

Rights Action
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GUATEMALA GENOCIDE TRIAL UPATE - A long-term struggle in an intertwined global community

Below, a detailed article on where the Genocide Trial is at, legally, in Guatemala.

Given the nature of the endemic impunity and corruption in Guatemala's legal system, the trial is very convoluted, to put it politely.

Fundamentally, it is an on-going political struggle for truth, memory and justice in Guatemala, with serious implications for the historical and on-going role of other "international actors", principally but not exclusively the United States.

See below, to support the on-going struggle of the Guatemala people to fundamentally transform how Guatemala operates, as a society and country, in our very intertwined, complicit and oftentimes unjust global order.

ONE MONTH AFTER GUATEMALA'S CONSTITUTIONAL COURT INTERVENES TO CHALLENGE RIOS MONTT GENOCIDE CONVICTION: AMNESTY BACK ON THE TABLE, NEW TRIAL COURT BOOKED TILL MID-2014, AND RIOS MONTT BACK HOME

by Emi MacLean

<http://www.riosmontt-trial.org/2013/06/one-month-after-guatemalas-constitutional-court-intervenes-to-challenge-rios-montt-genocide-conviction-amnesty-back-on-the-table-new-trial-court-booked-till-mid-2014-and-rios-montt-back-ho/>

On May 20, almost one month ago, the news that Guatemala's highest court partially annulled the judgment and trial in the case of Efraín Ríos Montt, essentially on a technicality, shook Guatemala and the international community. The Constitutional Court issued its resolution only three days after the trial court had issued its extensively detailed judgment laying the basis for the genocide and crimes against humanity conviction of the former dictator who ruled Guatemala during the bloodiest period of the country's 36-year armed conflict.

This was the first conviction of a former head of state for genocide in a domestic court, but followed a line of cases prosecuting military leaders, particularly in Latin America, for crimes committed during some of the more brutal periods of the region's history.

The Constitutional Court's May 20 decision produced many questions concerning the future and the viability of the trial, as well as the significance of the trial already concluded. Among them: What is the legal and historical significance of the more than 700-page decision produced by the trial court that found Ríos Montt guilty? Will there be a new trial—and if so when, and before which judges? Will there be other legal and political barriers which prevent any further prosecution of Ríos Montt? What is Ríos Montt's status following the Constitutional Court decision?

Events over the past weeks have answered some of these questions even while raising others.

Currently, the legal proceedings are in disarray—the Constitutional Court is considering various petitions seeking the former *de facto* president's amnesty; the initial trial court was forced to

disqualify itself; and a new trial court was finally assigned, but has indicated it is in no rush to hear the case, and has its plate full until April 2014.

The Constitutional Court also re-affirmed its decision to partially nullify the trial, in another divided 3-2 resolution (a "clarification" or *aclaracion*).

Meanwhile, Rios Montt has been released from the military hospital, where he went after a brief stint in prison, and returned to house arrest. A week ago, Guatemala also played host to the annual meeting of the Organization of American States (OAS), with this exposure contributing to growing questions and concerns about the country's willingness to combat impunity for the worst crimes and ensure judicial independence. The UN Committee Against Torture was among those who intervened in the public discussion to urge accountability and judicial independence, and flatly reject that an amnesty could properly prohibit prosecution for charges of this magnitude.

AMNESTY BACK ON THE TABLE?

The Constitutional Court is raising again the question of whether Rios Montt should be entitled to amnesty.

On May 29 and June 6, Guatemala's highest court held two public hearings considering the question of whether a historic 1986 general amnesty (Decree 8-86) – issued by General Humberto Mejia Victores, the dictator who succeeded Rios Montt – would prevent Rios Montt's prosecution despite the subsequent revocation of the decree, and its incompatibility with international law.

Rios Montt asserts that he was entitled to the amnesty authorized by Mejia Victores, and any subsequent rejection of the amnesty cannot retroactively take this "right" away from him. According to Rios Montt, any international law that suggests otherwise is either wholly irrelevant or inapplicable in this instance.

