implementation

The Court's judgment provided a crucial form of objective recognition of the nature of the wrongs committed against the community of Plan de Sánchez (and others).

5.4.2.1 Developing Collective as well as Individual Reparations

The reparations order has been described as 'ground-breaking'.[63] The Court's emphasis on collective as well as individual reparation, and on the fact of collective reparation being owed to affected persons beyond the particular petitioners identified in the case, is particularly significant. This reflected the profound and terrible nature of the personal, social and cultural impact of the violations themselves, carried out under the scorched earth policy. Indeed, in this respect, the judgment was described as contributing to the 're-conceptualisation of reparation in the Inter-American system', and clearly had a normative impact.[64] These 'community-based' or collective reparations took many forms as sketched out below.[65]

5.4.2.2 Socio-Economic Measures, Health and Education

At the start of the process, back in 1995, when we asked applicants about their goals for the case, they thought about it for a while and said they needed schools, hospitals and crops. The Court in the *Plan de Sánchez* order extremely wide-reaching reparation taking the need of the applicants into account. But these measures were notably ordered not only for Plan de Sánchez but also for other affected communities. They reflected the structural impact on the community life, culture, production and infrastructure, with symbolic as well as deep-rooted practical significance.

They included community infrastructure (roads, sewage systems), a housing program, education and the provision of teachers, medical treatment and psycho-social support for victims. The Court's approach to reparation in this case proved to be a precursor to a now more expansive body of jurisprudence from the Inter-American system, generally showing a holistic approach to repairing massive violations, with generational effect.[66]

The State committed itself to implementing this judgment, and has taken noteworthy measures towards compliance, as recorded in the ongoing monitoring by the Court itself.[67] In particular, the State reported that the Ministry of Public Health and Social Welfare, since one year after the judgment, had been 'providing collective, family and individual medical and

---

part of a convention over which the Inter-American Court lacks jurisdiction, could still be considered as aggravating circumstances in the decision of a case.

[62] *Plan de Sánchez* Judgment (Merits), above n 1, Separate Opinion of Judge Sergio Garcia-Ramirez, para 9.

[63] See eg C Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge, Cambridge University Press, 2012) 158.

[64] LM Balasco, 'Reparative Development: Re-conceptualising Reparations in Transitional Justice Processes' (2017) 17 *Conflict, Security and Development* 1. The author refers to it as one of four particularly important Guatemalan cases in this respect.

[65] While these steps are monitored as part of ongoing implementation of the judgment, even before the judgment was rendered, some forms of satisfaction such as acknowledgment of wrongs and honouring the dead were well underway as noted above in s 5.4.1.

[66] See eg *Plan de Sánchez* Judgment (Reparations), above n 3, at paras 100-01.

[67] Monitoring Compliance with *Plan de Sánchez* Judgment (2009), above n 40, at para 30; Monitoring Compliance with Judgment (2011), above n 40, at para 15.

psychological treatment to the residents of the Plan de Sánchez village, and neighboring communities, through two psychologists and one nursing assistant'. Though the Commission and victims have called for a 'more comprehensive' approach, more information and better access to medicine for example. Hence, implementation remains incomplete in some respects and the Court has resolved to continue to monitor progress.[68]

Through the State's process of implementation, the Court's monitoring and the Commission's active participation, a platform for dialogue with the community as to the adequacy of the provision of basic economic and social rights has been created. Those discussions and the ongoing engagement of the survivor community are themselves particularly valuable types of impact to flow from the international human rights judgment.[69] They also contributed to a broader debate that eventually resulted in a more comprehensive reparations scheme in Guatemala.[70]

5.4.2.3 Satisfaction and Guarantees of Non-repetition

The Court emphasized that reparation needed to go beyond material compensation, recognising that satisfaction seeking to repair the non-pecuniary damage, [with] public repercussions [… would] have particular relevance in this case, owing to the extreme gravity of the facts and the collective nature of the damage produced.[71] The symbolic measures ordered by the court were therefore extensive, with strong public and collective dimensions. They ordered the following:

- *A public act organized by the State in the community itself,* acknowledging the State's responsibility, and commemorating those executed in the massacre.[72] The high level public act of acknowledgement was part of a process of reparation, closely linked to guarantees of non-repetition.

- *Translation* of the judgments of the Court into the Maya Achí language, and publication and dissemination of the pertinent parts of the judgment. In this respect, the Court noted in follow up proceedings years after judgment that the translation and partial dissemination of the judgments had been carried out, while urging that the judgment be published and made available throughout the affected municipality of Rabinal. [73] In this way, the Court sought to bridge the gap between what happens in the courtroom in Costa Rica and in the Guatemalan communities most affected.

