

**GUATEMALA: TODAY FOR THE
FIRST TIME IN 500 YEARS
WE HAVE THE OPPORTUNITY TO PUT
PERPETRATORS OF GENOCIDE ON TRIAL**

Center for Legal Action in Human Rights (CALDH)

To understand the genocide in Guatemala, it is necessary to know who the Mayan People are and what their history in the country has been. Below is a presentation of their economic, social and cultural reality, which will allow for a better understanding of the Internal Armed Conflict and the conviction for genocide of the former dictator José Efraín Ríos Montt.

The Indigenous Peoples in Guatemala: The socio-economic and political context

Guatemala is a multi-ethnic, multilingual and multicultural country, with a land mass of 108,900 square kilometers, with 12.3 million inhabitants, in which three Indigenous Peoples coexist—Maya, Xinka and Garífuna—in addition to the ladino or mestizo people. According to the National Statistical Institute (INE), the percentage of Indigenous Peoples is 40%. The World Bank indicates that this percentage is 60% and that Guatemala has the highest percentage of Indigenous population in Central America.¹ It should be noted, that the statistical information, disaggregated by ethnic variables, has been a limiting factor for data analysis, and Indigenous organizations claim that the percentage of the Indigenous population is considerably higher than the official count. This is evident in the Poverty and Development 2011 document produced by the INE. The majority of the Indigenous population is concentrated in the western part of the country—Totonicapán (97%), Sololá (96%), El Quiché (89%), Huehuetenango (57%), Quetzaltenango (52%) and Chimaltenango (78%); and in 1 Information from the World Bank 2004, cited by Okma International. August 2004, www.radio.okma.org

the North of the country—Alta Verapaz (90%) and Baja Verapaz (90%).² According to the linguistic map of Guatemala and the Human Development Report, UN Development Program (UNDP) shows that in 122 of 333 municipalities, the Indigenous population exceeds 80% and is mostly monolingual in one of the Mayan languages.³ The Mayan People comprise 23 linguistic groups: Achi', Akateco, Awakateco, Chalchiteco, Ch'orti', Chuj, Itza', Ixil, Jacalteco, Kaqchikel, K'iche', Mam, Mopan, Popti', Poqomam, Poqomchi', Q'anjob'al, Q'eqchi', Sakapulteco, Sipakapense, Tektiteko, Tz'utujil and Uspanteko.⁴ Each of the Mayan languages is different and has distinctive characteristics, but is united by the common root of the Mayan civilization.

Having sketched the ethnic composition and linguistic map, we will now review the comparative statistical data on poverty and misery, which shows how the levels of social inequality are highest among the Indigenous population. The social inequality is also apparent in the high rates of maternal mortality, child malnutrition and other problems that the Indigenous Peoples disproportionately suffer. At least 74.8% of the Indigenous population lives in poverty, and 26% live in extreme poverty; in contrast, 35% of the non-indigenous population lives in poverty, and only 8% lives in extreme poverty.⁵ Similarly, even though the global average of chronic child malnutrition is 49.3%, in some linguistic communities in the western part of Guatemala, it is 90%.⁶ The literacy rate among the Indigenous population is much lower than in the rest of the population, especially among women. In

2 Álvaro Pop, Evaluation Report on the United Nations Declaration on the Rights of Indigenous Peoples in Guatemala, (2013), E/C.19/2013/CRP.3, p. 6, www.naleb.gt

3 United Nations Development Program for Guatemala, Ethno-Cultural Diversity: Citizenship in a Pluralistic State. National Report on Human Development, (Guatemala, 2005) p. 66.

4 Linguistic communities. According to a study of Mayan languages, currently 30 Mayan languages have been identified, but the Academy of Mayan recognizes 23 languages, plus Xinca and Garifuna, which are not Mayan. [http://www.ddl.ishlyon.cnrs.fr/AALLED/Univ_ete/3LCourseMaterial/Maya/Sis_Iboy_the Mayan Languages of Guatemala](http://www.ddl.ishlyon.cnrs.fr/AALLED/Univ_ete/3LCourseMaterial/Maya/Sis_Iboy_the_Mayan_Languages_of_Guatemala).

