

Rights Action
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Update: Ixil Genocide Trial in Guatemala

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Update

THE IXIL GENOCIDE TRIAL: The Case Against Efraín Ríos Montt Tests The Independence Of The Judiciary And Pushes Guatemala's Military Political Project To The Limit

By Annie Bird, Research Fellow at the Council on Hemispheric Affairs and Co-Director of Rights Action

April 30, 2013, http://www.coha.org/rios_montt_genocide_trails/

On April 30, 2013, the trial of former General Efraín Ríos Montt, and his former Military Intelligence Director José Mauricio Rodríguez Sánchez, on charges of genocide and crimes against humanity, resumed, after having been annulled on April 19 by a pre-trial judge, Carol Patricia Flores. It is still unclear whether the April 19 ruling will continue to impact the trial, whether an appeal of the decision will be reviewed by the country's Constitutional Court, or whether Judge Flores will be disciplined for misconduct. In the worst case, the trial could still revert to its status in November 2011, just before Ríos Montt was formally charged with genocide. [1]

The charges relate to the killing of 1,771 individuals who could be identified by name, out of many, many more Ixil Maya people who were killed during Ríos Montt's U.S.-backed regime. This is just one of five genocide charges which have been levied against Ríos Montt, who ruled the country from March 1982 to August 1983. In one of those charges, related to the Dos Erres massacre in the Peten, Ríos Montt has been formally charged and the case is now in the pre-trial phase. [2]

During the 20 days of the Ixil genocide trial hearings, survivors recounted heartrending testimony of what they had witnessed, including the most dehumanizing acts of violence imaginable: young children gang-raped until they died, children's hearts ripped out of their bodies in front of their parents, and the heads of victims used as footballs. [3] The list could go on. The expert witness made it clear Ríos Montt had direct command responsibility at the time and was closely apprised of military actions. The wanton brutality experienced during the epoch was a common pattern around the country, as a strategy to provoke terror.

The current trial was less than one week away from seeing sentencing when it was annulled. [4] Survivors said that the annulment made a mockery of their suffering, and expressed fear that the just issued ruling was the work of clandestine networks that illegally influenced the judiciary. Judge Flores's ruling appears to be an attempt to delay the case several more years as Ríos Montt remains under house arrest, a consideration that Judge Flores had granted the 86-year-old former dictator in January 2012. Ríos Montt's lawyers have presented more than 100 injunctions, appeals, and other legal filings, 98 of which have been thrown out. The excessive use of appeals are clearly seen as a delaying tactic. [5]

As observers view the ruling as flagrantly illegal, it is feared Judge Flores was acting in response to unlawful networks of influence that have long interfered in the judiciary in Guatemala. The judge presiding over the trial, Jazmin Barrios, described the ruling as illegal, as did the Attorney General, who stated that her office will investigate the judge's action. The Geneva based International Commission of Jurists submitted a formal complaint against Judge Flores. However, it is the Guatemalan courts which must eventually decide whether Judge Flores's action was illegal and whether she will be sanctioned. There is also speculation that the ruling was a last ditch effort to derail the trial after statements by a witness on April 3 implicated the country's current president, Otto Pérez Molina, in command responsibility for crimes against humanity in the Ixil area.

THE MILITARY POLITICAL PROJECT ON TRIAL

In many ways, the genocide trial is also a trial of the country's infamous military-political project launched in 1986 with the transition to a nominal democracy. The project was the crafting of a political system that incorporated elements of liberal democracy, such as civilian governance, political parties, and regular elections, into a political system run by a military-business alliance. This de facto coalition has employed the measured use of violence and corruption to maintain control of the government. It became the framework in which the peace process was carried out, and the basic form of governance that continues to this day.

The Guatemalan military-political project grew out of the National Security Doctrine. In 1982, Rios Montt commissioned the country's senior military commander, General Hector Gramajo, to design the Plan of National Security and Development, the famous beans or bullets strategy with its precise formula of 30 percent repression with 70 percent humanitarian assistance. The coupling of "security" and "development" evolved into what in 1986 became Gramajo's Thesis of National Stability, intended to replace the National Security Doctrine.

