GUATEMALA: THE RÍOS MONTT CASE

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Pluralism, Human Security & Sustainability Centre
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I. Introduction

In a packed courtroom on 10 May 2013 a three-judge "high-risk" tribunal sentenced former dictator José Efraín Ríos Montt to 80 years in prison.[1] It found that the now 87-year-old retired general had ordered military campaigns in the early 1980s as the de facto president that caused the death, rape, torture and displacement of civilians. These acts not only violated international humanitarian law, but also constituted genocide, said the judges, because the army targeted the entire community – from pregnant women to small children and grandparents – for alleged collaboration with guerrillas. "[We] are totally convinced", they concluded, "of the intention to cause the physical destruction of the Ixil group".[2]

Although over the past two decades more than two dozen former heads of state or government have been indicted for human rights abuse or corruption in Latin America, the charges against Ríos Montt were unprecedented.[3] Never before had a former head of state been prosecuted for genocide in his own country's courts.[4] The severity of the charges reflected the brutality of an armed conflict that cost tens of thousands of lives between 1960 and 1996. Ríos Montt took power in a March 1982 coup during its most violent period, when the army launched scorched-earth campaigns in mountainous regions with mostly Maya populations. Four of every five killed during the conflict, a UN-sponsored truth commission said, were indigenous.[5]

The genocide charges raised the raw issue of race and ethnicity in a country where the indigenous peoples, who census figures say make up about 40 per cent of the population, remain

* Plusec-Pluralism, Human Security and Sustainability Centre/Plusec-Centre de pluralism, de la sécurité humaine et du développement durable (Plusec) retained the International Crisis Group to conduct this research and analysis and to prepare this report.

[1] Elizabeth Malkin, "Former leader of Guatemala is guilty of genocide against Mayan group", *The New York Times*, 10 May 2013. For detailed coverage of the trial see the website of the Open Society Institute's Justice Initiative, "The Trial of Efrain Rios Montt & Mauricio Rodriguez Sánchez" (www.riosmontt-trial.org). The co-defendant, José Mauricio Rodríguez Sánchez, his former director of military intelligence, was acquitted. The court gave Ríos Montt 50 years for genocide and 30 for violations of international humanitarian law.

[2] Oral summation by Yassmin Barrios, president of the First Tribunal for Narcoactivity and Environmental Crimes 10 May 2013. See also "Genocidio: Tribunal condena a 80 años a Ríos Montt y absuelve a Rodríguez", *Prensa Libre*, 10 May 2013. Barrios presides over one of two high-risk courts created by the Supreme Court in 2009 at the urging of CICIG to handle cases against powerful or dangerous individuals, including suspected organised crime figures. See "Guatemalan Court for High Risk Crimes", The Center for Justice & Accountability, www.cja.org.

[3] See Ellen L. Lutz and Caitlin Reiger (eds.), *Prosecuting Heads of State* (Cambridge, 2009), Appendix: List of Prosecutions of Heads of State January 1990 to June 2008, pp. 295-99. This list includes indictments also in foreign courts.

[4] Aryeh Neier, "Will Justice Be Done?", *The New York Review of Books*, 20 June 2013.

[5] Daniel Rothenberg (ed.), *Memory of Silence: The Guatemalan Truth Commission Report* (New York, 2012), Appendix I, Table 3, p. 236.

overwhelmingly poor and largely excluded from the highest levels of national government and business.[6] Military veterans and some business leaders were particularly outraged by a verdict they attributed to foreign pressure. The powerful association of business chambers – the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) – warned the decision would foment polarisation and demanded that the Constitutional Court annul it.[7]

Ten days later, the Constitutional Court did just that: throwing out the verdict and most of the oral proceedings. Unable to rehear a case they had already decided, the original judges recused themselves, meaning the case would have to start again in a new court. Even that is uncertain: additional challenges could stall it indefinitely. What began as a history-making attempt to provide justice for the victims of one of Latin America's most brutal counter-insurgency campaigns has floundered amid accusations of political bias and outside interference.

At issue is not simply the guilt or innocence of Ríos Montt. The case laid bare problems that have also delayed or derailed justice in other high-profile cases. All too often Guatemalan courts have proven unable to arrive at definitive verdicts through an open judicial process that respects the rights of both defendants and victims. The result is a culture of impunity in which powerful criminals have little fear of justice and victims little faith in it.

This report highlights the linkages between impunity for the crimes of the past and the weak rule of law of today, largely because of a justice system that lacks independence. First, the report examines the testimony of Maya victims and Ríos Montt's controversial legacy among the Ixil people. It then looks at the trial itself and the short-lived verdict. Finally, it analyses weaknesses in the legal system that undermine progress toward an independent, impartial judiciary capable of providing defendants with a fair trial and victims with definitive justice and closure, especially in high-profile cases.

[6] The 2002 census (www.ine.gob.gt) classified 39 per cent of the population as indigenous, though Maya-rights groups say it significantly undercounted native peoples, who may be a majority. On unrest and exclusion, see Crisis Group Latin America Report N°47, *Totonicapán: Tension in Guatemala's Indigenous Hinterland*, 6 February 2013.

[7] "CACIF pide anular fallo por genocidio contra Ríos Montt", *Prensa Libre*, 12 May 2013.

II. The Case against Ríos Montt

A. THE IXIL OF EL QUICHÉ

Elena De Paz was twelve years old when she says she was raped by soldiers. She had gone with her mother to an army post in Tzalbal, having heard the military was distributing food to families displaced by the fighting.[8] Instead, she told the court, soldiers began to rape many of the women who had arrived seeking help. First the soldiers grabbed her mother by the neck "like a chicken" to stop the screaming, she told Crisis Group. Then they attacked De Paz herself, though she does not remember how many. She fainted and when she regained consciousness, her mother was gone.[9]

Nearly 100 Maya-Ixil witnesses testified during the trial of Ríos Montt, offering first-hand accounts of the violence they said was carried out by military and paramilitary forces during 1982 and 1983 in an area around the town of Nebaj known as the Ixil triangle. Among the most chilling statements were those of nine women, their heads covered with woven shawls (*rebozos*) to shield them from photographers, who described being raped themselves and/or seeing their mothers, daughters, sisters or relatives violated. Rape was "committed in a systematic and widespread manner by state agents", according to a UN-sponsored truth commission that collected testimony from victims following the 1996 peace accords.[10] Like De Paz, many victims wept as they told the court of a crime that in Mayan culture, as in many societies, is steeped in shame.[11]

Though painful, the public trial allowed members of the Ixil community to tell their stories before a national audience for the first time. "It is a strain, but it is also very restorative for the witnesses", said Juan Francisco Soto, director of the Centre for Human Rights Legal Action (CALDH), one of two groups representing the victims that joined the trial as concurring complainants (*querellantes adhesivos*).[12] Witnesses and Ixil community members interviewed in Guatemala City and Nebaj said they wanted others to understand their suffering, even as they expressed scepticism about the justice system. "They need to respect the pain of the Maya", said Pedro Bernal Raymundo, an Ixil who attended the trial, though he added that justice in his country was only "for the rich".[13]

The massive violation of human rights during the armed conflict has been exhaustively documented by local and international human rights groups, the Catholic Church and the

[8] De Paz could not give dates but said her mother approached the post to get food, having heard that the government had promised to stop the killing. In May 1982, two months after taking office, Ríos Montt urged the Ixil who had fled to the mountains to return home, offering a 30-day amnesty to guerrillas and supporters. However, "many that returned were accused of collaborating with the insurgency"; some were executed. *Memory of Silence*, op. cit., p. 37; also Virginia Garrard-Burnett, *Terror in the Land of the Holy Spirit: Guatemala under General Efraín Ríos Montt, 1982-1983* (Oxford, 2010), pp. 69-70.

[9] Sentencia dentro del proceso C-01076-2011-00015 que se sigue a José Mauricio Rodríguez Sánchez y José Efraín Ríos Montt, pp. 514-516 (hereafter, Verdict). Crisis Group interview, Nebaj, El Quiché department, 8 July 2013. De Paz told Crisis Group that after losing her mother, she was adopted by a childless couple in the town of Tzalbal.