- *Monument to 'historical memory':* Importantly, the Court paved the way for engaging with a sometimes neglected aspect of reparation - guarantees of non-repetition through acknowledging wrongs and honouring the memory of the dead. The Court held that the State must provide resources for 'collective memory' to contribute to raising public

[68] ibid.
[69] The Court noted inadequate compliance with lack of personnel to provide the services needed; Monitoring Compliance with Judgment (2009), above n 40, at para 26. In 2011, it noted that infrastructure improvements and bilingual education programmes were not fully effective; Monitoring Compliance with Judgment (2011), above n 40, at para 27.
[70] A broader reparation scheme was set up by the state of inevitable broader impact that any of the IACtHR judgments. Those judgments may however have highlighted the need for such programmes.
[71] *Plan de Sánchez* Judgment (Reparations), above n 3, at para 93.
[72] ibid 100-01.
[73] IACtHR, *Plan de Sánchez Massacre v Guatemala*, Monitoring Compliance with Judgment, Order of 5 August 2008, paras 12, 14, available at www.corteidh.or.cr/docs/supervisiones/sanchez_05_08_08_ing.pdf.

awareness, to prevent the recurrence of events like those that occurred in this case, and to keep alive the memory of the deceased.[74] This included the construction of a memorial chapel for the victims of the massacre, and the Court has since found that the State should provide a certain amount of money 'for the maintenance and improvements to the infrastructure of the chapel in which the victims pay tribute to those who were executed.'[75] Its example may also have catalysed other such monuments, which have proliferated in Guatemala since this one appeared. The restorative function of such monuments has been recorded by several survivors and researchers. As one survivor noted, 'we do not want to let the names of our friends be forgotten by not mentioning them, we have to mention them, because they are not to blame.'[76]

5.4.2.4 Cultural and Linguistic Reparation

The reparations judgment required the State to take a range of measures directed at the promotion and protection of Maya Achí culture. In the judgment on merits the Court had noted that it would consider the 'facts […] which gravely affected the members of the Maya Achí people […] when it decides on reparations.'[77] In the reparations judgment, it explained its reasoning:

> Given that the victims in this case are members of the Mayan people, this Court considers that an important component of the individual reparation is the reparation that the Court will now grant to the members of the community as a whole.[78]

The Court recognized that when the collectivity involves indigenous people, the harm produced threatens their cultural foundations and the social fabric of society and cannot be understood only in terms of the suffering of individual petitioners. It therefore required measures to strengthen training, education, and related institutions to this end.[79] The Court has since taken a similarly progressive and creative view of reparations in other cases in relation to cultural harm.[80] In its follow-up reporting on implementation, the Court performs an ongoing role in acknowledging the nature and impact of the wrongs, and in empowering the victim and survivor communities, and strengthening their institutions. As such, the judgment has served to keep on the agenda the fundamental underlying discrimination and historic injustice against indigenous Guatemalans.

---

[74] *Plan de Sánchez* Judgment (Reparations), above n 3, at para 104.
[75] The Court monitored compliance of the payment for infrastructure maintenance; Monitoring Compliance with Judgment (2009), above n 40, at para 22.
[76] Viaene (2010), above n 51, at 20.
[77] *Plan de Sánchez* Judgment (Merits), above n 1, at para 51.
[78] *Plan de Sánchez* Judgment (Reparations), above n 3, at para 86.
[79] This concerned in particular the obligation to 'study and dissemination of the Maya Achí culture in the affected communities through the Guatemalan Academy of Mayan Languages or a similar organization' and to 'provide teaching personnel trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling in the affected communities', *Plan de Sánchez* Judgment (Reparations), above n 3, at para 110.
[80] See among others the line of cases addressing indigenous rights in the Inter-American system, eg *Moiwana Community v Suriname*, Judgement (Preliminary Objections, Merits, Reparations and Costs) IACtHR Series C No.124 (15 June 2005); *Saramaka People v. Suriname*, Judgement (Preliminary Objections, Merits, Reparations, and Costs) IACtHR Series C No,172 (28 November 2007); *Kichwa Indigenous People of Sarayaku v Ecuador*, Judgement (Merits and Reparations) IACtHR Series C No 245 (27 June 2012); *Río Negro Massacre v Guatemala*, Judgement (Preliminary Objections, Merits, Reparations, and Costs), IACtHR Series C No 250 (4 September 2012).

