

## Episode 4 (January 2020) Spotlight on Guatemala

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**Tine:** Welcome to Justice Visions. And for those listeners who are just tuning in for the first time, my name is Tine Destrooper and I'm the project lead of Justice Visions. And I'm also the regular host of this podcast. And this is our first episode after the holiday break, but we're actually just going to continue to do what we did just before the break, which is to zoom in on some recent developments in transitional justice contexts around the world. And in our last episode, we talked about constitutional reform in Chile, and that discussion was so captivating that we decided to stay in Latin America for a bit longer. And we are going to be talking about Guatemala today. Guatemala, where a series of measures have been taken to dismantle several peace institutions, which also affects for example, the national reparations program. And our co-host today for this episode is a PhD research fellow with the Justice Visions team, Gretel Mejía, who is working on victim participation in transitional justice in Guatemala. Welcome Gretel!

**Gretel:** Hi Tine, I'm excited to be here and talk about this topic, which has not received enough attention outside of the region and outside Guatemala. So, it is important to shine a light on it because of the implications of these recent measures, both on the transitional justice process in general and on victims in particular.

**Tine:** Yes, that's true. And to talk about this topic, we also have a guest today in studio, which is, Eva Rocío Herrera, and Rocío is a Guatemalan human rights lawyer with extensive experience in criminal law and transitional justice, as well as strategic litigation and that both in Chile and in Guatemala. Rocío is currently involved also in challenging some of these measures. So, Rocío welcome!

**Rocío:** Thank you very much for inviting me to talk about this topic. It is a pleasure to share with you, Gretel and Tine.

**Tine:** Before we turn to the specific policies and the topic we're going to be talking about today. Gretel, I wanted to ask you if you could maybe give us a quick heads up about what we need to know about the background of the Guatemalan case.

**Gretel:** To summarize Guatemala endured from 1960 to 1996 an internal armed conflict, fought between the army and insurgent forces. During this period massive and systematic human rights violations took place, such as enforced disappearances, sexual violence and extrajudicial executions. According to the report of the historical clarification commission, which is the official truth commission in Guatemala, also genocide against the Maya ethnic population took place in several regions.

**Tine:** If you refer to the truth commission, then you are also implicitly referring to the peace process, which started in the 1980s and then culminated in a peace agreement in 1996, right?

**Gretel:** Yes, it was a process that started in the mid-eighties, as you pointed out. And that ended in 1996 with the signing of the final peace agreement. And in the realm of transitional justice, the peace accords provide for the creation of several measures, for example, the official truth commission, the historical clarification commission, but also other institutions that were tasked with implementing these agreements. And one example of this, and the one that we're going to talk about more, during this episode, is the Peace Secretariat or SEPAZ, which is in charge of overseeing the implementation of the National Program of Reparations for the victims of the armed conflict.

**Tine:** Right, and the reason why we are going to talk about this specific program is because now it's under threat from this presidential decree, right?

**Gretel:** Yes, it is under threat, not only the Peace Secretariat, but also, several institutions created through the peace agreements to oversee the recommendations made not only by the truth commission report, but also by the agreements themselves. And they are, not only affecting transitional justice policies, but also socioeconomic and human rights policies in general.

And within this context, it is important to now move on to the question and the topic of this episode, which deals with the recent presidential decrees, which ordered the closure of several of these institutions. So now I turn to you, Rocío. Could you elaborate more on these decisions and the implications on the transitional justice process?

**Rocío:** In 2020 the new government of the president of Guatemala, Mr. Giammattei, issued a regulation that eliminated all the institutions for peace. Although the victim reparation program continues to exist, it does not work because the commission that manages the process was dismantled. The Guatemalan government closed the institutions for peace and created a single institution called COPADEH that brings together the functions of all these institution in one: peace, human and agrarian rights. I believe that if all the institutions have not managed to fulfill all the commitments assumed in the peace accords, only one is almost impossible if the State's counterproposal is not efficient.

**Tine:** The decisions that you were mentioning, of course, they really affect the implementation of the peace agreements and these institutions that you just mentioned were foreseen in the peace agreements. And I think that's important not just in dealing with socio-economic issues as both you and Gretel pointed out just now, but also when I hear you talk, I am also thinking about how these measures particularly affect the victims of the armed conflict. And in this regard, I actually wanted to ask you Rocío if you could maybe elaborate in some more detail what the closure of these institutions and specifically what the closure of the SEPAZ means for victims that have applied, or that would like to apply, for reparations in the future.

**Rocío:** I think that the State's response is not efficient because, as an example, the National Program for victim's reparation was legally transferred to the Ministry of Development. It was practically frozen, and the victims could not execute their request and procedures. The victims of the national reparations program are being directly

affected. The reparation program will only last two more years. And this whole year (2020) it did not work, and the victims were not able to process their reparation claims.

