

## BRIEFING PAPER

# The Molina Theissen case in the courts of Guatemala

Five retired senior Guatemalan military officers are charged with crimes against humanity for the illegal detention, torture, and rape of Emma Molina Theissen, and the enforced disappearance of her 14-year old brother, Marco Antonio Molina Theissen, in 1981. The case is highly significant because those charged include former generals previously believed to be untouchable. Most prominent are former army Chief of Staff Benedicto Lucas García and former head of military intelligence, Manuel Callejas y Callejas. Their trial, together with three other former military and intelligence officials, is scheduled to begin in Guatemala City before High Risk Court “C” on March 1, 2018.



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## The Charges

The prosecution case relates to events that took place between September 26 and October 6, 1981. During this time, the Guatemalan army was implementing a counterinsurgency strategy based on the Doctrine of National Security. According to prosecutors, under this doctrine, the army considered Emma Guadalupe Molina Theissen to be an “internal enemy”, and someone with information of value to military intelligence. She was a militant of the Patriotic Worker Youth (*Juventud Patriótica del Trabajo*).

Prosecutors allege that the army illegally detained Emma Molina Theissen at a military checkpoint on September 27, 1981, and brought her to Military Zone No. 17, where she was interrogated, sexually assaulted, and tortured. Prosecutors say that the accused knowingly permitted soldiers under the influence of alcohol to enter the room where Emma Guadalupe was being detained and shackled, where they used physical and psychological violence to sexually violate her outside of interrogation sessions.

They also allegedly permitted soldiers to use physical and psychological violence to sexually violate her during interrogation sessions. She escaped from the base nine days after her detention. The day following her escape, October 6, armed men raided her home. Not finding her there, they beat her mother and abducted her 14-year-old brother, Marco Antonio Molina Theissen, who has not been seen since.

Each of the five defendants face multiple criminal charges:

### **Benedicto Lucas García**

As the Brigadier General and head of the High Command of the Guatemalan Army at the time, Benedicto Lucas García directed, coordinated, and oversaw the work of the High Command and was in charge of the design and conduct of military strategy in the counterinsurgency war. Lucas García is charged with crimes against humanity and aggravated sexual assault perpetrated against Emma Guadalupe Molina Theissen because he allegedly ordered the continuous implementation of military plans and directives by the commanders of the military zones and bases, including Military Zone No. 17; he allegedly supervised and controlled the implementation of counterinsurgency operations throughout the national territory, including the Military Zone No. 17; he allegedly permitted military officers under his command to develop counterinsurgency operations that resulted in the illegal arrest and clandestine detention of individuals in military bases and zones, who were then subjected to physical and psychological torture, and, in the case of women, to sexually violate them; and prosecutors say these actions and omissions created the conditions for the institutionalization of systematic and widespread violations of human rights and international humanitarian law.

With regard to the enforced disappearance of Marco Antonio Molina Theissen, Lucas García faces charges in relation the following alleged crimes: he knew about and permitted military officials, under the command of the former director of intelligence (G-2) of the High Command of the Guatemalan Army, Callejas y Callejas, to conduct a military intelligence operation to recapture Emma Guadalupe Molina Theissen after her escape from Military Zone No. 17; during the operation, carried out the next day, three

members of the Military Zone No. 17, under the command of intelligence officer “S2” Zaldaña Rojas and under the supervision of Callejas y Callejas, did not find Emma Guadalupe, instead abducting the minor Marco Antonio Molina Theissen; as head of the High Command, Lucas García failed to take action to investigate the enforced disappearance of Marco Antonio in order to identify and punish the perpetrators; and prosecutors allege that he failed in his duty as guarantor of human rights under Guatemalan law, with violating and infringing upon humanitarian law as set forth in the Geneva Conventions and violating and infringing upon the American Convention on Human Rights.