5.4.2.5 Compensation

The Court also ordered the payment of compensation, in what appeared to be very substantial sums. Though the amounts awarded were in reality quite modest when shared among the many applicants, these awards were nevertheless significant. By 2007, the Court found that the State had 'settl[ed] 66.66% of the sum of compensation awarded for pecuniary and non-pecuniary damage.'[81] The receipt of compensation can have complex effects, for those directly involved and also for others. It was reported that compensation has on occasion led to 'a sentiment of guilt among those with access to the money […] towards relatives who were killed but also towards those who, for bureaucratic reasons have not obtained compensation'.[82] It can also have both a symbolic value and a significant practical importance in enabling victims of genocide to re-establish sustainable modest sources of livelihood and rebuild their lives.

5.4.2.6 Duty to Investigate and Accountability

Notably, the first non-material aspect of reparation that the Court referred to in the judgment was investigation and accountability. The significance was encapsulated in these terms:

> More than 22 years after the massacre and 10 after the corresponding investigations were opened, the State has not investigated the facts or identified, prosecuted and punished those responsible. This constitutes a situation of impunity, which contravenes the State's aforementioned obligation, harms the victims, and encourages the chronic repetition of the human rights violations in question.[83]

The nature of some of these failures, and the insecurity, impotence and anguish caused to victims were set out.[84] The practical implications for accountability in Guatemala are discussed further below, but the obligations of the State, and concrete dimension of its failure, were set down in clear terms.

5.4.3 Impact on Impunity and the Ongoing Quest for Justice in Guatemala

A central goal of the international case, and of the civil groups involved in it, was always to combat the deeply entrenched impunity in Guatemala. An important aspect of both the Commission's report, and especially the judgments on merits and reparations of the Court, was the firm determination that the State was obliged to investigate, and to identify, prosecute and punish those responsible.[85] The processes had exposed, and objectively confirmed the State's abject failure to meet these obligations and the various impediments that stood in the way of it doing so. Through implementation, the State was forced to account for it, and struggled to look active, but results were limited. Through more recent cases in the Guatemalan courts, victims and NGOs have sought, with some faltering 'success' (as noted below), to bring these international obligations to bear in the domestic system. This has been accompanied, and made possible by, multifaceted action and factors coinciding to try to strengthen and put pressure on the system and make justice a real possibility. At various

---

[81] IACtHR, *Plan de Sánchez Massacre v Guatemala*, Monitoring Compliance with Judgment, Order of 28 November 2007, para 2, available at www.corteidh.or.cr/docs/supervisiones/sanchez_28_11_07_ing.pdf. It left open for further compliance monitoring the payment in full of compensation and costs.
[82] See Balasco (2017), above n 64.
[83] *Plan de Sánchez* Judgment (Reparations), above n 3, at para 95.
[84] ibid 94.
[85] eg *Plan de Sánchez* Judgment (Merits), above n 1, at para 2; *Plan de Sánchez* Judgment (Reparations), above n 3, paras 24, 49(6), 49(8), 49(9), 49(18), 49(19) and 87.

stages these supranational cases have provided tools to civil society to use domestically in pushing for investigation, and in forming domestic legal challenges to impunity. An interesting dynamic also arose in this respect between international massacre cases that is worthy of note. Following the judgment in *Plan de Sánchez*, the parties to the *Dos Erres Massacre* case agreed to a friendly settlement and the case was effectively 'suspended,' subject to compliance with the terms of this agreement, which included that investigations be conducted and accountability established. When it became clear however, that impunity continued to prevail in practice, the applicants reverted to the Court, which resumed the exercise of jurisdiction and handed down a strongly worded judgment in 2009, creating increased pressure on the State to deliver on justice.

5.4.3.1 Clarification of Accountability Obligations, and Reduction of Scope of Amnesty

The IACtHR's jurisprudence has had a decisive influence on domestic standards in Guatemala. This has taken several forms, as seen in decisions of the Constitutional and Supreme Courts to remove obstacles to accountability. The Courts have upheld the doctrine on continuing crimes and interpretation of enforced disappearance.[86] Most tellingly for present purposes, they have found that the authorities must investigate and hold to account those responsible for the massacres and they have rejected the applicability of the 1996 National Reconciliation Law (amnesty law) to such cases.