The issue of the protection of victims' information, in a national program for the reparation of victims is quite critical. It should be considered that after having suffered the violation of human rights, they once again believe in the state and give their testimonies under the guarantee of confidentiality and currently there are no national regulation and there are complaints from victims that their information is being transferred to the Ministry of Development, without any kind of precaution. I must say that the normative reform of the president eliminating the institution for peace and creating COPADEH does not return to include the opinion of the victims. Rather, victims seek a way to be included and have access to their rights.

**Gretel:** This is a highly worrying in a context where there has been a dismantling of the peace institutions in Guatemala. So Rocío, I would like to pick up on the last remark that you made, and that is that the victims were really not included in the decision-making process that went behind the issuing of all of these presidential decrees, and in this context, I also want to focus on the national program of reparations, as an example. With the closure of the Peace Secretariat, victims lack a proper venue to claim reparations, but really this is not surprising because ever since the creation of the National Program of Reparations back in 2003, this institution has not opened effective and meaningful channels of participation for victims or civil society in the design or implementation of this program. Although there's an explicit mention to create a victim's commission within this institution.

**Tine:** It's true, actually Gretel. And what's really striking me in what you say, is that in this context of all these setbacks to the proper functioning of the reparations program and the lack of proper participation avenues, what's striking me is that victims have actually remained active in many ways, not just mobilizing for the implementation of transitional justice, but also in challenging different kinds of obstacles that are appearing in the process, and Rocío, I wanted to ask you about that, specifically in the case of the reparations program, if you could say a bit more about what kinds of actions, victims and civil society have undertaken in response.

**Rocío:** The groups of urban and rural victims that are organized have made a communication and have sought the support of organizations to carry out different legal actions. Among the action are two unconstitutionality actions to the regulation that eliminated the institutions for peace. On the other hand, another community of Quiché, the COCOP village, that was the victim of 67 execution of children, women, men, filed an amparo action, because they do not have an effective state body to direct requests for reparation and are concerned about the security of their information. It is important to say that the constitutional court has not resolved the constitutional action and it is taking a long time.

**Gretel:** This is highly relevant Rocío because it reflects a tendency of actions taken by the victims. That they are highly organized, and they are the ones seeking redress and seeking to challenge this dismantling of institutions, right? And this reflects not only the constitutional level, as you mentioned but also in the legal realm where we can see strategic litigation in different kinds of cases, such as sexual violence. And there is also this type of alliances built between victim communities and human rights organizations. And as you mentioned in the context that you are working on with a community of Quiché, the COCOP village community that you support, where more than 67 victims were

executed in the eighties. They are the ones seeking redress and seeking to challenge these measures. So now I would like to ask you, Rocío, how do you integrate strategic litigation in your work with the community?

**Rocío:** The victims asked us to accompany one of the constitutional actions in this context, and during the legal action several meetings were held with the community. They asked us questions, explained their concerns and made specific request. We gave them a legal solution and consulted them until they fully decide. All these dynamics between the legal team and the community were facilitated by local and allied organizations. They supported many times with video conference or other resources, sometimes, some communities communicated directly with the legal team.

**Tine:** I think, Rocío, what you were just talking about is highly relevant. You're describing how people come and find you for cases is also showing how important people themselves find these matters. But what also struck me in what you were just saying is the constantly being in communication with the victim communities, right? Even in these times of COVID and there is lockdown, you somehow managed to constantly be in touch with victims and to integrate their views on what the most pressing issues are and their concerns and the design of the action. I wanted to ask you, very practically, how you did this? How you manage to continue to work so closely with the victim communities, even in these COVID times.

**Rocío:** In times of COVID-19 the legal and psychological accompaniment we traveled to the community, when necessary with all the health security measures. We communicated by video conference and we carry out all these articulation with local organization, with our partner and allies.

**Tine:** Can I maybe ask a quick short follow-up question about is because if you are talking about your partners and your allies going to the victim communities, what kind of victims are we talking about? This is not one homogenous group that you're working with, right? I'm just interested what the profile in a way is of the people that are involved in this case. If you could say a bit more about that?

**Rocío:** Defining a unique profile of the people involved in the cases could make me reductionist and I want to avoid it. If I had to use at least one characteristic to refer to the people in the litigation we are handling, I must say that they are organized communities resisting the repression of the system and the state since colonial times, despite a difficult history.

**Tine:** I wanted to return, Rocío, also to the fact that some of the points that you raise are of course, extremely important, and not just in Guatemala or not just even in a Latin American context, but basically for all kinds of countries where transitional justice is currently taking place. They're also so important for us as academics to talk about and to think about, I wanted to zoom in a bit on this link or on this nexus between academia and legal action or strategic litigation. And I think, Gretel, as a member of Justice Visions, and as a member of the Human Rights Center at UGent you've been involved in an action in this domain as well, right?

