An Imperfect Success – The Guatemalan Genocide Trial and the Struggle against Impunity for International Crimes

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Abstract

On 10 May 2013, a Guatemalan trial court rendered a historic judgment, convicting former President José Efrain Ríos Montt to an 80-year prison sentence for genocide and war crimes. On 20 May 2013, in a 3–2 majority decision, Guatemala’s Constitutional Court annulled the trial judgment on procedural grounds. The Constitutional Court’s annulment decision, decried by international observers as a defeat of justice, seems to reaffirm the impossibility of successful domestic prosecution of powerful leaders for international crimes and reinforce the need for international prosecutions. However, such a conclusion does not do justice to the profound meaning the genocide trial against Ríos Montt has had for Guatemalan society. This article aims to give a more complete picture. It discusses how the trial could come about, in spite of the apparent inability and unwillingness of the Guatemalan state to prosecute the serious crimes of the civil war era. It looks at the role that the international community and international law played in the trial. Finally, it assesses the trial’s significance, in the face of the Constitutional Court’s annulment decision, for both Guatemalan society and the international community.

Keywords

genocide – Guatemala – CICIG – intent – command responsibility – indirect perpetration

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1 Introduction

On 10 May 2013, a Guatemalan trial court rendered a historic judgment, convicting former president José Efraín Ríos Montt to an 80-year prison sentence for genocide and war crimes while acquitting his Chief of Military Intelligence, José Mauricio Rodríguez Sánchez, of the same charges. The case concerned crimes committed during Ríos Montt’s short but brutal reign as de facto president of Guatemala, from March 1982 until August 1983. The judgment was received with jubilation by Ríos Montt’s victims and praise by international press and institutions.

The successful conclusion of the trial was especially remarkable in light of the domestic context in which it took place. Guatemala has one of the weakest justice systems in the world: in 2009, the overall impunity rate in Guatemala was 99.75 per cent. Moreover, current president of Guatemala Otto Pérez Molina, a former general himself, is alleged to have been involved in numerous human rights violations during the civil war. Against this background, the trial was generally regarded as a victory for the rule of law in Guatemala and an important step forward in the struggle against impunity for international crimes.

However, this spirit of optimism was not to last. On 20 May 2013, in a 3–2 majority decision, Guatemala’s Constitutional Court annulled the trial judgment on procedural grounds. International observers decried the decision as a defeat of justice. At the time of writing of this article, the trial is set to

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1 Tribunal Primero de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente (Guatemalan trial court in criminal matters, drug offenses and crimes against the environment), 10 May 2013, C-01076-2011-00015 Of. zdo (hereafter: trial judgment), <www.riosmontt-trial.org/2013/05/718-page-rios-montt-judgement-released-all-eyes-on-constitutional-court/> accessed: 4 December 2013. All translations are by the authors.


3 CICIG, Tercer Año de Labores, September 2010, p. 4.


continue in January 2015, although it is uncertain whether and how this will actually happen.\(^6\)

The Constitutional Court's annulment decision seems to reaffirm the impossibility of successfully prosecuting powerful leaders for international crimes at the domestic level, particularly in the context of a weak state like Guatemala. It seems to reinforce the need for international prosecutions in such cases. However, this conclusion would be premature and would not do justice to the profound meaning that the Ríos Montt trial has had for Guatemalan society.

In this article, we aim to provide a more complete analysis of the Guatemalan genocide trial and its relevance for both Guatemalan society and the international community. We will examine how the trial could come about, in spite of the apparent inability and unwillingness of the Guatemalan state to prosecute the serious crimes of the civil war era. We will look at the role the international community and international law played in the trial. Finally, we will assess the trial's significance, in the face of the Constitutional Court's annulment decision, for both Guatemalan society and the international community.

