

GENOCIDE IN GUATEMALA: RIOS MONTT GUILTY

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



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According to the UN-sponsored Historical Clarification Commission (CEH), in the course of Guatemala's armed conflict, which lasted from 1960 to 1996, more than 200,000 people were killed, 45,000 were forcibly disappeared, a million people were driven from their homes, more than 600 massacres were documented, and 400 villages were completely destroyed. The period of greatest violence occurred under the regime of General José Efraín Ríos Montt, who seized power in a coup d'état in March 1982 and was toppled by another coup in August 1983.¹

During the Ríos Montt government, as part of a counter-insurgency strategy based on the idea of "draining the sea to eliminate the fish", the Guatemalan Army carried out attacks against the civilian population in areas where they had supposedly been providing aid and support to anti-government guerrilla forces.² One of the zones specifically targeted in this strategy was the so-called "Ixil Triangle". The inhabitants of these areas, composed of the towns and surrounding areas of Santa María de Nebaj, San Juan Cotzal and San Gaspar Chajul, in Quiché Department, were almost all members of the Ixil ethnic group, of Mayan descent. The attacks against the Ixil formed part of military plans and operations aimed at taking control of the supposedly subversive populations.³ These attacks included massacres and large-scale displacement, executions, disappearances, systematic rape of women and girls, torture, abduction of children, deprivation of basic services, bombardments and destruction of property. The atrocities committed under the Ríos Montt government culminated in more than 29,000 Ixil being driven from their homes and the deaths of 1,771 people in eleven of the 626 documented massacres.⁴ This resulted in significant destruction of this ethnic group.

On 23 June 1994 an Agreement was signed in Oslo to set up a truth commission, known as the Historical Clarification Commission, to investigate the crimes committed, and on 23 December 1996 the Firm and Lasting Peace Agreement was signed. The Historical Clarification Commission published its final report, "Memory of Silence", in 1999. As part of the peace process, the Law of National Reconciliation was passed in 1996, granting an amnesty for those who had taken part in the war, but explicitly excluding from the amnesty crimes of genocide, torture and crimes against humanity. In August 2007 the Guatemalan Congress voted to create the International Commission against Impunity in Guatemala (CICIG), a mixed body supported by the United Nations and the Government of Guatemala, with the mandate to investigate crimes committed by illegal and clandestine groups. Although its mandate was limited to current rather than past crimes, its then director, the lawyer Carlos Castresana Fernández, boosted efforts to combat impunity for crimes against humanity perpetrated during the internal armed conflict by calling for the appointment of a fully competent and independent Public Prosecutor. It was thanks largely to this new Prosecutor and his team that in September 2009, after 27 years of impunity, the first sentence in a case of forced disappearance was handed down in Guatemala.⁵ A former member of the Civil Self-Defence Patrols (PACs) in Chimaltenango, and a former Army colonel, Marco Antonio Sánchez Samayoa, were convicted in December 2009. Even though they did not bear the highest responsibility, these court decisions helped to breach the wall of impunity that had operated in the country. Following this, in 2011, four former members of the Guatemalan Army elite group known as the *kaibiles* were sentenced to 6060 and 6066 years in prison for the massacre of over 200 people in the Dos Erres district, Department of Petén, in December 1982.

1. After the coup d'état of 23 March 1982, Ríos Montt dissolved the ruling military junta and declared himself President of Guatemala. On 8 August 1983 he was ousted in the coup d'état carried out by Óscar Humberto Mejía Victores, Defence Minister in the Ríos Montt government.

2. Insurgent forces inspired by Communist ideology.

3. These were the *Planes de Campaña Victoria 82, Firmeza 83 (Victory 82 and Toughness 83 Campaign Plans)*, and *Plan de Operación Sofía (Operation Sofía Plan)*.

4. Facts documented by Guatemala's *Comisión para el Esclarecimiento Histórico (CEH)* (Historical Clarification Commission), set up in 1993

5. 'La réactivation des procédures judiciaires en Amérique latine', ('The reactivation of judicial proceedings in Latin America') Jimena Reyes, Head of the FIDH Americas Office, in *Amérique latine: De la violence politique à la défense des droits de l'Homme, (Latin America: from political violence to human rights)* ed. Sophie Daviaud, L'Harmattan, Paris, 2012. p. 258

However, it was not until 2013 that those bearing the greatest responsibility for the crimes committed during the internal armed conflict were brought to justice. The trial of General José Efraín Ríos Montt, former de facto President, and his Chief of Military Intelligence José Mauricio Rodríguez Sánchez opened on 19 March. On 10 May, after hearing more than a hundred witnesses and many experts, and analysing documentary, forensic, and other evidence, the Guatemala *Tribunal Primero A de Mayor Riesgo*, (First High-Risk Court A, a special court established to hear complex cases) in a historic decision sentenced ex-dictator General José Efraín Ríos Montt to eighty years' imprisonment for genocide and crimes against humanity.

The International Federation for Human Rights (FIDH) organized two judicial observation missions, from the opening of the trial on 19 March until 24 March, and subsequently from 15-20 April 2013. Observing the trial for the FIDH were Manuel Ollé Sesé, lawyer, expert on international criminal law, chairman of the human rights department of the Antonio Nebrija University, Spain, and president of the Association Pro-Human Rights in Spain (Asociación Pro-Derechos Humanos de España - APDHE) and Jo-Marie Burt, an expert on transitional justice and a professor of political science at George Mason University, USA. As part of these missions the FIDH observers held meetings with members of the organisations that were civil parties to the trial proceedings, the Centre for Human Rights Legal Action (CALDH) and the Association for Justice and Reconciliation (AJR), which is an association of witness-survivors to 23 massacres carried out between 1978 and 1983, as well as a number of victims. As part of its observer duties, FIDH also had meetings with the Public Prosecutor and members of the Judiciary, with Aníbal Gutiérrez, Political Counsellor for the International Commission against Impunity in Guatemala (CICIG), Alberto Brunori, Representative for the Office of the United Nations High Commissioner for Human Rights in Guatemala (OACNUDH), Frank La Rue, United Nations Special Rapporteur on the right to Freedom of Opinion and Freedom of Expression; Fredy Peccerelli, Director of the Guatemala Foundation for Forensic Anthropology; Helen Mack, President of the Myrna Mack Foundation; and Rigoberta Menchú Tum, winner of the Nobel Peace Prize.

The verdict came thirty years after the crimes were committed and thirteen years after the survivors filed the complaint with the Public Prosecutor. However, on 20 May 2013, ten days after the sentence was handed down, the Constitutional Court of Guatemala, in response to an *amparo* proceeding [an action challenging the purported infringement of constitutional or legal rights] lodged by the defence team days before the trial ended, ruled that part of the trial should be repeated, leaving the sentence without legal effect. This decision was bitterly contested by well-known jurists and academics, the international community, and civil society, as demonstrating the weaknesses of the Justice system in Guatemala and calling into question its independence and impartiality. The future of the genocide trial is still mired in complications. This has both serious consequences for the victims whose rights to truth, justice and reparation have clearly been violated, and for the rule of law in Guatemala.

I- The judgement: a historic breakthrough for Guatemala and an example for the international community at large

1- The long process of combatting impunity

1.1- Proceedings in Spain

In 1999 the Guatemalan Nobel Peace Prize laureate Rigoberta Menchú⁶ lodged a complaint with the Spanish Supreme Court against José Efraín Ríos Montt⁷ for the crimes of genocide, terrorism and torture carried out by the Guatemalan Army and paramilitary groups in the name of around 200,000 victims (83% of whom were of the Maya indigenous group). The Spanish Human Rights Association (APDHE), a member of FIDH in Spain, was also a civil party to the accusation.⁸

Spain's *Juzgado Central de Instrucción No. 1* (First Penal Court, part of the *Audiencia Nacional*, the Spanish Supreme Court) accepted the complaint and opened an investigation, but the Spanish Public Prosecutors' Office challenged the jurisdiction of Spanish courts. In the same year, the Spanish Supreme Court ruled on the complaint, stating that Spanish criminal courts had no jurisdiction in the matter, and decreed that the case should be closed. The difficulties and pressures deriving from recent Chilean and Argentinean cases compelled the magistrates to apply the principle of subsidiarity, arguing that they could not be considered competent under universal jurisdiction (Art. 23.4 LOPJ⁹) since not all the options of judging the case under the competent national Courts of Guatemala had been exhausted.¹⁰

6. Various human rights organisations were also represented as civil society parties in the trial.

7. Also against four other retired generals, two of whom were also former presidents (Oscar Humberto Mejía Victores and Fernando Romeo Lucas García).

8. The support and work of one of the FIDH member organisations in the United States, the Center for Justice and Accountability, also played a crucial role.

9. This article, in brief, states that Spanish jurisdiction is competent to hear cases of acts committed by Spanish or foreign citizens outside Spanish territory if, under Spanish Law, they fall into the category of crimes of genocide, crimes against humanity, terrorism, piracy, people trafficking, drug trafficking and similar serious international crimes.

10. According to the lawyer José Luis Galán Martín, in his article "The Scilingo case: a brief judicial chronology" (2006, *La Ley Penal*, 25, 21-31), "The magistrates had decided to close the door to the *Audiencia Nacional* [...] and prevent new cases from being brought to Spanish courts" due to "the dreaded possibility that the *Audiencia Nacional* would become a clone of the *International Criminal court*".

At that time the principle of subsidiarity was not recognised in Article 23.4 of LOPJ.¹¹ The denial of justice in Guatemala had been sufficiently proven in the case: rigged trials, unjustified delays (in some cases lasting decades), judges and prosecutors in the cases obliged to step down or go into exile and further irregularities documented in reports by the United Nations Special Rapporteur for the Independence of Judges and Lawyers. This principle of subsidiarity thus provided a perfect escape route for human rights violators who prevented access to justice in their own territories.

Civil society parties challenged the Spanish Supreme Court's judgement and eventually, in 2005, Spain's Constitutional Court ruled that Spain did have competence and jurisdiction in the Guatemala case. Following this important judgement, in 2006 Santiago Pedraz, the Spanish National Court judge who had reopened the case, travelled to Guatemala in order to question Ríos Montt and the others charged in the case. He was forced to abandon this proceeding as the defence lodged at least 15 appeals, preventing him from carrying out any questioning. Despite the difficulties of the trial, Judge Pedraz issued international arrest warrants and extradition orders for seven of the accused who had exercised the highest responsibilities in the chain of command, among them Ríos Montt, together with Ángel Aníbal Guevara, Germán Chupina, Humberto Mejía Victores, Pedro García Arredondo, Donaldo Álvarez and Benedicto Lucas García, so that they could undergo judicial investigation and be put on trial in Spain. In application of this order, the Guatemalan justice system detained Ángel Aníbal Guevara. It was the first time that someone believed to be responsible for the genocide had been arrested.¹² However, on 17 December 2007, the Guatemalan Constitutional Court annulled the request from the Spanish Supreme Court currently active in Guatemala, on the grounds that the Spanish Supreme Court had no competence to judge Guatemalan citizens. This ruling blocked the extradition of Ríos Montt and the other defendants in the criminal proceedings, preventing them from facing Spanish justice.