The Thesis of National Stability emphasized the need for a partnership between the military and business sectors, who together would maintain a civilian government with the military acting behind the scene to ensure control of the government and a model of development. General Gramajo, strongly backed by the CIA, stated, "We want politics to be the continuation of war," and "The plan was to continue fighting the war but by broader means." [6]

The genocide trial is challenging the networks of influence within the justice system that have provided the impunity needed to carry out corruption and repression. This challenge could have legal implications for the highest levels of governance. Guatemala's current president, former General Otto Pérez Molina, who founded the Partido Patriota (PP) political party in 2001, was named in the genocide trial on April 4 by a witness, a former soldier, as having been an officer who ordered the burning and looting of villages to be followed by the execution of their populations. Rios Montt himself has been an influential political figure in his country; he founded the Guatemalan Republican Front (FRG) political party in 1989, and was a congressman from 1990 to 2004.

An example of the measured intervention of the military in politics was the 1993 murder of Jorge Carpio, who was expected to be a leading candidate in the 1995 presidential elections, which, in his absence, was won by Álvaro Arzú. Otto Pérez Molina was head of Military Intelligence at the time, and questioned witnesses the day following the murder. The murder of Carpio was widely believed to have been the work of the military base in Santa Cruz Quiche. But the truth might never be known. Evidence the witnesses turned over to Military Intelligence following that questioning, such as clothing with a boot print, disappeared

during the investigation, along with ballistics evidence gathered at the scene by Military Intelligence. [7] Though the 36-year civil war ended with the signing of peace accords in 1996, and there is a nominal democracy in existence in the country, human rights defenders, and the political opposition are still subject to harassment, repression, and murder.

THE MILITARY POLITICAL PROJECT AND ORGANIZED CRIME

While not an explicit part of the Thesis for National Stability, organized criminal activities have long been managed by key actors in the military political project; this became public knowledge after 1995 when the first of a series of scandals linking military and government officials to organized crime was reported in the press and often referred to as the Moreno Network. Three cases currently being tried in Spain, Switzerland, and Guatemala illustrate more recent use of violence and corruption by the State; these cases are apparently related to maintaining State control over a number of criminal activities.

Carlos Vielmann and Edwin Sperinsen were respectively the Minister of Governance and National Police Director during the administration of Oscar Berger [2004-2008], while Washington insider, Eduardo Stein, served as Vice President. They currently are being tried in Switzerland and Spain, accused of commanding death squad actions while in office. Judge Carol Patricia Flores acquitted Alejandro Giamattei, then Director of Prisons, of related charges, and later attempted to block the Attorney General's decision to not request Vielmann's extradition in order to allow the case to be tried in Spanish courts. [8]

Maria Rosario Melgar, also implicated in the Vielmann and Sperinsen case, is on trial in Guatemala accused of collaborating with Gulf Cartel Kingpin Jorge Mario "El Gordo" Paredes in the murder of her boss, Victor Rivera, the head of a special unit in the police which has been in operation since 1996. Journalists claim Rivera formed part of Paredes's operation. [9]

These current cases and the genocide trial represent a tipping point which could decide whether Guatemala develops a justice system that overcomes impunity or one that will be allowed to make egregiously illegal rulings without consequences in order to maintain impunity for crimes of the past and present. At stake is the very possibility of a genuine democracy someday replacing the merely nominal one that now ostensibly exists.

PROMOTERS OF "PEACE AND DEMOCRACY" UNMASKED

President Otto Perez Molina, who had signed the peace accords as a representative of the military, stated several times during the trial that genocide had not occurred in Guatemala, even calling the trial a "threat to peace." This statement was made in support of a communiqué entitled "Betray Peace and Divide Guatemala," issued on April 16 by 12 members of the administration of former President Álvaro Arzú (1996-2000)—hereafter called the Arzú communiqué. This group includes people renowned for their close relationship to Washington, such as Eduardo Stein. Álvaro Arzú of the National Advancement Party (PAN) was the president who signed the peace accords in 1996. Those who signed the peace accords in the name of the government and the military now assert that amnesty was an implicit element of the agreement, though the amnesty measure itself and international law clearly prohibit amnesty for crimes against humanity.

