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Genocide and War Crimes in National Courts: the Conviction of Rios Montt in Guatemala and its Aftermath

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ASIL Insights, international law behind the headlines, informing the press, policy makers, and the public.

Introduction

After nearly two months of riveting testimony and procedural rollercoasters, a trial court in Guatemala on May 10, 2013 found former president Efraín Ríos Montt guilty of genocide and war crimes under Guatemalan law and sentenced him to a total of eighty years in prison. The court acquitted his military intelligence chief, José Mauricio Rodríguez Sánchez. Ten days later, on May 20, 2013, the country's Constitutional Court (the highest court) annulled the verdict and the last part of the trial based on alleged violations of the defendants' due process rights, sending it back to the trial court. The defendants were on trial for crimes committed in the northern Quiché area of Guatemala against the Ixil Maya people during 1982-83, the height of Guatemala's thirty-year long armed conflict. This *Insight* provides an assessment of the Ríos Montt trial, the first time that a former head of state had been convicted of genocide in a national court.

The Trial and the Charges

The trial of Ríos Montt and Rodríguez Sánchez began on March 19, 2013. The initial complaint was filed by the Center for Human Rights Legal Action (CALDH) on behalf of victims' associations in 2001. In the beginning, the effort seemed quixotic; however, several factors over the years made the trial more feasible. Starting in 2010 a new prosecutor with a background in international criminal law, Claudia Paz y Paz Bailey, put resources and political will into moving the cases forward. The criminal courts, which have been regularly "reformed" with foreign assistance given their inability to convict in 98 percent of the cases before them, were modified to create High Impact Courts for complex cases where judges with the best track records could receive extra salary, training and security.

At the same time, circumstances opened up the possibility for a meaningful trial. For instance, a case brought in Spain in 1999 under that country's universal jurisdiction law

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yielded witness and expert testimonies and military documents, some of which were then introduced into evidence in the Guatemalan trial. That case remains open but cannot move forward without defendants present, and Guatemala denied an extradition request for Rios Montt and others in 2007. More recently, Rios Montt, who had spent a decade as a legislator, lost his parliamentary immunity early in 2012. Another former head of state and defense minister, and the former army chief of staff, were originally indicted as well, but due to their ill health were not brought to trial.

The charges against the two former military leaders are based on the Guatemalan penal code. Since at least 1973, the penal code has contained provisions on genocide (article 376)^[1] and "crimes against obligations to humanity," (article 378). Although the latter sounds like crimes against humanity, its text actually implements Guatemala's obligations under the 1949 Geneva Conventions.^[2] Since these provisions have been part of Guatemalan law since well before the events at issue, unlike in other Latin American cases, the trial raised no issue of the application of retrospective law. Guatemala's 1996 amnesty law specifically exempts genocide and other international crimes. And the case was filed in 2001, just within the twenty year statute of limitations for genocide.

The genocide charge against Rios Montt used circumstantial evidence, particularly military plans and reports of soldiers from the field. It also relied upon the repeated patterns of gruesome killings, torture, rape, destruction and persecution, against a background of racism and suspicion against indigenous people in general and the Ixil-maya people in particular. The evidence together was used to show that there was an intent to destroy, in part, the Ixil-maya – those who refused to submit to army domination. The Ixil-maya were characterized as an ethnic group who speak their own language (many testified in Ixil) and have their own territory and customs. The court found that they were killed, wounded, subjected to unbearable conditions, and their children were transferred to another group.

The Prosecution Approach

The prosecution put on a case that assumed the ability of the trial court judges to reach a verdict and impose a sentence. Nearly 100 eyewitnesses and survivors of massacres, mass rape, torture, and destruction testified as to what had happened to their families and communities. In a day of dramatic testimony, ten women, their names withheld and their faces covered with their shawls, told of repeated rape in their communities and sexual slavery at military bases. A few shared details that even their own families had never heard. Eyewitnesses described a pattern of military actions in different communities that, the prosecutors argued, could not have been the result of lower-level officials' independent decisions. Close to fifty experts submitted written reports and gave presentations on a range of topics, including: the forensic evidence gathered in multiple exhumations; the history and politics of racism that caused the army high command to see all Ixiles as the "internal enemy;" the command structure and campaign plans of the military; the statistical evidence that showed that an individual was eight times more likely to be killed by the army in that time and place if they were Ixil-maya than if they were not; the conditions of life caused by forced displacement and persecution; and the nature of gender-related crimes. The prosecution also presented footage taken in 1982 by documentary filmmaker Pamela Yates, that showed Rios Montt affirming that he had complete control over the army at that time.