5 ILO, Pueblos Indígenas en Guatemala. (2011), www.iwgia.org/regiones/latin-america/guatemala

6 Indigenous Peoples Project. - OTC - Guatemala. www.aecid.org.gt/aecid/index.php. 2013

some rural communities, the illiteracy of adult Indigenous women is 90%. Indigenous children in this region attend school an average of just over two years, while girls barely receive one year of schooling. Among the population of school-age children (between 7 and 14 years of age), 26% do not attend primary school and 12% of students enrolled each year drop out of school. At least 65% of the Indigenous population does not have access to drinking water, more than 80% have no connection to sewage systems and 50% are not connected to the electrical grid.⁷

The majority of the statistical data presented is not recent, but rather is from the last census in 2002. The lack of recent data and statistical records on Indigenous Peoples is part of State institutionalized practices that render Indigenous Peoples invisible. It is indicative of the State's paltry interest in improving the living conditions of the majority of the Guatemalan population. This social inequality is not a recent phenomenon, but rather, is profoundly rooted in the Spanish invasion, the dispossession of Indigenous Peoples' territories and the subsequent founding of the nation state, which denies the rights of native peoples and institutionalizes "racial" relations under the "white or Creole" hegemony of a few families. These families of the oligarchy have always ruled and controlled the country. From this racial institutionalization stems the economy and political system, which denies the very existence of Indigenous Peoples in the country. Therefore, in order to grasp the causes of social inequality in Guatemala, it is necessary to reference this racial and racist framework. Similarly, to understand the genocide committed, it is fundamental to understand how the current capitalist globalization is part of the continuum of the colonial models that have been imposed throughout history; and how in order to achieve the accumulation of capital, these models have always used violent wars to exterminate peoples or social groups that resist domination.

⁷ *Supra* note 7.

The genocide from the standpoint of racism and dominance

When analyzing the genocide in Guatemala, it is necessary to be guided by the memory and history of the Mayan People. As mentioned above, everything began with the Spanish invasion and the foundation of the nation state, and it is based on these two historic moments that society is organized; the racial hierarchy created; and the racist ideology of who is “Indian” and who is not, established, which has been codified into law and used to organize and wield political power. The question is, “Why is this ‘Indian’ construct needed?” The hegemonic “Creole” social group “invented the ‘Indian,’ subordinated him to their interests, recognized a few of his rights which did not threaten their interests, and identified him as “‘something’ less than the invader.”⁸ Thus, they sought to homogenize into a single category all the cultures of the linguistic groups of the Mayan People, a civilization which was at its height, and supplant it with a single ideological, exclusionary and racist category.

The genocide during the Internal Armed Conflict was by no means the first genocide. Genocide has been committed numerous times in Guatemala’s history and the rest of the time has always been lying dormant to some degree. It is useful to establish the chronology of the three relevant historical periods: the first, starting in 1524 with the Spanish invasion and the subsequent governance of the colony; the second, from 1848 to 1943 during the liberal period; and the third, from 1960 to 1996 during the internal war when the state was suppressed by military governments for three decades. During these three periods of Guatemala’s political history, the worst atrocities and extermination campaigns were committed against the Mayan People. The common denominator of these genocides is the take over and control of the Mayan People’s land. The ruling class has used the army as a tool to destroy the community life of the Mayan People, instill terror and commit genocide. Therefore, it comes as no surprise that this very same strategy is being used to plunder the territories of the Maya to this day, since it continues to be necessary

8 Francisco López Bárcenas, Autonomías Indígenas. América Latina. (México: México City, 2007), p. 15.

for the accumulation of capital under the current exclusionary and racist economic model.

During the Internal Armed Conflict, the political elite feared the empowerment of Indigenous Peoples and that they would become the social base of the revolutionary movement. For this reason, the elite reactivated a key historic element of racism: “the supposed threat of ‘Indians’ to the ladino hierarchy.”

Since the consolidation of the nation state, the oligarchy in alliance with the army has kept the Mayan People in abject poverty so that the oligarchy could stay in power and continue to accumulate wealth based on the exploitation of the natural resources. Currently, the State is infamous for repressing communities that resist the invasion of mining companies and the imposition of hydroelectric projects. There is widespread criminalization of community leaders and all expressions of resistance; the situation is comparable to the period of the Internal Armed Conflict, when many Indigenous communities were treated as the enemy.

For the Mayan People, genocide is a historical sequence that is linked to the political and ideological strategies of the nation state for imposing economic models based on the control and plundering of the territories. Genocide has gone hand in hand with the creation of a systematic methodology of terror for attacking civilian populations and communities of the Mayan People. The resistance struggles have been and continue to be for the right to life in opposition to the colonial-capitalist economic model. This model denies the dignity of the Mayan People, because acknowledging dignity necessarily includes recognizing identity and, therefore, adopting a political ideological stance in defense of collective life, which poses a danger to the neo-liberal capitalist development model. This model leads to the death and destruction of all forms of communal existence.

