

# THE GENOCIDE TRIAL OF RIOS MONTT

**Illari Aragón Noriega and Daniel Carey on the trial's significance and the challenges faced by those seeking justice in Guatemala**

**T**he trial and conviction of Efraín Ríos Montt, *ex facto* president of Guatemala, is unprecedented. Never before has a former head of state been tried and convicted for genocide in a domestic court. On 10 May 2013, he was found guilty of genocide and crimes against humanity and sentenced to 80 years in prison.

The Bar Human Rights Committee of England and Wales (BHRC) has monitored this trial and supported the lawyers at the forefront of the case. The BHRC has made representations which include a communication in April this year when judicial proceedings were at risk of suffering a legal setback.

This article is to raise awareness about the significance of this trial and highlight the challenges faced by those seeking justice in Guatemala.

Edgar Pérez, attorney for the victims in this landmark case, met with the BHRC in 2011 and 2013. He discussed with us the sentence – as well as the momentum it brought to Guatemala as part of an effort to challenge impunity for the atrocities committed during the 36-year civil war. With indignation, however, he also described how justice was ruptured when after only 10 days Guatemala's Constitutional Court overturned the sentence on alleged 'procedural irregularities'. As a result, both Efraín Ríos Montt and his co-defendant José Mauricio Rodríguez Sánchez (former head of military intelligence, who was acquitted) will face a retrial, and the testimonies of Ixil people will need to be reheard. This new trial is scheduled to start in 2015. With amnesty motions being considered, the interim period is thus critical.

## **The trial and sentence**

Over 200,000 people were killed, 50,000 disappeared, and hundreds of thousands more displaced, raped and tortured during the course of Guatemala's 36-year civil war (1960-1996). Reportedly, the period of greatest violence was during the time in which army general Efraín Ríos Montt was *de facto* president, from March 1982 to August 1983, when the army launched scorched-earth campaigns clearing areas populated mostly by indigenous Maya. Approximately 83% of the victims killed during the entire internal war were indigenous (*Memory of Silence Report of the Commission for Historical Clarification* pp 69, 84-85).





**NO HUBO GENOCIDIO  
EN GUATEMALA**

JOSÉ EFRAÍN  
RÍOS MONTT

**SE BUSCA**

JOSÉ EFRAÍN  
RÍOS MONTT

JOSÉ EFRAÍN  
RÍOS MONTT

**PO GENOC**

UNIDAD  
SAN FRANCISCO  
17  
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SAN FRANCISCO  
SAN FRANCISCO  
**JUSTICIA**

## INTERNATIONAL

### Guatemala

Thirty years later, 87-year-old Efraín Ríos Montt was put on trial for his role in the atrocities. As reported by many organisations, the trial was possible thanks to a number of factors that included the exhaustive and meticulous work done by victims associations, lawyers, human rights investigators and forensic experts that for many years worked to collect the necessary evidence. The leadership of Attorney General Claudia Paz y Paz was also paramount in enabling human rights cases to move forward; as was the creation of specialised 'high-risk' courts, vested with additional security to deal with complex, risky cases.

The trial started on 19 March 2013 as a 'high risk' tribunal headed by Judge Yassmin Barrios, who for about two months heard the testimonies of almost one hundred Maya Ixil survivors.

Speaking about the atrocities to a national audience for the first time, Ixil people gave horrific accounts of patterns of abduction and killing of Ixil babies, massacres, persecution and torture. Accounts were also given in court of systematic rape – a practice that not only affected Ixil women individually, but impacted on the integrity of the Ixil culture as a whole.

Complementing the testimonies was substantive documentary evidence and over 50 expert opinions that included those of sociologists, statisticians, historians, ballistics experts, members of the military and forensic experts who testified for the prosecution, and to a lesser degree, the defence.

The substantial body of evidence supported a 718-page judgment delivered on 10 May 2013. For the tribunal, the acts did not just constitute human rights violations, but genocide,

## ON EDGAR PEREZ

Whilst we must contend with repeated attacks on the human rights system in this country, in Guatemala it is the physical safety of human rights lawyers that is regularly imperilled. Throughout Edgar Pérez's 15-year pursuit of the prosecution of ex-dictator Ríos Montt in Guatemala, he has suffered repeated intimidatory phone calls, blackmail attempts and death threats. On one occasion the brakes on his car were intentionally disabled. As the prosecution enters a new phase, his security situation remains precarious.

