



Workshop report

# Strategic litigation for sexual and gender-based violence: Lessons learned



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2019 United Nations

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Report by the Office of the United Nations High Commissioner  
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Office of the United Nations High Commissioner for Human Rights

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## Introduction

As part of UN Human Rights Office's efforts to promote accountability for gender-based crimes, the OHCHR Women's Human Rights and Gender Section (WHRGS) is working to identify, analyse and share good practices, and reinforce synergies and common understanding among practitioners on access to justice for victims/survivors<sup>1</sup> of sexual violence, particularly in contexts of conflict, post-conflict and insecurity. Part of this effort included a lessons learned workshop on the use of strategic litigation for cases of sexual and gender-based violence (SGBV)<sup>2</sup> held on 19 and 20 June 2019.

For the purpose of this lessons-learned exercise, strategic SGBV litigation comprises initiatives and interventions to bring cases of SGBV before judicial or quasi-judicial bodies (domestic, regional or international jurisdictions) with the aim to achieve greater protection and enjoyments of human rights, in addition to obtaining justice and redress in a specific case.<sup>3</sup>

Strategic SGBV litigation is an important tool to address the structural obstacles that survivors face to access justice and protection - challenges that are particularly acute in contexts of conflict, post-conflict and insecurity. These include for instance: lack of acknowledgement of SGBV as a human rights violation and failure to recognize those who have

been subjected to it as victims; prevalence of stigma, combined with persistent gender stereotypes, which impacts victims/survivors' ability to disclose and share with others the harm experienced; lack of trust in institutions which further deter victims from lodging formal complaints; gaps in domestic legislation, implementation of laws and procedural frameworks, which are not protective of victims' rights; gaps in investigatory capacities which further undermine the prosecution of cases of sexual violence before the courts and other accountability mechanisms; the granting of reparations being an exception and often failing to meet the minimum demands of the survivors; further harm against victims and human rights defenders, including intimidation, threats and harassment, and other acts of violence of sexist nature.

Strategic SGBV litigation has great potential to enhance victims' access to justice and can contribute to legislative or societal transformation. This includes enforcing existing legislation or clarifying its meaning, reviewing or amending legislation, regulations or policies, developing jurisprudence, raising awareness at the national or international level of particular issues, combating stigma or addressing the consequences of sexual violence on victims. Successful strategic litigation is often accompanied by advocacy initiatives (such as media campaigns or social activism programme), and includes the involvement and coordination amongst multiple stakeholders (including victims, lawyers, judicial operators, government authorities, NGOs, United Nations entities, donors, academics, journalists, politicians, artists, etc.). To meet its full potential, strategic litigation efforts require sustained funding.

In line with established practice for working with victims of SGBV, strategic litigation must comply with minimum standards of protection from re-victimisation, including protection from reprisals, stigmatisation, re-traumatisation and discrimination. Strategic litigation must ensure victims' meaningful participation in the design of strategies throughout the process, and work towards an outcome which reflects – and ultimately serves – their views, wishes and interests.

This lessons-learned exercise aimed at identifying good practices. This report intends to inform interventions of diverse actors, at the national, regional and international level, when designing and implementing

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<sup>1</sup> To identify a person who experienced sexual violence as "victim" or "survivor" primarily depends on the preference/self-identification of the concerned individual. Practitioners should be respectful of these choices. The context in which the term is used may vary. For example, the term "victim" is regularly used when indicating that a person has been subjected to a violation of international law or a crime. The term is broad in that victims of sexual violence are those individuals who directly experienced the violence as well as those who were indirectly affected (for example, children born of rape). The term "survivor" is sometimes preferred by affected individuals, as considered more empowering as it implies agency and resiliency. There is no United Nations wide agreement on the use of one term or the other. Both terms can be used simultaneously and interchangeably. See OHCHR, *Manual on Human Rights Monitoring* (2011), chapter 12, Trauma and self-care.

<sup>2</sup> On 27-28 March 2018, WHRGS organized a lessons-learned workshop on protection of victims of sexual violence. See OHCHR (2019), 'Protection of victims of sexual violence: Lessons learned', available at [www.ohchr.org/Documents/Issues/Women/WRGS/ReportLessonsLearned.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/ReportLessonsLearned.pdf)

<sup>3</sup> These forms of interventions are also known as "impact litigation," "test case litigation," "cause lawyering," "public interest litigation," among others. See also: Open Society Justice Initiative collection on strategic litigation; especially, OSJI, *Strategic Litigation Impacts. Insights from Global Experience*, New York, 2018.

initiatives using strategic litigation to enhance access to justice for victims, while further protecting their rights and contributing to prevention of violence through changes in institutions and societies.

### **Methodology and participants:**

This workshop was based on a comprehensive mapping of strategic litigation initiatives and interventions on SGBV cases, with a focus on conflict or post-conflict settings and other situations of violence. Preparatory work included desk research and semi-structured interviews with numerous practitioners from civil society organizations and within the UN system, both based at headquarters and in the field. The workshop brought together 29 participants from

a variety of institutional and regional backgrounds, with direct experience in designing and implementing strategic SGBV litigation, specifically in conflict and post-conflict contexts.

Discussions covered the following topics: identifying the objectives of strategic SGBV litigation; integrating a victim-centred approach; designing and planning strategic litigation; stakeholders' coordination, collaboration and complementary roles; communicating and advocating; funding strategic litigation; and maximizing the transformative potential of strategic litigation. Throughout the discussions, participants highlighted the specific aspects, practices and challenges that relate to strategic SGBV litigation *vis-à-vis* broader strategic human rights litigation.

## **1. Victims' participation in strategic SGBV litigation: a victim-centred approach**

Participants stressed the critical importance of rigorously adhering to strict ethical and human rights standards, while recalling the centrality of the victims in strategic litigation processes. Participants discussed how strategic SGBV litigation processes must conform to the needs, wishes and well-being of survivors. Victims/survivors' interests and decisions must prevail over other interests that may co-exist in litigating a case. This is particularly important to avoid "instrumentalization" of victims, such as "using" their voices and experiences in advocacy and litigation processes. Participants stressed the critical importance of informed consent and meaningful participation of victims/survivors. Processes aiming at a transformational agenda towards greater goals of gender equality and non-discrimination must go in hand with a transformational agenda for the survivors, aiming at their empowerment and greater autonomy, and towards the recognition, promotion and protection of their rights.