Manifestations of racism operate and are transformed according to the needs of the dominant class and the type or nature of the aggression or domination it requires. According to Dr. Marta Casaús, between the 1970s and the mid-1980s, the racism of the State reached its maximum expression and formed part of a generated crisis: “The oligarchy was not able to legitimize its domination legally and resorted

to the military, [to] electoral fraud, and to militarization to remain in power.”⁹

In Guatemala, to speak of genocide we must understand the present as it relates to the past; that genocide is justified by racism; and that achieving justice for the victims of genocide also requires redefining the memory of the survivors as well as of those who died. To strive for justice is to walk in the opposite direction of the impunity of the past and present, against oblivion and silence.

To speak of the genocide, one must also grasp the structural problems that led to the Internal Armed Conflict, which lasted for more than three decades (36 years), which have been present in the history of our territory since the Caravels anchored, until the present day. These structural problems include racism, discrimination, huge inequalities, unjust land tenure, poverty, the pillaging of the land and the exploitation of natural resources, among others, which are still present and reflected in the current continuation of violence, the repetition of repressive patterns and ways of operating, as well as the existence of structures of organized crime in State institutions.

In Guatemala, during the military governments of 1981 to 1983, genocide was committed, as were crimes against humanity and war crimes. The Mayan population was identified as a threat to national stability and defined by the military as the enemy. With the excuse of the war against communism, hundreds of communities of the Kekchi, Achi, K'iché, Kachiquel, Ixil, Q'anjob'al, Chuj and Mam language groups, were destroyed and wiped out in the West and North of the country. The notion that “He who is not with me is against me” was applied literally and militarily.¹⁰

During this period, a policy of genocide was implemented with scorched-earth strategies in hundreds of Mayan communities; extra-judicial executions against civilians, especially community, student, trade union and religious leaders; and torture, which caused grave physical and mental scars. Systematic sexual violence against women was used as an act of domination over the enemy and caused grave

9 Cited by Roddy Ph.D Roddy Brett, in Guatemalan Racism and Genocide 1981–1983. Forum. Genocide, the highest expression of racism. CALDH. 2004: p. 21

10 Commission for Historical Clarification, Guatemala: Memory of Silence, Report of the Commission for Historical Clarification, (Guatemala City: CHC, 1999).

physical, psychological and social wounds. Mayan women were treated as if they were the spoils of war. Indigenous Peoples were subjected to extreme conditions that led to the physical destruction of the group, and included the forced displacement of children and adults, resulting in thousands of deaths from hunger, illness, fright and inhumane living conditions.

To control and subdue the population, “model villages” (ghettos or concentration camps) were implemented whose main purpose was to “re-educate” the Indigenous population, which resulted in the imposition, once again, of other lifestyles, and the denial of the possibility of practicing their own spirituality, political organization as well as social and cultural relationships, i.e. their own worldviews. The model villages ripped asunder the communal social fabric, and helped create one of the State’s most effective repression mechanisms: the Civil Defense Patrols (PAC). Throughout all of this, violence was used as a means of control and to force the assimilation of ladino culture, which very adversely impacted the Mayan identity and culture. During the scorched-earth operations, hundreds of Mayan children who survived the massacres were transferred to the capital city and given up for adoption to families from other countries, or to the homes of the perpetrators of the violence, a very common practice of military regimes in Latin America.

The Commission for Historical Clarification concluded that during the Internal Armed Conflict more than 200,000 people were killed; more than one million were displaced; and 626 massacres were committed.

Indigenous Peoples’ walk towards justice

At the beginning of the year 2000, survivors of the Internal Armed Conflict from the regions of Ixcán and Ixil, Quiché; San Martín Jilotepeque, Chimaltenango; Nentón and Barillas, Huehuetenango; and Rabinal, Baja Verapaz, along with the Centro para la Acción Legal en Derechos Humanos (CALDH; in English the Centre for Human Rights Legal Action) came together to reflect on what had happened during the years of the conflict, and concluded that it was necessary

to seek justice for such grave crimes. Thus, it was that on April 24, 2000, the Association for Justice and Reconciliation (AJR), taking into account the recommendations of the Minutes on the Silencing of the Commission for Historical Clarification (CEH), regarding access to justice, decided to begin the quest for justice with a lawsuit against the military high command, namely Romeo Lucas García (from 1978 to the beginning of 1982), and in 2001, against José Efraín Ríos Montt (from March 23, 1982 to August 8, 1983), responsible for applying a policy of genocide against the Mayan People during the periods they were in power.

