

Ex-Dictator's Candidacy Threatens Justice in Guatemala Genocide Trials

By Nicole Gamble | September 30, 2003

The Guatemalan Constitutional Court's recent decision to allow ex-dictator Gen. Efraín Ríos Montt to run for president in 2004 could be disastrous for the indigenous communities and human rights workers trying to bring him to justice for acts of genocide in the early 1980s.

On July 14, the Constitutional Court voted 4-3 to allow Ríos Montt's candidacy in the election slated for Nov. 9. A run-off election was set for Dec. 28, should no one candidate score a majority.

The courts had previously ruled to deny his eligibility twice before, in 1990 and 1995. According to Article 186 of the 1985 Constitution, leaders of coup d'états are not eligible to run for president. Moreover, to prevent powerful political leaders from undoing this Article, an additional caveat was included in the provision stipulating that it cannot be amended. However, the Achilles heel of Article 186 may be what Ríos Montt and his supporters have long argued: that the 1985 law cannot be applied retroactively.

Ríos Montt came to power by coup in March of 1982 and ruled through August of 1983, when his defense minister deposed him. He currently is president of the Guatemalan Congress. The Constitutional Court's decision has sparked heated controversy, with many claiming that the bench was stacked in Ríos Montt's favor. Since 1995, Ríos Montt's party, the Guatemalan Republican Front (FRG), has controlled the appointments of several justices. Additionally, what should have been a random lottery process for selecting the justices to hear the case regarding Ríos Montt's eligibility was in fact conducted in private by the Constitutional Court's president, a former minister in the FRG government and childhood friend of current President Alfonso Portillo.

In a recent report from the Guatemalan newspaper *Prensa Libre*, Anabella de Len, a council member of the Gran Alianza Nacional (GANAN) political party responded to the decision by claiming that all the legal processes in the country have been "strangled."

Years of Genocide

This is not the first time that ex-dictator Ríos Montt's actions have been shrouded in controversy. According to human rights organizations both in Guatemala and internationally, Ríos Montt has long been known as one of the worst human rights abusers in Latin America, and his government presided over some of the worst acts of genocide in Latin American history. Guatemala's civil war produced more casualties than the so-called "dirty wars" of El Salvador, Nicaragua, Argentina, and Chile combined.

As dictator of Guatemala, Ríos Montt carried out what is known as the "scorched earth" policy. This policy was first established by the man he overthrew, former dictator Gen. Romeo Lucas García, who was president from 1978 to 1982. In the scorched earth campaign, the indigenous Mayans were not only subjected to torture, rape, and execution, but were also forced to flee their homelands into the highlands with insufficient means for survival. Many of those fortunate enough to survive massacres died later from starvation, hypothermia, disease, or bombardment by army helicopters.

The scorched earth campaign purposefully meant to leave few, if any, Mayan survivors. Its henchmen spared no-one. Over 300,000 children were orphaned. Pregnant women had their unborn babies torn from their wombs without anesthesia in hopes of what was termed "destroying the seed." Homes and crops were also destroyed, and water sources were poisoned. At the same time, 1 million Guatemalans were displaced and many forced into exile. By the end of the Ríos Montt and Lucas García regimes, Guatemalan security forces had massacred approximately 132,000 Guatemalan civilians and razed an estimated 440 Mayan villages.



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Indigenous, Human Rights Groups Unite for Justice

In 1997, a UN-sponsored Truth Commission published a report that implicated the Lucas García and Ríos Montt regimes in years of genocide, however the report did not identify perpetrators by the Catholic name. The Catholic Church subsequently initiated an additional truth commission to investigate the deaths and bear witness to the trauma.

The Catholic Church's Recovery of Historical Memory Project (REHMI) Report confirmed the conclusions of the UN Truth Commission and went beyond the previous report to explicitly accuse Lucas García, Ríos Montt, and their respective military high commanders of war crimes, crimes against humanity, and genocide.

Following the findings of both the UN and the Catholic Church, the 23 indigenous Mayan communities that suffered the brunt of the scorched earth campaigns have unified as in the Association for Justice and Reconciliation (AJR) to condemn the actions of the state under the two dictators. Aided by the Center for Human Rights Legal Action (CALDH), the Mayan communities have filed two unprecedented complaints, against Lucas García in May 2000, and against Ríos Montt in June 2001. Both also name members of the military high commands under the dictators.

AJR and CALDH based their legal complaints against both the regimes on the fact that since 1973, the Guatemalan Criminal Code allows for the prosecution of individuals suspected of genocide. Articles 376 and 378 define the legal basis for prosecuting war crimes, crimes against humanity, and genocide. Article 376 reflects international laws by adopting almost verbatim the prohibition of genocide included in the 1948 UN Convention for the Prevention and Punishment of the Crime of Genocide.