[10] *Memory of Silence*, op. cit., p. 53.

[11] Verdict, p. 516. According to the truth commission: "In most cases, the suffering of women who were rape victims is not known even among their relatives – children, partners or parents – and in those cases where the community knows about what occurred it is silenced and denied". *Memory of Silence*, op. cit., p. 53.

[12] "… del cielo al infierno en una semana", *Plaza Pública*, 25 July 2013. For a translation of this interview, see www.riosmontt-trial.org.

[13] Crisis Group interview, Guatemala City, 22 May 2013.

UN-sponsored truth commission.[14] Widespread massacres and destruction of indigenous villages did not start with the March 1982 coup that brought Ríos Montt to power. Nor was the violence limited to the Western highlands. The conflict began more than two decades before, in eastern Guatemala, where disaffected army officers formed the Rebel Armed Forces (FAR), to battle the U.S.-supported military government, operating principally in the largely ladino (non-indigenous) departments of Izabal and Zacapa.[15] Thousands died during "pacification" campaigns in the late 1960s, many of them victims of anti-communist death squads that assassinated alleged guerrilla supporters, including politicians, activists, labour leaders and teachers.[16]

By the mid- to late-1970s, the guerrillas had been largely eliminated in the east, and a new movement was emerging in the highlands of the north and west.[17] Among the first communities organised by the Guerrilla Army of the Poor (EGP) – one of four leftist rebel groups – were the Ixils, who lived in dispersed settlements in the mountains of El Quiché, one of the poorest departments. Not only did the EGP engage in acts of "revolutionary justice" in Ixil areas – assassinating plantation owners and local officials – it also attacked military installations.[18] "This provoked an immediate reaction from the army, which pinpointed that region as the area where the EGP was most likely to declare a 'liberated zone'", according to a study by the Archdiocese of Guatemala.[19]

A scorched-earth campaign was already underway in Ixil country and other Maya regions when Ríos Montt came to power in March 1982. In addition to selective massacres of individuals identified by informants as guerrillas or collaborators, state forces under President Romeo Lucas (1 July 1978 until the 23 March coup) resorted to indiscriminate slaughter of "whomever they found in their homes, on the road, or at places of work". The army had also already begun recruiting villagers into "civilian self-defence patrols" that were obliged to accompany it on sweeps of suspected guerrilla territory and serve as informants.[20]

"The crucial difference" between Ríos Montt and Lucas, wrote anthropologist David Stoll, was that Ríos Montt replaced "chaotic terror with a more predictable set of rewards and punish-

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[14] Amnesty International and Americas Watch (now Human Rights Watch) published reports based on eyewitness accounts in the early 1980s. "Massive Extrajudicial Executions in Rural Areas under the Government of Efraín Ríos Montt", Amnesty International, July 1982; Cynthia Brown, "Human Rights in Guatemala: No Neutrals Allowed", Americas Watch, November 1982. For comprehensive studies of abuses during the conflict, see *Memory of Silence*, op. cit., and *Guatemala Never Again! The Official Report of the Human Rights Office, Archdiocese of Guatemala*, Recovery of Historical Memory Project (REMHI) (New York, 1999).

[15] The founders of the Fuerzas Armadas Rebeldes (FAR) were officers loyal to President Jacobo Árbenz, overthrown in a CIA-sponsored 1954 coup. See Piero Gleijeses, *Shattered Hope: The Guatemalan Revolution and the United States, 1944-1954* (Princeton, 1991).

[16] Many analysts date the start of the armed conflict to 1960, when the military officers who later established the FAR, launched an unsuccessful coup. Inspired by the Cuban revolution, they form a guerrilla army in the Sierra de las Minas several years later. Estimates on casualties during this first phase of the armed conflict vary widely, eg, from 2,800 to 8,000 deaths during 1966-1968 counter-insurgency campaigns. Hundreds more died in 1971 during a state of siege. Patrick Ball, Paul Kobrak, Herbert F. Spirer, "State Violence in Guatemala, 1960-1996: A Quantitative Reflection", American Association for the Advancement of Science (AAAS), Science and Human Rights Program, International Center for Human Rights Research, 1999, pp. 16, 18.

[17] On the guerrilla movement's second-wave, see Timothy P. Wickham-Crowley, *Guerrillas and Revolution in Latin America: A Comparative Study of Insurgents and Regimes since 1956* (Princeton, 1992), pp. 217-218; Garrard-Burnett, *Terror in the Land*, op. cit., pp. 34-42; and Mario Payeras, *Los días de la selva* (Guatemala, 1998), a first-hand account by an EGP founder.

[18] David Stoll, *Between Two Armies: In the Ixil Towns of Guatemala* (New York, 1993) pp. 61-91. On guerrilla violence, see *Memory of Silence*, op. cit., pp. 81-96.

[19] *Guatemala Never Again*, op. cit., p. 221.

[20] *Memory of Silence*, op. cit., pp. 46, 117-121.

ments".[21] During his first weeks in power, violence continued to escalate, reaching 3,300 killings in April. It dipped during a one-month amnesty in June, surged again in July, when the government resumed counter-insurgency operations, then fell after November to fewer than 500 monthly.[22]

Ríos Montt's new strategies were designed to "increase the physical and psychological control" of the population in conflict zones.[23] Civic action programs were expanded under alliterative slogans, such as "*fusiles y frijoles*" (guns and beans) and "*techo, trabajo y tortillas*" (roofs, work and tortillas). Families displaced from war zones were gathered in "model villages" that formed part of "development poles" designed to provide security, economic opportunity and re-education.[24] A lay pastor in the evangelical Church of the Word, Ríos Montt also engaged missionaries in relief work.[25] These efforts gave him a political base in El Quiché and other indigenous regions that served him well when he made a political comeback in the 1990s as the head of his own political party.[26]

Despite the upsurge in violence during his early months in power, some Ixils remember Ríos Montt as the leader who brought security and order to a region exhausted by violence from both sides. Ana Brito, a market woman, recalls being welcomed by the army: "We were happy. They treated us well, giving us food and clothing". According to Jacinto De Paz, an ex-civilian patrolman, Ríos Montt was "a man with his pants on, who put a stop to the guerrillas and calmed down the war".[27]

But for those who chose not to live in model villages or join civilian self-defence patrols the war continued. Some lived precariously in the mountains for more than a decade, subject to bombings and abuse by military forces. Many would never return to the dispersed villages where they used to live close to their fields and firewood. Instead, like those concentrated in model villages, displaced families now live in crowded settlements near towns. "Ríos Montt broke the social fabric of the Ixil community", said Héctor Reyes, a CALDH lawyer. "He created divisions that have never been repaired".[28]

Elena De Paz now lives on the outskirts of Nebaj, in a two-room, dirt-floored shack built on land taken over by Ixil families. A widow with five children (of ten born), she does laundry, sells tortillas and cultivates a tiny *milpa* (cornfield). Neighbours told her not to testify, saying

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[21] Stoll, *Between Two Armies*, op. cit., p. 111.

[22] April 1982 was reportedly the conflict's most violent month. By the end of 1983, with the guerrillas virtually defeated, army attacks decreased. "Many rural people thus view the Ríos Montt coup d'état as an historical turning-point. To this day, ex-civil patrollers in rural areas pacified by Ríos Montt remain his FRG party's political base". "State Violence", op. cit., p. 41.

[23] Héctor Rosada-Granados, *Soldados en el Poder: Proyecto Militar en Guatemala, 1944-1990* (Guatemala, 2011), p. 165. Crisis Group interview, Guatemala City, 7 June 2013.

[24] James Dunkerley, *Power in the Isthmus: A Political History of Modern Central America* (London, 1998), p. 496; Garrard-Burnett, *Terror in the Land*, op. cit., pp. 70-74.

[25] Key to these efforts was the Fundación de Ayuda al Pueblo Indígena (FUNDAPI), an NGO funded and staffed by evangelical groups, though dependent on the army for access to war zones. Virginia Garrard-Burnett, *Protestantism in Guatemala: Living in the New Jerusalem* (Austin, 1998) p. 149.