A victim-centred approach in strategic SGBV litigation includes:

→ Victims' meaningful participation must be ensured throughout the process. Essential elements underpinning participation are, among others: informed consent; confidentiality; regular, clear and transparent communication with victims, in

a language they understand; management of victims' expectations; and, continuous victims' risk assessment. Victims should be involved throughout all stages of the strategic litigation process. No assumptions should be made on their behalf and their informed choices should be the key driver of the strategic litigation, from design to implementation and follow-up.

- Meaningful participation entails addressing the specific obstacles faced by victims in a given context to access justice, such as the prevalence and impact of stigma, the availability (or not) of psychosocial support, the existence and role of survivors networks and peer groups, the civic space and rights of freedom of expression and association of women's human rights defenders, the prevalence of gender-based discrimination, including harmful gender norms and stereotypes in the judiciary as well as among law enforcement officials, etc. Enabling safe environments that support victims' disclosure and participation is paramount.
- Impact should be assessed from the victims' perspective and with their interests as a paramount consideration.
- A victim-centred approach should guide the entire process of strategic litigation, from choosing



the cases, the jurisdiction and strategies during the judicial phase and the post-trial process or proceedings.

- A victim-centred approach is about designing strategies that aim at empowering victims/survivor and ensuring their access to needed services, to holistic forms of protection and to the enjoyment of their rights. This includes, but is not limited to, access to psychosocial services, medical attention and the enjoyment of sexual and reproductive health and rights.

Participants discussed how tensions may arise when the perspective or priorities set by legal practitioners do not match the victims' expectations and what they consider best for themselves. In this regard, participants recalled the critical importance of prioritising victims' interest and wishes. Victims may decide to drop out of a litigation process, in which case their choice must be respected notwithstanding how much time and effort has been invested in supporting a given process.

Furthermore, participants also mentioned examples of tensions that have arisen between the prosecution or prosecutors' strategies and the strategic SGBV litigation strategy. They recalled the importance of integrating judicial and prosecutorial actors in the advocacy strategy to mitigate the risks of judicial proceedings being solely or primarily guided by the intention of the prosecutor, without due consideration of victims' wishes and interests.

Participants further discussed challenges in ensuring participation and consultation with survivors. When survivors live far from the place where litigation is pursued, for instance in remote areas, communication and regularity of exchanges can be more difficult or inconsistent. The number of the victims/survivors in a given case can also represent a communication challenge and may require organising clustered meetings with a smaller number of survivors. These challenges point to the need for adequate funding in order to support travel of survivors or practitioners involved in the case, as well as other

### Sepur Zarco - Guatemala

During the civil war, in Sepur Zarco village, Guatemala, indigenous Maya q'eqchi' women were forced to serve the soldiers of the military post, and many were subjected to sexual violence. More than thirty years later, fifteen q'eqchi' women filed a complaint against one military official and one military commissioner, who were sentenced by a Guatemalan court to 120 and 240 years of prison for crimes against humanity, including sexual violence, sexual and domestic slavery, as well as humiliating and degrading treatments.

The Sepur Zarco strategic SGBV litigation illustrates many good practices, including on the participation of the victims/survivors in its design and implementation. Victims/survivors

of the Sepur Zarco community, called the *abuelas* (grandmothers), were part of the strategic litigation process from the outset. They organized themselves in the Collective *Jalok U*, which means change in q'eqchi' and became joint plaintiffs in the case through this organization, led by one of the *abuelas*. Psychosocial support and peer group support, provided for many years by civil society actors, including Equipo de Estudios Comunitarios y de Acción Psicosocial (ECAP), was instrumental for the *abuelas* to organise and claim their rights to justice and reparations. Civil society actors leading the litigation and advocacy strategies regularly met with them, to listen and build an understanding of their views, objectives, life-plans,

needs and concerns, and to tailor the responses accordingly.

Victims/survivors were informed of the process, possible avenues, obstacles and risks, as well as of the measures available to mitigate those risks. They were part of the decision about the design and implementation of protection mechanisms, including protection of identity during the hearings, using their shawls. The strategic litigation also focused on the enforcement of victims' right to reparations and reflected their views about the nature of these measures. Indeed, the *abuelas* had always been emphatic that reparations should include development measures for their community, such as health services and education – rights which they had been denied.

means of ensuring communication. Another challenge reported was representativeness of victims/survivors, recognizing that they are not necessarily organised in a group, are not homogenous, and not all victims/survivors relate with each other, necessarily. Leadership and representation are issues that require attention and discussions with survivors from the outset.

Some participants also discussed possible tensions that may arise at certain stages of the prosecutorial phase

and during the trial due the possible disruption in the communication and contact with survivors, in respect of the application of due process guarantees and rules and procedures of specific jurisdictions. Participants recalled that victims/survivors should be duly informed of the proceedings and phases of justice processes, in order for them to be able to anticipate how they will participate in and be informed of the proceedings and avoid creating false expectations, misunderstandings and mistrust.

## 2. Designing and planning strategic SGBV litigation

Participants discussed the elements that are particularly relevant for the planning and design of strategic SGBV litigation, including the definition of objectives, the criteria for selection and prioritisation of cases; the strategic choice of the legal forum and jurisdiction, as well as the strategic mapping of actors.

### Definition of the objectives of the strategic SGBV litigation

Throughout the workshop, participants discussed the following key objectives of strategic SGBV processes, noting these should be compatible and should aim at achieving justice for the victims/survivors taking part in a litigation process.

