

A historic criminal trial is currently underway in a crowded courtroom in Guatemala City. Former president and general, José Efraín Ríos Montt, and his former Director of Military Intelligence, José Mauricio Rodríguez Sánchez, stand charged with crimes against humanity and genocide for massacres carried out as part of the “scorched earth” counter-insurgency campaign of the early eighties.

Over the past twenty years, radical change to the international justice landscape has made the prosecution of former heads of state or government for genocide or crimes against humanity no longer fanciful (one expert recently citing 65 such prosecutions<sup>1</sup>). However, it is noteworthy how rarely this has occurred before criminal courts in the state where the crimes were committed. High level prosecutions have generally unfolded in the very different political and legal environments of international or hybrid courts (as in the Milosovic or Taylor trials) or in the national courts of foreign states (as in the cases of Pinochet or Habre). The present case is significant for many reasons, but among them is the fact that it appears to be the first time a regular national court has ever prosecuted its own former head of state for genocide.

The primary role of national courts is rightly exalted in the ‘complementarity’ ethos of the present system of international justice. The current trial epitomizes that principle and is likely to be a reference point for the potential and challenges of national courts taking the lead in ensuring accountability. Justice is best done at home, for many reasons: the effectiveness of the investigation by prosecution and defence, the role of the trial in satisfying victims’ rights to truth and reparation, the restoration of the authority of the law and national institutions, and with it the rule of law, are all enhanced where perpetrators are held to account in a fair process before their own courts, in view of their own societies and in the face of their own victims.

The case embodies the once vain hopes of many of those victims and survivors, and of many more Guatemalans, of securing a measure of justice for the genocide that claimed a devastating two hundred thousand, predominantly indigenous, lives in the late 1970s and 1980s. Beyond Guatemala, it is a reminder of the long arm of the law, that in this case has reached across the decades and through barriers of power and privilege to finally point the finger on their behalf at the man who symbolizes ‘strong arm’ politics in Guatemala, who oversaw a policy of genocide and went on to hold high political office for decades thereafter. It’s been a long journey and is far from over yet, but the very fact of the trial is a critical step forward.

I had the privilege of working on genocide in Guatemala for several years in the mid-nineties, as the legal director of the Guatemalan NGO Centro para Accion Legal en Derechos Humanos (CALDH). At the outset of the process, when we contacted communities and engaged in hearing their stories of the crimes committed and their effects, and sharing what was then known as to the broader pattern and policy, none of us would have dared to foresee the newsreel images today of Ríos Montt sitting in the dock in the middle of the Guatemalan courtroom. But as communities’ understanding of the widespread and systematic nature of the crimes grew, so did demands for justice and reparation. In the face of what was then complete inertia by the national prosecuting authorities, in 1996 we took human rights cases to the Inter-American system, culminating in the *Plan de Sanchez v Guatemala* judgment and reparations order from the Inter-

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<sup>1</sup> Prosecuting Heads of State, Ellen L. Lutz and Caitlin Reiger, CUP, 2009

American Court in 2004. The *Dos Erres* case was brought in turn by CEJIL, and judgment by the Court followed in 2009. While implementation has been far from complete, the cases had multiple levels of impact, clarifying the obligation of effective investigation and prosecution, and prompted official recognition, apology by the state and a government commitment to implement the Court's comprehensive reparations order including socio-economic and cultural measures of restoration. But one critical aim of the human rights litigation, and a sticking point in the implementation of the judgments at least until recently, was to secure individual accountability of those responsible for orchestrating the genocide.

Many have contributed to the process towards justice in Guatemala.<sup>2</sup> The diligent investigation, coordination and liaison with victim groups, capacity building, pressure and litigation by colleagues at CALDH, after I had left, built the momentum that eventually reached a Guatemalan courtroom. The formation of a coordination of victim groups, the Association for Justice and Reconciliation, was of the utmost importance. Undoubtedly a critical factor in making the case happen was appointment of independent and effective prosecutor, Claudia Paz y Paz, herself formerly a criminal lawyer engaged in human rights cases. Further in the background, an important step in clarifying the nature of the crimes, though (consistent with its mandate) not in identifying those responsible, has been attributed to the Guatemalan Historical Clarification Commission which fourteen years ago acknowledged that there had been genocide in Guatemala. The Rigoberta Menchu foundation and Center for Justice and Accountability (CJA) pursued justice through Spanish courts which, while not always supported by those intent on pursuing justice in Guatemala itself, served as a reminder of supranational alternative fora should the Guatemalan prosecution not bear fruit.

The challenges remain daunting. Conducting a high level trial of powerful military and political figures in a state with the security concerns of Guatemala is courageous to put it mildly. Evidentiary challenges are inevitable when prosecuting crimes 30 years after the fact, intensified by secrecy and lack of cooperation from the authorities. Legal obstacles have threatened to derail the process at various stages, including successive attempts by the defendants to invoke amnesty laws to protect them from prosecution. Several international experts, including in one case a group of international judges to which I acted as counsel, presented amicus interventions to the Guatemalan courts, drawing attention to the vast international body of law and practice rejecting amnesty for serious crimes and endorsing the obligation of accountability.

Despite the obstacles, the trial began on 19 March 2013. Preliminary motions to have the case thrown out were rejected, and the court proceeded to hear witness accounts of the brutality of the Guatemalan genocide, and responsibility for it at the highest levels. Rios Montt's defence team opened on 9 April, asserting curiously, perhaps desperately, that genocide never happened in Guatemala since indigenous people also formed part of the armed forces. The trial continues.

There have been many stepping stones, pitfalls and a power of perseverance on the path to justice in Guatemala. We are not there yet. But when the case opened and Rios Montt asserted his constitutional right to remain silent, and indigenous survivors took to the stand to assert their right to speak, a little justice was surely already done. The hopes of many turn on the Guatemalan courts to ensure a fair and just criminal process and - thirty years later, but never too late - accountability for the Guatemalan genocide.

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<sup>2</sup> Beyond those mentioned here, NGOs such as the Archbishops Office and Fundacion Mirna Mack are among those having done critical work in this field, alongside international partners