## Manuel Antonio Callejas y Callejas

As an infantry colonel who served as director of intelligence (G-2) of the High Command of the Guatemalan Army at the time of the events, Callejas y Callejas helped to implement the counterinsurgency strategy developed by the Guatemalan army during the internal armed conflict. As part of his functional duties, he advised the chief of the High Command of the Guatemalan Army, Benedicto Lucas García, in its mission to obtain information of strategic operational value. Accordingly, he contributed to the planning of military operations in different military commands throughout the country, among them Military Zone No. 17. Prosecutors allege that these plans resulted in the arbitrary arrest of non-combatant civilians, who were detained in clandestine detention centers within military facilities. According to the charges, members of the intelligence service questioned detainees and often subjected them to physical and psychological torture. Female detainees were allegedly subject to individual and collective sexual violence. The charges allege that in keeping with common practice at the time, the military sought to pressure Emma Guadalupe into becoming a collaborator and informant. The Attorney General’s Office charged Callejas y Callejas, as director of military intelligence, with crimes against humanity and aggravated sexual assault for permitting the existence of clandestine detention centers within some military zones, where detainees were interrogated using torture, cruel, inhuman, and degrading treatment, as well as sexual violence primarily against women. He is also charged with not taking the necessary actions to stop grave violations against non-combatant civilians. Callejas y Callejas allegedly supervised the military intelligence operation to recapture Emma Guadalupe and is accused of the crime of enforced disappearance in relation to the abduction of Marco Antonio.

## Francisco Luis Gordillo Martínez

The Attorney General’s Office says that Gordillo Martínez was commander of Military Zone No. 17 at the time of the events. According to the charges, military doctrine and guidelines establish that the commander is responsible for every action carried out or omitted by those under his command. Based on his functional duties as commander, the Attorney General’s Office charged Gordillo Martínez with crimes against humanity and aggravated sexual assault for allegedly failing to act to stop the crimes against Emma Guadalupe, to punish the officers involved, and omitting to fulfill his duty as guarantor of rights under Guatemalan law.

## Edilberto Letona Linares

The Attorney General's Office states that because Letona Linares served as Deputy Commander of Military Zone No. 17 at the time of the events, he was functionally responsible for all actions at the military base when the Commander, Francisco Luis Gordillo Martínez, was absent. He therefore faces charges of crimes against humanity and aggravated sexual assault for allegedly failing to take necessary actions to stop the perpetration of crimes against Emma Guadalupe and to punish the officers involved.

## Hugo Ramiro Zaldaña Rojas

The Attorney General's Office alleges that Zaldaña Rojas, who served as a military officer and intelligence official (S-2) in Military Zone No. 17 at the time of the events, had direct control over Emma Guadalupe during the period of her detention. Prosecutors charged him with crimes against humanity for allegedly having directed, supervised, and controlled her interrogation, and of therefore being criminally responsible for the crimes committed against her, including aggravated sexual assault. Prosecutors also charged Zaldaña Rojas with the crime of enforced disappearance for allegedly commanding the operation to recapture Emma Guadalupe, which resulted in abduction of Marco Antonio.

## Arrests

On January 6, 2016, acting on orders from the Attorney General's Office, police arrested 18 former senior military officers in relation to the Molina Theissen and CREOMPAZ grave crimes cases. This was the largest simultaneous set of arrests targeting officials linked to alleged wartime crimes.

## Pre-Trial Hearings

Under Guatemalan criminal procedure, pre-trial hearings are more substantive than is the case in many other countries. In 1994, Guatemala adopted an adversarial legal system, which introduced oral hearings. Prosecutors play the lead role during preliminary investigations, with police following their direction. Prosecutors petition a pre-trial judge to receive authorization for police searches and seizures, and the issuance of arrest warrants. Four months after the January 2016 arrests in the Molina Theissen case, the Attorney General's Office successfully obtained a decision from the Supreme Court of Justice to move the case from a regular court to High Risk Court "C". Pre-trial Judge Víctor Herrera Ríos presided over hearings to determine whether there was sufficient evidence against the accused to proceed to a full trial. In this intermediate phase of the pre-trial process, the prosecution presents its evidence, civil parties have an opportunity to present evidence, and the defense can contest the admissibility of evidence. During this period, the prosecution successfully sought to add additional charges of aggravated sexual assault to the cases against the original four accused, and to charge Benedicto Lucas García in relation to the case.

