



Advocacy for Human Rights in the Americas

SUMMARIES OF WARTIME HUMAN RIGHTS CASES BEFORE THE COURTS OF GUATEMALA, 2021

By [Jo-Marie Burt](#) and Paulo Estrada

Cases awaiting public trial

Maya Ixil Genocide Case during the government of Lucas García 1978-1982

In August 2021, Judge Miguel Ángel Gálvez of High Risk Court “B” [ruled](#) that there was sufficient evidence to initiate a criminal trial against retired generals Benedicto Lucas García and Manuel Callejas y Callejas for their role in the genocide, forced disappearance, and other crimes against humanity against the Maya Ixil population. Lucas García was chief of the General Staff of the Guatemalan Army between 1981 and 1982, while Callejas y Callejas was chief of military intelligence. Both were members of the Army High Command. Lucas García and Callejas y Callejas are currently in prison, serving [58-year sentences](#) for crimes against humanity, aggravated sexual assault and forced disappearance in the Molina Theissen case.

A third individual charged in the case, retired colonel and chief of military operations, César Augusto Noguera Argueta, was [arrested](#) in October 2019. The evidentiary phase hearings in the case took place in early 2020. However, the suspension of judicial hearings due to the pandemic resulted in a delay in the case. Noguera Argueta died in November 2020.

Judge Jasmín Barrios of High Risk Court "A" will preside over the public trial. A date for the start of the trial has not yet been set.

Dos Erres Massacre Case - Gilberto Jordán and José Ortiz Morales

In November 2020, pretrial judge Claudette Domínguez of High Risk Court “A” [ruled](#) that there was sufficient evidence to prosecute former special forces soldier Gilberto Jordán for his alleged role in the 1982 Dos Erres massacre, in which soldiers killed some 200 villagers they believed to be members of a guerrilla group. Jordán, who was [deported](#) from the United States in March 2020 after serving ten years in prison for immigration fraud and for lying on immigration forms about his role in the Dos Erres massacre, faces [charges](#) of crimes against humanity and aggravated sexual assault. Jordán admitted to U.S. authorities that he had been the first to throw a child into the community well, setting off the gruesome killing spree at Las Dos Erres.

Judge Domínguez sent the case to High Risk Court “A,” where Yassmín Barrios is the presiding judge. However, since she previously ruled on the Dos Erres massacre, the case has been transferred to High Risk Court “D,” but the names of participating judges and the start date of the public trial have not yet been defined.

Another former Kaibil soldier accused in the Dos Erres massacre, [José Ortiz Morales](#), was deported to Guatemala in May 2021, after serving a one-year sentence for immigration fraud in the United States. He was also sent to trial before High Risk Court “A,” but his case will also likely be transferred. It is expected that Ortiz Morales will be prosecuted simultaneously with Gilberto Jordán.

This will be the fourth trial in the Dos Erres massacre case. To date, Guatemalan courts have [convicted](#) six men—five ex-Kaibil soldiers and one army official—for their responsibility in the massacre. As detailed below, another former soldier has been arrested as is facing criminal charges in the same case. Several other alleged perpetrators remain at large.

The de facto head of state at the time, Efraín Ríos Montt, had been indicted in this case on charges of genocide, murder and crimes against humanity, but he died in April 2018, ending the prosecution against him.

Maya Achi Sexual Violence Case - Francisco Cuxum Alvarado, Damian Cuxum Alvarado, Benvenuto Ruiz Aquino and Bernardo Ruiz Aquino

A trial is set to start on January 4, 2022, against four former civil defense patrolmen who are accused of committing crimes against humanity including systematic acts of sexual violence against 36 Maya Achí women in the military base at Rabinal, Alta Verapaz between 1981 and 1985.

Damian Cuxum Alvarado and brothers Benvenuto and Bernardo Ruiz Aquino were among the six men arrested in 2018 in the Maya Achi sexual violence case. On June 21, 2019, pretrial judge Claudette Domínguez of High Risk Court “A” [ruled](#) that there was not sufficient evidence of their participation in the alleged crimes, without taking into account the testimony of the women survivors who identified the six men as their material aggressors. Domínguez provisionally dismissed the charges against Damian Cuxum Alvarado and Benvenuto and Bernardo Ruiz Aquino, while fully dismissing charges against the other three defendants, ordering their immediate release.

The Human Rights Prosecutor's Office and the lawyers for the victims, including Lucia Xiloj, of the Rabinal Community Legal Clinic, appealed the decision, resulting in the annulment of that ruling and the repetition of evidentiary phase hearings. They also accused Judge Domínguez of racism for failing to consider their testimonies as evidence in the case and successfully [recused](#) her from the case. The case was transferred to Judge Miguel Ángel Gálvez of High Risk Court "B". After new evidentiary phase hearings, Gálvez ruled that there was sufficient evidence to send the three men to trial.