2 Run-up to the Trial

The Guatemalan 36-year civil war ended with the signing of the Accord for a Long and Lasting Peace on 29 December 1996.\(^7\) On 27 December 1996, the Guatemalan Congress passed the Law of National Reconciliation,\(^8\) providing for amnesty for political crimes committed during the internal armed conflict. The crimes of genocide, torture and enforced disappearance were explicitly excluded from the application of the amnesty provisions in that law.\(^9\) It took over sixteen years from the passing of the Law of National Reconciliation for a genocide conviction to be rendered. In those sixteen years, three intertwined developments stand out as crucial for creating the circumstances that permitted the opening of the trial: victim organization, international pressure and reform of the domestic justice system.

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\(^9\) Ibid., Art. 8.
2.1  **Victim Organization and the Guatemalan Truth Commission**

Towards the end of the civil war, after formal civil democracy was restored in Guatemala in 1985 and violence had decreased, victims started organizing themselves in their quest for justice. Prominent among the organizations founded to protect their interests are the Association for Justice and Reconciliation (AJR) and the Center for Legal Action in Human Rights (CALDH), two organizations which came to play an important role in the genocide case against Ríos Montt.

During the peace negotiations between the army and the guerrillas, which started in 1994, the victims were side-lined.\(^\text{10}\) One of the most contentious elements of these negotiations was the creation of a Truth Commission under the auspices of the UN. The negotiating parties finally settled on a commission with very limited powers: most crucially, it would not be able to name names.\(^\text{11}\)

Victims were naturally disappointed with the Truth Commission's very restrictive mandate. However, they still acknowledged the potential that the Commission offered and embraced it, reclaiming their role in the peace process as a result.\(^\text{12}\) Thousands of victims, encouraged by their organizations' leaders, gave testimony before the Commission. Supplemented by forensic and documentary evidence, this testimony allowed the Commission to deliver a very detailed report.

The Commission, chaired by Christian Tomuschat, concluded that acts of genocide had been committed during the Guatemalan civil war and that the army and its paramilitary allies were responsible for 93 per cent of the civilian deaths.\(^\text{13}\) Although the perpetrators could not be named, it was implicitly evident that the Commission blamed the army high command for the worst atrocities. It was one of the first successes for the victim organizations. With the truth about the atrocities of the civil war out, they shifted their efforts towards obtaining justice, both internationally and domestically.

2.2  **International Pressure**

Guatemala accepted the competence of the Inter-American Court of Human Rights (IACtHR) on 9 March 1987. Faced with an unresponsive domestic justice

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12 Isaacs, supra note 10, pp. 260–262.


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system, the IACtHR proved to be a crucial partner to the victims and their representatives. In one of the emblematic IACtHR cases relating to the Guatemalan civil war, the Court found the state responsible for conducting scorched earth operations and massacres against the Maya population. In its reparations judgment in the same case, the Court ordered that "[t]he State shall investigate effectively the facts ... in order to identify, prosecute and punish the perpetrators and masterminds ... " The IACtHR gave similar orders in many other contentious cases relating to the Guatemalan civil war.

The IACtHR's emphasis on the legal obligation to prosecute serious human rights violations encouraged victims in their quest for justice. Through its monitoring and compliance regime, the IACtHR has been able to engage the Guatemalan authorities in an on-going dialogue on the issue of domestic prosecution of those responsible for these violations. In some cases, this led to convictions against a small number of low-level perpetrators.

In addition to the IACtHR jurisprudence, proceedings before Spanish courts relating to the Guatemalan genocide based on universal jurisdiction played a significant role. In December 1999 a group of Guatemalan victims filed a suit before a Spanish court, accusing eight senior government officials, amongst which were former presidents Generals Lucas García, Ríos Montt and Mejía Victores, of terrorism, genocide and systematic torture. Spain issued arrest warrants against all eight defendants in July 2006. Although this did not lead to the arrest of the accused the proceedings remained open, putting more

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17 For example, in response to the IACtHR's Dos Erres judgment, the Guatemalan authorities investigated, prosecuted and convicted to lengthy prison sentences four low-level soldiers for their participation in the Dos Erres massacre. In September 2012, the IACtHR considered that, in doing so, the state has only partially complied with its orders, as it has not yet investigated and prosecuted those most responsible. Las Dos Erres Massacre v. Guatemala (monitoring and compliance order), 4 September 2012, Inter-American Court of Human Rights, paras. 7–11.
pressure on the state of Guatemala and making it difficult for the accused to travel outside their own country.