Thus, began the research that would substantiate the first trial for genocide before the national courts of Latin America in history. In the Guatemalan justice system, the Public Prosecutor is supposed to be the institutional body responsible for conducting the investigation and criminal prosecution. However, it took eight years to make that happen. Meanwhile, the research process provided an opportunity to transcend the mere search for evidence, and to reconstruct, redefine and dignify the memory and truth of the survivors.

CALDH's strategic litigation was complemented by a diversity of elements: policy, communications, legal issues, research, accompaniment of the survivors and witnesses of the case, and security. This multi-pronged approach heightened the visibility of the case, strengthened the team of lawyers, who worked closely with the Public Prosecutor's Office, and acted on the need to prosecute those intellectually responsible for the genocide who lived in Guatemala as a guarantee of non-repetition and as a contribution to the fight against the reigning impunity. Thirteen years after having filed the complaint, they managed to bring a historic trial to the courts of Guatemala: the trial for genocide against the former dictator José Efraín Ríos Montt and his intelligence officer.

Genocide trial

The genocide case focused on the Ixil Region, Department of Quiché, one of the areas where the genocidal policy hit hardest. Several survivors, men and women, who saw and endured the persecution

committed against them, participated in this process. One of the avenues used was the reconstruction of the history of each person, which, through maps, drawings and stories, were then intertwined with each other. After several years, 106 reconstructions were completed that now form part of the expert reports introduced as evidence by the Public Prosecutors in the trial. These reports go into great depth and detail about the deliberate repressive measures, displacement, psycho-social, sexual, cultural, socio-cultural and historical violence; racism and discrimination; children who disappeared during the Internal Armed Conflict; demographics, geography, patterns of exhumation, military operations, etc. Each expert report confirms the events that occurred and how, this genocidal policy ripped asunder the social fabric, and re-education strategies were imposed on the Mayan Ixil population, including forced relocation that wreaked havoc on their lifestyle.

It is noteworthy that a key part of this process was the struggle for the declassification of military documents. In the trial, the Ministry of Defense was asked to hand over four military plans that contained relevant information, such as how the army identified the Mayan Ixil People; their plans against them; as well as how they executed their plans; and the subsequent reports on what had transpired, which concur with and confirm the reconstruction of events in the Ixil region. Of the four plans: Victoria 82, 83 Firmeza, Plan Sofia and Operación Ixil, the army has handed over only two. A third plan was investigated by the National Chamber of Hearings of Spain, sent to Guatemala, and presented as evidence in the trial.

Starting in 2008, the Public Prosecutor started working on cases of human rights violations during the conflict, which had been archived during previous negotiations, and streamlining investigations, thus, demonstrating an interest in putting an end to the sealed-off impunity of the State. Substantial advances were made in the research, and that is how, on June 17, 2011, Héctor Mario López Fuentes was captured and linked to the case on genocide and crimes against humanity. The general served as Head Chief of State of the Army in the bloodiest period of the armed conflict. His capture gave a beacon of hope and justice for the survivors. Then General José Mauricio Rodríguez Sánchez, responsible for intelligence, was captured; and in January

2012, General José Efraín Ríos Montt (*de-facto* President, whose time in power was characterized as the most repressive period) was also arrested and linked to the charges for the crimes of genocide and crimes against humanity.

The genocide case is an emblematic case because it brought charges against a former retired general Efraín Ríos Montt, who at that time was the President of Guatemala, and its high military command, for having created a counterinsurgency policy; developed military plans and operations to implement such a policy; and for having knowledge of the results of the implementation of this policy. Building and litigating this emblematic case meant challenging the justice system, economic power and military of the country.

The first genocide to be brought to trial in 500 years

Thirteen years passed before the victims of the genocide got to take the stand in court. Arriving at that point was not easy. The accused military members filed over a hundred lawsuits to impede going to trial. These unfair dilatory tactics were declared not grounds for preventing the trial by various courts of justice, and constituted malicious litigation, as well as intent to obstruct justice and to grant impunity for serious human rights violations committed during the Internal Armed Conflict.

The international community followed the trial closely and hailed its importance for all civilized nations. “I welcome the launch of this historic trial and hope that it marks the beginning of justice awaited for many years by the thousands of victims of grave human rights violations and crimes against humanity committed during 36 years of violent conflict in Guatemala,” said Navya Pillay, UN High Commissioner for Human Rights. “This is the first time anywhere in the world that a former head of state’s trial for genocide by a national court has occurred... Until very recently, no one believed that a trial like this could take place in Guatemala, and the fact that it is happening there, 30 years after the alleged violations took place, should encourage victims of human rights violations around the world.”¹¹

11 Press release. Office of the High Commissioner for Human Rights. “Pillay

On March 19, 2013, the first trial for genocide in Guatemala began. It was a landmark trial where the former dictator José Efraín Ríos Montt sat on the dock. The debate was characterized by repeated attempts to halt the aggression and contempt of the trial court, as well as blatant signs of racism in the courtroom.