The day before the Arzú communiqué was published as a paid newspaper ad, a new President of the Constitutional Court was sworn in, Magistrate Héctor Hugo Pérez Aguilera.

Pérez Aguilera too, harks back to the days of the Arzú administration. He served as Attorney General for two years, nominated by then President Arzú. [10]

Two days after the Arzú communiqué, Judge Flores unexpectedly issued the ruling to annul the trial underway with Judge Barrios. It is the President of the Constitutional Court who determines the order in which appeals to the court will be reviewed, and a ruling must be made within 10 business days, otherwise the trial will be permanently annulled. Observers fear that the new Constitutional Court President, Pérez Aguilera, will not review Judge Flores's annulment, thereby allowing the annulment to stand.

THE ANNULMENT RULING

Judge Flores's ruling related to two appeals. Rios Montt's defense had filed an appeal challenging pre-trial Judge Miguel Angel Galvez's decision not to admit evidence they submitted after the deadline had expired. In recognition of the pending appeal, trial Judge Barrios provisionally accepted the evidence awaiting the Constitutional Court's decision. [11] On April 3, 2013, the Constitutional Court ruled, allowing the lower court to proceed to introduce the evidence, which meant temporarily returning the file to Judge Flores, in charge of the pre-trial processes. [12] The surprise came on April 16, when Flores responded by ruling that she could not introduce the evidence as there had been an unresolved appeal filed by the Ixil victims' lawyers relating to a change in the pre-trial judges on March 23, 2011, and the lack of resolution of that appeal constituted a procedural violation.

The Flores ruling was immediately appealed, and on April 22, 2013 the Constitutional Court ordered Barrios to return the case file to Flores, and Flores to then incorporate the evidence and return the file to Barrios. Judge Flores received the case file on April 23, and convoked a hearing on April 26 in which she explained the case file would be returned to Judge Barrios. The case files were returned to Judge Barrios on Monday, April 29, and the trial resumed on April 30. [13] Doubt remains as the Constitutional Court did not rule explicitly on the legality of Judge Flores's ruling to annul all proceedings after the 2011 appeal. However, the order that she accept the evidence implied the invalidity of the annulment, which is likely to be its outcome.

TWO GUATEMALAS

A flood of communiqués were issued both in response to the statement from members of the former Arzú administration and to the ruling by Judge Flores. Previously attacks on human rights defenders and the victims of gross human rights violations were mostly limited to anonymous threats and vitriolic communiqués from the radical Association of Retired Military Officers (AVIMILGUA) and the Foundation Against Terrorism, associated with former extremist military officers.

Now, influential members of the civilian face of the political establishment have joined in the attack, describing victims of the genocide and human rights defenders as a danger to the nation and a threat to peace, and implicitly threatening them with a violent response. Some of those who passed as promoters of democracy and peace have removed their masks.

The Arzú communiqué has provoked outrage from human rights activists and indigenous organizations. The communiqué preposterously asserts that since the signing of the peace accords, political violence has disappeared from the country. While recognizing that the State has not complied with many elements of the peace accords, it goes on to maintain that

the army has complied with its commitments to the accords, separating the army from the State, yet goes on to assert:

“The accusation of genocide against officials of the Guatemalan Army constitutes an accusation not just against those officials or against the Army, but against the state of Guatemala in its entirety, which implies serious danger to our country, including a worsening of social polarization and reversing the peace which has thus far been achieved.”

The communiqué threatens that if the ruling of genocide is made, there is an “imminent danger that political violence will reappear.”