The prosecution and the civil parties strongly contest these assertions. During the peace accords, Guatemala enacted a law repealing all prior amnesty laws (Decree 133-97), and a National Reconciliation Law (Decree 145-96) which provided a limited amnesty, but excluded explicitly from any amnesty the crimes of genocide, torture, forced disappearance, and other international crimes. This constitutes a sound rejection of the 1986 general amnesty.

Further, Guatemala had ratified the Geneva Conventions and the Genocide Convention at the time of the Mejia Victores amnesty, and the country's national criminal code already defined genocide and crimes against humanity. International law prohibits so-called "self-amnesties"; amnesties or other prescription of genocide, crimes against humanity and other international crimes; and any amnesty which would limit the victims' rights to an effective remedy or the truth.

Thus, according to the prosecution and civil parties (as well as the [UN Committee Against Torture](#), the [UN High Commissioner for Human Rights](#), and the [Inter-American Court of Human Rights](#), among others), the 1986 amnesty was never valid.

Finally, Rios Montt's crimes, according to the civil parties, do not qualify as political crimes, or related common crimes, covered by even the 1986 Mejia Victores amnesty.

The amnesty challenge heard by the Constitutional Court on June 6 follows from the substantive rejection of Rios Montt's arguments by the court of first instance and the court of appeals, before the Supreme Court intervened on April 16, 2013 to order the appeals court re-consider its

ruling. The Justice and Reconciliation Association (AJR), a civil party in the case, appealed the Supreme Court's ruling to the Constitutional Court.

On March 1, 2012, Judge Miguel Angel Galvez, a pre-trial judge then assigned to the case and the first instance judge considering this *amparo*, rejected Rios Montt's arguments. Judge Galvez ruled that the 1986 amnesty was invalid and that, in fact, the 1996 National Reconciliation Law, promulgated during the country's peace accords, explicitly prevents the applicability of an amnesty to genocide and crimes against humanity charges.

On June 15, 2012, the First Chamber of the Court of Appeals affirmed Judge Galvez' ruling. However, on April 16, 2013, midway through the genocide trial, Guatemala's Supreme Court chamber dealing with *amparos*, granted Rios Montt's request for relief, holding that the appellate court had not provided a sufficient foundation for its decision.

It is this decision which AJR appealed—seeking decisive guidance from the Constitutional Court rather than further back-and-forth between the lower courts over questions of form rather than substance.

The Constitutional Court said on June 12 that it had [three pending petitions](#) seeking amnesty for Rios Montt which it has not yet ruled on.

The re-initiation of this discussion of whether Rios Montt should be entitled to amnesty has provoked strong reactions.

UN COMMITTEE AGAINST TORTURE DECRIES DEVELOPMENTS IN RIOS MONTT TRIAL, EXECUTIVE INTERFERENCE AND CONSIDERATION OF AMNESTY

The UN Committee Against Torture strongly affirmed, in its [Concluding Observations issued May 31](#), that international law prohibits the application of amnesty to prevent accountability for international crimes, consistent with Guatemala's domestic National Reconciliation Law. The UN Committee Against Torture also expressed "profound concern" about the "continued impunity for the majority of the human rights violations perpetrated" during the internal armed conflict.

The Committee noted in its Concluding Observations that the Constitutional Court reversed the conviction almost immediately after the verdict was issued, and also that high-level executive officials made statements during the course of the trial asserting that there was never genocide in Guatemala, "which could have the effect of influencing the determinations of judicial authorities." It called on Guatemala to ensure investigations, and guarantee the security of the victims, witnesses and others connected to criminal processes seeking accountability, and for Guatemalan officials to avoid making public declarations to negatively influence the independence of the judiciary. (Unofficial translations.)

STATUS OF THE PROSECUTION OF RIOS MONTT

After the conclusion of a high-profile trial, including nearly 100 fact witnesses and dozens of experts, there is no longer much expectation that any new trial will re-start soon though a new trial court has been assigned.