The Trial Court of High Risk “A” was made up of the following honorable judges: Iris Jasmin Barrios Aguilar, Patricia Isabel Bustamante García and Pablo Xitumul de Paz, and heard reports from more than ten experts (military, anthropological, sociological, psychological, etc.). Eight-five witnesses of the genocide testified on the displacement, massacres, forced disappearances, extra-judicial killings, destruction of community and culture, death of men and women, and all the different kinds of human rights violations that occurred during this period. There were also ten surviving witnesses to sexual violence and presentation of reports (including the report by the Historical Clarification Commission, sponsored by the United Nations, and the Report on the Reconciliation, which the Court gave probative value to, demonstrated that there was an intention to destroy the Ixil group, which was identified as an internal enemy: “...[The decision to carry out] violent acts against the Ixil was not a spontaneous act, but rather **the realization of previously prepared plans, which formed part of the state policy aimed at the elimination of a certain ethnic group** (...) who had proven over and over that **they were civilians** devoted to agriculture.”¹²

Sexual violence against women was a systematic State policy, which contributed to the destruction of the social fabric, and whose objective was to eliminate the Mayan Ixil ethnic group. The women suffered intentional violence and humiliation, not only as a means of inflicting physical or mental injuries to members of the group, but also as the most effective way to prevent the group’s physical and cultural reproduction. The Special Representative of the Secretary-General of the United Nations on sexual violence in conflict, Zainab Hawa Bangura, stated that: “It is difficult to conceive of the pain and

Hails Start of Genocide Trial in Guatemala,” Geneva: March 18, 2013.

12 Genocide Sentence and crimes against humanity. First Court of Penal Sentence, Narcoactivity and crimes against environment. Guatemala. 2013, p. 697.

brutality that torment the survivors of sexual violence.” “Therefore, the courage of their testimony about what they have suffered should not be underestimated. In the end, their stories will help to ensure that crimes of sexual violence do not remain hidden in silence and impunity. To confront its violent past, today Guatemala is demonstrating its commitment to the rule of law and to a future of peace. I urge the authorities to ensure a fair trial and the protection of victims, witnesses, human rights defenders and officials of the judicial system. Justice in Guatemala has been delayed for many, but must not be denied,” she added.¹³

Racism, was “**the machinery of extermination,**” the basis of the genocide. “Racism is expressed in the behavior, imagination, racist practices and ideologies that occupy different spaces and expand to the whole of society... Racism profoundly affected, caused, collaborated with and contributed to the genocide that occurred in Guatemala.” A stereotype of the “Indian” as an inferior “thug, thief, ugly and one that smells bad” has historically been constructed. Throughout history, the elites have insisted on the idea of “disposal” or the need to “improve the breed.”¹⁴ This is what was put into practice during the Genocide.

In the course of this trial, networks of impunity, which still exist in the justice system, were discovered. But what was also discovered was the persistence of groups in power who refuse to live in a full democracy with true rule of law. We have seen illegal resolutions tabled, malicious proceedings and the attempt to discredit the male and female actors of the justice system through various means. It is important to reiterate that, it is in the trial’s Oral and Public Debate where evidence reached its probative value. That is what gives strength and credibility to the rule of law and not the hundreds of appeals to delay or obstruct justice.

The surviving victims of the genocide have given a lesson to Guatemalan society. You can advance through the established

13 Statement by Zainab Hawa Bangura, United Nations Special Representative on Sexual Violence in Conflict. “Prosecuting Past Crimes Provides Hope to Survivors in Guatemala”. April 12, 2013.

14 Cited by Roddy Ph. D Roddy Brett, in Guatemalan Racism and Genocide 1981–1983. Forum. Genocide, the highest expression of racism. CALDH. 2004, p. 16, 17, 23.

democratic means to resolve your disputes. Those who resort to hatred and violence or who are afraid of democratic processes are those who have never believed in peace or democracy.

This ruling is a watershed in the history of Guatemala, because it gives us the opportunity to reconceive of ourselves as a society and decide what we want for our country in the present and in the future. Guatemala has a new chance, drawn by the long path traveled towards justice that victims and survivors embarked upon more than a decade ago. It symbolizes the vindication and the recognition of the truth, not only for the Mayan People, but also for the thousands of victims executed arbitrarily, disappeared and massacred in our territory.