In March 2017, Judge Herrera Ríos ruled that there was sufficient evidence to send all five defendants to trial. In a final phase, culminating in July 2017, he ruled on the admissibility of all presented evidence, and rejected a number of procedural objections raised by the defense.

## The prosecution case

Prosecutors told the court that they would be relying on a wide variety of evidence to prove the charges, including information on the context and the alleged specific actions and omissions of the accused. For general context on policies that led to torture, sexual violence, and enforced disappearance, including the establishment of clandestine detention centers, the prosecution sought admission of various reports of the Inter-American Commission of Human Rights, an expert report on the historical context, official military documents, the final reports of Guatemala's Historical Clarification Commission, and the 1996 Peace Accords. To establish that members of the Molina Theissen family suffered crimes, the prosecution sought admission of documents from the National Police Historical Archive, statements from family members, and the 2004 ruling of the Inter-American Court of Human Rights, which established state responsibility for the enforced disappearance of Marco Antonio Molina Theissen and the denial of the rights of the families to know the truth about his fate and to obtain justice against those responsible.

To demonstrate the criminal liability of the five accused, prosecutors sought the admission of eyewitness testimony from Emma Molina Theissen and others who saw her in custody, military documents relating to the positions of the accused, documents seized from the home of Gordillo Martínez related to such things as the Army's establishment of roadblocks to detain suspected subversives, and orders from Callejas y Callejas to construct interrogation rooms at Military Zone No. 17. Further prosecution evidence includes the report of a military expert on policies and the chain of command and "Plan Victoria 82," a military document on the treatment of documents seized from "internal enemies." Prosecutors said they would produce documents showing that the commanders of Military Zone No. 17 were aware of and responsible for the detention of Emma Molina Theissen, and that they reported this all the way up the Army's chain of command, and that Callejas y Callejas and Benedicto Lucas García knew about and failed to punish the crimes. Further, prosecutors argued that crimes against Emma and Marco Antonio Molina Theissen were the direct consequence of policies emanating from the Army's High Command. Specifically with regard to the enforced disappearance of Marco Antonio, prosecutors told the court that they would rely on eyewitness testimony from his mother and possibly others: including the family's maid, Emma's sister, a former military officer, and a protected witness.

## Civil party arguments

Alejandro Rodríguez, counsel for the Molina Theissen family, expressed agreement with the arguments of the Attorney General's Office. He underscored the importance of the jurisprudence of the Inter-American Court for Human Rights, including the 2004 ruling in this case, in which the court found that Guatemala was responsible for the enforced disappearance of Marco Antonio Molina Theissen and called for a series of economic and symbolic reparations. Rodríguez also called upon the court to take measures to ensure that none of the parties engage in behavior that could be offensive to the Molina Theissen family or to the observers in the proceedings.

## The defense case

Early in the proceedings, before the case was transferred to the High Risk Court, defense counsel for Edilberto Letona Linares argued that amnesty provisions of the 1996

National Reconciliation Law should apply to Letona Linares, and the case should be moved to a military court. Guatemala's Third Court of Appeals rejected that appeal on May 18, 2016, noting that the National Reconciliation Law explicitly excludes amnesty for grave crimes, including genocide, torture, and crimes against humanity.

During two preliminary hearings before the High Risk Court in August and September 2016, Benedicto Lucas García spoke at length, denying any knowledge of or participation in the events surrounding the Molina Theissen case. His defense centers on the fact that he was not present in the Military Zone No. 17 during the time of the events and therefore cannot be considered criminally responsible. Zaldaña Rojas also addressed the court, alleging that the Molina Theissen family and NGOs engaged in the case had financial incentives to pursue the proceedings. Further, he argued that the Attorney General's Office was pursuing a political agenda established by former Attorney General Claudia Paz y Paz.