**Gretel:** Yes, indeed Tine, I can tell you a little of about the process and how I came up to participate within one of the legal actions that was filed before the constitutional court, in the context of this dismantling of peace institutions. A couple of months ago, Rocío, she

supports one of these actions, as she mentioned within the COCOP community. She contacted me to ask for my support in the drafting of an *amicus curiae* brief, that would accompany the legal action. This is a legal document which serves to provide the legal arguments to illustrate the constitutional court on particular legal topics. In this context, it was about reparations and the international standards surrounding victims' rights to an effective and integral reparation.

**Tine:** So, you're illustrating these international standards to the constitutional court in Guatemala, in your *amicus* brief. So, tell us a bit more about what standards you're relying on and what kind of scholarly work also you're relying on, what are your sources when you're doing this?

**Gretel:** Besides relying on academic work, particularly regarding the nature of reparations, and also the relationship between development and reparations, which is super important, because as Rocío mentioned, one of the presidential decrees, closes down the Secretary of Peace, but then transfers the National Program of Reparations to the Ministry of Development. So, this was a pressing topic that we had to shed light on what are the similarities and the differences between both fields. And I also relied on the universal and regional human rights frameworks, particularly the UN basic principles on reparations and remedies, not only to define the scope, but also the nature of the right to reparation.

**Tine:** I just really wanted to very quickly ask you what the other specific topics are that are covered in the *amicus curiae*, what's the main focus of the brief is.

**Gretel:** Besides just laying out the international standards, we also focused on some pressing issues that were brought up by the victims themselves while Rocío and her colleagues were communicating with the victims. And these were particularly how the National Program of Reparations by being transferred to the Ministry of Development actually threatens the privacy and the protection of the data stored in the archives of this program, because there is no legal certainty about the destination of these documents. There are testimonies of victims. There are testimonies of human rights violations, so they need to be protected.

And another topic that was also included in the *amicus* by the victims was the psychological and the retraumatization that the lack of a venue causes on them. And they wanted to really, for us to shed light on it. And we managed to, bring about not only from the UN basic principles on the right to a dignified treatment, but also from the Special Rapporteur reports. We also mentioned secondary victimization and how victims need to be taken into account and be treated with dignity.

**Tine:** We'll link to all those sources that you were mentioning in the show notes that we'll put online. But then a last question maybe about this: the *amicus curiae*. So, you presented this on the 29th of December 2020, which coincides with the 24th anniversary of the signing of the final peace agreement. So, what now, what's the aspiration? What ideally would you want to achieve with it?

**Gretel:** We have two main goals with filing the *amicus*. First of course is the legal one, to provide legal arguments to the constitutional court about the international standards that are being violated by these presidential decrees, not only the right to an effective and integral reparation, but also the right to information and the right to have a dignified

treatment throughout the process. And the second one is a more political and a strategic purpose of filing this *amicus*. These collaborations are quite common in Guatemala and in other countries, that legal teams and human rights organizations make partnerships with academia and with other international human rights organizations in order to show the court that there are international actors closely following the proceedings of the case and that they are aware of the implications of these decrees.

**Tine:** Well, maybe then I can return to Rocío as well. Rocío I wanted to ask you about your overall experience in this collaboration and collaborating with academics to support these kinds of legal actions. Could you say a bit more about how you've experienced this?

**Rocío:** Communities in Guatemala are often underestimated from the outside, but if the Guatemalan people are characterized by one thing it is their resilience, resistance, struggle and organization, despite a history of repression. In our work, we have the firm conviction of only accompanying, and always looking for people who lead their own struggle. The fact of doing our work in a country with a weak government involves risk. So, we assume that our work is our own cause without losing sight of the fact that at the same time, we only accompany our client. The academic is important to study the realities, to contribute from its academic production in consultancies or in *amicus curiae* explaining to the court contents and human rights standards.

**Tine:** Thank you for that Rocío. And I think pointing out the resilience of the people that you work with, you're already nicely and automatically bringing us to our last question, which is a question that we ask of all our interviewees, about where you are finding your motivation and where you are looking for inspiration in the kind of work that you do? What inspires you in the really uphill battle that you're engaged in now?

**Rocío:** I don't know if I call it inspiration, but if there is a force that drives me to my job, perhaps a conscious outrage at the injustice, and certainly my hope or naive ideal for building a better and more dignified world for people.

**Gretel:** This is particularly important Rocío. In the sense of having this inner force, as you mentioned that drives you to do the job that you do in an environment of risks, of threats to human rights defenders, to communities. And it is important not only to find external inspiration, but also do it from your own source of inspiration. I want to thank you Rocío for your time and all of the insights and reflections regarding the current setbacks that are taking place in Guatemala and how you and a group of human rights lawyers accompanying the victims who are driving these processes and the alliances that you're building are actually challenging all of these setbacks.

**Tine:** Thank you Rocío. And thank you Gretel as well. And for our listeners, we will be back next month with a new episode. So, in the meantime, feel free to reach out to us, which you can always do via [justicevisions.org](http://justicevisions.org) with any interesting evolutions that you're observing or feedback that you're having. And of course, don't forget to follow us on Spotify or Apple Music or wherever you listen to your podcasts. And we look forward to talking about a new case next month.

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