With the UN-backed Truth Commission, the proceedings before the IACtHR and the case before the Spanish courts, an international narrative was taking shape that the Guatemalan army bore the brunt of the responsibility for the atrocities of the civil war and that the state of Guatemala was under a legal obligation to prosecute those crimes. This internationally accepted narrative did not resonate in the domestic criminal justice system. AJR and CALDH had filed an official complaint for genocide with the Public Prosecutor's Office in 2001. However, the genocide case, like many other cases relating to the atrocities of the civil war, was systematically obstructed or simply did not advance. That was to change with the creation of the International Commission against Impunity in Guatemala.

2.3 Domestic Reforms Instigated by CICIG

After the end of the civil war, ordinary violence in Guatemala rose alarmingly and impunity rates were spectacularly high. To improve the performance of the domestic justice system, the Guatemalan state and the UN created the International Commission Against Impunity in Guatemala (CICIG) by treaty in 2006.20 CICIG's mandate is to assist the state of Guatemala in dismantling so-called 'clandestine power-structures' and in bringing down the impunity rate by proposing legislative reform, co-prosecuting emblematic cases and vetting the judiciary, public prosecutor's office and police force.21

CICIG was not created to investigate the atrocities of the civil war and never got involved in the genocide case directly. However, it has played a crucial indirect role by reforming the Guatemalan justice system. One of its innovations was the creation of special High Risk Courts:22 principally created to treat organised crime cases, the High Risk Courts have highly secured courtrooms, witness protection schemes and personal security for the judges. Cases from the inland departments, where judges and prosecutors risk their lives when

22 Ley de Competencia Penal en Procesos de Mayor Riesgo, Decreto No. 21-2009, Guatemala, 3 September 2009.
going against the interests of organised crime, can be taken to one of the two High Risk Courts in the capital. Because of the delicate nature of the case, the High Risk Courts also treated the genocide case. If it had not been for the safe environment and institutional backing enjoyed by the judges in their serving on the High Risk Courts, the genocide case may not have advanced the way it did.

A second crucial contribution of CICIG was its vetting of the Public Prosecutor's Office. In May 2010, an exceptionally corrupt man, even for Guatemalan standards, was appointed Attorney General. The head of CICIG resigned in protest. In reaction to the political turmoil that followed, the president withdrew the Attorney General. On the instigation of CICIG, a more transparent nomination procedure for the highest offices in the justice system had been put in place, which eventually led to the appointment of Claudia Paz y Paz as Attorney General in December 2010. Paz y Paz, a legal scholar and human rights activist, has been absolutely crucial for the advancement of the civil war cases.

3 Proceedings

The genocide trial that had been in the making for well over a decade eventually took less than two months in court. The first person to be indicted for genocide in Guatemala was former general López Fuentes in June 2011, marking the start of strenuous pre-trial proceedings. The trial against Ríos Montt and Rodríguez Sánchez commenced on 19 March 2013. Throughout the proceedings, the Public Prosecutor's Office was assisted by the previously mentioned AJR and CALDH as 'querellantes adhesivos', or co-prosecutors, representing the victims. AJR and CALDH played a crucial role in providing the evidence.

