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# OUTCOME OF FORMER DICTATOR'S TRIAL FOR GENOCIDE REMAINS UNCLEAR

*Michelle Richard\**

ON May 10, 2013, a three-judge panel in Guatemala delivered an unprecedented ruling by finding former dictator, Efraín Ríos Montt (Montt), guilty of genocide.<sup>1</sup> Not only did this verdict impose the maximum sentence for both genocide and crimes against humanity, but it also marks the first time in history that a head of state has been found guilty of genocide in his own country.<sup>2</sup> But the excitement did not last for long. On May 20, 2013, only ten days after the conviction, Guatemala's Constitutional Court overturned the ruling on procedural error.<sup>3</sup>

## I. GUATEMALAN CIVIL WAR

Guatemala endured thirty-six years of internal conflict.<sup>4</sup> In 1944, revolutionaries overthrew the sitting military dictator and then elected a civilian President, however, after a coup in 1954—orchestrated with the help of the U.S. government—a right-wing military dictator took power.<sup>5</sup> Tensions with the government's increasing oppression grew, and finally in 1960 a leftist insurgency arose when low-ranking military officers revolted and launched a full-scale war against the government.<sup>6</sup> Many of the indigenous Maya population supported the guerilla movement because they believed that the insurgency could prevent their continued marginalization; unfortunately, this “promulgated an ideology that perceived all Maya as natural allies of the insurrection, and thus as enemies of the

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1. *A Historic Verdict in Guatemala: Genocidal General*, *ECONOMIST* (May 11, 2013), <http://www.economist.com/blogs/americasview/2013/05/historic-verdict-guatemala> [hereinafter *Genocidal General*].

2. *Id.*

3. Manuel Rueda, *How a Guatemalan Dictator Got Off the Hook for Genocide*, *ABC NEWS/UNIVISION* (May 21, 2013), [http://abcnews.go.com/ABC\\_Univision/News/guatemalan-dictator-rios-montt-off-hook-genocide-now/story?id=19227973#.UZwc9o4hRS8](http://abcnews.go.com/ABC_Univision/News/guatemalan-dictator-rios-montt-off-hook-genocide-now/story?id=19227973#.UZwc9o4hRS8).

4. *Guatemala: History*, *GLOBALEDGE*, <http://globaledege.msu.edu/countries/guatemala/history> (last visited Sept. 25, 2013).

5. *Id.*

6. *Id.*

state.”<sup>7</sup> During the conflict, the government began to employ dirty war tactics, such as using death squads and forced disappearances, which soon became a common practice during internal conflict throughout Latin America.<sup>8</sup>

On March 23, 1982, the guerilla forces executed a coup to prevent another right-wing president from taking power, and they asked Montt to oversee the transition.<sup>9</sup> Initially Montt formed a three-member military *junta*, but after annulling the constitution and dissolving Congress, he assumed the position of president.<sup>10</sup> After taking the presidency, the guerilla forces renounced Montt; however, he successfully suppressed the leftist movements and regained control over much of the land they once occupied.<sup>11</sup> Although Montt’s presidency only lasted sixteen months, it became known as the most violent period of the Guatemalan civil war and resulted in the deaths of thousands of civilians, most of whom were indigenous Ixil Maya.<sup>12</sup>

During the civil war, the government commenced a campaign to wipe out the indigenous populations.<sup>13</sup> Since the Spanish colonized Guatemala and enslaved the indigenous populations, the indigenous people have suffered under systematic repression and discrimination, and they remain the most underprivileged group in Guatemala.<sup>14</sup> Under Montt, the massacres increased and resulted in what is commonly referred to as the “The Silent Holocaust.”<sup>15</sup> The government perceived the Maya as allies of the guerilla forces and consequently began exterminating the Maya to remove the guerilla forces’ popular support.<sup>16</sup> Government forces employed “scorch-earth” tactics, invading and destroying over 626 villages and subjecting the Maya to rape, murder, mutilation, and torture.<sup>17</sup> The military went systematically throughout the Maya region, burning villages down and killing livestock, and then they slaughtered the Maya people, including children and the elderly.<sup>18</sup> Over 70,000 people were murdered during Montt’s short term; out of fear, somewhere between 500,000 to 1.5 million Maya fled the country.<sup>19</sup> Finally after over 200,000 deaths and many failed attempts to return to a democratic government, with the aid of the United Nations (U.N.) in December of 1996,