The international community expressed its satisfaction for the progress on justice and human rights. The United Nations system considers that a major step has been taken in the development of the rule of law and in the strengthening of democracy in Guatemala. As the United Nations System expressed, “There is no doubt that the approach to cases of high impact such as this, and other events occurring at the same time, has significant relevance both for national and international justice and provides a historic opportunity to make the Guatemalan justice system demonstrate its commitment to the fight against impunity in the country.”¹⁵

Impunity and the right to justice

“I call on the judicial authorities to act responsibly and to prevent any attempted interference, obstruction of justice or manipulation of the law, which may seriously undermine the credibility of the justice system in Guatemala. . . . The victims of the atrocities committed during the civil war in Guatemala, as well as their families, have been waiting many years for justice; I hope that they do not have to keep waiting. Justice delayed is justice denied.”¹⁶ Mr. Adama Dieng, Special Adviser on the Prevention of Genocide, stated before the suspension of the

15 Press Release from United Nations System. Guatemala: April 14, 2013.

16 Statement by Mr. Adama Dieng, United Nations Special Advisor on the Prevention of Genocide, about the judicial process against former *de facto* Head of State and former Chief of Intelligence Services of Guatemala. New York: April 23, 2013.

trial of the former head of State and the former head of the intelligence services of Guatemala.

Ten days later, the technical cancellation of oral and public debate

After the historic conviction handed down by the honorable High-Risk Court “A” on May 10, 2013, which sentenced General Jose Efraim Rios Montt to 80 years in prison for genocide and crimes against humanity, the private sector of the country and the Agricultural, Commercial, Industrial and Financial Coordinating Committee (CACIF) published a paid advertisement, dated May 13, 2013, that contended that “This [*court verdict*] **does not take into account the polarized [climate] and gives a very clear impression that justice was the [result of] ideological conflict**” and that “Given the legal measures that remain to be resolved, we appeal to Constitutional Court and its history of handing down landmark rulings in favor of the rule of law and respect for the Constitution, so that all anomalies incurred during the process may be amended.”¹⁷

On May 20, 2013, ten days after the conviction and seven days after the above-mentioned publication, three judges of the Constitutional Court resolved a *de facto* complaint presented by the defense of General Ríos Montt ordering that the proceedings and the oral and public debate since April 19 be annulled. With this judgment, the Constitutional Court technically overrode the oral and public discussion of the trial for genocide.

It is important to note that the court order was decided by the votes of judges Héctor Hugo Pérez Aguilera, Roberto Molina Barreto and Alejandro Maldonado Aguirre, while Judge Gloria Patricia Porras Escobar and Judge Mauro Roderick Chacón Corado voted against it.

In her separate opinion, Judge Gloria Porras indicates: “The ruling accepts as fact claims that do not match the procedural evidence; in issuing this ruling, the court accepts the tenuous claim

17 Published notice in El Periódico newspaper. May 13, 2013, p. 27. “CACIF demands to Guatemalan Constitutional Court to preserve governability and the future of country.”

that the rejection of the motion to reconsider the judge's refusal of the request submitted by his defense attorney constituted grounds for appeal. This is not the case, since the audio recording of the relevant trial day proves that the objection was solely directed against the sentencing court's decision to expel the defendant's attorney, and not against the motion."¹⁸

She later added, "With this ruling, I maintain that the Court is issuing a resolution which affects the legality of the proceedings, and, consequently, harms the development of justice, which is a fundamental right enshrined in the political Constitution of the Republic."¹⁹

The annulment of the trial left everything accomplished in a legal limbo, and this patently illegal and unlawful resolution, made a mockery of the victims, the country and the world. This attack brought against the legal proceedings by the hawkish entrepreneurial sector is an attack against the credibility of the entire legal system. It is a crippling way of conceiving democracy, citizenship and the law.

Malicious litigation undermines the justice system

Before, during and after the trial, various legal tactics were employed to hinder, prevent or postpone the trial and a conviction in favor of the surviving victims. On different occasions, the military defendants appealed to the Constitutional Court of the country to seek the application of amnesty for alleged crimes, but **amnesty is not applicable to these cases, because the Law of National Reconciliation**, a product of the Peace Accords, in Article 8, clarifies that amnesty cannot be applied to crimes of genocide, torture and forced disappearance.

The accused have put forth nonsensical appeals in order to delay the beginning and development of the trial. Since the capture of General López Fuentes, to date, the military defense has filed **over 100 challenges**, including objections, injunctions, appeals among others, that momentarily stopped the advance of the process. However, of these, **98 were thrown out by the appropriate bodies**.