24 Paz y Paz had worked for the UN Truth Commission, the Archdiocese's Human Rights Office and the Institute for Comparative Penal Sciences Studies that she co-founded. She was a teacher at Landívar University, Guatemala, before being appointed, and wrote a PhD thesis on cultural genocide. Claudia Paz y Paz Bailey, La protección penal de los pueblos, especial consideración del delito de genocidio. University of Salamanca, Faculty of Law, 2005.
25 General López Fuentes was later declared physically unfit to stand trial.
3.1 The Prosecution Case

The two defendants were charged with genocide and war crimes. According to the final report of the Truth Commission, during the Guatemalan civil war acts of genocide had been committed against five distinct Maya peoples.27 Adopting a selective charging approach, the prosecutors based their accusation solely on the campaign the army had waged against the Ixil people, living in the northern province of El Quiché.

The acts underlying the genocide charge included the killing of 1,771 Ixil civilians in 93 identified attacks and the displacement of at least 29,000 Ixil civilians, or around 75 per cent of the Ixil population based on the 1981 population census.28 The military campaign plans Victoria 82 and Firmeza 83 and the operational plan Sofía, amongst other military documents that the prosecutors had obtained from the Ministry of Defense, contained references to the civilian Maya population as an internal enemy. Ríos Montt had signed all these military documents and received biweekly updates from the field commanders on the ongoing operations.

The typical modus operandi of the armed forces in their campaigns against the Ixil was to encircle a village, assemble all villagers, massacre all or a large proportion of them indiscriminately, and pursue and bombard those who managed to escape. Crops were set on fire to provoke hunger among Ixiles hiding in the mountains. The military offered ‘amnesty’ to those who turned themselves in to the armed forces and agreed to live in so-called ‘model villages’, which were under complete military control. The Ixiles living in the model villages were forced to participate in Civil Self-Defense Patrols, or PACs, and to assist the army in pursuing their fellow Ixiles who had managed to flee and survive in the mountains.

The evidence presented at trial by the prosecution to sustain those charges demonstrated a level of professionalism rarely seen in Guatemalan courtrooms. Over a hundred victims and survivors gave compelling eyewitness testimony of what had occurred in their villages. Dozens of expert witnesses, including forensic anthropologists, legal scholars, statisticians, sociologists and military experts, also testified. Added to that was solid documentary evidence, ranging from the military plans and reports of the era, to the results of various exhumations and analysis on the circumstances of death carried out by forensic experts. For the legal qualification of the acts as genocide the

27 See CEH, supra note 13, Tomo III, paras. 3198–3606.
prosecutors relied on the jurisprudence of the International Criminal Tribunals for the former Yugoslavia and Rwanda.\textsuperscript{29}

\subsection*{3.2 The Defense Strategy}

Faced with the overwhelming substantive evidence presented by the prosecution, the defense chose a strategy of procedural obstruction from the beginning. On the opening day of the trial, the lawyers that had represented Ríos Montt during the pre-trial phase were not present. Instead, Francisco García Gudiel, a lawyer with a long track-record of representing military officers in court, presented himself as Ríos Montt's attorney and started off his defense by requesting the recusal of two of the three judges. Presiding Judge Barrios refused to grant the recusal, arguing that it was an instance of \textit{litigio malicioso}, or malicious litigation.\textsuperscript{30} It was to be the start of a whole series of actions aimed at undermining the proceedings and provoking the judges.\textsuperscript{31} The judges responded by keeping a steady hand, moving the trial along and hearing the substantive evidence. Outside the courtroom in the meantime, vicious media-attacks were launched, aimed especially at Judge Barrios and Attorney General Paz y Paz, while president Pérez Molina contributed by repeatedly stating that he was convinced that genocide had never occurred.