Despite the difficulties, the proceedings continued in the First Penal Chamber of the Spanish Supreme Court.

1.2- Trials in Guatemala

Parliamentary Immunity

On 6 June 2001, the Association for Justice and Reconciliation (AJR), with the aid of the Centre for Human Rights Legal Action (CALDH), an FIDH member organisation in Guatemala, filed a criminal complaint in Guatemala City against Ríos Montt and his High Military Command for alleged genocide, crimes against humanity, and war crimes. The case was accepted by the Second Criminal Court of First Instance in Guatemala, but the fact that Ríos Montt was an elected member of congress in Guatemala (standing for the Guatemalan Republican Front - FRG) gave him parliamentary immunity and prevented any criminal action from being taken against him. Such immunity is, however, contrary to the provisions of International Human Rights Law. In a climate made tense by intimidatory attacks and threats against magistrates in the High Courts, human rights defenders and victims, Ríos Montt was saved by his position of President of Congress, avoiding a criminal trial and possible sentence.

The End of Parliamentary Immunity

The Attorney General appointed in July 2008 as a result of the CICIG's call for independent judges, Amílcar Velázquez Zarate, as well as the current Attorney General, Claudia Paz y Paz, played a crucial role in moving forward the investigation and criminal prosecution of serious crimes committed in Guatemala, including those committed during the internal armed conflict.

11. The *Ley Orgánica del Poder Judicial* [Organic Law of the Judicial Branch] was modified by Organic Law 1/2009 of 3 November which introduced the principle of subsidiarity. "Summary of the Universal Jurisdiction Reform in Spain", *Newsletter (EU Update on international crimes. Special Issue on Spain)*, Redress and FIDH, 8 November 2010, pp. 5-7.

See: http://www.fidh.org/IMG/pdf/EU_Newsletter_Nov_2010.pdf

12. 'The reactivation of judicial proceedings in Latin America', Jimena Reyes, *op. cit.*, p. 256

It was due to pressure from Attorney General Velázquez Zarate and his team that in March 2009 the Defence Ministry complied, although only partially, with the 2007 order from the Constitutional Court to declassify military plans for the *Victoria 82*, *Firmeza 83* and *Operacion Sofía*¹³ campaigns mounted by General Ríos Montt's *de facto* government.¹⁴ However, the military never acknowledged the existence of *Operacion Sofía* and supplied only part of the *Victoria 82* and *Firmeza 83* plans.¹⁵ With the nomination of Claudia Paz y Paz as Attorney General, priority was given to criminal prosecution of historical cases of human rights violations, as well as other complex crimes like organised crime, money laundering and drug trafficking.

Ríos Montt's parliamentary term ended on 14 January 2012 and with it his legal protection. The end of his immunity had immediate consequences. The following week, on 21 January, Judge Carol Patricia Flores, President of the First High Risk Court "A" and presiding judge over the proceedings in the case for genocide and crimes against humanity, ordered Ríos Montt to testify. In his response he would have to answer for 72 criminal acts carried out by the Army against Maya communities in the so-called Ixil triangle¹⁶ during the 17 months he was *de facto* president of Guatemala. The documented figures showed the killing of 1,771 Ixil, more than 1,400 cases of other human rights violations and the forced displacement of 29,000 people. Charges of genocide had already been brought against retired generals José Mauricio Rodríguez Sánchez and Héctor Mario López Fuentes, for which they remained in custody.¹⁷

The Court kept Ríos Montt under house arrest while awaiting trial. For almost a year, the genocide trial remained paralysed as the defence lawyers lodged dozens of appeals, objections and other legal motions to delay the opening of the trial.¹⁸ Nevertheless, on 28 January 2013, the judge in the First High Risk Court "B" Miguel Ángel Gálvez, who took over the case after Judge Carol Patricia Flores was recused by the defence, declared the opening of the oral phase of the public trial of José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez.

The trial began on 19 March 2013. The First High Risk Trial Court A was presided over by Judge Yassmin Barrios sitting with Judge Patricia Bustamante García and Judge Pablo Xitumul de Paz. During the entire phase of oral testimony, the defence adopted a strategy of delaying the trial using procedural appeals as well as obstructionist tactics with the aim of preventing the trial from continuing and reaching a verdict. While the trial was interrupted on 19 April due to a ruling by Judge Carol Patricia Flores, President of First High Risk Court A and presiding judge over the genocide case during the first few months of its preliminary phase,¹⁹ it was able to recommence and reach a conclusion on 10 May 2013 when Ríos Montt was pronounced guilty. His co-accused Rodríguez Sánchez was absolved due to insufficient evidence.

13. Plans that were proved to have been drawn up by the Guatemala High Military Command whose objective, among others, was to control subversive populations.

14. *La reactivación de procedimientos judiciales en América latina*, Jimena Reyes, *Op. Cit.*, p. 258

15. This consisted of counterinsurgency operations throughout the Ixil region. Their objective was to kill enemy combatants and destroy their supposed "support bases," that is, the Maya Ixil population.

16. The so-called "Ixil triangle" is made up of the three districts of Santa María de Nebaj, San Juan Cotzal and San Gaspar Chajul, in the department of Quiché, in the north of Guatemala.

17. General Héctor Mario López Fuentes, who was Army Chief of Staff during Ríos Montt's *de facto* government, was the first to be indicted for genocide. His lawyer objected to Judge Carol Patricia Flores, and Judge Miguel Ángel Gálvez took over the case, which also included Ríos Montt and Rodríguez Sánchez. Ríos Montt's Defence Minister, Oscar Humberto Mejía Victores, who replaced Ríos Montt as president after another coup d'état, was also accused of genocide. He appeared before the court in October 2011, but Judge Flores suspended his trial by reason of his poor health. López Fuentes also escaped trial on the same grounds.

18. Ríos Montt's lawyers invoked specifically the provision in the Guatemala Amnesty Law, passed by Mejía Victores in 1986, which removed criminal responsibility from "any person responsible for or accused of having committed political or associated common crimes during the period between 23 March 1982 and 14 January 1986". It was eventually decreed that the removal of criminal responsibility in the general amnesty of 1986 was not applicable to the crimes of genocide, torture and forced disappearance, as this amnesty had been revoked by Congress when it passed the Law of National Reconciliation in 1996.

19. Judge Flores presided over the preliminary phases of the genocide case, but was challenged by defence lawyers for General Héctor Mario López Fuentes and replaced by Judge Miguel Ángel Gálvez of First High Risk Court B on 23 November 2011. Finally, the Constitutional Court ruled in favour of the appeal lodged by CALDH challenging the recusal of Judge Carol Patricia Flores. Thus, arguing that she was the first instance judge, she annulled the debate and determined that it had to restart as of 23 November 2011, the date on which she had been recused and replaced by Judge Gálvez.

2- The Court's Decision

On 10 May 2013, Guatemala's First High Risk Court A pronounced General José Efraín Ríos Montt guilty as perpetrator²⁰ of the crime of genocide and of crimes against humanity as set out in Articles 376 and 378 of the Guatemalan Penal Code, and imposed the maximum incommutable sentence of fifty years and thirty years imprisonment.

With regard to the second accused, General José Mauricio Rodríguez Sánchez, the Court declared that he had not been involved in the field of operations and nor was there evidence of his responsibility for any of the acts cited. He was cleared of the charges of genocide and crimes against humanity.

The judgement of 718 pages was based on the evidence of witnesses, experts, military documents and other evidence presented during the 27 court sessions. More than 90 Ixil who were direct survivors of the violence or relatives of the victims gave evidence to the Court, as did expert witnesses from different disciplines and specialities.²¹

The judges resolved that the witness and expert evidence showed, beyond any reasonable doubt, that under Ríos Montt's command the Guatemalan armed forces had implemented a series of plans aimed at eliminating the Ixil Maya population, seeing it as a community which completely supported the guerrilla forces that had risen up against the military government. The Court relied on military experts and military documents of the time to show that Ríos Montt drew up the national security plan and authorised the military operational plans. All the techniques deployed (deprivation of food, military occupation of villages, psychological operations to subdue and destroy the "enemy within", executions) were included in the plans drawn up by the military leadership headed by then General Ríos Montt. Specifically, the Court found that Ríos Montt ordered Plan *Victoria 82* to be drawn up, that he was aware of its content, and ordered it to be put into action. As Kate Doyle, an analyst at the National Security Archive pointed out, "*Plan Victoria 82 sought above all to destroy the guerrilla forces and their operations base by means of annihilation and a scorched earth policy*". In 2009, the National Security Archive received a collection of Guatemalan army records for July to August 1982 relating to *Operation Sofía*, a series of counter-insurgency operations across the Ixil region, whose objective was to kill enemy combatants and destroy their so-called "support base", that is, the Ixil Maya population. It was used as evidence in the trial.



20. According to Article 36.3 of the Guatemalan Penal Code, "*The perpetrators are [...] those who co-operate in committing the crime, in either planning or executing it, and without whose actions the crime could not have been committed*".