18 Separate Opinion vote Main Judge of the Guatemalan Constitutional Court.

Gloria Porras Escobar. p. 2067, dossier 1904–2013.

19 *Idem*.

For example, the defense put forth a challenge of the accused against Judge Carol Patricia Flores, to stop her from hearing the case, tried to remove a Guarantee Judge from the process. Faced with this, CALDH presented an appeal against the decision of the First Court of Appeals, and thereafter, the case was transferred to High-Risk “B” Judge, Miguel Ángel Gálvez.

The day the trial started, the defense lawyers for Ríos Montt did not appear at the hearing, despite having been seen in the Supreme Court building. The general brought another attorney as his defender, who filed nine motions that morning to try to ensure that the Court did not hear evidence. Once each motion was declared without legal grounds, the attorney challenged the Court, which decided to remove him from the court and appoint attorney César Calderón as a temporary attorney for Ríos Montt.

The defense was a **political and media-based strategy** and not a legal strategy to inspire pity and portray the accused as “General Helplessness.” This strategy was clearly expressed by attorney Danilo Rodríguez that day on a TV show: “The strategy was to replace four lawyers and hire an enemy of the Presiding Judge and friend of the Court Judge in order to force them to refuse from hearing the case.”²⁰ The strategy also made it possible subsequently to challenge all proceedings in the trial.

What the defense did not consider was that the Court is vested with authority to protect the rights of the defense; ensure the speediness of the trial; and prevent the obstruction of debate and delaying of the process.

Another illegal action during the trial was a decision from Judge Carol Patricia Flores, who tried to return the case to previous phases without grounds and violating procedure. Not only did this fail to respect the rights and guarantees of people who sought protection, but it also **constituted a new and profound offense** and humiliation against the victims and plaintiffs.

20 Television program “A las 8:45”, Antigua Guatemalan channel. March 19, 2013.

The strategy of the defense of the accused

During the trial against José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez, the defense implemented a strategy which was more political than legal.

As mentioned above, the defense's legal strategy was to present a large number of frivolous and irrelevant legal objections with the aim of hindering and, indeed, stopping the judicial development of the legal proceedings. This strategy was implemented throughout the trial including up to the very last moment.

The political and communications defense strategy basically consisted of five points, which are detailed below:

- 1. Discredit the prosecution, which brought the charges of genocide, through a smear campaign against the Attorney General and Head of the Office of the Public Prosecutors.** A PR campaign was launched to accuse the Attorney General of belonging to leftist groups (and characterize the trial as political revenge); and to accuse them of not being impartial in their research. In addition, even family members were demonized in leaflets that were circulated.
- 2. Revive the concept of an Internal Enemy and generate a psychological war against human rights defenders, demonizing their actions and accusing them of being terrorists and threatening their organizations.** A PR and political campaign was launched to criminalize human rights defenders, particularly those who defend the right to truth, even using epitaphs in newspaper articles such as: "Marxists, terrorist conspirators, manipulators, missionary priests or religious Marxists, judicial assassins, foreign ideologues, infiltrators, white-collar terrorists, hawkers of human rights, etc." It is noteworthy that such demonization continues to the present.
- 3. Use Amnesty as a way to stop the spread of justice.** The idea that justice is not an indispensable requirement for the construction of a democratic State is promoted in social media. It was even stated that peace and justice are mutually exclusive.

4. **Use allegations and political lynching, and lack of due process to challenge the conviction.** In the communications strategy, they tried to create the image that General Efraín Ríos Montt was legally defenseless against a justice system that was going to lynch him.
5. **Build support from various power groups around the idea that there was no genocide in Guatemala and, therefore, Efraín Ríos Montt could not be convicted of that offense and, thus, impose the official interpretation of history.** Conservative groups of Guatemalan society argue the non-existence of the crime of genocide, which was expressed in various advertisements. Days before the start of the oral and public debate, the president of the republic was even questioned in the forum of the Association of Managers of Guatemala, about whether there was genocide in Guatemala. The President replied “no,” clarifying that his statement was made in his capacity as president of the nation.

The significance of the genocide trial in Guatemala

For the first time in Latin America, a national court managed to convict a former *de-facto* President of genocide. The existence of the five counts that constitute the crime of Genocide, and intentionality were proven with an overwhelming amount of evidence. Even a military expert, presented by the defendant, confirmed the thesis of the Office of the Public Prosecutors that José Efraín Ríos Montt was the one who gave the orders, had knowledge of everything, and received constant reports on military operations.

The trial showed that when you have public officials acting independently and objectively, the rule of law can be advanced and strengthened. The Public Prosecutor, the Judge of the Trial Court and the Court all demonstrated capacity to fulfill and perform their duties with ethics and professionalism.