[26] Ríos Montt launched the Guatemalan Republican Front (FRG) in 1989. Though prohibited from running for president as a former coup leader, he served for nearly twenty years in Congress, including several terms as its president. Zury Ríos, his daughter and a politician herself, said in a recent interview: "The Ixil voted for General Ríos Montt in an incredible way. In Quiché the FRG won five of the seven [seats in Congress]". José Luis Sanz, "'El ejército tenía todas las de ley para ejecutar las acciones necesarias'", elfaro (www.elfaro.net), 23 April 2013.

[27] Crisis Group interview, Nebaj, 9 July 2013.

[28] Crisis Group interview, Guatemala City, 11 June 2013.

she might be killed, a warning she brushed aside. ("Let them kill me like they killed my mother. Won't I die someday anyway?"). She denied vigorously whispers that witnesses were paid.[29]

Ana De León, who lives nearby in a cluster of shacks constructed along a ravine, told the court about the burning of their homes and the murder of her brother, a plantation worker. She lost two daughters – aged seven and nine – who disappeared in the chaos during one of their flights from the army. She assumes they were killed, though their bodies were never found. Another child died of hunger in the mountains. She said she had testified for her daughters, whose deaths "will pain me until I die". She also wanted Ríos Montt and his allies "to feel the pain that we have suffered". Her husband, Joaquín Escobar López, added: "We are poor, perhaps, with no education, but we deserve respect". Like other victims, he wondered whether justice was for sale. "People are sad, because this means the law is not obeyed. The law is a toy".[30]

Though some witnesses say they will testify again if the trial resumes, others are not sure. Local indigenous officials said they considered the verdict valid, regardless of the Constitutional Court. "The verdict is here", said Miguel De León, an indigenous leader in Nebaj, holding a bound copy. "This is sacred for us, because this is the truth of our grandparents, our mothers, our brothers and sisters, our uncles. This is their truth, whether or not others deny it".[31]

B. THE TRIAL

The trial of Ríos Montt and Rodríguez Sánchez took place before a panel headed by Judge Yassmin Barrios, a magistrate with experience in high-risk, high-profile cases.[32] It was in many ways an exemplary process that highlighted the transparency of an accusatory system first implemented in the mid-1990s.[33] To accommodate the public and the press, proceedings took place in a high-ceilinged amphitheatre normally used by the Supreme Court, with the judges seated on a dais underneath a bas-relief of the Guatemalan coat of arms.

Witnesses were questioned before an audience that included members of the Ixil community, who listened to translations on earphones; the media recorded and debated the proceedings on TV news and talk shows; print and online publications offered daily coverage and analysis, tweeting updates to their followers. Also attending were supporters and relatives of the accused, whose age and health issues kept them out of prison during the trial. Ríos Montt, 87, was allowed to remain under house arrest. Rodríguez Sánchez, 67, stayed at a military hospital.

The most dramatic testimony came from Ixil survivors, like Elena De Paz, who recounted in detail their communities' destruction. They told of seeing relatives, including children and the elderly, shot, beaten, raped, burnt to death or drowned. Having lost crops and animals, they described their flight to mountain encampments, pursued and bombed by army helicop-

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[29] Crisis Group interview, Nebaj, 8 July 2013.
[30] Crisis Group interview, Nebaj, 8 July 2013.
[31] Crisis Group interview, Nebaj, 8 July 2013.
[32] Barrios presided over trials that convicted former Special Forces (known as Kaibiles) for the 1982 Dos Erres massacre and three former military officers for the 1998 assassination of Bishop Juan José Gerardi, killed two days after his office released the human rights report *Guatemala Never Again*, op. cit. During the Gerardi case, grenades were thrown onto the patio of her home. She has also worked on drug-trafficking cases. The panel had two other members, Patricia Bustamante and Pedro Xitumul. For more on Barrios, see the interview by Blanche Petrich, "'Juzgar a Ríos Montt, avance pese a todo'", *La Jornada*, 31 July 2013.
[33] Mauricio Duce, Rogelio Pérez-Perdomo, "Citizen Security and Reform of the Criminal Justice System in Latin America", in Hugo Frühling, Joseph S. Tulchin, Heather Golding (eds.), *Crime and Violence in Latin America: Citizen Security, Democracy, and the State* (Washington, 2003), p. 77.

ters. Forced to live off what they could forage, several described children dying of starvation or illness.

Personal testimony was supplemented by documentary evidence and expert opinion provided by 21 anthropologists, archaeologists and DNA and ballistics specialists, who described the physical evidence found in more than 100 mass graves in the Ixil triangle. The head of the Guatemalan Forensic Anthropology Foundation, explained that forensic evidence combined with statistical analysis indicated that most victims had died not in a crossfire but by systematic execution.[34] Domestic and foreign experts discussed quantitative analysis of homicide records, military command structures, social history and the colonial legacy of racism.

The defence presented nine witnesses (three others were withdrawn when they failed to appear). One slated to testify about the Ixil triangle admitted under friendly questioning that he had no first-hand knowledge, since he was never there during the conflict.[35] A video in which unidentified witnesses described how Ríos Montt brought security to indigenous communities had to be withdrawn when prosecutors objected to anonymous testimony.[36] A military expert may have helped the prosecution, confirming under cross-examination that as president Ríos Montt had command over the armed forces and authorised the counter-insurgency campaigns, though he denied that the president had direct authority over troops or knowledge of their actions.[37]

Only two defence witnesses, Harris Whitbeck and Alfred Kaltschmitt, directly addressed the situation in the Ixil triangle during 1982-1983. Both were political supporters of Ríos Montt who had worked on military-aided civic action campaigns.[38] They testified that the army gave food, shelter and work to those fleeing the violence, which they blamed on guerrillas. "State policy at this time was to help the population recover from war", Kaltschmitt said. "[The army] was helping the Ixil people. Everyone was sick of the war, and they were delighted with the army".[39]

Though the defence offered few witnesses, it was far from passive, clashing frequently with the bench. Francisco García Gudiel, who represented Ríos Montt at the beginning and end of the trial, made no secret of his disdain for the case against his client and contempt for the tribunal. A defence attorney who has handled high-profile corruption and drug trafficking cases, he boasted of his combativeness: "I don't care about getting along with the system", he told a magazine. "I know how to find the errors made by prosecutors and judges. That's how I win cases". Toward the end of the proceedings, he taunted the judges, telling them, "up to now I

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[34] Verdict, pp. 258-260. Crisis Group interview, Fredy Peccerelli, Guatemala City, 19 June 2013. The foundation, an autonomous non-profit, does exhumations at the request of the the public ministry (ministerio publico, the public prosecutor's office, headed by the attorney general). It gave trial evidence on 114; see its website, www.fafg.org.

[35] Gustavo Porras, an ex-Guerrilla Army of the Poor militant, was peace commissioner under President Álvaro Arzú (1996-2000). Kate Doyle, "Day 19 of Rios Montt Trial: Defense continues to avoid presentation of proposed expert witnesses as trial comes to a close", www.riosmontt-trial.org, 18 April 2013.

[36] Ibid.

[37] Verdict, p. 357. Omar Archila, "El Comandante General ordenó la elaboración del plan Victoria 82", *elPeriódico*, 11 April 2013

[38] Whitbeck, a key supporter of the FRG party in the 1990s, switched to the Patriot Party (now led by President Pérez Molina) and was briefly its presidential candidate in 2003 before it entered a coalition. Alejandra Álvarez, "Harris Whitbeck: Me vacune contra los partidos políticos", *Prensa Libre*, 23 March 2008. Kaltschmitt, a businessman and newspaper columnist, worked with FUNDAPI. For more on Ríos Montt's business and religious supporters, see Martín Rodríguez Pellecer, "Los militares y la élite, la alianza que ganó la guerra", *Plaza Pública*, 21 August 2013.