In response to the presentation of evidence from prosecutors, defense lawyers for the five accused contested facts alleged by the Attorney General's Office. For example, some defense counsel argued that the Army had never detained Emma Molina Theissen, while others argued that she was an armed insurgent. One lawyer argued that Marco Antonio Molina Theissen is still alive and in hiding, while another argued that guerrillas were responsible for his disappearance. The defense sought to disallow testimony from expert witnesses and asserted that documents seized from the home of Gordillo Martínez had been altered. They attacked the Inter-American Court of Human Rights, and urged the judge to disregard its rulings and treaty-based law in general.

Counsel for Gordillo Martínez argued that the case was politically motivated and was rebuked by the judge for a menacing tone and "crude arguments." Counsel for Zaldaña Rojas stated that his client was on leave from Military Zone No. 17 during the events in question. A lawyer for Callejas y Callejas stated that he was not in charge of the operation to recapture Emma Guadalupe and had not ordered the abduction of Marco Antonio. Further, he argued that Emma Guadalupe could not have been sexually assaulted, because if she had been, she would hate all men and she never would have married or had a child. Counsel for Benedicto Lucas García argued that the High Command of the Guatemalan Army was only advisory in nature, without capacity to emit orders.

### Ruling

In March 2017, Judge Herrera Ríos accepted defense arguments to disallow a last-minute request from the prosecution to admit further sources of evidence in the case. However, he rejected defense pleas to dismiss the charges, and ruled that there was sufficient evidence to proceed to trial. In the final phase of preliminary hearings, culminating in July 2017, Judge Herrera Ríos completed a review of all evidence to determine its admissibility. He ruled that all evidence presented by prosecutors and civil parties is admissible. He rejected attempts by the defense to disallow the participation of the victims' mother as a civil party, as well as new defense filings to discard evidence on grounds of irrelevance, that it was illegally obtained, or that it went to context and not conduct, and defense efforts to disallow testimony of expert witnesses. In rejecting these attempts, the judge noted that the probative value of the admitted evidence would be tested and determined at trial.

## Climate of intimidation



Throughout the pre-trial proceedings, there was significant tension inside and outside the courtroom. At various times, friends and family members of some of the accused verbally accosted members of the Molina Theissen family, NGO observers, the media, and even the judge.

## Trial

At the outset of the trial set to begin on March 1, the parties will present the judges with lists of witnesses they intend to call, and evidence they intend to present. The court will take account of these lists in preparing for oral hearings. The start of the trial will also present another opportunity for prosecutors, civil parties, and the defense to raise any procedural objections. Once oral hearings start, witnesses will give their testimony and face questioning by civil parties and the defense. The accused have a presumption of innocence. To achieve convictions, the prosecution must prove the charges beyond a reasonable doubt.

## Victims and Civil Parties

The Molina Theissen family is a civil party to the case, represented by lawyer Alejandro Rodríguez. In May 2017, the pre-trial judge also allowed Emma Theissen Álvarez de Molina—the victims’ mother—to act as a private prosecutor (*querellante adhesivo*) in the case.

## Background

Guatemalan authorities identified the Molina Theissen family as political opponents associated with subversive groups due to their opposition to the 1954 U.S.-backed military coup. Authorities detained, tortured and deported the Molina Theissen family patriarch, Carlos Augusto Molina Palma, in the years between 1955 and 1960. In subsequent years, others in the family were affiliated with San Carlos National University, which the government considered to be a center for insurgent activities. Carlos’ eldest daughter, Ana Lucrecia Molina Theissen, was a history student and actively participated in student political groups. Another daughter, Maria Eugenia, was a secretary in the university’s publications department, and her husband, Héctor Alvarado Chuga, was a teacher at a union orientation school affiliated with the university.

Authorities first arrested Emma Molina Theissen, Carlos Augusto’s daughter and a youth activist, in March 1976. Only 15 years old at the time, Emma was tortured and raped repeatedly by her captors before being brought to trial, where she was acquitted of subversion because she was a minor. Four years later, her boyfriend, who had been arrested with her, was found dead in his car with two other students; all three showed signs of torture.