\subsection*{3.3 Derailing of the Proceedings}

While pressure on the judges was mounting, the obstructionist legal strategy of the defense seemed to pay off. On 18 April 2013, pre-trial Judge Patricia Flores declared invalid all pre-trial and trial proceedings in the \textit{Ríos Montt} case that took place after 23 November 2011.\textsuperscript{32} The next day the trial judges declared that they considered the actions of Flores to be illegal, suspended the trial and turned the issue over to the Constitutional Court. On 30 April 2013 the trial was resumed and closing arguments were heard on 8 and 9 May. The trial neared conclusion when, on 10 May 2013 at 9.30AM, pre-trial Judge Flores reiterated her annulment of the trial. The trial court decided to disregard Flores' intervention and rendered its sentence in a jam-packed courtroom on 10 May 2013 at 4PM, only to see the sentence annulled after all by the Constitutional Court on 20 May 2013.

\textsuperscript{29} Ibid., para. A.1.

\textsuperscript{30} \textit{Ley del Organismo Judicial}, Decreto No. 2–89, Guatemala, Art. 201.

\textsuperscript{31} For an assessment of the legal tactics employed by the defense, see Burt and Thale, \textit{supra} note 5.

\textsuperscript{32} It is outside the scope of this article to fully explain judge Flores' mystifying reasoning in this decision. For a summary of this decision and other procedural issues concerning the trial, see K. Doyle, 'Day 20: defense attorneys walk out of trial in protest; preliminary court judge annuls trial as attorney general calls action illegal and promises legal challenge', \textit{Open Society Justice Initiative}, 19 April 2013.
4 Substantive Analysis of the Judgment

It is against the background of these chaotic proceedings that the trial judgment should be understood. The trial court convicted Rios Montt for genocide and war crimes, while his co-accused Rodríguez Sánchez was acquitted of all charges. Since both crimes were incorporated into the Guatemalan penal code in the 1970s the case does not involve the direct application of international law, nor do the judges rely explicitly on any international sources in interpreting the domestic provisions. There are however direct references to international treaties and case law in the overview of the charges presented by the Public Prosecutor's Office. Moreover, the formulations used in the judgment echo international sources on several points.

While the judgment deals with both genocide and war crimes, the legal and the public debate focused primarily on genocide. Therefore we have chosen to limit our discussion of the judgment to this crime. The legal basis for the judges' analysis with regard to genocide is Article 376 of the Guatemalan penal code, which is for the most part a direct translation of Article II of the Genocide Convention.

The judges' analysis and argumentation, while not as methodical as one would expect to find in an international court, do follow a pattern which is often found

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33 Art. 378 of Guatemala's penal code deals with Delitos contra los Deberes de Humanidad. While this sounds like crimes against humanity, it is in fact the implementation of the 1949 Geneva Conventions into Guatemalan criminal law. See N. Roht-Arriaza, ‘Genocide and War Crimes in National Courts: the Conviction of Rios Montt in Guatemala and its aftermath’, 17(14) American Society of International Law Insights (May 2013).

34 Código Penal de Guatemala, Decreto No. 17—73, Guatemala, Arts. 376 and 378 respectively.

35 The overview of accepted evidence does mention a number of international sources and documents, especially relating to the Karadžić and Mladić cases before the ICTY. See trial judgment, supra note 1, pp. 675–681.

36 Some differences between the Guatemalan and the international definitions of genocide do exist. Firstly, the enumeration of protected groups in art.376 of the Guatemalan penal code does not include racial groups. However, the Constitutional Court has clarified that the term 'ethnic' in the domestic definition should be understood to include racial groups as well. Corte de Constitucionalidad de la República de Guatemala (Constitutional Court of Guatemala), 22 February 2011, Exp. 2242-2010, pp. 8–9. Secondly, there are some small deviations in the wording of the genocidal acts. Art. 376(3) reads: "Inflicting on the group or on members of the group conditions of life that could bring about its physical destruction in whole or in part." Art. 376(4) reads: "Forcibly transferring children or adults of the group to another group." (Diversions from the Genocide Convention's wording are in italics; translation by the authors.) These differences in the definitions have no bearing on the substantive analysis of the trial judgment.
in international case law as well: first they consider whether, in a general sense, it can be said that genocide occurred in the area and period under consideration.\(^{37}\) In order to answer this question, they analyse whether the acts in themselves and the way in which they were committed demonstrate the existence of a genocidal plan or policy.\(^{38}\) Then the judges establish whether the individual accused was linked to the genocide in such a way that he bears responsibility for it.