[39] Kate Doyle, "As trial nears conclusion defense witnesses absent and hearing cut short", www.riosmontt-trial.org, 17 April 2013.

have beaten you every time", calling them "criminals" and shouting, "I am going to unleash all my power to see you behind bars".[40]

Rodrigo Fernández, an attorney and researcher at the Francisco Marroquín University, said the defence should have focused on the prosecution's most vulnerable point: the issue of intent. "The essence of a genocide case is intentionality: the prosecution must show that the killings were intended to destroy an ethnic group; what the defence has to do is cast doubt on that intention".[41] "There was no substantive defence", said Alejandro Balsells, a constitutional scholar. "There were issues they could have used to defend the general. A good defence gets into the crux of the matter; it doesn't just look for procedural obstacles". Even Phillip Chicola, a CACIF spokesman and critic of the prosecution, called the defence performance "pathetic".[42]

What went on in open court was only part of the story, however. The defence was active behind the scenes, filing twenty *amparos* (petitions to remedy violations of constitutional law or procedure). Seven concerned admission of evidence or witnesses.[43] Two argued the charges violated the right to amnesty under laws passed in 1986 and again in 1996, following the peace talks.[44] The petition that ultimately derailed the trial claimed that Ríos Montt's right to a fair trial had been violated when Judge Barrios refused to withdraw, expelled García Gudiel from the courtroom and asked attorneys for his co-defendant to take over until he found new counsel.[45]

García Gudiel dismissed criticism that the defence lacked substance, saying it was not his job to prove innocence; it was the prosecutors' job to prove guilt. "How can they reproach me for a strategy that gave me victory?" he asked. "The verdict no longer exists".[46]

C. THE VERDICT

Judge Barrios read a summary of the panel's decision to a standing-room only crowd on 10 May, including a tightly-packed bank of photographers and camera crews. Ríos Montt was sentenced to 50 years for genocide and 30 for violations of international humanitarian law.[47] Rodríguez Sánchez was acquitted of both charges on the grounds that as director of intelli-

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[40] Francisco García Gudiel, "Así me convertí en Francisco García Gudiel", *Revista Contrapoder*, 11 June 2013. The 8 May outburst can be viewed on the website www.granitomem.com. "Dictator in the Dock: Ep. #21", Granito: Cada Memorial Cuenca (Every Memory Matters).

[41] Crisis Group interview, Guatemala City, 18 June 2013.

[42] Balsells, professor of law, Rafael Landívar University, speech at "Foro Caso Ríos Montt: perspectivas", Guatemala City, 18 June 2013; Chicola speech at same event.

[43] Public ministry, list of *amparos* submitted during the Ríos Montt case, 8 July 2013, prepared at Crisis Group's request. See Section III below for more on use of these petitions.

[44] The military government of General Óscar Mejía Victores amnestied (decree 8-86) all political and related common crimes committed 1982-1986. The National Reconciliation Law (decree 145-1996) covers "political crimes committed during the internal armed conflict", but excludes "genocide, torture and forced disappearance" (www.refworld.org). A pre-trial judge rejected amnesty claims in January 2012; the Constitutional Court rejected another defence appeal for amnesty three months after the verdict. "Corte guatemalteca rechaza en definitiva la amnistía pedida por Ríos Montt", Agencia EFE, 13 August 2013. The Constitutional Court is outside the ordinary judicial system headed by the Supreme Court and rules on the constitutionality of laws and actions, by both the state and other entities. "Guatemala ex-leader Rios Montt to face genocide charge", BBC News, 27 January 2012.

[45] Emi MacLean, "Trial Opens with Statements, Prosecution Witnesses, after Defense Challenges Rejected", www.rios-montt-trial.org, 20 March 2013. Also see Section II.D below.

[46] Crisis Group interview, Guatemala City, 19 June 2013.

[47] The sentences are cumulative, meaning Ríos Montt was sentenced to 80 years' imprisonment.

gence he had no command over troops, so could not be held responsible for their actions. As Barrios finished her conclusions, the crowd burst into applause, and, in some cases, tears.[48]

The written decision totals 718 pages, including summaries of the testimony and the names of victims and of villages and hamlets where atrocities occurred. The specific charges against Ríos Montt involved the killing of at least 1,771 civilians in an area of three municipalities (Santa María Nebaj, San Juan Cotzal and San Gaspar Chajul) known as the Ixil triangle in the northwestern department of El Quiché. The court also found that military operations under Ríos Montt caused at a minimum the forced displacement of 29,000 people, along with multiple rapes, torture, bombing of civilian communities and forced concentration of civilians into camps.[49]

As president and army commander-in-chief, Ríos Montt "participated in the design, orientation, execution and supervision" of operations that classified certain communities as the "internal enemy" in part because of their "history of resistance to Western values", the verdict states.[50] It cites the Ríos Montt government's two national counter-insurgency plans – Victoria 82 and Firmeza 83 – to show that the army's objective was to deprive the guerrillas of their social base, ie, the local indigenous population. It also quoted reports about Operation Sofia that provided details on campaign strategy in El Quiché: according to these documents sent to and from the general staff, "subversive groups" operating in the area had won the support of "100 per cent" of the local population.[51]

The decision stresses the systematic nature of the attacks, stating that the army engaged in massive and indiscriminate killing, burned homes (sometimes with people inside) and destroyed crops and tools. It highlights rape, concluding it was part of a strategy to terrorise, humiliate and destroy the "social fabric" of Ixil communities.[52] Not only did the army launch physical attacks on the Ixil people, according to the judgment, it also attacked Ixil culture. The concentration of displaced villagers in camps, where they were given "re-education" classes, was called an effort at "*ladinización*", forced integration into the "national", non-indigenous culture.[53]

By emphasising patterns of repression and military plans that identified the Ixil as the "internal enemy", the tribunal was addressing the most difficult aspect of a genocide case: proving intent. Under the 1948 Genocide Convention, to which Guatemala has been a party since 1950, and the criminal code, any of the following acts could constitute the crime of genocide: killing members of the group; causing serious bodily or mental harm; deliberately inflicting conditions calculated to bring about the group's or part of the group's physical destruction; imposing measures intended to prevent births within the group; or forcibly transferring children away from the group. But these acts constitute genocide only if prosecutors also show they were committed with "intent to destroy, in whole or in part, a national, ethnic or religious group".[54]

While the defence maintained that army operations were designed to defeat leftist guerrillas, not destroy an ethnic group, said law professor Alexander Aizenstatd, the court decided that it pursued both objectives. It did not deny that the government's overall objective was to de-

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[48] "Minuto a minuto: Tribunal condena a Ríos Montt", *Prensa Libre*, 10 May 2013. Crisis Group attended much of the trial, including the final session.
[49] Verdict, pp. 89-91.
[50] Verdict, p. 110.
[51] Operation Sofia documents are available from the National Security Archive, www.gwu.edu.
[52] Verdict, p. 689.
[53] Ibid, p. 48.
[54] Article 376 of the Penal Code follows the 1948 convention, except that it does not include racial groups among those protected.

feat leftist guerrillas, but it concluded that within this broader counter-insurgency effort there was another strategy aimed at the Ixil, who were targeted "not as individuals suspected of being members of the guerrillas or of supporting the guerrillas but as members of the Ixil group which the army had defined as the 'internal enemy'".[55]

Proving genocide is controversial. There is no consensus in international jurisprudence about how to establish "intent to destroy", especially in the absence of explicit orders or public incitement.[56] Do prosecutors need to demonstrate that destruction of the group was the defendants' sole or primary purpose? Or is it enough to show that they knew destruction of the group was the probable outcome of actions undertaken for multiple reasons? Few regimes create the documentary trail left by the Nazis in Germany. Some experts argue that a pattern of actions or omissions indicating criminal negligence is enough.[57]

In finding Ríos Montt guilty of genocide, the tribunal was exploring legal territory uncharted by national courts in Latin America, so the genocide charges were the focus of most news coverage.[58] The other charge against the former general, violating international humanitarian law on protection of civilians, was largely ignored.[59] Though his prosecution on that charge also broke precedent in Guatemala – Ríos Montt is the highest-ranking official ever tried as the intellectual author of massive human rights violations – most of those convicted until now have been soldiers found guilty of participating directly in massacres.[60]

In media shorthand, therefore, the case became known simply as the genocide trial, with other crimes relegated to secondary status if mentioned at all. The words "Conviction for Genocide" and a photo of the former president surrounded by police on his way to prison

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[55] Crisis Group interview, Guatemala City, 21 June 2013. Aizenstatd practises constitutional and international law and teaches at Rafael Landívar University. See also Naomi Roht-Arriaza and Susan Kemp, "The Ríos Montt Judgment in Light of International Law", www.rios-montt-trial.org, 24 June 2013. They pointed out that international criminal law, like many national codes, distinguishes between motive and intent. "Although the motive was to end the guerrilla war, the intention was to do so by finishing off a portion of the Ixil ethnic group".