A NEW COURT IS ASSIGNED—AND SAYS IT IS BUSY UNTIL APRIL 2014

There are two "high-risk" trial courts in Guatemala, the one that heard the case ("A", presided over by Judge Yassmin Barrios), and a second one ("B", presided over by Judge Irma Jeannette Valdez Rodas, accompanied by Judges María Eugenia Castellanos Cruz and Sara Griselda Yoc Yoc).

On June 4, after the original trial court recused itself as it had already issued an opinion in the case, the other high-risk tribunal – “B” – was assigned the case. However, on June 6, this court has said that its [schedule is booked until April 2014](#).

Even with a new trial court assigned, the procedural effects of the Constitutional Court's decision are still unclear, and will likely continue to be until further pronouncements from the new trial court assigned to the case, or a higher court. According to [some sources](#), Guatemalan law requires that judges personally hear all the evidence before emitting a judgment. Thus, the unusual declaration of partial invalidity could mean that the new trial court decides that it will need to hear all of the evidence again, some of the evidence, or only the evidence remaining after the date to which the Constitutional Court ordered the case to be returned (April 19).

Any decision to rehear the evidence in entirety or large part implicates the possible re-victimization of witnesses as well as the risk involved for their safety if they have to testify again. Edgar Perez, attorney for civil party AJR, has described the Guatemalan judicial system as in crisis, and he and CALDH attorneys have said that the [Constitutional Court still needs to provide further guidance](#) if the case is to restart.

THE DIVIDED CONSTITUTIONAL COURT RE-AFFIRMS ITS DECISION TO PARTIALLY ANNUL THE TRIAL
On May 27, the divided Constitutional Court re-affirmed its ruling partially annulling the trial, in a more detailed “clarification” (*aclaracion*) issued by the three-judge majority.

Immediately after the May 20 Constitutional Court judgment, the prosecution asked the court to clarify (1) why it contradicted its [April 3 judgment](#) which recognized the inability to return the process to already completed stages; (2) why it ordered a remedy never sought by the defense (the partial nullification); and (3) why it intervened in a procedural matter rather than permit the normal processes to advance (the *apelacion especial*, under normal processes of criminal procedure).

The Court saw no inconsistency with its April 3 judgment as it was, in the majority's view, dealing with issues that occurred during the trial stage and not sending the trial back to preliminary stages. It stated that its partial nullification decision was, even if not identical to the remedy requested by the defense, consistent with that. And the Court also deemed itself the appropriate body, and the constitutional challenge (*amparo*) an appropriate mechanism, to deal with this issue. Though the Court's May 20 upending judgment was only about a procedural question – whether the trial should have been suspended until the defense concluded its appeals related to its request for the disqualification of two trial court judges – the Court in its May 27 clarification said that the underlying issues were the defense's right to an attorney and an impartial tribunal.

Judges Gloria Patricia Porras and Mauro Chacon issued another pair of strident dissents, after having dissented from the May 20 judgment. Judge Porras, for her part, continued to assert that the decision was wholly baseless—as the defense challenge was itself without a foundation.

Judge Porras affirmed, from a review of the audiotapes of the hearing, that the defense never actually challenged the trial court's refusal to disqualify two judges on the trial's opening day. Thus, under Guatemalan law, the defense could not appeal this decision. Judge Porras also decried the majority's disruption of the trial, which should be continuous.

Judge Chacon continued to insist that the Constitutional Court intervened improperly when this “strictly procedural” challenge should have been heard through the normal criminal appeals process, as the prosecution asserted. Judge Chacon accuses the majority of creating

arguments that the defense never itself provided – including that this is fundamentally about the impartiality of the tribunal – in order to defend its intervention when these issues should have been resolved through ordinary, and not extraordinary, means.

Both Judges Porras and Chacon urged that the defense attorney acted unethically—in joining the case on the first day in order to seek the disqualification of two judges; and in seeking belatedly the disqualification of two judges after the start of the trial, prohibited under Guatemalan law. By endorsing these actions, Judge Chacon wrote, the court would allow any defendant to introduce a new attorney with a conflict with a judge, at any stage of the trial, and force the judge's disqualification and a new trial.