21. Jo-Marie Burt, *Ríos Montt convicted of Genocide and Crimes Against Humanity: the Sentence and its Aftermath*, "The Trial of José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez", 13 May 2013. See: <http://www.riosmontt-trial.org/2013/05/rios-montt-convicted-of-genocide-and-crimes-against-humanity-the-sentence-and-its-aftermath/>

The judgement stated that Ríos Montt supervised, permitted and authorized systematic attacks against the Ixil populations which violated their human rights in a planned and systematic way. The Army carried out the massacres according to a generalized pattern of behaviour, as part of a State policy intended to eliminate a specific ethnic group considered to be the “internal enemy”. Ríos Montt neither impeded nor prevented the commission of these acts, despite having the power to do so by virtue of his position as Head of State. Thus, the judgement established the individual criminal responsibility of the accused, to the extent that as *de facto* Head of State and Commander-in-Chief of the Guatemalan Army, in addition to having continued and intensified the counter-insurgency policy, he authorised and had knowledge of the implementation of the *Victoria 82*, *Firmeza 83* and *Sofía* plans, as well as “*being aware of all that was happening in the villages in El Quiché, of all the massacres that were being committed, and did not stop them, despite having the power to do so.*”²²

The Court ruled that the prosecution and the civil parties had offered evidence proving the specific crimes contained in the criminal complaint: the murder of 1,771 Ixil, the forcible displacement of 29,000 persons, at least nine cases of sexual violence, and several cases of torture. The Court described the nature of the violence perpetrated against the Ixil community, including indiscriminate massacres, rape and sexual assaults on women, infanticide, destruction of crops to create famine, seizure of children and the forcible displacement and resettlement of populations in militarised areas known as “model villages”. The Court also described the forced participation of populations in civil defence patrols (PACs) as a way of destroying self-government and undermining the local indigenous authorities, who had to implement and enforce the men’s obligation to join the patrols. The proven existence of such events, culminating in massive acts of persecution, a repeated pattern of behaviour and the cultural elimination of an ethnic group, led the judges to decide that these acts rose to the legal definition of the crime of genocide.²³ The fact that the accused had full knowledge of the atrocities that occurred during his mandate led the Court to decide that José Efraín Ríos Montt was also the perpetrator of crimes against humanity.²⁴

It is important to recall that the responsibility discussed during the trial is the individual criminal responsibility of the accused and not of the State. Individual criminal responsibility is one of the major advances emerging from the Nuremberg principles and it goes beyond State responsibility. It was the accused’s acts of commission and of omission that caused the persecution and destruction of the Ixil ethnic group in Guatemala, and as the jurists Naomi Roht-Arriaza and Susan Kemp²⁵ correctly stressed, “*it is individuals, not abstract entities, who decide to commit crimes [...] it is a way of avoiding criminalisation of a whole institution. What is relevant is the intentionality of the accused, not that of each member of the force to which he belongs. For this, the fact that there were members of the group under attack within the armed force is irrelevant, and it is the characteristic of a democratic State to show itself competent to judge those who break the law, and thereby show that the rule of law exists.*”

The judgement, invoking Article 124 of the Guatemalan Penal Code which lays down the right to suitable reparation, also ordered that moral reparation be made to the victims. This included an apology issued by representatives of all three branches of government to all women and to the entire Ixil people in ceremonies in the National Palace and in the municipal government headquarters in Santa María de Nebaj, San Juan Cotzal and San Gaspar Chajul. In each of these ceremonies, the President of the Republic and the Minister of Defence are to deposit a written document containing the apologies of the Guatemalan Government and Army to the Ixil people. The Executive was to erect a national monument in honour of the victims, as well as monuments in Santa María de Nebaj, San Juan Cotzal and San Gaspar Chajul. The government was

22. Sentence C-01076-2011-00015 Of.2º., p. 701

23. Article 376 of the Guatemalan Penal Code.

24. Article 378 of the Guatemalan Penal Code: “*A person who violates or infringes human rights, laws or agreements relating to prisoners of war or hostages, persons wounded during hostilities, or who commits any inhumane act against the civil population, or against hospitals or premises used for treatment of the wounded, will be punished by a prison sentence of twenty to thirty years.*”

25. Naomi Roht-Arriaza is Professor of Law at the University of California (Hastings College of the Law, San Francisco, USA). Susan Kemp is a lawyer specialising in International Law and was an advisor at the International Center for Transitional Justice (ICTJ) in New York for this trial.

also required to create educational centres at pre-school, primary, secondary, specialised and university levels in these three municipalities, and create a cultural centre in the Ixil region for the recovery of historic memory and to guarantee non-repetition of the events. Additionally, the government was required to draft a law making 23 of March each year a National Day against Genocide; develop a plan to disseminate the content of the judgement in all public and privately-owned communications media with the objective of guaranteeing that such crimes would never be repeated; and create a travelling museum. At the same time, the Public Ministry was required to reaffirm its commitment to the development of a justice system that was respectful of cultural difference, with a mural dedicated to the Ixil people. The reparatory measures also included educating the armed forces on human rights and international humanitarian law, and that the inclusion of the categories of genocide and crimes against humanity in the Reparations Programme²⁶ so that the Ixil victims could access all the reparations available therein.

26. The National Reparations Programme is an institution created by the Guatemalan State in response to the recommendation of the Commission for Historical Clarification (CEH) that there should be a programme of reparations for victims of the internal armed conflict.

II- The trial proceedings.

“I want to say what happened to me, because it is the truth.”²⁷

1- The testimonies of the victims. “Justice so that our children do not have to live through what we did.”



The Court heard evidence from more than a hundred Ixil survivors of the massacres. During the first days of the trial, they explained how the “scorched earth” policy was implemented under the *de facto* government of General Ríos Montt, by means of massacres, persecution, the burning of dwellings and possessions, bringing about destruction their culture and traditions. “*Many died of fear.*” “*I’m still ill now from what happened to me, I am still afraid, now everything puts fear into my heart.*” They also made known the number of people killed during the massacres and their living conditions during the flight into the mountains. They also explained why they returned to villages occupied by the Army and how the men were forced to take part in the civil defence patrols (PACs).²⁸

The witnesses’ accounts showed the systematic pattern of behaviour the Army adopted against the Ixil. “*The soldiers threw my mother, my father, my brothers and other people in the river.*” “*They stripped my brothers naked and threw them into the fire.*” After going into the villages and massacring or executing some of the people, the soldiers would burn down the houses, destroy the fields, burn the crops, kill or take away the animals and destroy the farming implements. The indigenous

27. Testimony of Don Gaspar, an Ixil survivor, 21 March 2013.

28. The Civil Defence Patrols (PAC) were groups set up during Guatemala’s internal armed conflict with the aim of forcing the civil population to take part in military duties, and were authorised and coordinated by the Guatemalan Army, in theory to protect the communities from guerrilla insurgents.

inhabitants were forced to flee and take refuge in the mountains. In particular, the testimonies revealed the intention to exterminate the children. *“They shot the adults and threw them in the river, but they just threw the children in the river so they drowned and died.”* *“How can three month old babies be guilty, they [the Army] said they were guerrillas.”* It should be stressed that the witnesses, when asked about the kind of uniform worn by the perpetrators of these crimes, said that no other armed groups came into their communities. *“The only ones who came were Army soldiers and members of the patrols”*.

On 2 April, Ixil women who were victims of sexual violence by the Army between 1982 and 1983 testified before the court. Their testimonies revealed that these were not isolated incidents, nor were they merely acts committed by troops beyond the control of their commanders. Rather, the testimonies revealed that it was these commanders who ordered, approved and legitimised these acts. *“It was a sergeant who gave the orders to the soldiers.”* One woman survivor gave evidence that she had heard one soldier say, *“Ríos Montt told us to get rid of this Ixil rubbish because they collaborate with the guerrillas.”* The details of the terrible crimes perpetrated against Ixil women showed that rape was a premeditated, systematic, generalised practice, used as a form of warfare and part of the counter-insurgency policy of José Efraín Ríos Montt’s government. *“They took us to the detachment and there many soldiers raped us, I was there for ten days and I was raped many times and so were other women.”* *“They abused me all night, there were about twenty soldiers, but eventually I lost consciousness.”* This practice, which included the rape of minors, pregnant women and elderly women, was aimed at instilling terror into the population and particularly the women, involving cruel and extreme forms of sexual violence, causing serious and permanent injuries to the women’s physical and psychological integrity, affecting their reproductive capacities and destroying the social fabric, with the aim of destroying the Ixil people. *“I have an infection in my womb, it hurts all the time.”* *“I feel very sad, I am often ill and I do not leave my home... my heart aches.”* Over the following days, witnesses who were children at the time of these events explained how they were taken captive by the Army and taken to orphanages so that they could be given up for adoption. This also demonstrates the desire to destroy Ixil cultural identity. Witnesses also emphasised the violence unleashed upon children when the Army arrived in the indigenous communities. *“They cut open my daughter’s chest and tore out her heart. What wrong had my daughter ever done?”*

On 4 April, three witnesses testified by videoconference with their faces hidden and from a secret location, due to the risks that their testifying posed to their safety. One of them told of the barbarism he witnessed as a child in the village of Visan, Nebaj after his abduction by the Army. *“When the soldiers cut off the head of an old woman, and then played with the head, I can’t get that out of my mind.”* He also explained that when members of the G2 intelligence unit interrogated and tortured detainees, before executing them and throwing their bodies into pits, they threw rubbish and poured petrol on them to burn them. The second witness testified that he had been forced to take part in PAC patrols in Tzalbal. *“If we didn’t cut down the maize, they were going to think we were guerrilla fighters... We were frightened... And when they made us go on patrols with the Army we were frightened of the guerrillas, because they had weapons too.”* The third witness was a soldier and mechanic in the engineering corps who was present in various villages in the Ixil region between 1982 and 1983. He affirmed that the officer in charge of the Salquil Grande detachment in Nebaj was Otto Pérez Molina, the current President of the Republic of Guatemala, and stated that he had heard him order the soldiers to burn and sack villages and then kill the inhabitants as they fled to the mountains. The witness also identified officers in charge of other detachments where torture and executions were carried out in Nebaj (Arnoldo Otoniel López, Pedro Díaz and Luis Felipe Ruano) and in Tzalbal (Mario René and Juan Chiroy Sal).

2- Expert testimonies: corroboration of the victims' evidence and José Efraín Ríos Montt's responsibility

During the trial, anthropologists, sociologists, historians, psychologists, mathematicians, jurists, political scientists, forensic anthropologists, geneticists, archaeologists and social anthropologists presented the results of their investigations, corroborating the evidence presented in the victims' testimonies. Among these expert witnesses, Marta Elena Casaús Arzú²⁹ explained that racism contributed to genocide, in that the indigenous peoples were seen as inferior beings, and were objectified, stigmatised and de-humanised. *"Racism reached its peak during the internal armed conflict with the stigmatisation of the indigenous people. That is when racism operated as a State ideology, as an apparatus of extermination against a group, in this case the Ixil"*. This analysis was confirmed by the third witness who gave evidence via videoconference on 4 April, who stated that the orders given to the Nebaj detachment were: *"see an Indian, kill an Indian."* It should be noted that even during the trial there were several events that demonstrated differential treatment of the indigenous population. For example, the toilets in the Supreme Court building were locked and witnesses were told they had to use portable toilets that had been set up outside the building until the civil party lawyers complained about this as discriminatory.