[56] Recent setbacks for prosecutors pursuing genocide charges before international tribunals demonstrate how hard securing and maintaining convictions can be. The International Criminal Tribunal for the former Yugoslavia (ICTY) acquitted Radovan Karadžić on one of two genocide charges in June 2012; the tribunal for Rwanda (ICTR) in February 2013 overturned the genocide convictions of two former ministers. "Radovan Karadzic: Prosecutors to appeal over acquittal", BBC News, 3 July 2012; "Rwanda genocide: ICTR overturns ex-ministers' convictions", BBC News, 4 February 2013.

[57] On establishing genocidal intent, see the 1985 UN report by Benjamin Whitaker, "Revised and updated report on the question of the prevention and punishment of the crime of genocide", E/CN.4/Sub.2/1985/6, para. 39. For a critical view, see Timothy W. Waters, "Never Again to Genocide Charges", Project Syndicate, 27 July 2012. Kai Ambos discusses recent theory and case law in "What does 'intent to destroy' in genocide mean?", *International Review of the Red Cross*, vol. 91, no. 876 (December 2009), pp. 833-858.

[58] A Bolivian court used the term genocide in 1993 when convicting former dictator Luis García Meza for the massacre of eight opposition party leaders, but the killing of political opponents does not fit the definition under international law. http://articles.latimes.com/1993-04-22/news/mn-25822_1_garcia-meza. For the rest of Latin America, see Naomi Roht-Arriaza, "Prosecutions of Heads of State in Latin America", in Lutz and Reiger (eds.), op. cit., p. 60.

[59] The charge in Guatemala's Criminal Code, Article 378, is "delitos contra los deberes de la humanidad", literally "crimes against the duties owed to humanity". The language refers mainly to war crimes but also to "any acts of inhumanity against civilians".

[60] Only a few commanding officers have been convicted in Guatemala for human rights abuses. In 2004, Colonel Juan Valencia Osorio of the Presidential High Command was sentenced to 30 years for the murder of Myrna Mack, an anthropologist studying forced displacement in El Quiché and Alta Verapaz departments. He escaped from custody and is a fugitive. In separate cases in 2009, a former colonel was convicted for the forced disappearance of six people in 1981, and a former lieutenant was convicted for the Dos Erres massacre. "Soldados guatemaltecos sentenciados a 6,060 años por la masacre de Dos Erres en 1982: un paso hacia la justicia", Washington Office on Latin America, 5 August 2011.

covered almost the entire front page of the 11 May edition of *Prensa Libre*, the non-tabloid daily with the largest circulation in Guatemala. Those opposed to the trial also concentrated on genocide. Under the slogan "*No hubo genocidio*" (there was no genocide), they published paid ads, organised demonstrations, posted signs and established a twitter account; supporters of the charge countered with a similar "*Sí hubo genocidio*" campaign.

Though careful to express support for judicial independence, President Otto Pérez Molina, an ex-general who served in the Ixil triangle as a young officer in the early 1980s, also spoke out against the charge. "There was never a policy, never a document, and I never personally received an order to massacre a population", he said to applause when asked about the issue at a business forum the day before the trial began.[61] In one of the trial's more controversial moments, a witness linked him to killings in the region, alleging that "Major Tito Arias" – a pseudonym Pérez Molina used during the conflict – had ordered homes burned and their inhabitants executed. The president denied the allegations.[62]

D. REVERSAL

Though celebrated as a historic victory by human rights groups, the verdict was immediately labelled a political vendetta by some military veterans and the business federation CACIF, which accused the "international community" of pressuring the courts and declared itself in "permanent session" to analyse the impact of a decision it warned would "foment polarisation".[63] As the trial neared an end, CACIF mounted a media campaign to arouse nationalist opposition to the charges: "to accept that the State is genocidal", it said, "implicates all of us".[64]

The conviction stood for ten days: on 20 May, the Constitutional Court, the highest tribunal, annulled it on procedural grounds in a three-two decision. This means both defendants may face a retrial, though Rodríguez Sánchez was acquitted. Human rights and victims groups cried foul, accusing the court of succumbing to outside pressure by reversing a historic judgment on technicalities. Amnesty International criticised what it called a "devastating blow for the victims of the serious human rights violations committed during the conflict".[65] In a joint statement, local human rights activists condemned an "illegal and malicious action" and a "gigantic insult to surviving victims who have believed in justice".[66]

At issue was an incident on 19 March, the first day of oral proceedings, when Ríos Montt arrived with a new lawyer, García Gudiel, having dismissed his defence team that very morning. García Gudiel asked for a five-day suspension of proceedings to prepare (which was denied) and then that the president of the tribunal recuse herself on the grounds that they had clashed during a previous case. Judge Barrios refused and, when García Gudiel continued to argue, expelled him from the courtroom. She then ordered an attorney for Rodríguez Sánchez to defend Ríos Montt until he could put together a new legal team.[67]

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[61] "Conservadores insisten en que no hubo genocidio", Agencia EFE, 20 March 2013.
[62] Sonia Pérez Diaz, "Guatemala war trial puts past closer to president", Associated Press, 9 April 2013.
[63] Álvaro Montenegro, "El CACIF le pide a la CC la anulación de la condena contra Ríos Montt", *elPeriódico*, 13 May 2013.
[64] "¡AHORA DICEN QUE LOS GUATEMALTECOS SOMOS GENOCIDAS!", www.cacif.org.gt.
[65] "Guatemala annuls Ríos Montt's genocide conviction", BBC News, 21 May 2013.
[66] "Defensores de DD.HH. califican de 'ilegal' la anulación de la sentencia a Ríos Montt", Agencia EFE, 22 May 2013.
[67] Emi MacLean, "Trial opens with statements, prosecution witnesses, after defense challenges rejected", www.riosmontt-trial.org, 20 March 2013. See also Oswaldo J. Hernández, "El preámbulo de los abogados", *Plaza Pública*, 20 March 2013.

Although Ríos Montt brought back members of his former defence team the next day, and García Gudiel himself was re-incorporated several weeks later, those hours on the first day of the proceedings when the general lacked representation of his own choosing ultimately unravelled the entire trial. The Constitutional Court technically annulled only proceedings that took place after 19 April, the day when the trial court supposedly failed to obey an appeals court ruling to remedy the due process violation.[68] But the original tribunal had to withdraw on the grounds that it could not re-hear a case it had already decided, sending the trial to a new court that must begin oral proceedings anew.[69]

Human rights lawyer Héctor Reyes criticised the ruling: "You cannot throw out half a trial and return the case to judges who have already reached a verdict", he said. "[The Constitutional Court justices] should have said clearly what they were doing and borne the political consequences".[70] "They did not want to say that they were annulling the trial, but that is what they did", commented Ernesto Archila Ortíz, a criminal law specialist.[71]

The decision to declare a partial mistrial raised fierce objections from the dissenting justices, who accused the majority of ordering a disproportionate remedy and overstepping their authority by interfering in a dispute that should have gone through the appeals process laid out in the criminal procedural code.[72] One, Mauro Chacón, also pointed out that the lawyer filing the motion for Judge Barrios's recusal joined the defence after the trial began and the deadline for attorneys to petition for a new court had passed, "with the sole objective of hindering the case". The other, Gloria Porras, accused the majority of misrepresenting what occurred in the trial and called the judgment "devastating" to the judicial system and "especially to the victims who have relied on that system".[73]

The decision also drew blistering criticism from Jorge Mario García Laguardia, former chief justice of the Constitutional Court. "It demonstrates a total crisis in the country's judicial profession at all levels", he said in a newspaper interview. "The Constitutional Court exceeded [its powers]. It had no basis for annulling the judgment".[74]

For García Laguardia and other legal analysts, the Ríos Montt case demonstrated perversion of the *amparo*, an action aimed at protecting an individual's constitutional rights. "The *amparo* is not bad", García Laguardia said. "It works well in many countries. What is bad is the conduct of those who are using it". According to Archila, the instrument is being used "maliciously" by attorneys to challenge "every procedural decision". Instead of rejecting petitions as "frivolous and irrelevant", he said, "the courts just accept them".[75] Lawyers compete to

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[68] Even this is in dispute: according to news reports the appeals court said on the day of the verdict that García Gudiel's return was sufficient remedy. Emi MacLean, "Uncertainty hovers over next stages in historic Guatemala genocide case after Constitutional Court overturns conviction", www.riosmontt-trial.org, 28 May 2013. Oswaldo Hernández, "El juicio que deberá regresar en el tiempo", *Plaza Pública*, 21 May 2013.