Strategic SGBV litigation could contribute, for instance, to the following objectives:

- *SGBV victims/survivors' empowerment.*
- *SGBV victims/survivors' and communities' enhanced trust in the justice system.*
- *Societal transformation, including combating stigma and prejudices.*
- *Official acknowledgement of the truth, recognition of victims/survivors by the State and in communities as right-holders whose rights have been violated – recognising the gender dimension of such violations.*
- *Enforcement of the right to reparations, including individual and collective, material and symbolic, in consultation and with meaningful participation of victims/survivors, with gender-sensitive approaches.*

- *Breaking cycles of impunity and achieving justice for victims/survivors of SGBV.*
- *Changing State policies, legislation, proceedings and methods of work concerning the prevention, investigation and prosecution of SGBV, enhancing victims' participation – with a victim-centred and gender-sensitive approach.*
- *Enhancing victims/survivors' protection, support and access to services, including in relation to the right to health, including mental health, sexual and reproductive health and rights, as well as legal and socio-economic support.*
- *Setting legal precedents and jurisprudence towards a victim-centred and gender sensitive approaches in the interpretation and enforcement/application of international human rights norms and standards to address and respond to SGBV.*
- *Make visible specific patterns of SGBV, including when used as a weapon of war and/or to dismantle social fabric of a particular group, including to serve in truth-seeking, prevention and reparation efforts.*

### Criteria for case selection

Participants mentioned several factors that can play a role in deciding to select one specific case (or several), including whether this/these case/s address/es the particular objective aimed at. For instance:

- *Are the violations at stake illustrative of a structural problem in relation to the State obligation to prevent, address and respond to SGBV, including*



in relation to gender-based discrimination, accountability, victims' participation and protection, access to services?

- Does the situation reveal the particular obstacles faced by victims/survivors of sexual violence to access justice and adequate support and services?
- Does the situation reveal differentiated impact on women and girls, men and boys, and/or intersectional forms of discrimination against particularly marginalized populations, including LGBTI, religious or indigenous minorities?
- Do the violations at stake encapsulate or reveal a certain pattern of violence or gender-based discrimination or gender-based violence, that is particularly under-reported, under-addressed and in relation to which victims are particularly marginalised or stigmatized?
- Is the case "solid" enough, in terms of evidence, and in relation to the possibility and disposition of victims to participate such process?

Participants highlighted that in some cases litigation does not necessarily start with a strategic litigation focus. Some cases have been selected for pragmatic reasons, such as the profile of the prosecutor, the type of crime or forms of SGBV, the capacity and expertise of a given litigation team, or the funding available. On many occasions, a case which was not initially identified to be part of a strategic SGBV litigation process, then became relevant and emblematic. Contexts are changing and different opportunities may arise over time.

Participants recalled that, when working with an established framework of collaboration among different actors, elements for the prioritization of a case must be discussed and agreed upon among all involved partners from the outset, ensuring effective participation of the victims and survivors. They must be part of such strategic decisions and informed of the criteria and reasons that may be argued for the prioritization of a case over another. Creating false expectations (e.g. that all individual cases could be brought to trial or that all victims/survivors will have a day in court) is particularly harmful. Unmet expectations are not innocuous and can seriously affect survivors' trust in the

justice system and further hinder their sense of agency and autonomy.

### Criteria for selection of legal forum and jurisdiction

The strategic selection of legal forum and jurisdiction is paramount to any strategic litigation process. In relation to strategic SGBV litigation, particular attention must be paid to the gender-sensitive nature of the specific jurisdiction and the possibility or limitations to victims' participation in that given fora, among others. Participants also stressed that a gender analysis of jurisprudence and legislation is critical to make a choice.

Assessment of the most strategic jurisdiction requires a thorough analysis from the perspective of the victims/survivors, assessing the risks they may face and how these could be mitigated. For example, in Colombia, following consultations with survivors and a risk analysis, several cases of racism and gender based and sexual violence perpetrated against Afro-Colombian women were brought by Women's Link Worldwide and Asociación de Mujeres Afrodescendientes del Norte del Cauca (ASOM) before the Truth Commission, rather than before ordinary tribunals or the Special court, in line with the victims/survivors wishes, as they expressed fear of re-victimisation and mistrust in formal judicial proceedings.

The use of national and international fora or jurisdictions may not necessarily exclude each other and can serve complementary purposes. Strategic SGBV litigation at international or regional level can create obligations and opportunities to support existing national level advocacy and litigation efforts. Indeed, in some cases before the Inter-American Court of Human Right, the decisions of the regional court were upheld by national authorities and led to prosecutions at national level. For example, many years after the decision of the Inter-American Court in the case *Molina Thiessen vs Guatemala*, a national Court for High Risk Crimes sentenced four former high-ranking Guatemalan military officers for crimes against humanity, including for the arbitrary detention and sexual torture against Emma Guadalupe Thiessen and the disappearance of her brother Marco Antonio Thiessen.

## Kavumu – Democratic Republic of the Congo (DRC)

In Kavumu village, between 2013 and 2016, more than 40 girls between 13 months to 12 years old were abducted at night from their homes and raped. Despite legal actions, documentation and advocacy undertaken for two years by Congolese and international actors and coverage in the international press, the local civil prosecutor did not initiate an investigation. In response to this inaction, the actors leading victims' legal representation considered the need to change the strategy and file the complaints before the military jurisdiction.

The United Nations Team of Experts on the Rule of Law and

Sexual Violence in Conflict and the International Centre for Transitional Justice held a case prioritization session with Congolese military prosecutors examining serious international crimes in South Kivu in March 2016, which included the situation in Kavumu among others. After an assessment of the evidence gathered by TRIAL International and Physicians for Human Rights, a legal brief was presented to the Congolese judicial authorities, building on existing evidence, demonstrating that the violations were prima facie crimes against humanity and should therefore be brought

before the jurisdiction of the military prosecutor.

As a result, the case was then brought to a provincial military prosecutor as a matter of priority for the Congolese government, and the Congolese special police for women and children in South Kivu was officially tasked with a mass crime investigation. In December 2017, the military court of South Kivu convicted 11 perpetrators, including an acting politician, to life in prison for rape as crimes against humanity against 37 young girls. The conviction was upheld on appeal in July 2018.