This transposition of international standards was certainly not automatic but has come about gradually. Guatemalan courts' have waivered, their approach evolving erratically over time, reflecting a dynamic relationship between the regional and national systems. The Guatemalan courts had reached several conflicting decisions regarding the applicability of the 1996 amnesty law before the *Plan de Sánchez* decision came down. For example in 2001, the Constitutional Court had decided that the amnesty *was* applicable to military officers involved in the Dos Erres massacre (admittedly in the context of allegations of threats to members of the Court).[87] After the *Plan de Sánchez* case was handed down with clear accountability obligations, and with civil society pressing ahead for accountability domestically, the *Dos Erres* case was, as noted above, suspended pursuant to a friendly settlement. However, as is often the case in international human rights litigation, faltering advance was most apparent in respect of the accountability aspect of the *Plan de Sánchez* judgment of 2004 on which implementation was weakest. The IACtHR re-seized the matter in the *Dos Erres* judgment of 2009, condemning the State's approach to the amnesty law, and the broader lack of investigation and undue delays, already exposed by the *Plan de Sánchez* case.[88]

On 8 February 2010, the Guatemalan Supreme Court decided that the Inter-American Court's judgment in the *Dos Erres* was 'self-executing' and ordered, inter alia, that suspects be apprehended and prosecuted, without application of the amnesty law.[89] Just a month later, the Constitutional Court of Guatemala upheld a Supreme Court decision to deny amnesty to

[86] This has been interpreted as meaning that the crime continues until such time as the remains of the victims are found is one example. See Bosdriesz (2015), above n 2, at 17-18.
[87] According to Bosdriesz, the 'decision was taken only a week after one of the CC judges involved in the case left the country as a result of threats made against him'. See Bosdriesz (2015), above n 2, at 18.
[88] *Las Dos Erres Case* (Merits), above n 30, at para 133.
[89] Corte Suprema de Justicia de Guatemala (Guatemalan Supreme Court), 'Solicitud de Ejecución de Sentencia de la Corte Interamericana de Derechos Humanos, No MP001/2006/96951, Judgment of 8 February 2010 (in Spanish).

another military officer.[90] In 2012, the Guatemalan Courts were called on to apply the 1996 amnesty law, provoking litigation in which I intervened as amicus, with other international lawyers,[91] and the Court accepted that the amnesty law could not apply in any case which concerns grave violations of human rights, with specific reference to the IACtHR's jurisprudence.[92] The exception for genocide, torture, and enforced disappearances had been expressly stated in the language of the law, pursuant to the negotiations, but ambiguity and uncertainty had remained, and the government has maintained support for the amnesty laws.[93] It was therefore ultimately through the Guatemalan courts, citing the binding nature of the IACtHR's rulings, that the narrower interpretation of the amnesty law was upheld.[94]

Although, strictly speaking, beyond the scope of this report, it is noteworthy that the amnesty issue was not definitively settled there, but reared its head again in the *Montt* trial (2013) and subsequently. As this latest development shows, it is not a linear process however but a series of advances and setbacks informed as ever by a range of powerful external factors. Nevertheless, accountability standards have undoubtedly been improved in Guatemalan justice system and the influence of the IACtHR's jurisprudence on the massacres cases, while inconsistent, is certainly evident.

5.4.3.2 Prosecutions (of Low Level Officials) for the Plan de Sánchez Massacre

Given the entrenched nature of impunity in Guatemala it is noteworthy that several prosecutions and convictions in relation to the Plan de Sánchez massacre eventually took place. Almost exactly 30 years after the massacre, in 2012 there were five convictions that were upheld by the Guatemalan courts on appeal. The defendants were former military commissioner Lucas Tecú and civil patrolmen Santos Rosales García, Eusebio Galeano, Julián Acoi, and Mario Acoj, direct perpetrators of the massacre.[95] They were sentenced to 7860 years in prison (30 years for each victim).[96] These trials both reflected and consolidated the positive impact achieved by the *Plan de Sánchez* case, especially by confirming the facts uncovered by it and the recognition to which the victims were entitled. They also generated further momentum towards a fuller justice, as reflected in the terms of the criminal judgment itself. Significantly, although that case concerned low level perpetrators, it called for the public ministry to continue to investigate 'the intellectual authors'.[97] Prosecutions have also