The Judgment of the Court and its 718 pages reaffirm what was said by witnesses, by organizations and by the people. In Guatemala, genocide was committed. The sentence recognizes Indigenous

Peoples, their culture and their collective rights, identifies racism as a serious disease that affects our society, and hails justice as a right that it is guaranteed so that these crimes will never again be committed.

The Maya Ixil People, noncombatant civilians, spoke in their language of the horrors that they suffered during the Internal Armed Conflict. These accounts were heard by a trial court and the Palace of Justice.

For the first time, and after 30 years, women who were victims of sexual violence gave their testimony before a court, breaking a historic silence imposed by a patriarchal, racist and exclusionary State.

There was a debate on Truth, Memory and Justice. The ruling is a triumph for and affirmation of the diverse social and resistance movements composed of women, youth, social leaders, Indigenous Peoples, ancestral authorities, intellectuals, newspaper columnists and defenders of human rights and justice.

A large number of international organizations and friendly countries accompanied the entire process, showing that genocide has international significance and affects humanity.

This landmark trial revealed the structural and internalized racism in our society and its institutions. Not only were the impunity networks embedded in the justice system exposed, but so was the elite's brand of "democracy."

We emphasize that if the roots of racism are not addressed and resolved, democratic governance in general will remain fragile and the rule of law will continue to be threatened and only partially implemented.

Retrieving the Memory and Truth of the Peoples

"These processes of justice are crucial for the realization of the rights of victims, including the right to truth, justice, reconstruction of historical memory, reparations and guarantees of non-repetition; however, none of these elements may be conceived as an alternative to justice. This is a historic trial because it is the first time that a former head of State is prosecuted for the crime of genocide in a national court by national authorities and in the country where the violations

occurred. It also represents a step forward in the long process of transitional justice in Guatemala, after years of stagnation of the judicial process; and is a key step in the consolidation of the rule of law both in terms of the status of rights and the peace process,” noted Pablo de Greiff, the UN Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-repetition.²¹

“I would like to pay tribute to the courage of the survivors and witnesses who have made statements in this trial as well as the incredible work to collect and analyze the information that forms the basis for the charges...I would also like to acknowledge the important work of the Office of Public Prosecutors and the members of the judiciary who have sought to end impunity in Guatemala for crimes committed during the internal armed conflict,” stated Mr. Adama Dieng, Special Adviser on the Prevention of Genocide, before the suspension of the legal process against the former head of State and the former head of the intelligence services of Guatemala.²²

During all these years, organizations, groups and survivors, together have strived and continue to strive to recover historical memory; to raise social consciousness about the need to prosecute the grave violations of human rights in the past; as well as to reflect on the reality today and its relationship with the past. Guatemalans have been breaking down the walls of fear; overcoming the fear of speaking about what they have lived, and finding the courage to tell the truth... every day more women, more men, more youth become actors in the pursuit of justice.

In this way, we have been learning, building, coming together, to create other social and political ways of being, reaffirming that to look ahead, it is necessary to look back. Therefore, talking about genocide means looking at our present, because we are still living the consequences of the genocide’s impunity. We understand justice for the victims of the genocide and for all of us not only in terms of the incarceration of the material and intellectual authors, or the scientific

21 “Without Justice There Cannot be Just and Lasting Reconciliation,” United Nations Experts. Geneva: April 18, 2013.

22 Statement by Mr. Adama Dieng, United Nations Special Advisor on the Prevention of Genocide, about the judicial process against former *de facto* Head of State and former Chief of Intelligence Services of Guatemala. New York, April 23, 2013.

and legal proof of the facts. Justice for the victims of the genocide and for all of us goes beyond that, it necessarily includes the social and political recognition of what occurred, involves the redefinition of history and memory, represents the “Unofficial Truth,” and represents the dashed hopes and dreams of those who were massacred. It represents the hopes and dreams of those who live each day in pain from the brutality, and it means living in a democratic State ruled by law.

This is only possible when a wounded society continues to be indignant over yesterday’s violence and the violence of today. This may only be possible through the resistance, that resistance to forgetfulness, to a repressive State, to a society with amnesia, permeated by globalization and individualism. It can be realized only when the structural racism against the Mayan People is dismantled. And despite what happened with the conviction, the Mayan People continue raising their voices, using their hands to keep weaving with threads of memory and truth, the multicolored canvases of our Latin America. As expressed by the poet Kakchiquel Humberto Akabal in his poetry: “Now and then, I walk backwards. It is my way of remembering. If I only walked forward, I could tell you about forgetting.”