## Valentina Rosendo Cantú - Mexico

In 2018, after 16 years of struggle led by Valentina Rosendo Cantú, supported by civil society actors, including through strategic SGBV litigation, a Mexican Tribunal sentenced military officials for the sexual violence committed against Ms Rosendo Cantú, an indigenous woman and a minor at the time of the crime.

The Tribunal ordered sentences of up to 19 years in prison and the payment of financial reparations to the victim. Significantly, the Tribunal recognized the testimony of the victim as fundamental evidence, acknowledging that SGBV often occurs in a context that does not allow the possibility of accessing other witnesses or material evidence. The Tribunal's decision further refers to the sexual torture against Ms Rosendo

Cantú as an act of aggravated and intersectional discrimination based on gender and ethnicity. In this regard, the sentence takes into account the structural inequality in which she found herself indigenous, combined with the fact of being a girl, which exacerbated the power imbalances between her and the armed military officials.

The investigations were first initiated before the military justice system in Mexico, which dismissed the complaint. Subsequently, the complainants brought the case before the inter-American system, and in 2010 the Inter-American Court of Human Rights issued a judgment declaring the responsibility of the Mexican State. The regional Court ordered 16 reparation measures,

including investigating the facts in the civil/ordinary jurisdiction and proceeding to identify, prosecute and punish those responsible, in order to guarantee access to justice for Valentina Rosendo Cantú. As a result of this decision and the sustained perseverance of Ms Rosendo Cantú and civil society's advocacy and strategic SGBV litigation, in 2014, Mexico partially modified the Code of Military Justice, establishing that human rights violations committed by the military against civilians should be investigated in civil/ordinary courts, and four years later sentenced the perpetrators, as explained above. Despite all these progresses, civil society actors claim that these reforms are insufficient and that justice remains exceptional for victims of sexual violence.



The use of universal jurisdiction was discussed as a possible strategic selection of fora, particularly to circumvent laws that perpetuate impunity or other forms of amnesties. For example, the strategic litigation process regarding the serious human rights violations committed during the Franco regime in Spain, included the filing of a complaint before Argentinean jurisdictions and requested the extradition of several individuals. At first SGBV was not included in the initial complaint and the strategic SGBV litigation led by Women's Link included the filing of an additional complaint to the original one, instead of filing a new case. While extraditions were not granted by Spain and prosecutions have not taken place, victims and witnesses, including of SGBV, could testify before the Argentinean judicial authorities and have raised significant attention – at national and international level – on the prevailing impunity and on victims' claims for justice.

Moreover, participants discussed and shared experiences on the strategic use of non-criminal jurisdiction, such as using administrative proceedings to get redress for human rights violations. This was the case for example in the case of a British woman who was raped at a checkpoint in the Sinai region, allegedly by an Egyptian military officer. She did not receive the help and assistance required from the UK embassy and consular services in Cairo in the filing of a claim before Egyptian authorities and to access medical services. An official complaint was filed to the UK Foreign and Commonwealth Office (FCO) and dismissed, but the Parliamentary Ombudsman upheld her claim. As a result, she received an official apology and a small financial compensation from the FCO, who also changed the policies, procedures and training for consular services to deal with victims of sexual violence, including rape.

Participants also shared experiences of using foreign administrative courts, for example for violations of immigration regulations, to address and redress cases of human rights violations, including SGBV. For example, these proceedings were effective in addressing cases of sexual violence committed in Liberia, when perpetrators were found in the US, in violations of territorial entry requirements.

In Kenya, the Bill of Rights in the 2010 Constitution allows organisations to file complaints about human rights violations in the public interest, in addition to

persons acting in their own interest. The use of that jurisdiction was particularly relevant in the initiation of a case related to sexual violence committed during the 2007 to 2008 post-election violence in Kenya, as these proceedings enabled a shift in focus from individual liability of perpetrators to State's obligations. This was particularly important in these cases because for most of the survivors, the perpetrators were unknown, and the state claimed that there was no evidence to identify them. At the time of the workshop, proceedings had not concluded. Yet, regardless of the outcome, the forthcoming decisions should result in further clarity in relation to State's obligations to prevent and protect the population from sexual violence, especially those most at risk, and to ensure credible investigations and prosecutions of perpetrators, including during times of elections.

Participants also suggested that the use of quasi-judicial mechanisms should be further explored, including through individual complaints procedures of UN Human Rights Treaty Bodies, as well as inter-State complaints.

### **Strategic mapping of actors**

Participants discussed the strategic mapping of actors during the litigation process. They highlighted the importance of mapping potential allies, as well as possible opponents or actors who may resist or advocate against the strategic aim pursued. Some attendees shared examples of how such exercise was conducted, such as the elaboration of a matrix placing individuals and organizations according to their level of agreement, or opposition, and their degree of influence. The matrix also included a mapping of influencers who could impact the views and conduct of others. Reaching out to actors who were situated in the middle of the matrix – meaning not in radical ends of the spectrum of support – was the priority. This matrix had proven useful, especially to broaden the identification of actors beyond the "traditional" ones.

Mapping of actors for strategic SGBV litigation requires an analysis of the spectrum of allies, opposition and influencers, from a gender perspective. This analysis should include past and current positions and actions regarding women's human rights and gender equality, including official and non-official statements and decision taken.

When mapping allies, participants noted that State entities, including justice authorities and prosecutors' offices, are not necessarily monolithic. Some officials within the institutions, including at low or mid-level in hierarchy, can be influential and decisive in bringing a gender perspective into a judicial decision and interpretation of standards. The same observation applies to Government entities.

International and non-governmental entities working with the justice system, including by providing training on human rights, were also identified as having potential influence, as they could be decisive in enhancing judicial actors capacities and understanding of the characteristics of investigating and prosecuting SGBV. Media actors should also be included in actor mapping exercises, such as journalists or social media influencers, who play an important role in informing and impacting public opinion. Renowned figures,

such as Nobel Price Laureates or other public figures, can play an influential role by their presence and/or statements in public events, as much as the voice of other survivors, including from other countries, expressing support and solidarity in a global cause.