On September 27, 1981, soldiers again detained Emma, this time on the road between Guatemala City and Quetzaltenango, carrying pamphlets of the Guatemalan Workers Party (PGT), Guatemala’s Communist Party. They brought her to the Quetzaltenango military base and interrogated her under torture for nine days. On October 5, she escaped



from detention. The next day, two armed men entered her family's home, beat her mother and kidnapped her brother, 14-year-old Marco Antonio, transporting him in an official vehicle. According to the truth commission, it is believed that members of the intelligence section of the military, or G-2, dressed in civilian clothes subjected Marco Antonio to enforced disappearance as retaliation for the family's activism and his sister's escape from detention.

The Molina Theissen family, with the support of the Mutual Support Group (GAM), a group composed of families of the disappeared, lodged a complaint with the Inter-American Commission on Human Rights in 1998 regarding the enforced disappearance of Marco Antonio Molina Theissen. The state initially accepted a friendly agreement and [recognized its responsibility in the case](#), but a subsequent administration rejected the agreement and the case moved to the Inter-American Court of Human Rights. In 2004, the Court found the Guatemalan state responsible for the enforced disappearance of Marco Antonio, and ordered Guatemala to investigate, prosecute, and punish those responsible. The Court also ordered a series of reparations, including the publication of the sentence, a public apology to the victims, and monetary compensation to the family.

## Timeline

### **November 13, 1960**

The Guatemalan internal armed conflict began with a failed revolt by left-wing military officers and the military government's counter-insurgency campaigns in response.

### **March 7, 1978**

General Fernando Romeo Lucas García was elected to power and intensified a military counter-insurgency campaign. Deploying scorched-earth tactics, the Guatemalan military decimated villages, and carried out assassinations, disappearances, kidnappings, torture, robbery, and rape, especially in the northern department of El Quiché.

### **September 27, 1981**

Emma Molina Theissen was arrested in a military checkpoint for carrying subversive pamphlets, and brought to the Quetzaltenango military base, where she remained until her October 5 escape. She was reportedly interrogated under torture and was subjected to repeated sexual violence.

### **October 6, 1981**

On the day following her escape, armed men kidnapped Emma Molina Theissen's 14-year-old brother, Marco Antonio Molina Theissen, from their home and subjected him to enforced disappearance. He has not been seen since.

### **January 14, 1986**

President Marco Vinicio Cerezo Arévalo was elected the first democratic president in Guatemala following a succession of military dictatorships.

### **December 1996**

A final peace accord was signed. Congress passed the [National Reconciliation Law \(Decree 145-96\)](#), including a partial amnesty for political crimes, and explicitly excluding from the amnesty genocide, torture, forced disappearance, and other international crimes.

### **September 8, 1998**

The Molina Theissen family presents the case of the enforced disappearance of Marco Antonio to the inter-American Commission on Human Rights.

**February 1999**

The UN's Historical Clarification Commission (*Comisión para el Esclarecimiento Histórico*, or CEH) released its report, [Guatemala Memory of Silence \(Tz'inil Na'tab'al\)](#).

**August 9, 2000**

Guatemala entered into an amicable agreement with the Molina Theissen family and recognized state responsibility for the disappearance of 14-year-old Marco Antonio Molina Theissen before the Inter-American Commission on Human Rights.

**2001-2003**

In the face of the failure of the State of Guatemala to fulfill its obligations outlined in the amicable agreement, the petitioners withdraw from the amicable agreement and call upon the Inter-American Commission to recommend the case for adjudication before the Inter-American Court of Human Rights.

**July 3, 2004**

The Inter-American Court of Human Rights condemned Guatemala for the enforced disappearance of Marco Antonio Molina Theissen.

**March 2005**

The Public Ministry established a Human Rights Prosecution Unit to investigate and prosecute crimes perpetrated against journalists, trade union representatives, prosecutorial and judicial actors, human rights defenders and others, and to continue investigations of the violations elaborated in the CEH report.