[69] Jerson Ramos, "Sala cambia tribunal en caso por genocidio", *Prensa Libre*, 5 June 2013.

[70] Crisis Group interview, Guatemala City, 11 June 2013.

[71] Crisis Group interview, Guatemala City, 12 June 2013. Archila is director of investigations for the Guatemalan Institute for Comparative Studies in Criminal Sciences (ICCPG).

[72] Constitutional Court, dissenting opinions, Justices Gloria Patricia Porras Escobar and Mauro Roderico Chacón Corado, 20 May 2013. See also, Emi MacLean, "Uncertainty hovers", op. cit.

[73] Byron Rolando Vásquez, "Surgen dudas en fallo de Corte de Constitucionalidad", *Prensa Libre*, 24 May 2013. According to this news report, audio recordings from the trial corroborate Judge Porras's argument that the majority misrepresented what happened in the courtroom.

[74] Gerson Ortíz, "La CC no tenía porqué resolver la anulación de un juicio", *elPeriódico*, 26 May 2013.

[75] Crisis Group interviews, Guatemala City, 12 June 2013.

"drown" the system in *amparos*, said Rodrigo Fernández. "What should be an extreme remedy has become routine".[76]

[76] Crisis Group interview, Guatemala City, 18 June 2013.

III. Justice under Stress

A. MALICIOUS LITIGATION

The *amparo*, which originated in Mexico in the mid-nineteenth century, is a legal instrument that allows individuals to petition the courts for protection of their constitutional rights.[77] The Inter-American Commission on Human Rights calls the *amparo* "one of the basic pillars not only of the [Inter-]American Convention on Human Rights, but of the rule of law in a democratic society".[78] Guatemala became the second country to introduce the procedure, in 1879, and it has since been adopted throughout Latin America as an expeditious remedy for violation of fundamental rights.[79]

Guatemala, unlike some other countries, does not limit the *amparo* to certain fundamental rights, though it is supposed to be used only after the litigant has "exhausted all ordinary judicial and administrative means".[80] Even if the courts find that an attorney has filed "frivolous or notoriously inadmissible" petitions, the only punishment is a fine of between 50 and 1,000 quetzales (about $6.50 to $130).[81] According to Justice Chacón, the Constitutional Court is "saturated" by the sheer number of *amparo* remedies on its docket: "We consider all kinds [of *amparos*] – economic, judicial, political, social – even religious".[82]

Use of these petitions appears to be increasing. From 2004 to 2008, the Constitutional Court heard an annual average of 3,170 cases, including 2,667 *amparos*. A Guatemalan Institute for Comparative Studies in Criminal Sciences (ICCPG) study found that during those years *amparos* that reached the highest court took on average 441 days to resolve. One took four years.[83] According to a court official, the Constitutional Court now handles between 5,000 and 5,500 cases a year, of which more than half to three quarters are *amparos*.[84] This flood of petitions has converted it into a "Super-Tribunal", said the international NGO Impunity Watch, that has "omnipotent power to rule in any judicial case regardless of its original nature (civil, criminal, fiscal, labour, etc.). [Cases cannot] be considered finished until a judgment is delivered by the Constitutional Court".[85]

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[77] This contrasts with the U.S., for example, where constitutional rights are protected in trials through general procedural regulations, such as the appeals process. See Gretchen Helmke and Julio Ríos-Figueroa (eds.), *Courts in Latin America* (Cambridge, 2011), p. 31.

[78] Cited by Allan R Brewer-Carías, *Constitutional Protection of Human Rights in Latin America: A Comparative Study of Amparo Proceedings* (New York, 2009), p. 8.

[79] Ibid, p. 5. Under Guatemalan law, the *amparo* is used for all constitutional rights, including habeas corpus. Article 265 of the constitution states that "there is no area which is not subject to *amparo*, and it shall always proceed as long as the acts, resolutions or rules of the authority imply a threat, restriction or violation of the rights guaranteed by the laws and the Constitution".

[80] Article 19 of the *amparo* law (*Ley de Amparo*) states that the petitioner should exhaust other means before resorting to such a petition.

[81] The fines established under Article 46 of the *amparo* law have not increased since the law was passed by the constitutional assembly in 1985. Lawyers rarely pay even these nominal amounts. Gerson Ortíz, "Los abogados evaden pagar multas por amparos frívolos", *La Hora*, 2 May 2009.

[82] Quoted in Byron Rolando Vásquez, "Corte está saturada por miles de amparos", *Prensa Libre*, 2 April 2013.

[83] Miguel Ángel Urbina Martínez, "Duración de la acción de amparo en el sistema jurídico guatemalteco", *El Observador Judicial* (May-December 2008), pp. 11-13.

[84] Crisis Group interview, court official, Guatemala City, 8 August 2013, who added that fewer than half the *amparos* received in the past year have been resolved. The *amparo* can also be used to challenge laws passed by Congress. The Constitutional Court has received 32 petitions against a 2012 fiscal reform law, for example. Vásquez, "Corte está saturada", op. cit.

[85] "Regulatory and Practical Obstacles to Justice in Guatemala", Impunity Watch, March 2013, p. 6. The filing of an *amparo* does not necessarily halt proceedings, but as long as the petition is unresolved, the outcome of the trial is uncertain.

Filing multiple petitions has become a way to delay sentencing if not avoid a verdict entirely. *Amparos* are "often formalistic or inaccurate and clearly designed to obstruct the course of justice", according to a 2000 analysis of post-conflict judicial reform.[86] "Structural impunity in Guatemala is promoted by the inconsiderate processing by judicial authorities of notoriously frivolous challenges whose only objective is to obstruct justice", the Inter-American Human Rights Commission wrote in 2003.[87] The Inter-American Human Rights Court cited *amparo* abuse when it ruled against the Guatemalan government in the Myrna Mack murder case (2003) and the Dos Erres massacre (2009). In the former, defence attorneys filed fourteen *amparos*, all finally rejected; in the latter, 24 of at least 33 filed were rejected.[88]

Accused drug traffickers, like other well-heeled defendants, also use this tactic. Since Claudia Paz y Paz became attorney general in late 2010, the authorities have arrested eleven persons who face trafficking charges in the U.S. Five have been extradited, but the two most prominent, Juan Ortíz ("Chamalé") and Waldemar Lorenzana, have staved off extradition for more than two years.[89] Ortíz allegedly ran drug operations for the Sinaloa cartel along the border with Mexico. Although a court approved his extradition in February 2012 – nearly a year after his arrest in a joint operation by Guatemalan authorities and the U.S. Drug Enforcement Agency – his lawyers have delayed the process through *amparos* and appeals. Lorenzana, allegedly the patriarch of a major crime family in eastern Guatemala, was arrested in April 2011. He remains in a Guatemalan prison, though his extradition was approved by a lower court and an appeals court.[90]

What makes a successful defence attorney in Guatemala, said Fernández, the lawyer and researcher, is not eloquence or scholarship: "You can be a legal eminence, but you won't win any cases. It's not the best prepared attorney who wins; it's the one who understands how to exploit the system's defects".[91] The result is a judicial system that makes even reaching a judgment difficult. "A verdict of innocence or guilt is a luxury here", wrote legal scholar Alejandro Balsells Conde. "[Cases] are won by exhaustion".[92]

B. WEAK JUDGES

The difficulty of obtaining verdicts even in cases that make it to trial helps fuel the perception that judges – along with police and prosecutors – are on the take. Lack of confidence in the justice system is a problem throughout much of Latin America, but Guatemala ranks among the countries whose citizens express the least faith in their judiciary.[93] Although judges are not viewed as negatively as police, political parties or Congress, they enjoy less confidence than local governments, the president, the human rights ombudsman or electoral authori-

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[86] Rachel Sieder, "Renegotiating 'Law and Order': Judicial Reform and Citizen Responses in Post-war Guatemala", *Democratization*, vol. 7, no. 1 (Spring 2000), p. 148.