[90] Guatemalan Constitutional Court, Decision of 18 March 2010, No expediente 4837-2009 (in Spanish).
[91] See for a summary of the involvement of Human Rights in Practice in the case www.rightsinpractice.org/legaladvice-litigation.html#4; The amicus curiae brief is available in Spanish under http://www.rightsinpractice.org/doc-html/RIOS%20MONTT%20AMICUS%20SPANISH.pdf.
[92] See eg Guatemalan Supreme Court, Judgment of 8 August 2012, No expedientes 1143-2012 and 1173-2012, and Judgement of 10 April 2013, No expedientes 1758-2012 and 1779-2012 (in Spanish). IACommHR Country Report (2015), above n 53, at paras 432-35.
[93] Art 8 of the Law on National Reconciliation expressly excluded genocide, torture, forced disappearance 'or those offenses that are imprescriptible or that do not allow for the extinction of criminal liability as per domestic law or the international treaties ratified by Guatemala.' See also paras 442-43 of the IACommHR Country Report (2015), above n 53. The IACommHR expressed concern with regard to the support of amnesty for grave human rights violations (para 442), and the classification of the situation in the country as genocide remained a matter of dispute with the Guatemalan government.
[94] ibid paras 435-36.
[95] CALDH, 'Historica condena por massacre de Plan de Sánchez', Website of the Network in Solidarity with the People of Guatemala (20 March 2012) available at www.nisgua.org/historica-condena-por-masacre-de-plan-de-sanchez/.
[96] IACommHR Country Report (2015), above n 53, at para 3.
[97] Bosdriesz (2015), above n 2, at 24.

unfolded in relation to other massacres[98] including Dos Erres in relation to which the Supreme Court ordered the investigation following the IACtHR's judgment.[99] Multiple arrest warrants were issued and some individuals have been arrested abroad through international cooperation, and held to account.[100]

5.4.3.3 Faltering Accountability at the Highest Levels

Attempts at higher level accountability, while ongoing and thus far elusive, have gained significant momentum and themselves had considerable effect in recent years. In 2012, the same year as the Plan de Sánchez direct perpetrators were sentenced, charges for genocide and crimes against humanity were filed against Efraín Ríos Montt and José Mauricio Rodríguez Sánchez. This is the first time a former head of state has been prosecuted for crimes against humanity in the courts of the country where the crimes were committed. Hearings took place in a Guatemalan courtroom, with some of the most powerful characters in Guatemalan history sitting in the dock. Multiple witnesses provided testimony as victims or witnesses, speaking to the genocidal policy that desecrated communities, cultures and traditions. International trial observers followed and reported daily, a website was established, and the world watched an important display of justice for genocide, conducted where it is often said it can be done best, at home.

Ríos Montt was convicted on 10 May 2013. Euphoria was well founded, but short-lived. The judgment was overturned in its entirety ten days later and a retrial was ordered.[101] Lawyers on behalf of Ríos Montt argued that Montt, like Pinochet before him, lacks the mental capacity to stand trial.[102] This may ultimately prevail and he may not be punished in the traditional criminal law sense, an undoubted limitation in the ultimate impact of the justice journey. Views are divided, however, on the extent to which Montt actually escaped justice. Victims described the importance of their giving testimony, of the crimes being recognized as genocide in the conviction, of the reduction of all-powerful military and political strongman as a form of accountability in itself.

The process can hardly be seen as a failure. Since 2013, a steady stream of investigations and prosecutions for grave crimes committed during Guatemala's conflict have continued, in what has aptly been described as a 'two steps forward, one step back'

---

[98] In an early example, members of the civil patrols PACs were prosecuted after the peace accords, but then 'broken out of jail' in a symbol of impunity. See L Arriaza and N Roht-Arriaza, 'Social Repair at the Local Level: the Case of Guatemala' in K McEvoy and L McGregor (eds), *Transitonal Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford, Hart Publishing, 2008) 151-153. It ordered the state 'to effectively direct the investigations so as to identify, prosecute, and punish those responsible for the crimes committed in Dos Erres, and remove all obstacles, de facto and de jure, which maintain the case in impunity.'

[99] Developments arise in relation to the *Dos Erres* judgment; as noted above in n 89, the Guatemalan Supreme Court ordered that the competent court continue with the prosecution.

[100] There were 17 arrest warrants. US authorities in 2009 reportedly arrested three ex-military who had been involved in this massacre; 'Capturan en EE.UU a tres implicados en masacre de las Dos Erres', *Prensa Libre* (5 May 2010).

[101] IACommHR Country Report (2015), above n 53, at paras 427-428.