While the Association for Justice and Reconciliation (AJR), the association of victims advancing the case, has not issued a statement about the annulment and the Arzú communiqué, the Assembly of Ixil Civil Society Organizations made statements in support of the trial, denouncing that the annulment gave testament, that once again, to the influence of malevolent forces behind the government, and that the ruling made a mockery of the rights of the Ixil people. [14]

The Revolutionary Unity for a New Guatemala (URNG), the other party that signed the peace accords, responded by asserting that not only has the government not complied with the peace accords, but that since the accords there has been, “a resurgence of political violence exercised even today by the State against the people who act in legitimate defense of their rights and that, to the contrary, are pursued, captured, kidnapped and killed, using the same methods as in the past.” The URNG called upon the nation to recuperate the agenda of the peace accords, and demanded respect for the independence of the judiciary. [15]

TWO MURDERS MARK THE BEGINNING AND THE POSSIBLE END OF THE TRIAL

Among the barrage of responses to the Arzú communiqué is one entitled “What Peace are You Talking About,” in which the author, a Mayan community journalist, describes 4,000 residents of the Kanjobal area of northern Guatemala combing the hills on April 16 for community Kanjobal radio journalist, Daniel Pedro, the same day the communiqué was released. An important leader defending community land rights against mining and dam concessions, Pedro had been missing since April 7. After 10 days of searching, they found his tortured and disfigured body. Communities from this region also took action to present charges of genocide against Rios Montt. [16]

The commencement of the genocide trial coincided with the murder of Xinca leader Exaltacion Ramirez, who was killed after he attended a consultation against mining in Xinca communities. [17] And if the annulment is upheld, the trial may have ended with the torture and murder of Daniel Pedro. The number of killings like these have been mounting over the past year, and it is likely that most of these crimes are related to mines, biofuel plantations, and hydroelectric dams, as well as mega development projects in which former military and influential political figures hold significant interests.

In 2012, the new Pérez Molina government began remilitarizing Guatemala, placing the military increasingly into police functions. [18] This occurred alongside growing social protest and repression related to mega-development projects. On April 10, the Commander of U.S. Army South, General Frederick Rudesheim, inaugurated a new military base in Tecún Umán, built with more than 10 million dollars in assistance from the United States. [19] The same day the World Bank held a “consultation” in Guatemala City on the revision of their safeguard

policies which are in the process of review. [20] Human rights observers fear the policies, already ineffective, may be further weakened. Though the policies' explicit purpose is to protect people from the negative impacts of projects funded by the World Bank, communities protesting such projects around the country were not invited to the "consultation." [21]

The genocide trial is a test of the justice system whose obligation it is to protect the communities' land rights and right to life, essential human rights that the World Bank's "safeguard mechanisms" are not in a position to protect. Human rights defenders argue that a ruling of genocide will not provoke a return to political violence by the government, because the authorities already are complicit in political violence against the civilian population. Rather, the recent statements and communiqués by members of the political establishment regarding the trial generally appear to be an attempt to preserve the mechanism to perceive impunity.

GROWING INDEPENDENCE OF THE JUDICIARY, A FIRST STEP TOWARD REAL DEMOCRACY?

Over the past two decades, there has been growing scrutiny of the clandestine networks within the military, the networks that have ensured military control of the government. Though there have been shifting alliances within and between political parties, business leaders, military factions, and organized crime networks, these dramas have all played out within the framework of the Theory of National Stability. These networks have a great deal of control over the State, their influence within the justice system has been of particular concern to justice advocates in Guatemala. With the support of the United Nations, the independence of the judiciary has grown and networks of corruption in the Attorney General's office have been gradually partially weeded out. This increase in effective prosecution has resulted in the Ríos Montt trial and other trials for crimes against humanity, and in the prosecution of high ranking officials, including Attorney Generals, Chiefs of Police, and a Minister of Governance.

Guatemala waits in expectation of one of many possible outcomes to a pending litigation. The annulment of the genocide trial could be reversed; the executive branch could lash out to end the nascent independence of the judiciary; killings of human rights activists could rise; and/or the clandestine rightwing networks could show strength many had hoped they had lost. If the trial ends up being permanently annulled, such a measure would only further unmask the political system. The struggle for real democracy and justice in Guatemala, however, will continue.

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