[87] "Justicia e Inclusión Social: Los desafíos de la democracia en Guatemala", p. 14.

[88] *Myrna Mack Chang* judgment (2003), p. 40. *Dos Erres* judgment (2009), pp. 33-38. In *Dos Erres*, the court ordered Guatemala to reform the *amparo* law; it has not done so.

[89] Sara Solórzano, "Con argucias legales frenan extradición de supuestos narcos", *Diario de Centro América*, 19 November 2012; Steven Dudley, "Guatemala traffickers exploit legal tool to fight extradition", *Insight Crime*, 7 February 2012; Hugo Alvarado, "Mujer fue extraditada a EE. UU. por narcotráfico", *Prensa Libre*, 9 February 2013. Crisis Group email correspondence with public ministry, 21 August 2013.

[90] "Defensa de Juan Ortíz "Chamalé" apela extradición a Estados Unidos", *Prensa Libre*, 7 March 2012. "Tribunal confirma extradición de Waldemar Lorenzana hacia EE. UU.", Agencia EFE, 29 January 2013.

[91] Crisis Group interview, Guatemala City, 18 June 2013.

[92] Alejandro Balsells Conde, "Acá no hay sentencias", *Prensa Libre*, 22 May 2013.

[93] Stefanie Herrmann, Dillon MacDonald, Robert Tauscher, "Confidence in the Criminal Justice System in the Americas", *Americas Barometer Insights: 2011*, no. 62, p. 1. In Guatemala, 35.6 per cent of those surveyed expressed confidence in the justice system. Only Mexico (35.6 per cent), Peru (34.8) and Ecuador (30.5) scored as low or lower.

ties. The institutions enjoying the greatest legitimacy are those generally seen as untainted by politics or private interest, such as the Roman Catholic and evangelical churches and the military. Lack of faith in the justice system also contributes to another disturbing finding: Guatemalans are the Latin Americans who express most support for vigilantism, with 39 per cent saying they think citizens should take justice into their own hands if the state do not punish criminals.[94]

In its report "The Judges of Impunity", CICIG analysed verdicts that lacked "logic" and "thorough judicial analysis", as well as some so "intentionally slanted, partial or openly contrary to law that they constituted breach of duty".[95] The perception that judges are at best inept, at worst partisan or corrupt encourages lawyers to use every legal resource at their disposal, legal experts say. "Many attorneys might feel that if they don't … they aren't defending their clients with sufficient zeal", said Aizenstatd.[96] Cynicism about the judiciary has created a no-holds-barred attitude, said Fernández. "If you believe justice is arbitrary, you are going to defend your client tooth and nail. If you think the system cheats, you are going to cheat".[97]

Judges themselves are victims of a system that fails to give them the resources, training and independence they need. At the lowest rungs, trial judges and justices of the peace are appointed to five-year terms by the Supreme Court in competitions criticised for lack of transparency.[98] Under the 1999 judicial career law, the court "should" take into account evaluations of "performance and professional behaviour" when approving appointments, but it does not always do so: judges who received top assessments have had to file *amparos* themselves to get jobs they were denied.[99] It is also "common wisdom" (*voz popular*), according to a 2010 study published by a Guatemalan think-tank, that transfers to remote or otherwise undesirable locations are used to "punish" trial judges. The same study criticised the rudimentary training offered to new judges, noting that many were already handicapped by the poor legal education provided in the country's "overpopulated" law schools.[100]

According to retired Constitutional Court Chief Justice García Laguardia, failure to create a clear judicial appointment and promotion process means the selection of judges is "improvised". Facing reappointment every five years debilitates the judiciary, rendering trial judges vulnerable to the Supreme Court and all magistrates susceptible to outside interests.[101] A criminal law specialist called the selection system deliberately "perverse … it functions the way it is supposed to function: the idea is to keep judges weak and protect privileges".[102]

Political interference in judicial appointments is most obvious during the process to name members of the higher courts. Under the constitution, both the thirteen-member Supreme Court and appeals court justices are chosen by Congress from candidates nominated by a committee that includes representatives from the universities, each law school, the bar asso-

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[94] "Cultura política de la democracia en Guatemala y en las Américas, 2012: Hacia la igualdad de oportunidades", Latin American Public Opinion Project (LAPOP), December 2012, pp. 149-150, 233.
[95] "Los Jueces de la Impunidad", 28 November 2012, p. 92.
[96] Crisis Group interview, Guatemala City, 21 June 2013.
[97] Crisis Group interview, Guatemala City, 18 June 2013.
[98] "Ilegal atentado contra la carrera judicial", Fundación Myrna Mack, 24 May 2010.
[99] "Mission to Guatemala: Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy", UN Human Rights Commission, 1 October 2009, p. 12.
[100] "La Carrera profesional en la administración de justicia: Sexto estudio: Proceso de fortalecimiento del sistema de justicia, avances y debilidades, 2008-2010", Asociación de Investigación y Estudios Sociales/Fundación Konrad Adenauer, November 2010, pp. 49, 73-74.
[101] Crisis Group interview, Guatemala City, 12 June 2013.
[102] Crisis Group interview, Ernesto Archila Ortíz, ICCPG, Guatemala City, 12 June 2013.

ciation and the appeals courts.[103] Politicking to get onto the nominating committees is intense. According to a CICIG study of the 2009 process to choose the Supreme Court, the campaign began two years in advance, with political parties spending heavily on "electoral propaganda" to promote their candidates, especially within the bar association.[104] According to the 2010 think-tank study, much of the financing comes from corporate law firms with ties to the parties, business interests and organised crime. Potential candidates deemed "too independent" are subjected to smear campaigns.[105]

A law to make the selection process more objective and transparent was passed in 2009. Among the changes it introduced were a grading system for candidates and the requirement that the nominating committees meet in public sessions.[106] Critics say, however, that further reforms are needed, such as requiring would-be candidates to make public the names of those financing their campaigns, providing the commissions with the resources to verify candidates' backgrounds and encouraging greater participation of indigenous groups and women in the process.[107]

Despite the new law, the last nominating cycle in 2010 was marred by controversy. Attorney General Conrado Reyes was forced out after less than a month in office, after CICIG and civic watchdog groups accused him of links to organised crime.[108] Supreme Court Justice Erick Álvarez continued in office despite strong criticism by many NGOs.[109]

Several judicial cycles end in 2014: the attorney general and the supreme and appeals courts must all be re-appointed or replaced.[110] Although reformers are pushing for legislation to make the process more transparent, this is unlikely given stalemate in the polarised Congress.[111] The business association is gearing up for a fight, especially over the reappointment

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[103] Constitution, Article 215. Gladys Annabella Morfin Mansilla, "Selección de magistrados en Guatemala: ¿Es posible la prevalencia del Estado de Derecho?" *Aportes DPLF: Revista de la Fundación para el Debido Proceso*, p. 14. The Supreme Court, Congress, president, University of San Carlos (the public university) and bar association each directly select one member of the Constitutional Court and one alternate for five-year terms, constitution, Article 269.

[104] "Informe: Proceso de elección de magistrados a la corte suprema de justicia y cortes de apelaciones y otros tribunales colegiados de igual categoría año 2009", CICIG, pp. 44, 48.