The discussion also emphasized the impact that expert testimonies had in legal proceedings. For instance, expert advice on the specific gendered elements of sexual violence, or the gendered dimension of the obstacles in access to justice for SGBV victims/survivors has made a difference in several strategic litigation cases. Participants also mentioned the relevance of enhancing alliances in the context of the submission of amicus briefs, including calling upon international experts.

### 3. Coordination and collaboration among entities leading strategic SGBV litigation processes

Discussions referred to the challenges and good practices in building alliances and co-leading the strategic SGBV litigation processes with different entities. Participants presented the specific examples of partnership in leading strategic SGBV litigation in the cases of Sepur Zarco in Guatemala and the Kavumu case in the DRC. Partnerships in both cases, while the contexts were very different, resulted into similar lessons learned. These include:

- The importance of building partnership, including with the UN, to strengthen the capacities of justice actors at national level, including through training and mentoring on investigations and prosecution of SGBV and other serious human rights violations.
- The critical relevance of multidisciplinary partnerships with complementary expertise, including to address the specific needs and rights of SGBV victims. This includes, for instance, expertise in protection from re-traumatisation and other forms of re-victimisation; expertise in interviewing methods tailored to the needs of victims of sexual violence and children victims/survivors; expertise in providing psychosocial support to victims/survivors throughout the process; expertise in litigation and

advocacy against gender-based violence, including sexual violence, or in relation to women's human rights more broadly.

- The complementary role played by non-national or international actors, including the United Nations, in supporting initiatives led by national actors, including through: advocacy at national and international level; monitoring of human rights violations, including in relation to victims' access to justice and/or threats, intimidations or attacks against judicial actors or human rights defenders; supporting the implementation of protection measures for victims; and funding (grants) and technical advice.

Participants also discussed potential challenges related to possible tensions between civil society actors. These may be the result of different factors, including competition for limited resources for human rights advocacy and litigation and differences in strategic views and focus. Participants also noted the potential difficulties in coordination resulting from power imbalances between organizations, including between national and international non-governmental organisations, or between non-governmental organisation and



## Sepur Zarco – Guatemala

Three organisations compose the Alliance for Breaking the Silence and Impunity (Alianza Rompiendo el Silencio y la Impunidad): Mujeres Transformando el Mundo (MTM), el Equipo de Estudios Comunitarios y de Acción Psicosocial (ECAP) and Unión Nacional de Mujeres Guatemaltecas (UNAMG). These three organisations led the strategic SGBV litigation process with the Collective *Jalok U*, the organization created by the *abuelas* of Sepur Zarco.

The Alliance, formed in 2009, aimed at accompanying female victims of serious human rights violations of the internal armed conflict, mainly indigenous women victims of sexual violence, on their route to justice. UNAMG and ECAP had already collaborated for several years, in providing support to women victims of sexual violence in Guatemala. In 2010, the Alliance organized a Tribunal of Conscience on sexual violence perpetrated against indigenous women during the internal armed conflict in Guatemala. This effort led to providing support to the Q'eqchi women from the community of Sepur Zarco to file a

complaint with the Inter-American Commission on Human Rights on the right to reparation, before lodging a criminal complaint before national courts.

The partnership of the three organisations is noteworthy for the complementary and multidisciplinary perspectives that each entity brings. This includes the specialized expertise of ECAP in providing psychosocial support to victims/survivors of sexual violence, including building trust with the women of the indigenous community through longstanding accompaniment, combined with the feminist approaches of UMANG and MTM, where the fist led the political and communication strategies and MTM the legal strategy and litigation before the court. The strategic SGBV litigation continues today, after the verdict, in relation to the enforcement of the reparations.

OHCHR provided support to the partnership and the strategic litigation process, including by leading and sustaining capacity strengthening efforts with the judiciary, to enhance judges and prosecutors' understanding

of international standards applicable to international crimes and gender-based crimes. In addition, OHCHR contributed to the development and adoption of a general instruction on SGBV by the Attorney General's Office, ensuring compliance with international norms and standards. Moreover, through the "Maya Programme", OHCHR provided technical and legal advice, capacity strengthening, including training on strategic litigation, as well as financial support through grants provided to civil society organisations to lead strategic litigation processes to advance indigenous people's rights. This included the strategic litigation in the case of Sepur Zarco. OHCHR further complemented these efforts through national and international advocacy, sensitization of the public to counter stigma and racism, as well as through monitoring of the trial and documenting and reporting on threats and intimidations against the victims, members of the tribunal and human rights defenders associated with the process.

international entities, such as the United Nations. Yet, participants indicated that while there were times of tensions in the alliances, overall, the cohesive factor was the common goal behind the strategic litigation and the commitment with the victims/survivors.

Coordination of actors was also discussed in relation to fundraising. Participants noted that some donors' funding policies can contribute to coordination, for example prioritizing funding to consortiums. Yet, while

coordination is generally positive and can enhance the impact of a process, by promoting complementarity and multidisciplinary processes, funding policies or incentives for coordination should not result into erasing (or ignoring) the legitimate differences that entities may have in relation to key policy matters and strategic approaches.

## Kavumu - Democratic Republic of Congo

Coordination and collaboration among the entities co-leading the strategic litigation in this case was of critical importance. In this case (but also in relation to many others in DRC) it took several years for the authorities to acknowledge that the incidents in Kavumu qualified as crimes against humanity and to prioritize their prosecution. In DRC, decisions on prioritization are discussed and agreed by a multidisciplinary task force convened by the UN Stabilization Mission in the DRC (MONUSCO). The task force gathers all national and international actors involved in accountability processes for serious human rights violations. Each actor of the Task Force brings its unique expertise and some international organizations provide support and mentoring to relevant national entities.

Victims and their relatives were also central to the process, taking part and being consulted regularly. After mapping the organizations working with victims' relatives, a national family association was identified to serve as liaison with the parents of the child victims. Security concerns were particularly acute in this case and victims and their relatives received training and support from civil society actors to enhance their protection.