In January, the United States [deported](#) a former member of the Rabinal civil defense patrol, Francisco Cuxum Alvarado, to Guatemala. Judge Gálvez [indicted](#) Cuxum Alvarado in February. Evidentiary phase hearings were delayed due to the pandemic, but were finally held in February 2021. Judge Gálvez [ruled](#) that there was sufficient evidence to send Cuxum Alvarado to trial.

The case against the four accused will be heard by High Risk Court "A", which is presided over by Judge Jasmín Barrios, and is set to start January 4, 2022. The plaintiffs hope that the court will incorporate Gabriel Cuxum Alvarado, who was recently sent to trial in this case, as described below, as a fifth defendant in the public trial.

Maya Achi Sexual Violence Case - Gabriel Cuxum Alvarado

In May 2021, ex civil defense patrolman Gabriel Cuxum Alvarado, who had been a fugitive of justice since 2018, was [captured](#) in relation to the Maya Achi sexual violence case, described above. Cuxum Alvarado attempted to avoid arrest using a fake identity document, but prosecutors identified him using his fingerprints. The eighth former PAC member accused in this case, he is the brother of Francisco Cuxum Alvarado, who was deported from the United States, as discussed above.

On November 16, 2021, presiding pretrial judge Miguel Ángel Gálvez ruled that there was sufficient evidence to send Cuxum Alvarado to trial. It is expected that Cuxum Alvarado will be prosecuted alongside the other four accused in the Maya Achi sexual violence case whose criminal trial is scheduled to begin on January 4, 2022.

Tactic Forced Disappearance Case - José Manuel Castañeda Aparicio

On September 21, 2021, José Manuel Castañeda Aparicio, the 2nd Chief of Military Commissioners of the municipality of Tactic, Alta Verapaz, was [captured](#) on an outstanding arrest warrant for the forced disappearance of Jacobo López Ac, Rodolfo López Quej, and Francisco Guerrero López, who were taken from their homes at night in the village of Tampo,

Tactic in January 1983. Castañeda Aparicio's request to be released was denied and his case was sent to trial, though a date has not yet been set.

Castañeda Aparicio was first arrested in relation to these charges in 2012. The trial began in 2014, with the First Criminal Court of Coban, Alta Verapaz overseeing the proceedings, and the Human Rights Ombudsman's Office (PDH) and the Mutual Support Group (GAM) representing the victims. There were numerous security incidents during the course of the trial including the presence of heavily armed men just outside of the courtroom during the course of the proceedings. On June 3, 2014, the court acquitted Castañeda Aparicio, arguing, against Guatemalan and international law, that the statute of limitations for the crime of forced disappearance had expired, and ordering his immediate release.

In October 2017, the court's ruling was annulled by means of a "special appeal" for reasons of form and substance filed by the Human Rights Prosecutor's Office and the plaintiffs. Prosecutors' request that the case be transferred to the high risk courts was approved in 2019 and the case was taken over by High Risk Court "D," presided by Judge Sara Yoc Yoc. The tribunal issued a summons to Castañeda Aparicio, ordering him to appear in court. When he did not appear, the court declared him "in rebellion." He was captured at his home and is now awaiting a date for his retrial.

Xamán Massacre Case - Julio Cesar Armando López Rodríguez

On May 31, 2021, ex army soldier Julio César Armando López Rodríguez, was [captured](#), after being on the run from justice for more than two decades. López Rodríguez was one of several military officials accused of participating in a 1995 massacre against members of the "Aurora 8 de octubre" community, located in Finca Xamán, Chisec, Alta Verapaz. The community was established as part of a formal process allowing the repatriation of people who had fled the country due to the "scorched earth" counterinsurgency policies that predominated between 1978 and 1985, and included families who had returned from Mexico in 1994 as well as Q'eqchi' families from the region. The massacre occurred amidst celebrations of the one-year anniversary of the community's founding. Eleven people were killed and 18 others were severely wounded.

The Xaman massacre is notorious as the "last" massacre of Guatemala's internal armed conflict and occurred in the context of ongoing peace negotiations. Then President Ramiro de León Carpio and a high-level commission of inquiry visited the site of the massacre the day after the tragic events. In November 1998, the Cobán Criminal Court, presided by Judge Héctor Gálvez Velásquez, initiated proceedings against 25 military officials on charges of homicide. The

military high command asserted that the officials were innocent and hired lawyers to defend them.