[102] The High Risk Tribunal 'B' ordered a private trial (behind closed doors and with no press presence) for January 2016 for the purposes of applying security measures and corrections measures (such as confinement to his home or a healthcare facility, due to his health). However, after various interruptions, Presiding Judge María Elena Castellanos declared on 16 March 2016 that retrial proceedings in the *Maya Ixil Genocide* case should start, disregarding pending motions. Montt was not present and, on 3 June 2016, the First Court of Appeals suspended the case indefinitely. On March 2017, a new trial against Montt for crimes committed during the Dos Erres massacre was ordered. See the Trial International webpage available at www.trialinternational.org/latest-post/efrain-rios-montt/.

advance.[103] These shoots - however imperfect - of accountability can be viewed as an indicator of the impact of that earlier litigation that was certainly a catalytic force within a broader movement for change.

5.5 Conclusions

It has been a long, winding and incomplete journey towards justice in Guatemala. There has been remarkable progress, offset by notorious challenges and setbacks. While assessment of the strengths and weakness of efforts to secure justice in Guatemala inevitably vary, it is clear that we have travelled a long way from the Guatemala of the mid-1990s that I landed in, with the apparently impenetrable wall of silence, denial and/or impunity surrounding massacres such as Plan de Sánchez and the genocide of which it formed part.

Myriad factors have contributed to that movement. Massive investment of resources by NGOs, including CALDH and others, the power of specific individuals, such as victims' representatives or prosecutors, and international support of various forms, are among the factors contributing to the progress. In turn, security challenges,[104] systemic inequality, or the role of 'veto players' [105] are among the factors that limit this progress.

The approach to reparations in the *Plan de Sánchez* case was remarkable in the breadth of its recognition of beneficiaries and its ambition for impact. It contributed to setting international standards in relation to reparations; the Inter-American jurisprudence on reparations has become a reference point for courts and tribunals, across human rights systems and now in international criminal law.[106] It has recognized the pressing need for reparation to comprise a full array of compensation, recognition, remorse, commemoration, translation, outreach, socio-economic support, the development of infrastructure, education, health, psycho-social measures, cultural redress and investment, in response to wrongs as egregious as genocide. By setting down the need for a structural approach to reparation in this case and others of a similar nature, the approach aims at genuine restitution that takes into account the nature and impact of the violations. It has been observed that 'the transitional justice/development nexus could not be clearer in these important rulings. Each case is an assertion by the Court that the State must not only compensate 'but also assist in restoring and rebuilding [for] victims […] families and communities.'[107]

Implementation of this judgment is on-going, and likely to remain so for some time. A checklist approach to implementation checklist does not tell the whole impact story. As one commentator noted, even if one sees full compliance as low on these cases, there may have been 'low compliance but high impact' from cases such as *Plan de Sánchez*.[108] Through the ongoing process of implementation, there are platforms for engagement and for victims and

[103] T Reisman, 'Human Rights Trials in Guatemala: "Two Steps Forward, One Step Back"' *International Justice Monitor* (2 May 2017) available at www.ijmonitor.org/2017/05/human-rights-trials-in-guatemala-two-steps-forward-one-step-back/.
[104] Judges involved specifically in *Plan de Sánchez* and other cases subject to threats were covered by precautionary measures; see above n 11 and IACommHR Country Report (2015), above 53, at paras 223ff.
[105] F Lessa et al, 'Overcoming Impunity: Pathways to Accountability in Latin America' (2014) 8 *International Journal of Transitional Justice* (2014) 75. The authors define 'veto players' as ,those actors who oppose accountability for,or investigation into,past human rights violations' at 78.
[106] *Prosecutor v Thomas Lubanga Dyilo* (Order for Reparations) ICC-01/04-01/06-3129-AnxA (3 March 2015).
[107] See Balasco (2017), above n 64, at 7.
[108] Bosdriesz (2015), above n 2, at 3.

representatives to have a voice and contribute to discussion on how the impact of this important judgment can be maximized and given real effect.

While the judgment and implementation are crucial, this case study suggests that the impact of these processes can be understood long before the judgment, reflecting the power of the process itself, from its inception: when *conversations* with communities began; when they began organizing themselves for the purpose of litigation, with lasting benefits; when they began to *share* and to confront experiences for the first time; when researchers, lawyers, journalists and academics began draw together *evidence* and share it with the community, and dispel insidious notions of blame.

Conversely, the importance of litigation such as this may lie in its – sometimes almost indiscernible - contribution to the building of a different future in the much longer term. The inscription on the wall of the chapel constructed on the massacre site in the Plan de Sánchez community to honour the dead speaks to the broader hopes enshrined in these processes:

> *'Memory, truth, justice and reparations form the fundamental base of the restitution of the social fabric and an authentic reconciliation.'*