The strategic litigation around the Kavumu case was also illustrative of the importance and effectiveness of establishing multidisciplinary collaboration between the civil society partners and UN entities. In particular, in addition to the legal expertise required in this case, particular attention was needed to ensure

the protection of child victims, including by preventing their re-traumatization, while ensuring effective interviewing of children to be used as evidence. Psychosocial support was provided to the victims throughout the process. Special measures were also taken to ensure that the interviews were conducted by well-trained professionals and video-recorded, while lawyers and prosecutors were watching and taking notes from a separate room without being seen by the child victim. Strategic SGBV litigation in this case also involved advocacy to ensure that such video-recorded testimonies were used as evidence in the trial, without having to re-interview the children.

## 4. Communication and advocacy strategies

Participants shared experiences about advocacy strategies. In many occasions these included the elaboration and publication of an analysis of the situation, including the various obstacles faced by victims of sexual violence to access justice. In Bosnia and Herzegovina, a study was conducted analysing the prevalence of gender stereotypes in the judiciary in relation to rape cases prosecuted as war crimes. Participants also reported setting up a database in Colombia documenting defence lawyers' tactics to delay procedures in a specific case. Three years later, they used this information to expose what they called 'impunity tactics' in a report that became an advocacy tool used by other partners as well. Similarly, in the case of Sepur Zarco, civil society actors elaborated a research to raise awareness on the specific realities and the experience of SGBV survivors, explaining the differences and particular characteristics of the prosecution of crimes of sexual violence, including the gender dimension of such forms of violence. Some

participants also pointed out that highlighting the positive contributions of State institutions, authorities or prosecutors and recognising this publicly has proven to be a powerful approach, leading to better collaboration and increased access to and support from these State entities.

Participants also discussed challenges and successes when advocating and communicating around sexual and reproductive health and rights. For instance, in Colombia, a complaint was presented to the Constitutional Court aiming at enforcing the implementation of guidelines on comprehensive access to healthcare for SGBV victims. When designing the communication strategy, deliberate decision was made not to focus on sexual and reproductive health and rights. This prevented the polarisation of the debate and secured wider support from a larger political spectrum. Once the decision on the guidelines was adopted, the advocacy strategy then focused on the



operationalisation of the guidelines, including the right to access abortion.

Communication on the litigation processes themselves, including through media, can be particularly effective in raising public awareness on the case and on the gender dynamics related to the investigation and prosecution of SGBV. While participants discussed how communication and advocacy have proven effective to raise social awareness, encourage change, spark debates and inspire hope, and to exert pressure to end impunity, discussion at the workshop also covered the risks related to communication strategies, especially in relation to victims/survivors' participation and security. Risks assessment and measures taken to protect victims' safety must be undertaken in all contexts and at all times, irrespective of the active, visible or more discrete

role played by the victims/survivors. Actually, in some cases, the communication strategy could be to remain silent and not involved any media activity, including for security reasons or potential harm. In other cases, raising the profile of the victims in the media, may on the contrary contribute to protection, acknowledging their role as human rights defender.

Communication and media coverage of the trial provided an opportunity to sensitize the wider public on the reality faced by victims/survivors of SGBV. In the case of Sepur Zarco, media, including TV attention exposed the living standards of marginalized indigenous communities. At the same time, some media close to military sectors did also further stigmatize victims/survivors, including disseminating sexist insults against them. Advocacy and media strategies

### "Jungle Jabbah" - Liberia

Cases involving sexual violence, committed during the civil wars in Liberia, have been mostly tried abroad, including in Belgium, France, the UK and the US. For instance, a US Federal court opened a case against the former Rebel Commander "Jungle Jabbah" for false information to U.S. immigration authorities related to atrocities committed in Liberia's First Civil War. Twenty victims travelled to Philadelphia to testify about the serious violations committed by him and his soldiers, including cannibalism, rape, murder, and slavery. Civitas Maxima led several innovative initiatives to reach out to the Liberian population and raise their awareness on the content and outcome of these trials, for example:

The organization monitored the trials and prepared legal briefs. While these were appreciated by human rights and litigation organisations, they were too

technical and legalistic to reach a broader audience. These were then coupled with other complementary initiatives. Civitas Maxima mapped out which platforms, including social media, were more used in the country. Based on that, the NGO decided to initiate a Facebook campaign and, in 2017, launched the Liberian Quest for Justice, a platform that disseminates videos, cartoons and other material about justice processes happening outside of Liberia. Civitas partnered with a local NGO supporting independent journalism, and through this partnership, funded Liberian journalists to go to the US for the period of the trials. In the memorandum of understanding, it was agreed that, while Civitas was funding journalists' efforts, the NGO would have no say in what the journalists would say in their reporting. As a result, Liberian journalists produced articles, conducted several Facebook live

events and radio recordings, which have reached over 40,000 Liberians.

Moreover, advocacy initiatives also included theatre and other forms of art as a tool to engage communities. This included the development of a cartoon series about Musu, a brave girl in Monrovia, raising awareness on the impact of the violations committed during the 14-year back-to-back civil wars, and reaching out to young segments of the population. The cartoon shows the importance of breaking the silence and the resilience of the Liberians who seek to end impunity, and promotes youth leadership and girls' empowerment. Musu's diary connects cartooning with the battle against impunity in order to encourage Liberians to voice their own quest for justice.

should include measures to anticipate, address and counterbalance possible narratives that perpetuate stigma, gender stereotypes and gender-based discrimination.

Participants discussed how victims' voices in the media have been critical elements that contributed to change prevailing narrative and to, counter gender-stereotypes and stigma. For example, a participant referred to her experience supporting the elaboration of a report presented by Women's Link Worldwide and Asociación de Mujeres Afrodescendientes del Norte del Cauca (ASOM) to the Colombian Truth Commission on sexual

violence against women of Afro-Colombian descent during the conflict. This initiative started at least three years before and resulted from a close cooperation with victims and survivors. The women were involved in the communications strategy surrounding the presentation of the report and defining its key messages. For example, they decided to use the first person in the report and to be the ones to present and spread its messages. They also decided to compose songs on the content of the report, which they played before the Commissioners, and they chose the name of the report – Voces Valientes ("Brave Voices").