Another expert, the social anthropologist Byron García Méndez, presented a report based on his research in the village of Pexla Grande, located in the municipality of Santa María de Nebaj. He stated that the members of one family *"died in a state of defencelessness"* and *"the possibility that they were killed in armed conflict can be dismissed,"* showing that when attacked they were not taking part in insurgent activity, by virtue of their state of defencelessness. The lawyer Ramón Cadena, director of the Office of the International Commission of Jurists (ICJ) in Central America, gave evidence of serious violations of international humanitarian law, in particular the failure by the State of Guatemala to fulfil its obligations to protect the non-combatant civilian population. He pointed out that the State denied the existence of the conflict and the relevance of the 1949 Geneva Convention to which it had been party since 1952. Similarly, he listed the crimes committed against the Ixil people: killings of members of the group, forcing them into conditions capable of wholly or partially destroying the group, torture and inhuman and degrading treatment, forced displacement, and removal of children from one group to another, all acts that constitute genocide.

In her evidence, the Spanish lawyer Paloma Soria³⁰ stated that sexual violence against indigenous women during the internal armed conflict was widespread and systematic. These were not isolated acts; sexual violence was used as a weapon of war and proves the intention of genocide because not only does it destroy the protected group in physical terms, it also brings about the absolute destruction of the social fabric. The evidence as to the damage to the mental health and the culture of the Maya Ixil group bore witness to the traumatic effects of the genocide on the group, expressing itself as constant terror and fear, which resulted in the destruction of the Ixil view of the world and their culture, the stigmatisation of women who had been raped and the tearing of the social fabric.³¹ Similarly, the expert witness and mathematician Patrick O'Donnell Ball presented his conclusions that, during the period from 1982 to 1983, the Army executed 5% of the Ixil population, and that of every ten people, the probability was that eight would die because they were indigenous people. Another expert witness, geographer Elizabeth Ogelsby, stated that between 29,000 and 37,000 Ixil people were displaced into the mountains, fleeing from the Army's repressive operations.

The Public Prosecutor also brought in Fredy Peccerelli, the Executive Director of the Guatemalan Forensic Anthropology Foundation (FAFG), as an expert witness. He stated that between 1992 and 2009, the Foundation had investigated more than 1,116 cases throughout the country, obtaining the remains of more than 5,800 persons, of whom 420 lost their lives during 1982

29. A Guatemalan sociologist, political scientist, historian and writer, who holds a Chair at the *Universidad Autónoma de Madrid* (Autonomous University of Madrid).

30. A lawyer specialising in women's issues and legal counsel for "Women's Link Worldwide"

31. Expert testimony from the psychologist Nieves Gómez and the historian Ángel Valdez

and 1983 in the Ixil area. The majority were aged between 26 and 49, but 33% of them (140) were minors. According to Peccerelli, 8 out of every 10 skeletal remains showed direct trauma to the skull, which led him to conclude that these people were killed by summary execution. Also, in accordance with expert studies, in a conventional war the likelihood that combatants will die of a shot to the head is 2 out of 10. Similarly, he discounted the possibility that the remains were of people killed in battle since a combatant who died in battle would be expected to have two fatal wounds. With the help of visual illustrations, he showed that these bones bore more than two fatal injuries and showed signs of violence caused by firearms and machetes.

As for the expert witnesses for the defence, several of their statements corroborated José Efraín Ríos Montt's responsibility for the crimes committed against the Ixil people during his *de facto* government. On 9 April, a colonel in the Guatemalan Army testified that the military high command was made up of the President of the Republic, the Army Chief of General Staff and the Minister of Defence. He also confirmed that in 1982, the President of the Republic performed strategic functions and could give orders to any minister. The next day, the former military officer José Luís Quilo Ayuso was questioned by the defence as an expert witness on the chain of command. He stated that "*the Chief of General Staff is the one who gives the orders, in the form of plans, directives or instructions.*" Thus, he confirmed the function of the High Command and answered the Public Prosecutor as to who made up the High Command in 1982, saying: "*Commander in Chief of the Army: Ríos Montt, Minister of Defence: Ríos Montt and Chief of General Staff: Ríos Montt*". He also indicated that it was Ríos Montt who ordered the *Victoria 82* plan to be drawn up; the plan's intelligence annex was drafted by Rodríguez Sánchez. In describing some of the phrases found in the annexes, he said that the "support bases" were the clandestine organisations in the Ixil area. This expert also read out telegrams taken from the *Sofía* plan, in which it stated that both José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez were informed of communications with the bases, as the document itself mentioned that it had been copied to both of them.

The findings of an expert military witness, the retired Peruvian General Rodolfo Robles Espinoza, which were presented on 15 April, confirmed this understanding. He asserted that in terms of his knowledge and experience, as well as his analysis of the campaign plans for *Victoria 82*, *Firmeza 83*, and *Operation Sofía* and of the chain of command existing from 23 March 1982 to 8 August 1983, it would have been impossible for any of these plans to be implemented without the knowledge and approval of the military High Command or the Army Chief of General Staff, who at that period was the President of the Republic José Efraín Ríos Montt. His testimony showed that the latter played an active role in military operations, both tactical and operational, and that he was aware of the excesses, massacres and human rights violations committed during this period, but he did not stop them at the time and did not punish members of the Army who had carried out these serious acts. The expert witness also explained that the High command had total control over the Army and that "*an order from him would have been able to change the situation*" because he had command responsibility. "*It is clear that he incurred the responsibility of a superior,*" he stated. This line of argument was reinforced the following day when the Public Prosecutor introduced as evidence a video in which the documentary filmmaker Pamela Yates interviewed Ríos Montt in 1982, when he was already *de facto* President. In this interview, Ríos Montt insisted that his troops were not massacring peasant farmers in the mountains, asserting that: "*If I can't control the Army, then what am I doing here?*"

3- The Crime of Genocide: the crime of all crimes

3.1- Proven Facts

The First High-Risk Tribunal A found that, as part of Ríos Montt's counter-insurgency policy during his years of government, the Army and the civil defence patrols carried out violent actions against Mayan ethnic groups on the grounds that they were giving aid and comfort to the insurgent guerrilla groups. Concretely, these counter-insurgency policies focussed on the Maya Ixil ethnic group, which was considered to be an internal enemy even though they were a non-combatant civilian population. According to the expert testimony heard, Ríos Montt ordered and authorised the targeting of the Ixil population in the *Victoria 82*, *Firmeza 83* and *Operation Sofía* plans of campaign, and that actions carried out against them included indiscriminate massacres, torture, sexual violation of women, girls and elderly women, bombardments, destruction and looting of property, as well as persecution within places of refuge, and occupation and destruction of places considered sacred within Ixil culture.

These acts were carried out by the Army between March 1982 and August 1983 in the Quiché department, certainly in the Ixil villages and homesteads of *Canaquil*, *Pexla Grande*, *San Francisco Javier*, *Chuatuj*, *Sajsiban*, *Sumal I*, *Vijolóm I*, *Vijolóm III*, *Bí Chapyac*, *Acul*, *Tuqanal*, *Tujolom*, *Sumalito*, *Quejchip*, *Salquil Grande*, *Palop Chiquito*, *Vatzsuchil*, *Parramos Grande*, *Jolopxam*, *Visibacbitz*, *Vatz Sumal II*, *Xeo*, *Vitzal*, *Trapichitos*, *Batzchocola*, *Vipecbalam*, *Chapyac*, *Viucalvitz*, *Vicalama*, *Visibal*, *Tuchabuc*, *Tu Uchuch*, *Batzcorral*, *Parramos*, *Xemamatze*, *Palop*, in the **Santa María Nebaj** district; in *Chel*, *Amajchel*, *Xesayí*, *Xachmoxan*, *Vipollí*, *Xe Belubal*, *Santa Clara*, *El Mirador*, *Finca San Joaquin Chel* and *Finca Estrella Polar* in the **San Gaspar Chajul** district; and in *Villa Hortensia Antigua*, *Villa Hortensia I*, *Villa Hortensia II*, *Chipal*, *Finca San Francisco* and *Chi'sis* in the **San Juan Cotzal** district.

These strategies of persecution were aimed at exerting physical and psychological control over the Ixil population, using hunger as a weapon (destruction of fields of crops and livestock), as well as the prohibition against wearing traditional costume and speaking their native language —all of which contributed to the criminalisation of Ixil culture— and militarised resettlement (military occupation and forcing of the population into “model villages,” where they were forced to take part in the PACs).

The anthropological and archaeological evidence presented in various expert testimony and reports documented the existence of various “clandestine cemeteries” in which groups of people were buried in mass graves; the bodies showed signs of shootings to the head and chest and other signs of attack (broken ribs, broken jaws, neck fractures), which supported witness statements of how their families were killed. The evidence presented confirmed that between 1982 and 1983, the mere fact of being an Ixil constituted a crime punishable by death, which brought about the destruction of the Ixil social and cultural environment.

The evidence presented in the witness testimonies substantiates the barbarities committed. Juana Chen was ten years old when soldiers and self-defense patrols came into her village on 13 March 1982. Her mother and brother were killed, alongside another 107 women and more than 70 children. In her testimony she related that the head of the patrol ordered the soldiers “to kill 10 women and 10 children each.” “When they started killing the women, they took them to a pit, made them turn around and shot them in the back. And afterwards they grabbed the children by the feet, and killed them on the rocks [...] they cut off their heads and the blood flowed out [...] And they threw them into the pit where they were killing the women.” Some of the soldiers who gave evidence at the trial stated that their orders were to use bayonets for executions (so as to save ammunition), stabbing the victims in the chest “or cutting their throats.”

Many of the villages referred to in the judgement and in reports no longer exist today. Several survivors related similar stories in their testimonies about the bloody massacre in the village of Ilom. “The soldiers came in at around 5 in the morning, and went from house to house pulling people out and forcing them to gather together in the main square [...] They drew up a list while communicating with to other soldiers on the radio and announced that they were

going to kill everyone on the list. Some people managed to stay hidden in their houses, but the majority were trapped in the church and the courtroom and in the village [...] they set fire to all the houses in the village and the buildings and those who remained alive were taken away.”

The father of a family in the village testified that he was forced to watch as a group of soldiers cut the throats of his wife and children. In the Ilom massacre 95 people were killed and over 150 displaced people were forced to abandon the village and take part in military activities with the patrols.

Expert reports have documented that there were 1,771 Ixil deaths (comprising 5.5% of this ethnic group) at the hands of the Army and PAC military forces.³² Over 29,000 people were displaced and took refuge in the mountains in sub-human conditions. Thirty years later, the psychological and emotional consequences for the survivors still persist among the families and the communities as a result of the horror and grief to which they were subjected.³³

3.2- The intention to exterminate the Ixil ethnic group

What is especially noteworthy is the fact that these actions were not spontaneous, but rather formed part of the implementation of plans drawn up with the objective of annihilation of this ethnic group. The judges stated in their verdict that the prior intention and the main objective of the plans that were carried out (*Victoria 82*, *Firmeza 83* and *Plan Sofía*) had been proven, and that the accused Ríos Montt had participated in formulating the plans and evaluating their results.