Guatemalan criminal procedure has a pre-trial judge who decides on the charges and the list of evidence and witnesses and prepares the case file; the trial itself, with oral testimony, is before a separate 3-judge panel. The three-judge panel, composed of Judge Yassmin Barrios (the president and spokesperson), Pablo Xitumul and Patricia Bustamante, seemed to be taking its job seriously, and to be aware of the larger historical context of the trial.

They allowed the trial to be live-streamed on both radio and Internet. Judge Barrios took pains to explain the proceedings in accessible language that the public could understand. The trial did move along at a fast clip; eyewitnesses were unable to tell their whole story but had to boil it down to the most relevant points. The pace was sometimes dizzying and included over a dozen witnesses per day. It soon became clear that prosecutors were racing against time, to introduce as much evidence as possible before a hailstorm of defense motions to stop the trial became too great.

The Defense Approach

The substantive defense was only fully developed during the closing arguments, after it was clear that procedural maneuvering had failed to stop the proceedings. Defense counsel argued that genocide was not committed because the intent was to destroy a political and military enemy, not an ethnic group, and the army had acted to protect, not harm, the civilian population. There were no written orders to attack civilians, and the military plans that had been presented showed no evidence of any such orders. Massacres were lamentable "excesses" of war and had been committed by both sides, so it was unfair to try only one, they argued. And in any case, they argued, there was no proof that either defendant personally ordered, supervised, implemented, or indeed was in an operational position where he could have ordered the massacres.

On the next to the last day of trial, Rios Montt himself took the stand for 45 minutes to make the case that he was but a politician who had few military responsibilities as head of state. Rodriguez made a similar plea the next day.

For the most part, the defense lawyers (four for Rios Montt and two for Rodriguez) followed a trial strategy that was not based on the merits. Rather, the strategy was to stop the trial and avoid reaching a verdict employing tactics of delay, to create grounds for interlocutory appeals, and of insulting the judges to try to provoke a reaction. In 2011, the defense began filing recusal motions against the then-pre-trial judge and asking to introduce evidence that was untimely or impossible to get by the projected trial date. When the judge, predictably, excluded that evidence, they filed an interlocutory appeal; the attorneys for the victims for their part appealed the recusal order. As these motions made their way through the courts, on March 19th as the trial began, the trial court provisionally admitted all the defense evidence. A long tangle over whether the proper steps to admit the evidence had been followed ensued, with one of the pre-trial judges trying to suspend the proceedings and threatening at one point to annul everything done since 2011. Judge Barrios refused to stop the trial, declaring to a packed court that "we will not obey an illegal order."

Another knot, which proved the most serious, concerned the choice of defense lawyers. Rios Montt walked in with a new lawyer on the first day of trial, telling the court he had fired his old lawyers. The new lawyer asked for a five-day delay, and when he was denied, he demanded a recusal of two judges on grounds of enmity with one and friendship with another. Judge Barrios found that it was improper for a lawyer to appear once trial had started in a case where he would have to ask judges to recuse themselves, and asked him to leave. The judge then asked Rodriguez' lawyer to act for Rios Montt while she found Rios a public defender. Soon after, the original team of lawyers (who had reportedly been waiting in a nearby café) was in the courtroom. The rejected lawyer then filed a motion based on his expulsion, eventually winning the right to be reinstated. He promptly tried again to recuse two of the judges, which led to another round of appeals and cross-appeals and more delay. This situation formed the basis for the May 20 Constitutional Court ruling, described below.

The Verdict

The verdict was read from the bench; a full 718-page written sentence was released on May 17. The verdict relies heavily on the eyewitness and expert testimony regarding patterns of attacks and persecution to establish the intent to destroy the Ixil ethnic group in part. The verdict finds that the entire Ixil people were considered an "internal enemy" that supported the guerrillas, and that either needed to be killed or placed under army control. It places particular emphasis on the mass rape of women, which showed that the killings were not simply casualties of war. Rios Montt was liable as a participant, on a theory that, first, he had designed and overseen the army's overall strategy, and second, he had command responsibility: he knew about the crimes, had the authority and ability to stop them, and chose not to do so. He was also convicted of inhumane acts against civilian populations.