## 5. Funding of strategic litigation

Participants repeatedly stressed that strategic SGBV litigation is a long and complex process that requires sustained, multi-year funding. Strategic litigation, generally speaking, is expensive, and successful results cannot be guaranteed. When funding is short-term and there is time pressure, the risks of re-victimisation and instrumentalizing the victims are higher. For instance, shortage in funding and disruption in support provided to victims/survivors can jeopardize their trust in civil society actors and in the justice system more generally, compromising their participation in the future. Long-term engagement is critical to strategic SGBV litigation. Legal and advocacy interventions do not end with a guilty verdict, but should be sustained after a first judicial decision, including appeal phases and the enforcement of reparations measures. A victim-centred approach in strategic SGBV litigation also requires long term engagement with victims/survivors after a verdict, including to address potential reprisals and backlashes.

Many participants noted the importance of diversifying funding and sensitizing the donor community about the potential impact of strategic SGBV litigation, beyond the individual cases at stake. Donors must be aware of what strategic SGBV litigation requires in terms of funding, including long-term engagement, diversity of intervention and a victim-centred approach. Participants highlighted that funding should cover all the aspects of strategic litigation, including communication, advocacy and victim support. Participants noted the critical value of core/institutional funding to support larger advocacy projects, which include strategic litigation. This has helped in allowing more flexibility on how to orientate needs and resources over time and taking into consideration the changing contexts to diversify the profiles of the professionals leading the project (e.g. good combination of lawyers and litigators and professionals experienced in advocacy and communication).

## 6. Transformative impact of strategic litigation

Participants presented and discussed the transformative impact of strategic SGBV litigation, including the following illustrative cases.

### Transformative impact on victims/survivors

A verdict can be very significant in restoring victims' sense of justice, serving as an official acknowledgement of the harm that victims suffered,

and – if handled well – can contribute to victims/survivors' empowerment and agency.

The transformative experience of Linda Loaiza López is an inspiring example of the resilience of victims/survivors. Ms Loaiza López, a Venezuelan young woman, survived four months of captivity, during which she was brutally and repeatedly tortured, including sexual torture and rape, by an individual she did not know. The police did not act to protect her though



they had tangible elements to do so. Since her escape from her captor, she is at the forefront of the strategic litigation of her case, starting before national courts. After 17 years of struggle, in 2018, the Inter-American Court concluded that in failing to protect the victim and to investigate and prosecute the crime, the State was in violation of the prohibition of torture and sexual slavery. The Court also found that these violations took place in a context of gender-based discrimination and a lack of gender-sensitive procedures. Ms Loaiza López had graduated from law school in 2011, and in 2013 enrolled in a post-graduate in international and human rights law. She presented and defended her own claim before the Inter-American Court of Human Rights, while two international human rights and litigating NGOs joined as co-petitioners. She now works as a lawyer and supports victims of sexual violence in Venezuela.

The experience of the victims/survivors who led the report 'Brave Voices' in Colombia (mentioned above) are another clear example of how a victim-centred approach and victims/survivors' participation, from the outset, in the design and implementation of strategic SGBV litigation initiatives contributed to their empowerment, agency and activism.

Participants also discussed how strategic SGBV litigation has proven instrumental for restoring the victims' trust in the justice system. For example, in Bosnia and Herzegovina, some victims of sexual violence and their communities, after one of the guilty verdicts passed down by a national court, expressed that they could now trust the justice system again and were satisfied that the harm they suffered had been officially acknowledged and recognised. Discussions highlighted that victims' participation in a process could have in itself a meaningful impact on victims/survivors, even if the final verdict is not a guilty verdict. Some victims/survivors had indicated that the litigation process was in itself empowering, sometimes solely related to the fact that a lawyer was representing their views and rights, and a prosecutor listening and believing them. Many victims/survivors have expressed that participation in the process, and being taken seriously, was a form of redress and healing.

Yet, not all experiences shared were a success. For example, in Bosnia and Herzegovina, one survivor/victim expressed frustration at the weak sentence and the court's neglect of her right to reparation, including compensation. In this case, this person is now a

strong advocate and activist, and that experience also empowered her, but it was noted that she suffered a significant emotional backlash in the time immediately following the sentence. It was also noted that in some cases victims/survivors may be satisfied with the outcome of the strategic litigation process, whereas the litigating organizations may not be. For example, in another case in Bosnia and Herzegovina, a survivor had accepted a plea agreement and damages were paid to her. While the litigating organizations had advised her against the plea agreement, the victim/survivor was satisfied with the financial compensation.

Participants also discussed that cases of "positive" legal outcomes, such as a satisfactory guilty verdict, may not necessarily result into victims/survivors' empowerment. For instance, in the context of the prosecutions for sexual violence by the Extraordinary Chambers in the Courts of Cambodia, only a very limited number of victims were selected to provide their testimonies. And from the few who did provide their testimony in court, many experienced very difficult moments during the cross examinations and had a feeling of disempowerment.

### **Transformative impact on societies and communities**

Societal transformations are harder to monitor. They are multi-factorial and may take place over long periods of time. Yet, several participants shared some insights on how strategic SGBV litigation processes had contributed to address stigma and to shift how victims/survivors were perceived by their communities. For instance, Valentina Rosendo Cantú (mentioned above), an indigenous girl who was victim of sexual violence by military officials in Mexico, had been subject to stigmatisation and was blamed by members of her community for the violence she had suffered, to the extent that she was forced to move town. Following the sentence of the Inter-American Court of Human Rights, which was later followed by a sentence from a national court, she received apologies from several members of her community, including many women, for the way she had been treated.

Similarly, after the guilty verdict, the *abuelas* of Sepur Zarco have also received apologies from members of their communities who had previously publicly insulted them labelling them as "prostitutes" and claiming that they were only interested in financial

gain through reparations. In addition to the official acknowledgement of the truth concerning the violations they suffered, the fact that the *abuelas* had always stressed the importance for the Tribunal to also order collective forms of reparations (which will ultimately also benefit the community as a whole) may have also contributed to changes in perceptions.