Sadly, this is not unfamiliar territory, even for us in the UK. The killings of Pat Finucane and Rosemary Nelson are all-too-recent reminders that lawyers who threaten the state can run fatal risks. Yet these dangers are magnified in Guatemala, one of the most violent countries in the world, where life is very cheap indeed. There are on average 100 murders a week in a country with a population of 15 million. Only 5% of these are successfully prosecuted. That's 95 unsolved murders a week. In the midst of such impunity, the death of a human rights lawyer would be unremarkable: just another body in the pages of the Guatemalan tabloids which daily chronicle the latest murders in lurid detail.

Reflect for a minute whether you would continue to pursue the prosecution of the country's ex-dictator in these precarious circumstances. A man responsible for the worst episode of killings and disappearances in a war which claimed the lives of over 200,000 indigenous campesinos, and who still occupies a position of considerable power in Guatemala. Consider further that the current President, Otto Pérez Molina, served under Ríos Montt as army chief during this very period. Many of us would choose our safety and that of our families.

Yet Pérez fights on. Within weeks of the Guatemalan courts requiring reconsideration of Ríos Montt's claim to immunity from prosecution, he lodged an expedited application with the Inter-American Court of Human Rights seeking to compel Guatemalan courts to proceed without further delay.

And in all this work, Peace Brigades International (PBI) volunteers are at Pérez's side. When he journeys to the provinces to interview witnesses, when he attends court, when he returns home, PBI volunteers physically accompany him. They do so as a visible manifestation of the international community's concern. Their presence is underlined by their engagement with local, national and international authorities. A golden thread of accountability that runs from PBI supporters, prominent lawyers and Members of Parliament in the UK and elsewhere to the UN and international NGOs; all the way to embassies in Guatemala and the Guatemalan Government and onwards to the police chiefs and mayors in the towns and villages where Edgar Pérez works. PBI volunteers ensure that all are aware that the world,



and all the other links in the chain, are watching. International pressure usually focuses only on top-level decision-makers, but this leaves perpetrators free to act. PBI targets the entire chain of command. Those who might threaten or attack Pérez under the cover of impunity find their sphere of action curtailed. And at the same time, human rights defenders' ability to act is expanded. The PBI volunteers also publicize the situation faced by those they accompany, and stand at the ready to activate their international support network if any threats materialize.

This form of physical, political and informational accompaniment is not a new idea: the Freedom Riders in the US Civil Rights struggle performed a similarly protective role as they bore witness to the racism of Jim Crow segregation in the Southern US. Best of all, it leaves local people free to vindicate their own rights; PBI volunteers do not interfere in their work, or take sides: they are not there as yet another international NGO importing their own solutions. Accompaniment leaves the people who know best, people like Pérez, to pursue justice in their way.

This physical and political solidarity is invaluable to Pérez. As he has said: *"I know I'm being followed and that my phone is being intercepted but if I'm accompanied there's a permanent reminder that the international community is watching. My work is not illegal, I'm helping the vulnerable and the excluded."* Other symbols of solidarity help: in 2012 he was awarded both the American Bar Association's International Human Rights Lawyer award and the Medal of the Governor General of Canada.

I witnessed the impunity and the threats in Guatemala first hand as a volunteer with Peace Brigades International. I strove in vain to comfort a human rights defender whose children had just been shot; and observed as indigenous communities buried their relatives exhumed from mass graves, watched by the very perpetrators who put them there. The thin golden line of accountability that PBI secure is only as strong as all of us make it. Please see <http://www.peacebrigades.org.uk> for more details of Pérez's work and PBI's Alliance for Lawyers at Risk.

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imposing a sentence of 80 years imprisonment. The tribunal was 'completely convinced' of the existence of an 'intention' - fundamental to genocide cases - to exterminate this ethnic group (Judgment V. E). As president and army commander in chief, Rios Montt 'participated in the design, execution, and supervision' of counter insurgency plans (Victoria 82, Firmeza 83) that sought to eliminate guerrilla groups and their so-called 'support base', identified as the Ixil Maya population. Considered to be hostile to western values, Ixil people were thought to have supported rebel groups (mainly through espionage activities about military movements) and were consequently defined by the army as an 'internal enemy' (Judgement III.5).

The court also found that the systematic rape of women constituted evidence of the intent to destroy the Ixil ethnicity. For the court, women were not only raped as the 'spoils of war' but as part of a systematic and intentional plan to destroy the ethnic Ixil group. 'Women are responsible for physical human reproduction [as well as] for cultural reproduction,' said the court; so the decision to rape the women was also motivated by a desire to 'destroy the social fabric and to achieve the elimination of the Ixil seed' (Judgment V.A).