Plan Sofía envisaged the extermination of subversive elements as part of the mission, and gave orders for direct offensive actions during which “*the lives of women and children should be spared insofar as possible*,” which by definition opens the door to attacks on the civilian population. The Ixil ethnic group as a whole was referred to as the enemy within, and hence no distinction was made between the civilian population and potential combatants. It was precisely this intention of eliminating this group in its entirety, rather than the total number of victims, which qualifies Ríos Montt’s actions as genocide.

This distinction is based on fundamentally important criteria of International Criminal Law, particularly the distinction between the motive and the intention of the accused. While the objective was to eradicate the guerrilla forces as part of a military plan, the Ixil ethnic group was identified as the internal enemy, and this is the aspect that the trial court judges took into account in their verdict.³⁴ All the actions were undertaken specifically to destroy the Ixil ethnic group.

3.3- Knowledge of the events

Equally important was the fact that the accused, Ríos Montt, was at all times aware of and consenting to the carrying out of these criminal acts. These military plans could not have been implemented without the prior authorisation of the Army’s Commander in Chief.

According to the Court, Ríos Montt had “*full knowledge of what was happening and did nothing to prevent it; he was aware of the events, and had the power and capacity to stop them*”. The Court relied on the testimony of military experts to show that Ríos Montt drew up the national security plan and authorised the military operational plans. Specifically, the Court found that Ríos Montt ordered the preparation of *Plan Victoria 82*, that he was aware of its content, and authorised its implementation. As was pointed out by the analyst Kate Doyle,

32. The statistician Patrick O’Donnell Ball (who worked with the CEH during the expert investigations), confirmed that the Ixil deaths during 1982 and 1983 amount to between 1,996 and 2,325 with a probability of 95%.

33. Over 20 witnesses testified that they were not allowed to give their family members a decent burial or carry out the ceremonies customary in the community. The common graves and secret cemeteries found near the villages are proof of these affirmations.

34. The Guatemalan expert and investigator Marta Casaus Arzú stated that “*when counter-insurgency policies are combined with underlying racism and dehumanisation, cases of genocide may ensue*.”

“Plan Victoria 82 sought primarily to destroy the guerrilla forces and their base of operations by means of annihilation and the scorched earth policy.” In 2009, the National Security Archive received a collection of Guatemalan Army files from July to August 1982 relating to *Operation Sofía*. These were used as evidence in the trial. In addition, witnesses stated that several planes flew frequently over the area, and in the commanders’ biweekly reports there was mention of vandalism, rapes, robbery, destruction of crops and other crimes committed by the Army. These reports were evaluated by military high command, headed by the then General Ríos Montt. It was thus proved that Ríos Montt oversaw, permitted, authorised and failed to prevent the systematic attacks against the Ixil population in which their human rights were violated in a planned and systematic way. Ríos Montt did not rein in or impede the actions despite having the authority and the power to do so given his position as Head of State.³⁵

On the basis of the evidence presented by the Public Prosecutor, the Court declared that it was “completely convinced” that there had been an intention on the part of the Guatemalan Army to eliminate the Ixil Maya as an ethnic group and that the elements of the crime of genocide existed. The Court judged that the crimes were committed as part of a systematic plan to destroy the Ixil Maya as a group and were not spontaneous acts. The Court also emphasised the killing of unborn babies by the soldiers - *“the seed that has to be destroyed”* – as a crucial element in demonstrating the intention to commit genocide.

The Court also found that women were raped not just as the “spoils of war”, but as part of a deliberate and systematic plan to destroy the Ixil population. Women reproduce both life and culture, according to the Court; therefore, perpetrating violence against the bodies of women destroys the social fabric and facilitates the destruction of the group.

3.4- Crimes against Women

It was clear from the testimonies that of all the atrocities committed in Guatemala during 1982 and 1983, of particular relevance and concern was violent and perverse nature of crimes committed against Ixil women. These included the systematic rape of women, girls and old women, the destruction of unborn babies, and sexual slavery within the Army. Ixil women were subjected to violence by soldiers and the PAC, who sought to exterminate the Ixil as a group, and implemented this in particularly bloody ways against the women.

It should be noted once again that Ixil women play a vital cultural role within their communities, as they are traditionally the guardians and transmitters of the group’s culture and traditions. The above-mentioned legal expert Paloma Soria affirmed at the trial that: *“the sexual violence perpetrated on Ixil women and girls was rampant and demonstrates that there was an intention to destroy the group. When you attack women in this way you are preventing the reproduction of the community, physically and culturally.”*

In addition to the rapes carried out in the villages, many young Ixil women were carried off to military camps as sex slaves, where they were systematically abused by officers and soldiers. Many died as a result. While reading the sentence, Judge Barrios referred to the testimony of one woman who recounted that she had been raped by more than 20 soldiers while she was held in a military base. A number of witnesses affirmed that pregnant women in their community had their bellies slit open and were abandoned to their fate, and others lost their babies as a result of successive rapes. The destruction of unborn babies was documented in the expert reports, as the physical consequences of such tactics on the body are easily identifiable.

The women who testified at the trial shared horrific accounts of these abuses. *“We were in the holding cell for about 15 days, surrounded by the blood of the people they had already killed. [...] Four of them raped my daughter, while they held my son back.”* Another woman from the village of Tzabal recounted: *“The soldiers raped me, they took away my shame, they left*

35. The sentence refers to Ríos Montt as *“de facto Head of State”* and states that he had *“an active leadership role.”* In a 1983 interview, Ríos Montt stated in front of the cameras: *“If I don’t control the Army [...] What am I doing here?”*. This interview was presented in the trial as proof of his de facto control over the military government between 1982 and 1983.

me naked. There were about 20 of them. I went back to my home and everything was burnt. They burned down my house with my son inside, he died before we had given him a name." The Court emphasised that many of the women still suffered pain and anguish as a result of the sexual violence they had experienced.

4- Accusations, intimidation and threats against human rights defenders, victims and agents of justice

During the trial there was a campaign aimed at calling into question the legitimacy of the parties in the trial and the trial procedure itself. After several weeks of intensive eyewitness and expert testimony – and just before the closing arguments – a series of paid advertisements began to appear in the press which asserted that the accusation of genocide was a fabrication, accused the various actors involved in the trial as “*guerrilleros or their puppets*”, and claimed that a conviction for genocide would unleash a spiral of violence. On 16 April 2013, the press published a paid advertisement signed by twelve well-known dignitaries who had signed the Peace Agreements in 1996, among them Gustavo Porras, Raquel Zelaya, Richard Aitkenhead and Eduardo Stein, which warned of the serious consequences for peace if Generals Efraín Ríos Montt and José Mauricio Rodríguez Sánchez were convicted on charges of genocide.³⁶ The signatories claimed that the accusation of genocide was directed not only at those two individuals but against the State of Guatemala, and that a conviction would therefore “*bring serious danger for our country, including an intensification of social and political polarization, which would undo the peace now achieved.*” They also asserted that a conviction for genocide would mean “*the imminent danger that political violence will reappear, thereby betraying the goal and achievement of peace,*” and concluded by asserting that “*the accusation of genocide is a legal fabrication.*” It should be pointed out that President Otto Pérez Molina, a retired general and an army officer in the Ixil area during the Ríos Montt government, who was accused of criminal responsibility in a human rights case that has since been closed, expressed agreement with the content of the paid advertisement.³⁷ Also, on various occasions before, during and after the trial, he asserted that there had been no genocide in Guatemala. Other advertisements and paid inserts were more overtly intimidatory, including one entitled “*The faces of infamy,*” which included photographs of various individuals involved in the trial, from Attorney General Claudia Paz y Paz to judges and prosecutors in the case, lawyers for the victims, international activists, and even the United States ambassador, Arnold Chacón.³⁸

Once the verdict had been emitted, a new campaign was launched to discredit the trial court judges and the decision. The day after sentence had been pronounced, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), a powerful business association in Guatemala, issued a press statement asserting that the trial court had committed serious violations, and calling for the sentence to be nullified. It accused the judges of being “*excessively ideological*” and having been swayed by pressure and interference from unidentified international organisations. CACIF called on the Constitutional Court “*to put an end to all the anomalies that had occurred during the trial.*” It alleged that the conviction for genocide had tarnished all Guatemalans, and urged citizens to challenge efforts to compare what happened in Guatemala with Nazi Germany. In a blog published on the CACIF website, author Philip Chicola expanded this argument: “*Guatemala has joined the select club of genocidal States,*

36. “Betraying the Peace and Dividing Guatemala”, paid advertisement appearing in various print media on 16 April 2013.

37. In statements to the press, Pérez Molina affirmed: “*I join with these statements (...). I agree with what they are saying in this public statements. Not only do I support it: I join with it*”. Quoted in: “Trial for genocide: Pérez Molina also states that the trial for genocide endangers peace,” Plaza Pública, 16 April 2013. See: <http://www.plazapublica.com.gt/content/perez-molina-tambien-afirma-que-el-juicio-por-genocidio-hace-peligro-la-paz>.

38. Jo-Marie Burt, “Historic Verdict in Guatemala’s Genocide Case Overturned by Forces of Impunity”, NACLA Report on the Americas (Summer 2013), 1-3; Spanish version, “El caso Ríos Montt: La justicia en riesgo,” Noticias SER, 26 June 2013. See: <http://www.noticiasser.pe/26/06/2013/contracorriente/el-caso-rios-montt-la-justicia-en-riesgo>.

along with Nazi Germany, the former Yugoslavia, Rwanda and Cambodia"; this was, he argued, an irreversible stain on Guatemala's international image.³⁹

Less than a week after the sentence had been passed, the media announced that the Constitutional Court was considering an *amparo* motion lodged by the defence and that the Court was divided. Ríos Montt's defence lawyer, Francisco García Gudiel, subsequently stated in the press that if the Court did not decide in favour of his client, 45,000 of the general's supporters were ready and prepared to "paralyse" the country. These supporters were supposedly former PAC members. The Military Veterans' Association of Guatemala (AVEMILGUA) also threatened a 50,000 strong march on the capital, blocking the main thoroughfares to demand the release of Ríos Montt. Bomb threats were made to government offices, including the Constitutional Court. Public officials involved in the trial, and particularly Judge Yassmin Barrios, were targeted by media campaigns to discredit them. They were also threatened with disciplinary sanctions, and even civil and criminal charges.⁴⁰

The Constitutional Court's annulment of the sentence on 20 May 2013 took place in a strained climate of insecurity. Judicial operators, others who participated in or supported the trial, and the victims were also the object of direct threats. Such threats were directed against the lawyers in the case, including members of CALDH and of the Association for Justice and Reconciliation (AJR), members of the Human Rights Defenders Protection Unit of Guatemala (UDEFEUGA), as well as against surviving victims belonging to other organisations, both in Guatemala City and in the departmental capital Nebaj, Quiché.