In August 1999, a court found the 25 military officials guilty of homicide and sentenced them to between four and five years in prison, which was commutable by paying a bail of five quetzales per day, the equivalent of about 65 cents. In 2001, the ruling was overturned by the Constitutional Court. In 2003, the Alta Verapaz Criminal Court prosecuted 14 of the accused military officials; 11 others who did not appear in court, including López Rodríguez, were declared fugitives. The Supreme Court of Justice ratified the conviction in 2005. Since López Rodríguez was already indicted, the case will proceed directly to trial in the Criminal Court of Coban.

Cases at evidentiary (pretrial) stage

Ixil Genocide Case during the de facto Ríos Montt government 1982-1983

Retired general Luis Enrique Mendoza García, chief of military operations and third in command of the Guatemalan army during the government of dictator Efraín Ríos Montt (1982-1983), faces charges of genocide and crimes against humanity for his role in the Maya Ixil genocide. Originally accused in 2011 along with Ríos Montt and other members of the High Command, Mendoza García eluded arrest and was a fugitive until June of 2019, when he [was arrested](#) at a polling station while casting his vote during Guatemala's general elections. The case is being heard by Judge Silvia de León of High Risk Tribunal "C."

The case was [delayed](#) for over a year due to the pandemic. Since judicial hearings restarted, the court has repeatedly suspended the start of the intermediate stage hearings. Currently hearings are scheduled for February 2022. Judge de León granted Mendoza García substitution measures, against the will of the plaintiffs, which allows him to move freely in three departments in Guatemala.

Maya Achi Sexual Violence Case - Felix Tum Ramírez, Simeon Enriquez Gómez, and Pedro Sánchez Cortez

After a little over a year in custody on charges of crimes against humanity and systematic sexual violence against 36 Maya Achi women between 1981 and 1985, Felix Tum Ramírez, Simeon Enriquez Gómez, and Pedro Sánchez Cortez, along with three other former civil defense

patrolmen, were released from custody after Judge Claudette Domínguez [dismissed the charges](#) against them on June 21, 2019. The plaintiffs succeeded in [recusing](#) Judge Domínguez and the case was transferred to Judge Miguel Ángel Gálvez of High Risk Court “B.”

The Human Rights Prosecutor’s Office and the plaintiffs are seeking the revocation of Judge Domínguez’s dismissal motion against the three defendants so that they can stand trial. A hearing scheduled for November 15, 2021, at which the parties were to present their respective arguments, was suspended after a quorum was not met in the Criminal Chamber of the Supreme Court of Justice.

Military Diary Case - 1983-1985

On May 27, 11 military and police officials were [arrested](#) in relation to 195 cases of forced disappearance, crimes against humanity, murder and attempted murder between 1983 and 1985 during the de facto government of [General Oscar Humberto Mejía Víctores](#). These atrocities are registered in the “death squad dossier,” also known as the Military Diary, which was made public in 1999. The defendants are also being [accused](#) of being part of the “clandestine and illegal structures” that operated at that time, which still have power in national politics. One official appeared in court during the pretrial hearings and was brought into custody. Six officials are fugitives in the case.

Beginning on [June 1](#) and lasting until [September](#) 2021, the arraignment hearings were split up into four different parts, with different groups of defendants in each phase. Judge Gálvez ruled that there was sufficient merit to the charges and sent 11 of the 12 military and police officials to the next phase of the judicial process. One official who suffers from severe health issues has not yet been arraigned; the judge ordered a special representative for him who will appear in his arraignment hearing at a yet undetermined date.

Also in September, a public hearing was held to hear arguments of the parties with regard to a defense motion to recuse Judge Gálvez from the proceedings. The Second High Risk Court of Appeals [rejected](#) the motion, and Judge Gálvez will preside over the intermediate phase hearings, which are scheduled to begin on January 12, 2022.

Among those indicted in the case are senior military officials with close connections to the clandestine structures of power that are seeking to rollback gains in Guatemala’s battle against corruption and impunity.

CREOMPAZ Case - Military Zone No. 21 - 1981-1986

The mass forced disappearance case known as [the CREOMPAZ case](#), one of the largest cases of [enforced disappearance](#) in Latin America's history, centers on the discovery of the human remains of 565 individuals in 85 clandestine graves on the grounds of the former Military Zone No. 21 in Cobán, Alta Verapaz. To date, more than 160 of these have been positively identified as victims of the armed conflict.

Guatemalan officials arrested fourteen senior military officials in the case in January 2016. In June 2016, the pretrial judge, Claudette Domínguez of High Risk Court "A," [ruled](#) that there was sufficient evidence to proceed to trial against eight former military officials, while dismissing the charges against six officials. Among these indicted are former army chief Benedicto Lucas García, who in May 2018 was convicted in the Molina Theissen case and who also faces charges in the Maya Ixil Lucas genocide case.