### The reversal

This milestone decision was, however, short-lived. On 20 May, ten days after the sentence was handed down, the Constitutional Court of Guatemala overturned the decision based on 'procedural irregularities'. In response to an *Amparo* motion (an action aimed at protecting Constitutional rights) presented by the defence, the Court annulled the oral proceedings and left the verdict without legal effect. As a consequence, both Efraim Rios Montt and his co-defendant Jose Mauricio Rodriguez Sanchez, the former head of military intelligence, who was acquitted, will face retrial. Furthermore, the testimonies of the Ixil people, who have already stepped forward to recall their personal loss and tragedy, would need to be heard again.

The 'procedural irregularities' that ultimately led to the derailment of the entire trial are connected to an incident that occurred on the first day of oral proceedings on 19 March. That day, Rios Montt's lawyer Francisco Garcia Gudiel (appointed that same morning) was asked to leave the court room after making a number of petitions that were considered to be obstructionist. He first asked for a five-day suspension to prepare for the case (in view of his recent appointment), which was denied. He then requested that the president of the tribunal, Judge Barrios, be recused on grounds that there was a 'declared enmity' between them from a previous case. She firmly denied this, dismissing his petition for being *impromptu* and part of dilatory tactics. When Garcia Gudiel continued to argue, Judge Barrios expelled him from the court room and asked the attorney of co-defendant Rodriguez Sanchez to take over until Rios Montt appointed a new counsel. Although the previous lawyers for Rios Montt returned the next day, and Garcia Gudiel was later incorporated back into the defence team, those few hours on the first day of the trial, when Rios Montt lacked representation of his own choosing, were the basis for the annulment of the entire trial (*Crisis Group. Justice on Trial in Guatemala: The Rios Montt case, 23 September 2013* p 12).

The Constitutional Court decision to rescind the proceedings was criticised by many jurists, academics, human rights organisations and members of the international community. Strong objections also came from two dissenting judges who accused the majority of exceeding their authority and ordering a disproportionate remedy. For Justice Gloria Porras, the rights

of the defence had already been protected by the tribunal's reinstatement of Garcia Gudiel and for this reason there was no need to suspend the trial (Dissenting opinion B.4). She described the result as devastating for the victims, whose right to access to justice was thereby violated. For Justice Mauro Chacon, the defence attorney's challenges 'had the sole objective of hindering the case' (Dissenting opinion G).

For many human rights organisations the defence's strategy has been largely based on obstructionist tactics (see for example, International Federation for Human Rights (FIDH), *Genocide in Guatemala: Rios Montt Guilty*, 2013). For Edgar Perez, rather than focusing on contesting the prosecution's charges, the defence has used any means possible to allege violations of due process, filing frivolous and repetitive motions to create procedural obstacles. This is reflected, for example, in inappropriate and excessive use of constitutional motions: since the start of the case in 2011, 21 *Amparo* motions have been presented, 20 of them by the defence.

A new tribunal has been named to conduct the retrial which will not start until January 2015.

### Amnesties

In yet another controversial decision, on 22 October 2013 the Constitutional Court directed the pre-trial court to further elaborate on its prior holding that Guatemala's 1986 blanket amnesty (decree 8-86) should not bar Rios Montt's prosecution.

This refers to a 2012 ruling, when the pre-trial court denied that amnesty applied to Rios Montt's case. As a result of an *Amparo* filed by his defence against this decision, the Constitutional Court has now ruled that the lower court that rejected his appeal of that ruling had inadequately reasoned its decision, and that it must explain it properly now.

For human rights groups, the fact that the Constitutional Court is asking a lower court to substantiate the decision as to why amnesty was not granted raises serious concerns. More so, it is feared that amnesties for the defendants might now be brought into consideration.

As with the earlier annulment, this was a polarized 3-2 decision. Justice Mauro Chacon and Gloria Porras dissented again. Justice Porras argued that the lower court judgement explained very clearly why the decree law 8-86 does not apply, since it was substituted by the Law of National Reconciliation. This was passed in 1996 as part of the peace and transition process repealing all prior amnesty decrees issued during the war and establishing, in their place, a limited amnesty which explicitly excluded from its scope crimes of genocide, torture, forced disappearance and other international crimes (Article 8).

It is yet to be seen what the lower court resolves: to reaffirm its previous decision it could simply explain in more detail why the amnesty does not apply. Or it could retract its previous decision, an outcome many human rights organisations fear.

Blanket self-amnesty for human rights violations is clearly prohibited under the American Convention of Human Rights and other international treaties to which Guatemala is a party. At this crucial stage, it is therefore of great importance that international scrutiny is brought to bear on the case in order to ensure that this trial complies with due process and that accountability for human rights atrocities is attained. ●

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