In Guatemala City, there were several reports of vehicles following the buses carrying the participants and witnesses after they left the law courts after each scheduled hearing. In some cases witnesses on the buses were photographed. As for the lawyers, there were cases of people following and keeping watch on the houses of two members of the Human Rights Law Office after the court hearings. There were also reports that some members of the Ixil communities were followed on foot as they went to restaurants near the courtroom by various members of General José Efraín Ríos Montt's security personnel and his family.

During the hearings, most of the intimidation and threats were verbal and aimed at members of the Ixil communities and other organisations. On one occasion, a man approached one of the members of the communities and said: "*if you want information, I can give you information on how soldiers use a knife.*" Similarly, several individuals were identified as frequently asking witnesses: "*Who is paying you to come?*" "*Who is bringing you?*" On other occasions, telephone messages were used.

There were various incidents in Nebaj, including: breaking into the UDEFEGUA offices and comments and jeers from former PAC members who, after part of the trial had been annulled, tried to intimidate witnesses, telling them that "*nothing you did was of any use because Ríos Montt is still free*" and "*now it's you who'll be arrested.*" There were several examples of vigilance acts when the buses carrying the witnesses returned, and on the day of the verdict, a group of women from different organisations were attacked as they were preparing the courtroom for the broadcasting of the hearing where the final verdict was to be pronounced.

On 28 June, the Inter-American Commission for Human Rights (IACHR) granted protection measures for the judges in High Risk Court A, Yassmin Barrios Aguilar, Patricia Bustamante García and Pablo Xitumul de Paz. Such measures obligate the State of Guatemala to protect their right to life and personal integrity, to provide suitable protection measures with them and to investigate the events that had led to complaints.

39. *Ibid.*

40. *Ibid.*

5- The Defence's Delaying Tactics

FIDH believes that the defence sought to derail the trial from the start. From August 2011 up to the present, it has lodged over 40 *amparo* appeals. These delay tactics had major effects throughout the trial, from the opening day of the trial until its partial annulment on 20 May. Ríos Montt's lawyers looked for any legal means to allege violations of due process, mainly based on the argument that the accused had not been properly represented.

Thus, on 19 March, the accused José Efraín Ríos Montt appeared with a new defence lawyer rather than the four lawyers who had represented him up until then. The new lawyer, Francisco García Gudiel, attempted to delay the start of the trial by asking for five days to prepare the defence. The Court refused, and the lawyer then claimed that he could not undertake the defence because in previous trials a "serious enmity" had arisen between him and the President of the Court and an "intimate friendship" existed with one of the other judges in the case. The President of the Court denied this claim and expelled Francisco García Gudiel from the courtroom, on the grounds that according to the Law governing the Judiciary, lawyers were prohibited from taking part in a trial if there was a state of enmity between them and a member of the presiding judiciary. She ordered that the defence lawyer for Rodríguez Sánchez should also act for Ríos Montt until his own lawyers could resume his defense. The following day one of these, Marco Antonio Cornejo Marroquín, appeared in court to take over the defence of the accused.

Also on 19 March, once this incident had been resolved, the proceedings were opened, and the lead prosecutor in the case, Orlando López, read the charges against Ríos Montt and Rodríguez Sánchez. Then began the testimonies of the direct victims and their families. The trial made rapid progress, as hearings took place every weekday. Over four weeks more than ninety people gave evidence in court, some of them in their native language via interpreters, describing the massacres, the rapes and other ill-treatment the women suffered, as well as the forced displacements after the soldiers had burned their houses and crops.

On 17 April, the Public Prosecutor concluded his presentation of the witness evidence. The defence presented some witnesses and videos, but some of the witnesses did not come to the Court to testify. It was expected that the closing arguments would be delivered on 18 April and then shortly thereafter the verdict would be pronounced. As a result, the courtroom was full of representatives of the Ixil community and other Maya peoples, as well as distinguished human rights defenders such as Rigoberta Menchú Tum, Frank La Rue, Aura Elena Farfán, Helen Mack and Patricia Yoj Popul. Also present were a number of ambassadors, United Nations representatives, the international lawyer Almudena Bernabeu, who had taken part in the Spanish genocide trial, various delegations of international observers, including the FIDH, the Center for Justice and Accountability (CJA), and a delegation of judges and prosecutors from Argentina, Chile, Uruguay and Peru organised by the Centre of Legal and Social Studies (CELS), the Washington Office for Latin American Affairs (WOLA), the International Centre for Transitional Justice (ICTJ) and the Open Society Justice Initiative. Also in attendance were the daughter of Ríos Montt and former Congress member Zury Ríos de Well, the wife of Rodríguez Sánchez, Zulema Paz de Rodríguez, and Ricardo Méndez Ruiz, head of the Anti-Terrorism Foundation, an organisation that defends military personnel accused of human rights violations.



However, on that day Judge Carol Patricia Flores, who had been in charge of the early stages of the trial before being recused on 23 November 2011,⁴¹ annulled the trial, based on the Constitutional Court's decision in favour of the legal recourse lodged by CALDH appealing the decision to remove her from the case. She argued that as she had been the trial judge in the court of first instance, the trial should begin again as from 23 November 2011. Since General Ríos Montt was indicted in January 2012, this decision would have resulted in his release. Similarly, Judge Flores accepted the defence argument that the First High Risk Court A had violated the law by failing to comply with the ruling made by the Constitutional Court on 3 April, ordering that documents presented by the defence should be incorporated as evidence. This resolution overturned the decision made on 4 February by the preliminary trial judge Miguel Ángel Gálvez, who refused to accept a large part of the defence evidence on the grounds that it had not been presented correctly. It should be remembered that at the beginning of the trial Judge Barrios had decided to accept provisionally all the defence evidence, and on 3 April the Constitutional Court had confirmed that the defence evidence could be accepted, a decision which benefited the defence. Despite the fact that the Court had ruled in favour of the defence, Ríos Montt's lawyers lodged a complaint before a different court alleging that the High Risk Court did not have the authority to accept this evidence and thereby accused High Risk Court A of usurping the powers of the Constitutional Court. This was another clear example of the defence's strategy to delay and obstruct the proceedings at any cost.

The national and international press reported that the trial had been annulled, but the following day Judge Barrios declared that the trial court would not comply with a ruling that it considered illegal, in that Judge Flores's ruling ordered the trial return to an already concluded stage. Judge Barrios argued that the trial court had already implemented the Constitutional Court's ruling of 3 April by allowing the defence evidence. However, she decided to wait until the Constitutional Court confirmed that the proceedings should continue. On 25 April the Constitutional Court ruled that Judge Carol Patricia Flores should making a ruling based on the 3 April decision addressing only the issue of whether the defence documents should be admitted as evidence, and then promptly return the case file to the trial court. The following day, Judge Flores complied with the Constitutional Court order, and after almost two weeks passed in a legal limbo, the trial began again on 30 April.

That same day, the Third Chamber of the Court of Appeals ruled on an amparo presented by Ríos Montt's defence. It found that there had been a violation of Ríos Montt's due process rights on the first day of the trial and that the trial court was obligated to reinstate Francisco García Gudiel as his defence lawyer. It also held that the trial court was obliged to recognise and consider Francisco García Gudiel's challenge seeking the recusal of Judge Barrios and Judge Xitumul. The trial court implemented this ruling, reinstating Francisco García Gudiel into the proceedings. García Gudiel immediately submitted another dilatory argument in which he argued that since the appeals court had found that Ríos Montt had been deprived of his defence lawyer, the proceedings should start again from the beginning given that he, Gudiel, had not been present. He also argued that Judge Carol Patricia Flores' decision to return the trial to 23 November 2011 was still valid. The trial court dismissed these two requests, recalling that Ríos Montt did have legal representation throughout the trial. In fact, after the expulsion of Francisco García Gudiel on 19 March, Judge Barrios had ruled that Ríos Montt would be represented by the same defence team as Rodríguez Sánchez. The following day Ríos Montt's lawyer Cornejo Marroquín returned, and on 25 March the lawyer Danilo Rodríguez also returned.

Judge Barrios then read again the accusation against Ríos Montt and asked the defence lawyers to bring forward their last witnesses and videos on Thursday 2 May. However, on that day defence did not bring forward its witnesses and the trial court postponed the next session until Tuesday 7 May.

41. Judge Flores presided over the early stages of the genocide case, but was disqualified by defence lawyers for General Héctor Mario López Fuentes and replaced by a judge from the First Court of High Risk B, Miguel Ángel Gálvez, on 23 November 2011.

On 8 May, Francisco García Gudiel did not attend the trial, excusing himself on grounds of illness. The following day, 9 May, he again demanded that the trial court suspend the debate until his challenge to recuse the judges had been resolved. The court, however, offered Francisco García Gudiel the opportunity to present his challenge, which he did. The court ruled that it was without merit and ordered the session to continue, urging the defence to bring forward its witnesses. García Gudiel vehemently addressed the judges, accusing them of not abiding by the ruling of the Third Chamber of the Appeals Court, questioning their professional ethics, insulting, attacking and even threatening them in the following words: “*I warn you [...] I shall not rest until I see you behind bars.*” The trial court once more rejected García Gudiel’s request, before asking the defence to bring forward its witnesses, which it did not do. Subsequently, the Prosecutor Orlando López requested permission to show a video in which Francisco García Gudiel was seen entering and walking around the Public Ministry the previous day, when he was supposedly ill, the reason why the session had been postponed on that day.⁴²

In the absence of witnesses for the defence, the closing arguments began. Orlando López, for the Public Prosecutor’s office, presented the case against Ríos Montt and Rodríguez Sánchez, and asked the trial court to pass a sentence of 75 years imprisonment for both men. The lawyers representing the victims, Edgar Pérez for the AJR, and Francisco Vivar for CALDH, presented their conclusions. Edgar Pérez paid tribute to the bravery of the victims in speaking out before the Court about “*the truth that will not be forgotten*” to reveal “*Guatemala’s dark history*”. He emphasised the historic racism that the country had, and continued to suffer from, and pointed out that the trial had revealed the systematic pattern of violence against the Ixil population, and which should lead to the accused being found guilty. Francisco Vivar recalled that the counter-insurgency operations in the Ixil were holistic, including not just military strategies but also political and social ones. He reiterated that it had been proved in the evidence that Ríos Montt had been fully aware of all the operations in the Ixil area, recalling the Ixil Operational Plan, which identified the entire Ixil population as guerrilla sympathisers.⁴³