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7. *Guatemala ‘Silent Holocaust’: The Mayan Genocide*, THE CENTER FOR JUSTICE & ACCOUNTABILITY, <http://www.cja.org/article.php?list=type&type=294> (last visited Sept. 25, 2013) [hereinafter *Holocaust*].

8. *Id.*

9. *Guatemala: History*, *supra* note 4.

10. *Id.*

11. *Id.*

12. *Holocaust*, *supra* note 7.

13. *Id.*

14. *Guatemala 1982*, PEACE PLEDGE UNION, [http://www.ppu.org.uk/genocide/g\\_guatemala.html](http://www.ppu.org.uk/genocide/g_guatemala.html) (last visited Sept. 25, 2013).

15. *Id.*

16. *Id.*

17. *Holocaust*, *supra* note 7.

18. *Guatemala 1982*, *supra* note 14.

19. *Holocaust*, *supra* note 7.

the civil war officially ended.<sup>20</sup>

## II. CIVIL WAR REPARATIONS

As part of the peace negotiations, the Commission for Historical Clarification was created to uncover human rights violations that occurred during the civil war.<sup>21</sup> Three selected individuals spent two years collecting information and formulating their report.<sup>22</sup> They presented the report to members of the U.N. and the Guatemalan government, finding that the armed forces and state institutions had perpetuated a state policy of genocide against the Maya people; throughout the civil war, over 200,000 people were killed, 83 percent of which were Maya.<sup>23</sup> The Commission was not allowed to name the perpetrators, but they recommended state reforms and reparations for the victims.<sup>24</sup> The Inter-American Court of Human Rights (Inter-American Court) also found the Guatemalan government responsible for many human rights violations during the civil war, including a massacre that occurred under Montt's rule.<sup>25</sup> The Inter-American Court criticized Guatemala for failing to investigate or prosecute any of the crimes that occurred during the civil war and for failing to provide protection and restitution for the victims.<sup>26</sup> Furthermore, an indigenous leader, Rigoberta Menchú, also filed charges against Montt in Spain for genocide, state terrorism, and torture, for which Spain issued a warrant for his arrest in 2006.<sup>27</sup> Montt remains wanted in Spain for these charges.<sup>28</sup>

Despite such efforts, it still took many years for Guatemala to recognize the victims and prosecute the perpetrators. The government did not formally apologize for the atrocities against the indigenous population until 2005.<sup>29</sup> Furthermore, Montt remained politically powerful and retained popular support after his presidency, notwithstanding his violent rule.<sup>30</sup> He formed the Guatemalan Republican Front (FRG) in 1990 and ran for president unsuccessfully in 2003 after successfully challenging a constitutional law that prohibited him from running.<sup>31</sup> Most importantly,

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20. *Guatemala: History*, *supra* note 4.

21. *Truth Commission: Guatemala*, UNITED STATES INSTITUTE OF PEACE, <http://www.usip.org/publications/truth-commission-guatemala> (last visited Sept. 25, 2013).

22. *Id.*

23. *Id.*

24. *Id.*

25. *See Guatemala Abrogates Attempt to Limit the Inter-American Court of Human Rights' Jurisdiction*, INTERNATIONAL JUSTICE RESOURCE CENTER (Jan. 23, 2013), <http://www.ijrcenter.org/2013/01/23/guatemala-abrogates-attempt-to-limit-the-inter-american-court-of-human-rights-jurisdiction/> [hereinafter *Attempt to Limit Jurisdiction*].