RIOS MONTT BACK AT HOME

Meanwhile, [Rios Montt returned to house arrest](#) on June 11, following an order by the new trial court. Immediately after the trial court found him guilty, Rios Montt was transported to Matamoros prison, though he was soon after transferred to a military medical hospital.

Before his conviction, and during the trial, Rios Montt had been under house arrest with a constant police presence said to be stationed outside his home permanently. On June 11, Rios Montt was released from the military medical center and placed again under house arrest. According to reports, his house arrest remains in effect, but the police permanent monitoring requirement has been revoked or is ineffective.

DOS ERRES TRIAL

In addition to the indictment against Rios Montt for genocide and crimes against humanity in connection with the massacres in the Ixil region, Rios Montt has been charged for his role in the December 7, 1982 massacre of 201 people in the village of Las Dos Erres, Las Cruces, Petén.

The prosecution reports that [that case is temporarily halted](#) as a result of a legal challenge posed by the defense. The civil party in the case is also seeking to modify the charges in the case. Initially indicted for murder (*asesinato*), the pre-trial judge in the case – Judge Flores – had earlier changed the indictment to charge genocide. Now, Families of the Disappeared (FAMDEGUA), the civil party in the Dos Erres case, is [seeking to change back the charge to murder](#).

While this case remains at the pre-trial stages, the [prosecution](#) and attorney Edgar Perez, representing FAMDEGUA, [sought the recusal of pre-trial Judge Carol Patricia Flores](#) from this case, alleging bias. In its request for the disqualification of Judge Flores, FAMDEGUA noted among other things that [Rios Montt had been permitted to remain under house arrest](#) while others charged in the same massacre – who had been of lower rank, and some subsequently convicted – were imprisoned pending their prosecutions.

During the genocide trial before Judge Barrios' court, Judge Flores had twice attempted to annul the process, near and then after its endpoint, and send the case back to a period before Rios Montt or his co-accused had even been indicted.

Guatemalan courts have already convicted various low-level soldiers or paramilitaries for their role in the Dos Erres massacre—six former *kaibiles* sentenced to 6,060 years in prison in 2011 and 2012, but only expected to serve a maximum of 50 years pursuant to Guatemalan law.

OTHER DEVELOPMENTS

Various international actors and entities have spoken out with concern about the developments in the case, the right of the victims, and the perception of judicial independence in Guatemala following the Constitutional Court's decision.

One week ago, Guatemala hosted the General Assembly of the Organization of American States (OAS). While a significant portion of the discussions at the OAS General Assembly was devoted to drug policy, there were various statements of concern related to the progression of the genocide case.

Among others, [U.S. Secretary of State John Kerry held a meeting with Claudia Paz y Paz, Guatemala's Attorney General](#), demonstrating his support for the work of her office. Senator Kerry also expressed that the [U.S. was committed to support the continued strengthening the independence of the Guatemalan judicial system](#).

The [European Union](#) expressed its continued engagement in the trial, and its hope that the process will contribute to the reconciliation of Guatemalan society.

The [Nobel Women's Initiative](#), including Guatemalan Nobel laureate Rigoberta Menchú and four other women Nobel laureates, released a statement calling for Guatemala to "respect the rights of the survivors of atrocities"—and to resist the trial "com[ing] to represent a failure of justice and a victory for impunity for those who suffered huge loss and suffering during the genocide."

The Los Angeles Times published an editorial, [Justice delayed in Guatemala](#), also calling for a clear process to proceed promptly—and rejecting the assertion that either Guatemalan or international law permits an amnesty or immunity for genocide.

During the OAS meeting, Guatemalan human rights organizations and allied groups hosted a vigil in Antigua, where the convention was held, calling for an end to impunity. Over 300 civil society representatives were present in the General Assembly – 186 organizations from 29 countries – and they issued a statement as part of the formal dialogue with the heads of state and Secretary General of the OAS. In the statement, the groups challenged the use of amnesties to prevent accountability, and recognized the interconnectedness between the crimes of the past and current violence and instability.

[Alejandra Otero-Ruiz contributed to the research and writing of this blog.]

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