[105] "La carrera profesional en la administración de justicia, op. cit., pp. 69-71. The UN Special Rapporteur on the independence of judges and lawyers has also warned that organised crime may influence the selection process. "Consulta subregional sobre la independencia del Poder Judicial en América Central: Informe de la Relatora Especial sobre la independencia de los magistrados y abogados, Gabriela Knaul", UN Human Rights Council, 2 April 2013.

[106] Ley de Comisiones de Postulación, decreto 19-2009 (3 June 2009).

[107] A bill to reform the law on nominating commissions has been presented in Congress, though as mentioned below, political gridlock on this and other issues makes it unlikely to pass. Initiative 447 is available at www.lexglobal.com/documentos/1351881689.pdf. For additional commentary, see "Propuesta de la Asociación de Investigación y Estudios Sociales (ASIES) en relación a la Iniciativa 4471 que dispone aprobar reformas a la Ley de Comisiones de Postulación Decreto 19-2009 del Congreso de la República", www.asies.org.gt; and "Comentarios de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Guatemala a la iniciativa 4471 que dispone aprobar reformas al decreto número 19-2009 del Congreso de la República, Ley de Comisiones de Postulación", www.ohchr.org.gt.

[108] Amid mounting protests against Reyes, the Constitutional Court asked the nominating committees to resign and new committees to take over. Olga López, Leonardo Cereser, Geovanni Contreras, "La CC anula elección del fiscal Conrado Reyes", *Prensa Libre*, 11 June 2010. Reyes denied the accusations but agreed to abide by the court's decision. "Guatemala attorney general ousted", *The New York Times*, 11 June 2010.

[109] "Comunicado de ONGs guatemaltecas apoyando la demanda de renuncia de Erick Álvarez, presidente de la Corte Suprema de Justicia", 4 August 2010, posted at protectiononline.org. See also Coralia Orantes, "Sociedad Civil exige renuncia de Erick Alvarez", *Prensa Libre*, 3 August 2010.

[110] Committees in 2014 must also nominate Supreme Electoral Tribunal and comptroller general candidates. Sergio del Águila, "Urgen a reformar Ley de Comisiones de Postulación", *Siglo21*, 8 May 2013.

[111] Jessica Osorio, "El clamor por cambios a ley de postulación", *Siglo21*, 4 July 2013.

of Attorney General Paz y Paz, made controversial by the prosecution of Ríos Montt and other high-profile human rights cases. The selection of judges and the attorney general in 2014, predicted Phillip Chicola of CACIF, will be the "mother of all battles".[112]
CICIG played an important role by vetting candidates in 2010, but the international commission has been buffeted recently by controversy and weakened by judicial setbacks, such as its failure to convict former President Alfonso Portillo on corruption charges.[113] It is led for the last two years of its mandate by a former Supreme Court justice, Iván Velásquez, named by the UN in September 2013. A tough anti-corruption judge who exposed links between legislators and paramilitary groups, he will need to work quickly to initiate or complete investigations into the illicit organisations that CICIG was created to dismantle.[114]

"Conditions are not the same as in 2009", said political scientist Renzo Rosal. Civil society "is eroded, battered and divided by the controversies over CICIG and the Ríos Montt trial". While political parties, lawyers and the business chambers appear to be better organised than before and more determined to secure candidates favourable to their interests, he said, "civil society isn't even invited to the party".[115]

[112] Phillip Chicola, "Lo que se nos viene: La sentencia por genocidio es un parte aguas en todo sentido", *elPeriódico*, 14 May 2013.
[113] In 2011, a CICIG official allegedly pressured a Constitutional Court justice to extradite ex-President Alfonso Portillo to the U.S. According to news reports, the official has since left Guatemala, and the commissioner has apologised, saying there was a misunderstanding. It is not clear who leaked documents related to the two-year-old incident and why. "Trasciende presión de CICIG en extradición de Portillo", *Prensa Libre*, 29 August 2013.
[114] James Bargent, "Last rites for Guatemala's anti-impunity crusaders CICIG?", *Insight Crime*, 9 September 2013.
[115] Crisis Group telephone interview, 9 September 2013. Rosal teaches at Rafael Landívar University.

IV. Conclusion

Dealing with massive violations of human rights is never easy. Other Latin American countries have also had to grapple with the legacy of military or authoritarian regimes that brutally eliminated their opponents. Despite threats and protests, however, prosecutors, witnesses and judges have successfully tried and convicted ex-heads of state for human rights violations, including Argentina's Jorge Videla (died in prison in May 2013), Uruguay's Juan María Bordaberry (died in July 2011 under house arrest), Peru's Alberto Fujimori (serving a 25-year sentence) and Bolivia's Luis García Meza (serving 30 years after conviction in absentia, capture in Brazil and extradition). Former Chilean dictator Augusto Pinochet was under investigation for human rights and financial crimes, having won and lost immunity several times, when he suffered a fatal heart attack in 2006.[116]

Guatemala has been slow to join what has been called the region's "justice cascade" of trials for old human rights violations.[117] Until the Ríos Montt/Rodríguez Sánchez trial, only a handful of low-level military officers, police and paramilitary members had faced prosecution. Elsewhere, as in Guatemala, former leaders and their political and economic allies have attempted to protect themselves with amnesty legislation, arguing that prosecution would endanger peace and political stability, but their claims have proven false, as politicians and business leaders have distanced themselves from their countries' authoritarian past.[118]

A new tribunal has been named to handle the Ríos Montt/Rodríguez Sánchez case, but it reportedly has no space on its docket until April 2014, and even that date is uncertain.[119] The Constitutional Court and other appeals courts are still considering at least four defence challenges, seeking amnesty, among other issues.[120] Human rights attorneys and prosecutors suspect the defence is playing for time, hoping to delay proceedings until 2015, when Guatemala may have a new attorney general less willing to pursue controversial human rights cases.[121] Other cases at risk include that of a former guerrilla commander accused of killing 22 unarmed people in the village of El Aguacate, Chimaltenango, in 1998.[122] Ríos Montt may face additional charges, including genocide, for the 1982 massacre of 201 people at Dos Erres, in the northern department of El Petén.[123]

The Ríos Montt/Rodríguez Sánchez trial is an historic attempt to establish high-level, individual responsibility for some of the most serious human rights violations ever committed in

[116] See Roht-Arriaza, "Prosecutions of Heads of State in Latin America", op. cit.
[117] See Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York, 2011), p. 6. Sikkink argues that in Latin America there has been a "dramatic shift in the legitimacy of the norms of individual criminal accountability for human rights violations and an increase in actions (like prosecutions) on behalf of those norms".
[118] Two scholars who studied human rights trials (1979-2004) in the region, concluded that "… there is not a single case of a country where democracy has been undermined because of the choice to use trials. Nor is there evidence that trials lead to worsening human rights situations. Rather in 14 of the 17 cases of Latin American countries that have chosen trials, human rights seem to have improved". Kathryn Sikkink and Carrie Booth Walling, "The Impact of Human Rights Trials in Latin America", *Journal of Peace Research*, vol. 44, no. 4 (2007), p. 442.
[119] "Juicio por genocidio a Ríos Montt reanudará en abril 2014", Agencia EFE, 5 June 2013.
[120] Crisis Group email correspondence with the public ministry, 5 September 2013.
122 Crisis Group interview, Héctor Reyes, CALDH, Guatemala City, 11 June 2013.
[122] Byron Rolando Vásquez, "Detienen a ex guerrillero que comandó masacre de El Aguacate", *Prensa Libre*, 2 May 2013. See also Stephen Kinzer, "Guatemala massacre laid to rebels", *The New York Times*, 3 December 1998.
[123] Coralia Orantes, "Caso por masacre de las Dos Erres se reactiva", *Prensa Libre*, 6 June 2012.

Latin America, but it is not just about the two former generals. It is also about showing the world and, most importantly, its own citizens that Guatemala's political leaders and courts are willing and capable of guaranteeing that the rule of law protects all, including the most vulnerable, and holds all equally accountable, including the most powerful.

Appendix A:

Map of Guatemala

Map No. 3834 Rev. 3 UNITED NATIONS
May 2004

Department of Peacekeeping Operations
Cartographic Section