26. *Id.*

27. *Former Dictator Ríos Montt Cedes Party Control at 84*, TICO TIMES (Nov. 5, 2013), [http://www.ticotimes.net/Region/Nicaragua/Former-Dictator-Rios-Montt-Cedes-Party-Control-at-84\\_Friday-November-05-2010/](http://www.ticotimes.net/Region/Nicaragua/Former-Dictator-Rios-Montt-Cedes-Party-Control-at-84_Friday-November-05-2010/).

28. *Id.*

29. *Id.*

30. *See id.*

31. *Id.* (He was prohibited from running because he had previously led a coup.).

he served in congress for multiple terms, which afforded him immunity from prosecution until January 14, 2012.<sup>32</sup> The FRG openly admitted that they kept him in Congress in order to “protect him.”<sup>33</sup>

In December 2012, the Guatemalan Congress passed Resolution 370-2012 in an attempt to limit the jurisdiction of the Inter-American Court to those events that occurred after Guatemala recognized the Inter-American Court’s jurisdiction in 1987.<sup>34</sup> Consequently, the Inter-American Court would not have jurisdiction over most of the violent and inhumane acts committed during the civil war.<sup>35</sup> This sparked outrage within Guatemala, and many human rights advocates viewed this resolution as yet another obstacle that prevented justice and promoted impunity.<sup>36</sup> After much national and international pressure, President Otto Perez Molina repealed the resolution and received acknowledgment for not only fixing the situation, but also for recognizing the significance of the resolution.<sup>37</sup>

### III. MONTT’S TRIAL

Eight days after Montt’s immunity from prosecution expired, a domestic court indicted him for genocide and crimes against humanity.<sup>38</sup> Specifically, Montt and Mauricio Rodriguez Sanchez, Montt’s intelligence chief, were charged with massacring 1,711 people and forcefully displacing 29,000 more in an effort to destroy the Maya people.<sup>39</sup> The trial began on March 19, 2012, and lasted for five weeks with over a hundred people testifying.<sup>40</sup> Witnesses testified about the atrocities including accounts of infant murders, gang rape, and mass graves.<sup>41</sup> Throughout the trial, Montt adamantly proclaimed his innocence and pled that he never approved any attacks against the indigenous people.<sup>42</sup> Many Guatemalan lawyers frequently bring frivolous and excessive claims to postpone, if not prevent, a trial from proceeding,<sup>43</sup> just as Montt’s lawyers constantly contested technicalities during the trial, bringing over a hundred legal chal-

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32. *See id.*

33. *Id.*

34. *Attempt to Limit Jurisdiction*, *supra* note 25.

35. *Id.* (the Inter-American Court had already adjudicated the jurisdictional issue in the case *Rios Negro Massacres v. Guatemala* and found that “it was competent to adjudicate ongoing or permanent violations.”).

36. *Id.*

37. *Id.*

38. Stephen Lendman, *Reinventing Guatemalan History*. *Wall Street Journal Upholds Rios Montt, Denies Crimes Against Humanity*, GLOBAL RESEARCH (May 21, 2013), <http://www.globalresearch.ca/reinventing-guatemalan-history-wall-street-journal-denies-crimes-against-humanity/5335870>.

39. Mike Allison, *Guatemala: Rios Montt Genocide Trial Ends with Historic Verdict*, AL JAZEERA (June 9, 2013), <http://www.aljazeera.com/indepth/opinion/2013/05/201351591259267287.html>.

40. Lendman, *supra* note 38.

41. *Genocidal General*, *supra* note 1.

42. *Id.*

43. Allison, *supra* note 39.

lenges in Montt's defense.<sup>44</sup>

The judges found Sanchez not guilty on all accounts, but found Montt guilty of genocide and crimes against humanity.<sup>45</sup> At eighty-six years old, Montt was taken to prison directly after being sentenced to fifty years for genocide and thirty years for crimes against humanity—the maximum sentences.<sup>46</sup> Montt had specific knowledge of the plans and attacks but failed to stop them under his power as president, and as such effectively approved the genocide.<sup>47</sup> Judge Jazmín Barrios, who delivered the sentence, “laid out in horrific detail how under his leadership the army had massacred, mutilated, raped, bombed and persecuted members of the Ixil Maya community, including many children and elderly, during counter-insurgency operations.”<sup>48</sup> Furthermore, Judge Barrios commended the victims and their families for speaking out.<sup>49</sup>