Plaintiffs have challenged different aspects of Judge Domínguez's 2016 ruling, including the exclusion of nearly 80 percent of the victims from the original accusation. The courts have failed to resolve these appeals, leaving the CREOMPAZ case in a state of [legal limbo](#) since 2016. A public hearing was scheduled before the Criminal Chamber of the Supreme Court of Justice for November 4. Government prosecutors were going to present their arguments in favor of reversing the ruling that provisionally dismissed the charges of the six individuals who were then released in 2018. That hearing was suspended, however, and a new date has not yet been scheduled.

During the most intense months of confinement for Covid-19 in 2020, several defendants filed motions to lift their pretrial detention, claiming that they were at risk for various reasons, including health and age-related risks. Judge Domínguez [rejected](#) these requests.

In addition, the Constitutional Court has not yet resolved an appeal filed by the defense attorneys, who oppose the decision to accept the Coordinating Group of Victims of Alta Verapaz (CODEVI) as civil parties in the case after the victims' group filed a protective measure (*amparo*) protesting against their exclusion in the case. This *amparo* and appeal motion have kept the case in suspense for more than five years.

Cases awaiting arraignment

Dos Erres Massacre Case - Alfonso Bulux Vicente

In September 2020, authorities in Belize [captured](#) Alfonso Bulux Vicente, who had been charged by the Guatemalan Attorney General's Office of criminal responsibility in the Dos Erres massacre in December 1982 and was a fugitive of justice for several years. His arraignment was scheduled for October 12. Bulux Vicente's lawyer reported that his client has health problems, leading pretrial judge Claudette Domínguez of High Risk Court "A" to [suspend](#) the proceedings and order health examinations and a COVID-19 test. Judge Dominguez has rescheduled the arraignment a few different times.

To date, Guatemalan courts have [convicted](#) six men—five ex-Kaibil soldiers and one army official—for their responsibility in the massacre in four different criminal trials between 2011 and 2018. Several alleged perpetrators remain at large. Two other defendants have been ordered to trial in January 2022, as described above.

Tululche case, Quiche

In January 2020, a judge in the department of El Quiché [dismissed](#) charges against [Juan Alecio Samayoa Cabrera](#) for his role in the Tululché massacre and other grave crimes and ordered his immediate release. Prosecutors allege that Samayoa, who had been living in the United States for decades and was deported in late 2019, was a chief military commissioner in Chinique, El Quiché. While in U.S. custody, Samayoa [admitted](#) to having commanded a paramilitary unit of 500 men in Chinique, but claimed to be just “an assistant” during the proceedings in El Quiché.

The accusation against Samayoa was first presented by the Attorney General's Office in 1992. He and his associate, Candido Noriega, who were the heads of the military commissioners and civilian self-defense patrols in the municipalities of Chiche and Chinique, located in the department of El Quiche, were accused of participating in at least 150 serious human rights violations, including massacres, assassinations, rapes, and other crimes in the Tuluche state-run plantation. After a long and tortuous criminal process, Noriega was convicted and sent to prison. Samayoa, however, escaped. He resided in the United States for 25 years until he was deported to Guatemala in 2019 after being convicted of lying to U.S. immigration authorities.

The victims appealed the January 2020 decision, and on November 25, 2020, the pretrial judge [reissued the arrest warrant against Samayoa](#). A new arraignment proceeding was convened, but Samayoa did not appear in court. The judge declared him a fugitive of justice, for a second time. In the meantime, the victims have requested that the judge hear their testimonies and introduce them into evidence to ensure their access to justice.

Cases with sentences under appeal

Molina Theissen case

On May 23, 2018, High Risk Court “C,” presided Judge Pablo Xitumul, [convicted](#) four senior military officials of crimes against humanity and aggravated sexual assault against Emma Molina Theissen and forced disappearance of Emma’s 14-year-old brother, Marco Antonio Molina Theissen, in reprisal for Emma’s escape from the military base where she was being held incomunicado. Among those convicted were members of the Guatemalan military’s top brass: retired army generals Benedicto Lucas García and Manuel Callejas y Callejas, who were the chief of the General Staff of the Guatemalan army and chief of military intelligence, respectively. Also convicted were Luis Francisco Gordillo Martínez and Hugo Zaldaña Rojas.

The convicted officials have filed a number of substantive and procedural [appeals](#) of the sentence. The appellate court has convened and then suspended hearings, or held hearings for a short time and then suspended them without any definitive resolution.

Currently, the Chamber of Appeals of the Supreme Court of Justice is reviewing an appeal filed by lawyer Karen Fisher, who has filed to be recognized as a civil party to the case and who has accused the Molinta Theissen family of presenting false evidence. She continues to affirm, with no evidence, that Marco Antonio Molina Theissen is alive and in hiding. In 2019, a judge [rejected](#) a similar appeal filed by Fisher.