Rodriguez Sanchez was acquitted because the court found insufficient evidence that he had been able to order, or stop, the actions of military commanders. The judges cited the prosecution's own military expert, who found that the chief of intelligence was not within the chain of operational command. The prosecution's argument had conceded that fact, but emphasized that Rodriguez had chosen the targets for subsequent operations, defining the Ixiles as an "internal enemy."

The judges separately ordered a series of symbolic reparations to the victims, including apology, memorials and school curriculum reform. However, despite the requests of victims' associations, they stopped short of ordering the return of lands stolen during the conflict.

Political Implications

As important as the legal maneuvering, the political implications of this case are also potentially profound. The trial provided, often for the first time, a public forum for eyewitnesses to tell their stories before the media and public, leading to unprecedented discussion of the events of the early 1980s. That discussion illustrated the continuing polarization of the country, and made clear the links between the events of the early 1980s and today's disputes over land, resource extraction, and the criminalization of protests in the same parts of the country.

In the short run, the trial increased political polarization. A group of former military officers published weekly supplements in a local paper accusing everyone from the Attorney General to the NGOs to the Catholic church to the governments of the US and northern Europe of collaborating with guerrillas and rabble-rousers. President Otto Perez Molina, who was an army major in the Ixil region at the time and has himself been accused of atrocities, has taken an ambivalent position. At first dismissive that genocide had been committed and echoing concerns about peace, in the last two days of trial Perez Molina backtracked, stating that the trial should end with a verdict, whatever it was. After the verdict, the private sector umbrella organization published a strong critique of the conviction, and former paramilitaries threatened to paralyze the country.

The Constitutional Court Annuls the Sentence

On May 20, the Constitutional Court annulled the sentences and ordered that the trial must restart from where the court stood on April 19. The majority in the 3-2 decision held that the trial court did not properly carry out their earlier instructions, because it suspended the trial on its own motion and not in response to a Constitutional Court ruling, and because they did not follow the proper procedure to hear the recusal motion by Rios Montt's lawyer. The dissenting judges pointed out that there was no harm, much less a due process problem, because the defense lawyers had already obtained the relief sought. They also found that since a verdict had already been issued, the proper recourse for improprieties was through the appeals process, not through annulment. One of the dissenting judges stated openly that the whole issue of recusal had been invented by the defense in order to impede the

trial and verdict.

It is unclear what happens next. The three judges are still in charge of the case, but will no doubt be challenged by defense lawyers as biased if the trial resumes where it left off – after almost all the testimony but before final arguments and verdict. There are practically no trial judges who have not played some role in the pre-trial proceedings, so it is unclear who would constitute a new panel of judges. The defense at least for now seems to have achieved its goal, to impede getting to a verdict. The May 20 decision has undone all the international prestige and good will Guatemala had achieved with the May 10 verdict. However, the verdict cannot be un-issued, and the testimonies cannot be unsaid. Their reverberations will continue to push Guatemalan society to confront its demons.

About the Author:

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Endnotes:

[1] The definition of genocide largely follows the 1948 Genocide Convention, with two significant differences: it does not require that the intent to destroy the group in whole or in part be "as such," and the act of submitting the group or its members to conditions of existence which could lead to their destruction does not require specific intent. Decreto No. 17-73, 27 July 1973, Código Penal de Guatemala [Penal Code] art. 376 *available at* http://www.oas.org/dil/esp/Codigo_Penal_Guatemala.pdf ("Comete delito de genocidio quien, con el propósito de destruir total o parcialmente un grupo nacional, étnico o religioso, efectuare cualquiera de los siguientes hechos: 3o. Sometimiento del grupo o de miembros del mismo a condiciones de existencia que pueda producir su destrucción, total o parcial").

[2] Código Penal de Guatemala [Penal Code] art. 378 ("Quien violare o infringiere deberes humanitarios, leyes o convenios con respecto a prisioneros o rehenes de guerra, heridos durante acciones bélicas, o que cometiere cualquier acto inhumano contra población civil, o contra hospitales o lugares destinados a heridos, será sancionado con prisión de veinte a treinta años.") ("Whoever violates or infringes humanitarian duties, laws or treaties with respect to prisoners or hostages of war, those wounded during armed actions, or who commits any inhumane act against civilian populations or against hospitals or places for the wounded, is subject to 20 to 30 years imprisonment." (trans. by author)).