#### IV. APPEAL

Despite the celebrated conviction, Montt won an appeal to the Constitutional Court that suspended the trial due to procedural error.<sup>50</sup> Throughout the trial, one of Montt's attorneys, Francisco Garcia Gudiel, claimed that Judge Barrios was personally biased against him and should be removed from the case.<sup>51</sup> Thus, the defense argued that the court sentenced Montt before fully addressing all of their complaints.<sup>52</sup> During the trial, Gudiel accused Judge Barrios of bias because she proceeded with the trial notwithstanding a prior judge's ruling that unconstitutional procedural errors had occurred in the evidentiary stage, in turn Judge Barrios threw Gudiel out of court and continued to conduct the trial, leaving Montt without legal counsel.<sup>53</sup> Consequently, the defense requested Judge Barrios' removal from the case and claimed that Montt was deprived of “the lawyer of his choice” during the time Gudiel was not present.<sup>54</sup> But many believe that the defense specifically chose Gudiel for his history with Judge Barrios and planned to bring bias claims in order to remove Judge Barrios; Montt did in fact add Gudiel after the first day of trial.<sup>55</sup> On appeal, the Constitutional Court ruled that all evidence entered after April 19, 2013, must be re-introduced, which essentially requires that the case be retried.<sup>56</sup>

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44. *Id.*

45. *Genocidal General*, *supra* note 1.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Rueda, *supra* note 3.

51. *Id.*

52. *Id.*

53. Will Grant, *Rios Montt Trial: Fight over Guatemala Genocide Continues*, BBC (May 21, 2013), <http://www.bbc.co.uk/news/world-latin-america-22618105>.

54. *Id.*

55. Rueda, *supra* note 3.

56. *Id.* (the Constitutional Court decided that April 19th is the date on which the court failed to answer the defense's complaint.)

## IV. PUBLIC REACTION

A retrial proves problematic because controversy has marked this case from its inception. To many people, especially the Maya, Montt's conviction represented justice and the appeal further postpones closure and healing.<sup>57</sup> Whereas other Guatemalans fear the repercussions that a guilty verdict could have for Guatemala as a whole, such as whether a guilty verdict means that the state of Guatemala committed genocide and if so, what stigma would consequently follow.<sup>58</sup> Others have expressed concern that a guilty verdict would result in more claims by Maya groups against the government, and consequently lead to a country further divided into ethnic groups.<sup>59</sup>

From the start of the trial, members of Guatemala's government and many political organizations have adamantly objected to the charges.<sup>60</sup> President Otto Pérez publicly disagreed with the genocide charge.<sup>61</sup> One of Guatemala's most influential institutions, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) and the Foundation Against Terrorism (Foundation) both paid for advertisements to run in popular journals criticizing every aspect of the trial from the judges and genocide charges, to the foreign countries in support of the prosecution.<sup>62</sup> The Foundation also transported many indigenous and former military protestors to the trial, although many of the poor Ixil people reportedly received fertilizer in exchange for participating.<sup>63</sup> During the trial, judges and prosecutors even received death threats and lists—closely resembling hit lists—frequently circulated.<sup>64</sup>

## V. CONCLUSION

What will happen after Montt's retrial remains unknown. The trial has further torn apart already divided political and ethnic groups in Guatemala, with human rights groups calling for justice for the Maya victims and prominent Guatemalan leaders adamantly opposing the genocide charges. After being the first country to try and convict a former head of state of genocide, the appeal disappointed many who hoped that Montt's historic conviction would mark a change in the Guatemala justice system. While the outcome of the case remains unsure, many continue to believe that Guatemala will still convict Montt.

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57. *Genocidal General*, *supra* note 1.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Alison, *supra* note 39.

63. *Id.*

64. *Id.*