Ríos Montt, who had opted to remain silent when questioned earlier in the trial, asked for an opportunity to address the Court, completely denying any responsibility.⁴⁴ He began by saying: “*I am going to tell you my story.*” According to him, Guatemala was facing an economic, political and military crisis when he took power in March 1982. He described subversion as the consequence of under-development. He sharply criticised the notion that he had any responsibility based on the chain of command, alleging that as Head of State he was “*busy with national and international affairs.*” He added that it was the armed forces who were in charge of military matters, and that each person was responsible for his own mistakes. “*If you find the police stealing, you do not put the Minister of the Interior on trial.*” He specified that regional commanders were responsible for their actions, and that as President he could not be seen as responsible for crimes that occurred in particular areas. He claimed that he had felt ill when he heard that the Public Prosecutor was accusing him of genocide, before raising his voice and affirming: “*I never authorised, I never suggested and I never ordered actions against any ethnic or religious group.*”⁴⁵

After Ríos Montt’s statement, Judge Barrios invited his lawyer Francisco García Gudiel to present his closing arguments. He objected on the grounds that Judge Carol Patricia Flores had called a hearing at two o’clock in the afternoon. Judge Barrios stated that since the trial court was already in session, she was not obliged to halt the proceedings. The lawyer then began his presentation, alternating between *ad hominem* attacks on judges, prosecutors, witnesses and the United Nations, and arguments questioning the Public Prosecutor’s allegations as well as

42. Jo-Marie Burt, “Ríos Montt Trial Moves to Closing Arguments: Public Ministry Seeks 75 Years in Prison for Genocide and Crimes Against Humanity,” *The Trial of Efraín Ríos Montt & Mauricio Rodríguez Sánchez*, 9 May 2013. See: <http://www.riosmontt-trial.org/2013/05/rios-montt-trial-moves-to-closing-arguments-public-ministry-seeks-75-years-in-prison-for-genocide-and-crimes-against-humanity/>

43. *Ibid.*

44. Jo-Marie Burt, *Historic Genocide Trial Nears End; Ríos Montt Addresses Court, Declares Innocence*, “The Trial of Efraín Ríos Montt & Mauricio Rodríguez Sánchez”, 10 May 2013. See: <http://www.riosmontt-trial.org/2013/05/historic-genocide-trial-nears-end-rios-montt-addresses-the-court-declares-innocence/>

45. *Ibid.*

the findings of various experts called by the Public Prosecutor (for example the evidence of the forensic anthropologists). However his arguments were not technically substantiated; that is, during the course of the trial he had not put forward any evidence or expert reports that contradicted the evidence of victims or experts. He questioned the relevance and even the existence of international law, and repeated Ríos Montt's argument that the former Head of State could not be blamed for the actions of regional commanders. He called for his client's acquittal on all charges. After a short recess, the Court heard the presentation by César Calderón, lawyer for Rodríguez Sánchez. He alleged that the Public Prosecutor had not succeeded in establishing his client's responsibility for the events, and dismissed the notion of command responsibility on the grounds that criminal responsibility is personal and individual, and each person should be judged on what he or she had done. He then concluded by saying that Rodríguez Sánchez had not drawn up or authorised any plan or any order, nor had he carried out any of the crimes investigated and therefore he should be found innocent.⁴⁶

In the late afternoon, Judge Barrios invited the parties to the trial to address the Court. Benjamín Gerónimo, of the AJR, a survivor of the massacre of 256 people in the community of Río Negro during Ríos Montt's government, stated that the victims were not seeking vengeance, but peace based on justice, respect, equality and dignity. Recalling the children, women and elderly massacred by the Army, he asked the Court to find Ríos Montt and Rodríguez Sánchez guilty. *"These were not animals, dogs, beasts, or any other kind of animal. They were human beings... We ask that those responsible for crimes against humanity be punished."* He also called for reparations for the victims and protection for the witnesses, lawyers, and for all Ixil and Maya communities in general. Francisco Soto, Executive Director of CALDH, addressed the Court next. He recalled that the victims had waited for over thirty years for justice to be done, and it had taken 13 years for the proceedings to reach the oral trial phase. *"If we forget the past," he said, "we are doomed to repeat it."* He continued: *"More than 90 survivors testified before the Court of their desire for justice and for assurance that such crimes would never happen again."* Ríos Montt addressed the Court for the second time. *"You have heard the parties in this case. I think that you have sufficient maturity, intelligence and wisdom to come to a verdict. Justice is all I seek."* With this, the Court suspended the debates until the following day to hear the final statement of the other defendant, Rodríguez Sánchez.⁴⁷

On the morning of 10 May the Court heard Rodríguez Sánchez. He spoke very briefly, alleging his innocence. Judge Barrios then declared the conclusion of the oral stage of the proceedings and convened the parties at 4 pm for the reading of the verdict. Immediately after the trial court hearing, the parties attended a hearing called by the president of First High-Risk Court A, Judge Carol Patricia Flores, presumably to implement a 8 May ruling by the Constitutional Court in favor of the Public Ministry, which ordered Judge Flores to suspend her ruling 18 April to annul the trial, and to issue a new ruling within 48 hours. In a surprise decision, Judge Flores reaffirmed her ruling of 18 April. The prosecutor Orlando López expressed his disagreement with her ruling, arguing that it was completely inconsistent with the order issued by the Constitutional Court on 8 May.⁴⁸

Judge Flores's ruling did not succeed in cancelling the reading of the sentence, given that the trial court had already declared the conclusion of the oral proceedings. At precisely 4 pm, before a courtroom filled to maximum capacity, Judge Barrios read a summary version of the guilty verdict, which sentenced Ríos Montt to eighty years imprisonment for genocide and crimes against humanity.

46. *Ibid.*

47. *Ibid.*

48. Jo-Marie Burt, *Judgment in Genocide Trial Expected Today at 4 PM Despite Pre-Trial Judge's Call for Annulment*, "The Trial of Efraín Ríos Montt & Mauricio Rodríguez Sánchez", 10 May, 2013. See: <http://www.riosmontt-trial.org/2013/05/judgment-in-genocide-trial-expected-today-at-4-pm-despite-pre-trial-judges-call-for-trials-annulment/>

III- The annulment of the sentence and the future of the case

Ten days after the historic sentence in the genocide case, the Guatemala Constitutional Court issued a ruling, supported by three of its five members, alleging procedural irregularities, and ordered that the trial should start over as of 19 April, but suspending it until various legal remedies requested by the defence had been addressed, and leaving the guilty verdict without legal effect.

The Constitutional Court made this decision declaring admissible a defence complaint that the trial court had not dealt adequately with the 30 April resolution of the Third Court of Appeal relating to the alleged violation of due process when Ríos Montt's lawyer, Francisco García Gudiel, was dismissed on the first day of the trial. The Court ruling to this effect in spite of the fact that the very same Third Court of Appeal had acknowledged, in a resolution issued a few days after the verdict was pronounced, that the trial court had complied fully with that ruling.

Two of the five magistrates making up the Constitutional Court disagreed with the majority opinion in the 20 May ruling. Giving reasons for their dissenting opinions, Magistrates Mauro Chacón and Gloria Porras stated, among other arguments, that the Court had exceeded its powers in admitting the appeal, since there was already an appropriate mechanism for dealing with any supposed infringement after sentence had been pronounced, in the form of an appeal through the normal legal channels, rather than to the Constitutional Court. In particular, Magistrate Gloria Porras considered that the rights of the defence had already been protected by the Trial Court's reinstatement of Francisco García Gudiel, and for this reason there was no need to suspend a trial in which no rights had been violated. She also believed that the decision failed to safeguard the constitutional right of the victims to have access to justice. She concluded her dissenting opinion by stating *"I completely dissociate myself from the criteria used by the majority [who granted] an appeal whose effect is devastating for the ordinary justice system, but even more so for the victims who put their trust in this system; and for no reason whatsoever, annulled previous proceedings in a legal trial when it had dealt with the so-called anomalies in the appeal process."* Magistrate Chacón asserted that the Constitutional Court's decision was a disproportionate response to the alleged violation, recalling that according to the jurisprudence of the Constitutional Court itself, *"the principle of proportionality implies analysing the appropriateness of the means used, whether it is necessary, and weighing it [against others]."* They should have considered that the act the defence called to be remedied *"does not constitute any offence that can be acted upon by the Constitutional Court,"* and that Francisco García Gudiel's intervention in the first hearing of the oral trial *"had as its sole objective to interfere with the normal proceeding of the trial."*

According to national and international law, and, as shown in the reasoned opinion of magistrates Mauro Chacón and Gloria Porras, FIDH considers that the ruling should have been appealed through normal legal channels instead of being annulled by the Constitutional Court, which thus exceeded its competence. However, following the Constitutional Court ruling, and given that they had already emitted a sentence in the case, the judges of the High Risk Trial Court A who presided over the case had no choice but to excuse themselves from pursuing the case, which they did on 27 May. On 5 June, High Risk Trial Court B was appointed to hear the case. On 13 September, Judge Carol Patricia Flores reiterated the need for the trial to start over as of 23 November 2011, in accordance with her previous resolutions of May 8 and 10 and April 18, pretending that since she had been the trial judge in the court of first instance, the trial should re-start on the date of her removal. This raises the concern that the Constitutional Court may

rule in favour of this new resolution, causing the risk that the trial would not start over, since in November 2011, Ríos Montt had not been indicted yet.

In this context, and given the perception that in reality the verdict had not been annulled on a legal technicality but as the result of the undue intervention of the Constitutional Court at the instigation of powerful sectors who were not prepared to admit that there had been genocide in Guatemala, it is still not clear whether the trial will recommence from 19 April, or in which stage. Since the principle of immediacy requires that all judges in the case should have knowledge of all the evidence, the trial would have to start all over again. However, the entire trial proceedings were not annulled, creating a state of legal confusion and paralysis. Given that the Constitutional Court decision ordered the trial re-started from 19 April, when the witnesses and experts had already given evidence, High Risk Trial Court B cannot, legally, have knowledge of the evidence already heard by High Risk Trial Court A. On the other hand, restarting the trial right from the beginning would represent a gross injustice to the victims, in that it would mean that the almost one hundred people who gave evidence, in the face of grave risks, would be called again to testify. Moreover, as stressed, restarting the trial from 23 November 2011, that is to say from its preliminary stage, may cause the withdrawal of charges against Ríos Montt. In both latter situations, the victims could have recourse to the Inter-American Human Rights System, under the argument that the sentence was annulled illegally.