**September 2007**

The Guatemalan government and the United Nations, with international support, established the International Commission against Impunity in Guatemala (CICIG), to assist the state in investigating organized crime and parallel power structures that had come to prominence during the internal armed conflict.

**September 2009**

The judiciary, under then-Supreme Court judge Cesar Barrientos, established separate "high risk courts" for politically complex cases.

**October 28, 2015**

The Supreme Court of Justice opened a third high-risk court, called group C.

**January 6, 2016**

Four senior retired military officers are arrested in relation to the Molina Theissen case (Hugo Ramiro Zaldaña Rojas, Edilberto Letona Linares, Francisco Luis Gordillo Martínez, and Manuel Antonio Callejas y Callejas) on the same day that 14 other former senior military officials are arrested in relation to the CREOMPAZ enforced disappearance case.

**March 2016**

Lawyers for Edilberto Letona Linares files an appeal seeking application of the amnesty provisions of the 1996 National Reconciliation Law and requesting that his case be moved to a military court.

**April 19, 2016**

The presiding judge of Guatemala's Fifth Criminal Court, Judith Secaida, suspends a pre-trial hearing pending resolution of the Letona Linares appeal.

**May 18, 2016**

The Third Court of Appeals rejects the Letona Linares appeal, as the amnesty provisions of the National Reconciliation Law exclude grave crimes including genocide, torture, and crimes against humanity.

**May 2016**

Guatemala's Supreme Court of Justice rules in favor of a request from the Attorney General's Office to move the Molina Theissen case to High Risk Court "C".

**June 16, 2016**

High Risk Court “C” officially receives the Molina Theissen case. Judge Víctor Herrera Ríos takes charge of the pre-trial proceedings.

**August 2016**

Over the course of two hearings before High Risk Court “C,” the Attorney General’s Office presents additional charges against the original four defendants in the Molina Theissen case and seeks to charge a fifth former senior military official: Manuel Benedicto Lucas García. Lucas García was already in custody; police had arrested him in January 2016 in relation to the CREOMPAZ case.

**August-September 2016**

Over the course of two hearings, Lucas García denies the charges against him, stating that he was unaware of the events surrounding Emma and Marco Antonio Molina Theissen. Hugo Ramiro Zaldaña Rojas stated that the case was politically motivated, and accused the Molina Theissen family of also having financial motivations for the case.

**October 2016**

Judge Herrera Ríos rules that there is sufficient evidence to initiate criminal proceedings against Benedicto Lucas García, and to add new charges of crimes against humanity to the case against Manuel Antonio Callejas y Callejas, and charges of aggravated sexual assault to the cases against him and the other three original defendants. Judge Herrera Ríos also rules against a defense request to release the five accused from pre-trial detention.

**January-February 2017**

In a series of hearings, Prosecutor Erick de León presents the evidence against the five defendants, followed by presentations from the civil party lawyer for the Molina Theissen family, and arguments by lawyers for the defense.

**March 2, 2017**

Judge Herrera Ríos rules that there is sufficient evidence to send all five defendants to trial.

**May 2, 2017**

Judge Herrera Ríos admits the mother of the victims, Emma Theissen Álvarez de Molina, as a private prosecutor (*querellante adhesivo*) in the case.

**July 25, 2017**

Judge Herrera Ríos concludes the final stage of pre-trial proceedings, in which the judge is required to review evidence and determine its admissibility. He admits all evidence provided by the prosecutors and civil parties, and rejects a number of defense motions. The case will be heard by the three-judge trial bench of High Risk Court “C”: Judge Pablo Xitumul de Paz (presiding), Judge Eva Marina Recinos Vásquez, and Judge Elvis David Hernández Domínguez.

**October 2017**

The trial chamber of High Risk Court “C” informs the parties that the Molina Theissen case will go to trial on March 1, 2018.

**March 1, 2018**

The scheduled start date for the Molina Theissen trial.

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## CONTACT INFO

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