Status of the Case in Guatemalan Courts

"Genocide is hard to prove," stated Christina Lauer de Pérez, an attorney at CALDH. Consequently, the case is still in the investigative phase. Since May 2000, CALDH and the special prosecutor for the Attorney General's Office have been interviewing the 101 survivors and witnesses to the atrocities committed in the communities represented in the AJR. With depositions from the 23 vilages completed, CALDH, AJR, and the special prosecu-

tors are merely waiting for the additional physical evidence before bringing the case to trial.

Before the testimonial phase of the case, investigators carried out numerous exhumations. Teams of forensic anthropologists worked at various massacre sites searching for anything from clothing scraps to ballistic evidence or military weapons left behind, which would provide evidence of military involvement in the massacres. Forensic reports from all of the exhumation sites have not yet been completed, but CALDH hopes to receive them by the end of this year.

Additionally, CALDH is still waiting for reports from academic specialists in the specific regions of the massacres. These reports will provide important information on the context of the massacres and will be used to show patterns in the systematic killings. Currently, reports for three out of the five regions in question have been completed and the remaining two are expected by the end of the year.

An assessment of the physical, mental, and emotional harm experienced by the survivors and eyewitnesses to the massacres is being undertaken by the Community Studies and Psycho-Social Action Team (ECAP), a mental health organization in Guatemala. The report is expected to be completed by November.

CALDH and AJR aim to have the cases on trial by the end of the year. "We are into the final investigations," Lauer commented. "We would expect by the end of the year to have enough evidence to initiate the trial." She said the goal is attainable, providing Ríos Montt is defeated in the presidential campaign. Were Ríos Montt to win the upcoming election, his immunity as a democratically elected president would make it nearly impossible to press charges.

Deteriorating Respect for Human Rights

The Guatemalan Human Right's Ombudsman's office released a June 2003 report highlighting the steady increase in violent deaths over the past four years, nation-wide, culminating in 12 homicides a day. Most recently, the assassination of several prominent journalists has added to the atmosphere of repression in the country.

Human Rights Watch reported that incidents of political violence rose in 2002. Although political violence is not always state-sponsored, the impunity granted govern-

ment officials plays a major role in the mounting violence. In addition to fomenting abuses, rampant impunity has caused the Guatemalan people to lose faith in the judicial system and turn to public lynching. According to Amnesty International, between 1986 and 2002, there were 482 cases of lynching.

This lack of faith in the judicial system, along with the system's limited capacity for investigation and prosecution, has serious implications for the genocide cases against Ríos Montt and Lucas García. The budget of the Attorney General's Office is so small that most prosecutors have enormous caseloads. Attorney General Carlos de Len admits that his office has coverage in only 10% of the national territory, with almost no representation in the places from which more than 80% of the complaints are received. Prosecutors are overworked and regularly intimidated, threatened, or abused. The same special prosecutor is assigned to both the Ríos Montt case and the Lucas García case, a fact that has hindered AJR and CALDH's efforts to move the cases through quickly. Moreover, the courts consistently fail to resolve judicial appeals in a timely manner, the army and state generally refuse to cooperate, and the intimidation of witnesses continues to be a normal occurrence.

Given the current human rights climate, the witnesses' families are in constant danger. Recently the son of Otoniel de la Roca Mendoza, a key witness before the Inter-American Human Rights Court in the case of disappeared guerrilla leader Efraín Bámaca, has been subject to acts of intimidation and death threats.

In response to the gravity of the situation the Guatemalan state, the UN and the Organization of American States (OAS) jointly formed the Commission to Investigate Illegal Armed Groups and Clandestine Security (CICIACS) in March of 2003. Human rights groups consider the creation of CICIACS a positive step toward identifying and dismantling organizations with extensive records of human rights violations. However, for witnesses and survivors to feel safe in testifying against political and military leaders, the systemic problems of impunity, corruption, and state-sponsored violence must be addressed as well.

International Support Essential

According to CALDH, international support is essential for convicting both dictators. In cooperation with the Guatemala Human Rights Commission/USA, CALDH has recently launched an international postcard campaign. Concerned citizens in hundreds of cities across the United States, Canada, and the UK are sending postcards to the Guatemalan Attorney General's Office to denounce the actions of Lucas García and Ríos Montt and to demand a transparent, expeditious trial in Guatemala. The postcards have been collected in Guatemala for presentation to the attorney general in a public forum this autumn.

Proving that election fraud is still a very real concern, the UN, the OAS, the European Union, as well as many international and Guatemalan civil society organizations will be conducting formal observations of the Guatemalan elections. Currently, Ríos Montt lags in polls by only 3.3%.

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Genocide prosecution details from CALDH
<http://www.justiceforgenocide.org/>

Guatemalan presidential elections
http://www.prensalibre.com/especiales/ME/elecciones/la_encuesta/index.html

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