It appears that Ríos Montt's defence has achieved, if temporarily, its main objective: to use all possible legal means to disrupt the trial, and thereby obtain a partial annulment, creating so many procedural problems that the trial is legally paralysed. The Constitutional Court's 20 May decision appears to demonstrate that there is a lack of will to find Ríos Montt guilty, in that three of the five judges who compose it have aligned themselves with the defence's dilatory and obstructionist manoeuvres.

However, we should emphasise that the mere fact that the High Risk Trial Court managed to try the case for genocide and crimes against humanity is of major importance. It shows that it is possible for a judicial authority to judge and sentence in an impartial manner powerful élites involved in serious human rights violations and international crimes. However, as is shown by the Constitutional Court's decision, those élites still have great power in Guatemala. While they could not prevent justice from being done, they were able to undo the results, with relative speed and hardly any consequences. It remains to be seen if key State and civil society actors will succeed in changing this situation so that substantive justice can be done in this case. What is at stake is Justice, both for the Ixil Maya and for the thousands of victims of the serious human rights violations and international crimes committed in Guatemala, who are seeking for those responsible to be tried and sentenced.

Conclusions and recommendations

The judgement passed on 10 May 2013 brought justice and at the same time made history, as it is the first time a dictator in Latin America has been found guilty of genocide.

The judgement was a testimony to the courage and perseverance of the victims, who after three decades of institutional impunity and official denial of the facts, dared to denounce before a court of law the Guatemalan Army's systematic use of violence in its scorched earth policies. It is also a testimony to the bravery of the lawyers, prosecutors and judges who endeavored to bring the trial to a proper conclusion, despite the existence of a sustained campaign to discredit, intimidate and threaten them. The Association for Justice and Reconciliation (AJR) and the Centre for Human Rights Legal Action (CALDH) played a fundamental role in the trial, investigating the crimes committed, presenting cases since 1997, and continuing their work during the following years. Attorney General Claudia Paz y Paz, the trial prosecutor Orlando López, the three judges of the First Court of High Risk A, Yassmin Barrios Aguilar, Patricia Bustamante García and Pablo Xitumul de Paz, as well as the preliminary court judge, Miguel Ángel Gálvez, all acted with great integrity in the face of a major challenge, confronting serious personal risk and strong political pressure, and thus demonstrating their commitment to Justice and their desire to fulfill the promise of the Rule of Law.

In this respect, the judgement was a symbolic and political victory. As noted by Jo-Marie Burt, who attended the Ríos Montt trial as an observer, *“the human rights organisations who represented the victims underscore the political and symbolic significance of the judgement.”* The trial in the genocide case took place in a national court, Ríos Montt was tried and he was found guilty. On the basis of the evidence presented, the sentence established that genocide had been committed in Guatemala. This is a victory for the victims and has opened up a national and international debate on the armed conflict and particularly on the Ríos Montt government. As Francisco Soto, Executive Director of CALDH, pointed out: *“We demonstrated that there was a genocide within the legal system. The Court accepted the evidence we presented, as well as the witnesses, the experts, and the documents, and reached a conclusion: genocide had taken place in Guatemala. They tried to set it aside by procedural means. This is not a defeat, it is just part of our long fight against impunity.”*

The defence was unable to disprove that there had been a genocide. It focused on purely formal and procedural strategies to free the accused of the charges against them, in an attempt to create the conditions for overturning the verdict using malicious litigation, through fraudulent abuse of appeals, challenges and other procedures to prevent the trial from reaching its conclusion. The defence never engaged in debate on the merits of the case, but rather launched a strategy to subvert the trial. As it failed to attain its objectives, certain powerful groups, linked to the country's major economic élites, put pressure on the Constitutional Court to annul the judgement, overreaching its powers and in clear violation of the victims' rights to truth, justice and reparation. The role played by CACIF in this respect should be noted.⁴⁹ By refusing to recognise the legitimacy of a verdict reached by a legally constituted court, CACIF abandoned the social pact and disengaged itself from democratic means and processes. The trial also demonstrated the persistence of racism in Guatemala, as Edgar Pérez underlined: *“The trial showed the extent of the racism that surrounds us, and how it influenced the genocide during the armed conflict.”*⁵⁰

49. See p. 19

50. See p. 14

The Constitutional Court ruling ordering a partial retrial and the resulting invalidation of the judgement is further proof of the impunity enjoyed by those holding the highest offices in the country, and the constant legal and procedural barriers Ríos Montt's defence set on the path up to and including his sentencing. Had there been abuses of due process the defence should have appealed them in the ordinary courts, in accordance with the law. However, as a result of this pressure by élite groups, the Constitutional Court interfered in the proceedings, overstepping its jurisdiction and ruling on matters that pertain to ordinary jurisdiction. Although the vote was divided, it needs to be pointed out that the Constitutional Court's decision affected not only the genocide case but also brought about a crisis in the whole justice system. Sixty judges excused themselves from participating in the panel of judges that had to carry out the Constitutional Court ruling. Similarly, this decision could create a legal precedent which might be used by organised crime and drug traffickers. In this sense, the outcome represents a legal and juridical defeat that illustrates the weaknesses of the justice system and democracy itself in Guatemala. There is a deep paradox here, in that when there is sufficient will, it is possible for the justice system to function and to adjudicate serious crimes including that of genocide. However the independence of the legal system is tenuous and as we have seen there are a number of mechanisms whereby powerful groups can influence or interfere with the legal process to change the outcome to their advantage.

The abuse of appeal and *amparo* proceedings is one of the serious weaknesses of the Guatemalan justice system, which has contributed to impunity for serious human rights violations. In other cases the Inter-American Court of Human Rights and the International Commission against Impunity in Guatemala (CICIG) have already condemned the permissiveness of judges with regard to the fraudulent use of *amparo* and other legal procedures deployed as a dilatory strategy during trials. In the genocide case, 1,771 Ixil were killed by the Army under the orders of General and *de facto* president José Efraín Ríos Montt. Genocide was committed in Guatemala. Democracies become stronger by demanding and enacting justice, not by renouncing it. As Manuel Ollé Sesé, an observer at the Ríos Montt trial, commented: "*The truth we must not forget is that which destroys lives and people and negates the very essence of humanity. Justice is the only way to restore, in part, the dignity stolen from all the victims. Justice is the remedy that can restore democratic coexistence and prevent the horrific past from ever being repeated.*"

Recommendations

1. Considering that the annulment of part of the trial and the sentence constitutes a flagrant violation of the right to truth, justice and reparation of the victims of international crimes, FIDH urges the Constitutional Court to reconsider and amend its decision, and to retain in effect the judgement rendered against José Efraín Ríos Montt for genocide and crimes against humanity. FIDH also demands that the Guatemalan authorities respect the due application of international human rights law and standards by national Guatemalan courts.
2. FIDH also urges the Constitutional Court to rapidly resolve the outstanding *amparo* and other outstanding appeals in the genocide case, and to issue clear instructions about how the case should proceed. Similarly, FIDH demands that in no case should the survivors be re-victimised by being asked to testify in court again. In particular, FIDH urges the Constitutional Court to rectify the latest resolution of Judge Carol Patricia Flores, which calls for restarting the trial from its preliminary stage and may guarantee impunity for Ríos Montt.
3. Recalling that by virtue of the United Nations Basic Principles on the Independence of the Judiciary, *“The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason,”* and *“there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision,”*⁵¹ FIDH urges the Guatemalan authorities to guarantee the strengthening of the judicial system, principally the impartiality and independence of judges in all courts. In this regard, FIDH urges the Guatemalan authorities to improve selection methods for judges and magistrates, eliminate the politicised system of judge selection, in particular those of the Constitutional Court, as well as improve disciplinary measures for the Judiciary, and remove the right of judges to a “preliminary trial” (*ante-juicio*), which prevents investigation of malpractice by members of the judiciary. In addition, the FIDH requests the creation of effective sanctions mechanisms for malicious litigation, the fraudulent abuse of *amparo* appeals and other legal steps aimed at obstructing the judicial process.
4. Since the High Risk Courts that were set up as a separate internal system to ensure judicial independence in cases of major importance such as organised crime, drug trafficking and human rights violations enabled the trial to take place, FIDH urges the Guatemalan authorities to strengthen these Courts in terms of resources, security and guarantees of independence. Otherwise the rule of law in Guatemala will be endangered and the country risks being overwhelmed by organised crime and drug trafficking.

51. United Nations Basic Principles on the Independence of the Judiciary, paragraphs 2 and 4.

See: Basic Principles on the Independence of the Judiciary <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

5. In relation to the press release issued by the IACHR at the close of the 147th Session on 5 April 2013, emphasising “*the importance that the State of Guatemala offer security guarantees so that justice operators can continue their work in conditions of independence and impartiality, in order that the State can continue to move forward in ascertaining the truth and punishing those responsible for the grave violations committed during the internal armed conflict,*”⁵² FIDH calls on Guatemala to ensure the integrity and security of judicial operators, lawyers and human rights defenders, as well as those who have served justice by testifying in the case against José Efraín Ríos Montt, and to implement in a timely and diligent manner protection measures in cases where the IACHR has provided for precautionary measures, as well as in cases when they prove necessary due to threats, attacks and harassment.
6. In general, FIDH calls upon all State authorities to ensure that other cases concerning serious human rights violations can be properly investigated and pursued without interference and in accordance with the Law.
7. Additionally, FIDH urges the Guatemalan authorities to consent with the request of the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to undertake a visit to Guatemala, in the framework of his mandate of dealing with situations “in which there have been gross violations of human rights and serious violations of international humanitarian law”.⁵³
8. In the same way, FIDH asks that the Special Rapporteur on the Independence of Magistrates and Lawyers and the Inter-American Commission on Human Rights visit Guatemala as soon as possible, in order to advocate for the implementation of mechanisms to strengthen the judicial system and in particular the High Risk Courts.
9. Finally, considering the seriousness of the facts proven in the condemnatory sentence, the seriousness of the irregularities of the Constitutional Court’s decision, as well as of Judge Carol Patricia Flores’ decisions, and recalling European Union’s commitment to combat impunity of international crimes, including genocide, FIDH urges the EU member States not to ratify the EU-Central America Association Agreement either as long as the validity of the condemnatory sentence has not been recognised, or if the trial has not re-started from 19 April 2013.

52. The Inter-American Commission on Human Rights, Annex to the Press Release Issued at the Close of the 147th Session. See: http://www.oas.org/en/iachr/media_center/PReleases/2013/023A.asp

53. Human Rights Council, Resolution 18/7, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. See: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/166/33/PDF/G1116633.pdf?OpenElement>



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FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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represents 178
human rights organisations
on 5 continents

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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Find information concerning FIDH's 178 member organisations on www.fidh.org