### **Transformative impact on jurisprudence and interpretation of the national and international norms and standards**

Strategic SGBV litigation has proven instrumental to define and refine the international jurisprudence in relation to human rights violations and SGBV crimes, including States' obligations to prevent, prosecute and respond to these crimes. Just to mention one example, the strategic SGBV litigation in the case of Linda Loaiza López vs Venezuela resulted in a decision of the Inter-American Court of Human Rights, which clarified international standards in relation to States' due diligence obligations, under the absolute prohibition of torture, and obligation to protect from sexual violence when committed by non-state actors.

### **Transformative impact on reparations**

Strategic SGBV litigation was successful in tailoring reparation measures, which can include individual and collective measures, financial, material and symbolic reparations, as well as institutional, legislative and regulations reforms, as guarantees of non-recurrence in cases of SGBV.

In the case of the sexual torture of eleven women from Atenco (Mexico), strategic SGBV litigation also focused its efforts on the importance of the provision of guarantees of non-recurrence, as forms of reparations, to prevent future violations and to lift the obstacles that victims of sexual violence face when attempting to access justice in Mexico. The strategic SGBV litigation had included, as an advocacy priority, the need to enhance the independence of medical staff supporting victims of sexual violence in the context of their access to justice. As a result, the Inter-American Court of Human Rights ordered several measures of reparation, including in relation to the State's obligation to provide immediate and free medical, psychological or psychiatric treatment to the victims who wish so, as well as other measures of non-recurrence, such as the implementation of training programs for law

enforcement and public officials and the establishment of an internal State-led monitoring and control mechanism on the use of force. The Court also ordered the State to organize a public act acknowledging its international responsibility and to issue a public apology, in addition to financial reparations granted to the victims for the material and immaterial damage and legal costs.

In the case of Sepur Zarco, Guatemala, the *abuelas* were at the forefront of the strategic litigation process, throughout the entire process and now in the follow-up phase on reparations. Inter-institutional monthly meetings ("mesa de reparaciones") were established to follow-up on the implementation reparation measures ordered by the court. For each reparation measure, one survivor became "ambassador", following-up on the progress made in that particular area. This role reinforces the centrality of their voice and agency in this process and seeks to sustain their participation and consultation in this phase of the strategic litigation process. The reparation measures, which include individual and collective measures, in addition to monetary compensation, also entailed measures related to their right to land, the establishment of education and health services and security policy measures, at the level of the community and at national level. Yet, these reparations measures had still not been enforced and implemented. The strategic litigation continues towards that goal. For example, at the three-year anniversary of the verdict, a commemoration act and a photo exhibition was organized, to which journalists were invited. This greatly contributed to heightened visibility of the experience of victims/survivors, the very precarious conditions in which they and their communities continued to live and the lack of progress in obtaining reparations for the serious violations committed during the civil war.

### **Transformative impact on institutions, legislation and regulations**

Participants shared experiences where strategic SGBV litigation have proven instrumental to advocate for reforms in institutions, laws and regulation, to prevent and respond to SGBV. Indeed, strategic SGBV litigation can reveal and address specific patterns related to the prevalence of SGBV, which include in many instances the prevalence of impunity for such crimes. As noted above, participants recalled the importance of building strategic SGBV litigation based on solid research, for



instance collecting information on the obstacles that specifically affect victims of SGBV in accessing justice and in obtaining the protection from the State.

Strategic SGBV litigation also served to equip judges and prosecutors to better address the specificities of SGBV investigations and prosecution, and the requirements and methodologies needed to enable the effective participation of victims of SGBV in judicial proceedings. For example, strategic SGBV litigation has proven instrumental to inform the tribunals' proceedings on how to address SGBV cases. In the case of Sepur Zarco, the strategic litigation has set important precedents in the use and validity as evidence of victims' testimonies, where violations had taken place more than three decades before and no other material evidence or medical certificate were

available. The strategic litigation included advocacy with the Tribunal to accept, as evidence, in addition to the testimonies of the victims, the expert psychological reports which evidence long-lasting harm resulting from the sexual violence, such as the persistence of post-traumatic stress disorder symptoms. While the experience in this case was positive in terms of improved capacity of Court for High Risk Crimes to handle SGBV cases, there were challenges that persisted, including in terms of lack of interpretation throughout the trial. While the indigenous women complainants were provided with interpretation during their testimony, many of them expressed frustration for not having had the chance to follow the whole process in a language they understood. This would have also greatly contributed to their empowerment and agency in the trial.

## 7. Concluding remarks

Strategic SGBV litigation has been used increasingly in the past decade, and there are many interesting experiences, lessons learned and good practices, which were shared at the workshop.

Ensuring a victim-centred approach is critical to the success of any strategic SGBV litigation. This includes the continuous participation of victims/survivors from the outset and throughout the process and making sure that their views and best interests are paramount to any strategic litigation efforts. A victim-centred approach also seeks to support their autonomy, enabling the development of their full potential to exercise their rights with agency. This includes, for instance, avoiding making assumptions, seeking informed consent and avoiding taking decisions on their behalf, whatever well intentioned this may be.

The achievements discussed in this report reveal the potential of strategic SGBV litigation to bring justice to the victims, to advance their rights and agency

and to contribute to social, legal and institutional changes. While the effective implementation of reforms and guarantees of non-recurrence is still pending in most contexts, strategic SGBV litigation efforts have contributed to place the need for legal and institutional reforms in the political agenda. This greatly contributes to shape States' future responses to SGBV, including in relation to the prevention, protection and prosecution and in the design and implementation of reparations.

Strategic SGBV litigations are not stand alone strategies, and generally build from previous long-standing efforts to accompany and support victims/survivors. Linkages of strategic SGBV litigation with other strategies and advocacy efforts, for instance promoting women's human rights or combating gender-based violence and impunity more broadly, is also critical. Hence the importance of strengthening partnerships, enhancing complementarity and promoting multi-disciplinary approaches.



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