### 4.1 Did Genocide Occur?

With regard to the \textit{actus reus} of the crime of genocide, the judges, relying especially on the testimony of eye-witnesses and evidence gathered through the exhumation of several mass-graves, came to the conclusion that the Guatemalan military had committed all acts enumerated in Article 376 of the penal code.\(^{39}\) It should be noted that the defense did not seriously question at any point during the trial that such acts had indeed been committed. Thus, the judgment focuses mostly on establishing the existence of a genocidal plan or policy.

#### 4.1.1 Crimes Directed against a Protected Group as Such

In order for the crimes committed to constitute genocide, they have to be committed against a protected group (national, ethnic, racial or religious) \textit{as such}. The judgment deals with this question at some length.\(^{40}\)

According to international doctrine, the \textit{as such} element in the formulation of genocidal intent is meant to express that the group in question was targeted \textit{because} of its separate national, ethnic, racial or religious identity.\(^{41}\) However, international case law recognises that this separate identity need not be the only reason for the commission of the genocidal acts. The existence of other motivations does not exclude the existence of genocidal intent.\(^{42}\)


\(^{39}\) Trial judgment, supra note 1, pp. 698–699.

\(^{40}\) Discussion of whether the Ixil group constitute a protected group under the Genocide Convention and the Guatemalan penal code is limited to the remark that "through the declaration of the Ixil women and men, it was established that they effectively belonged to the Ixil ethnic group...". Trial judgment, supra note 1, pp. 697–698. This remark demonstrates a subjective standard of self-identification for establishing the protected group.

\(^{41}\) See Schabas, supra note 38, at 294–306.

\(^{42}\) See Judgment, Eliézer Nyirugenge v. the Prosecutor, 9 July 2004, International Criminal Tribunal for Rwanda, appeals judgment, Case No. ICTR-96-14-A, para. 49.
In their closing remarks, Rodríguez Sánchez and his defense team had argued that the violence employed by the military was not aimed at the Ixil but at the guerrilla and should be understood against the background of the civil war and counter-insurgency operations. This position implies that the Ixil casualties were either part of the guerrilla or collateral damage. Indeed, this has been the typical line of reasoning of the Guatemalan military in defending its actions during the civil war.43

The judges rejected this claim. They considered that the motivation behind the counter-insurgency strategy was to destroy those who were considered as an enemy in the context of the internal armed conflict.44 In the eyes of the military command, the Ixil were a rebellious group and formed the support system of the guerrilla in the Quiche province.45 Accordingly, they were designated as an internal enemy that would have to be eliminated in order to successfully eliminate the guerrilla.46 The judges noted that this identification of the Ixil as an internal enemy should be seen against the background of the pervasive racism present within the Guatemalan ruling class, which formed "the basis for the genocide".47

In short, counter-insurgency considerations combined with a pattern of racism led the military command to seek to destroy the Ixil group as such. The judges find further support for this thesis in the fact that the military, in its operations in the Quiche region, made no attempts whatsoever to distinguish between combatants and the civilian population.48 Men, women, children, and the elderly were indiscriminately victimised by the army, the only constant being the fact that they all belonged to the Ixil ethnic group.

4.1.2 The Intent to Destroy and the Issue of the 'Model Villages'

The final question then is whether the military acted with the intent to destroy the Maya-Ixil group. The text of the Genocide Convention, or any other international instrument dealing with genocide, does not qualify the type of destruction required for genocidal intent. Many experts however believe that the word 'destruction' in this context is limited to physical or biological destruction.49

43 See for example La Hora, 'Aseguran que no hubo genocidio', 7 November 2006.
44 Trial judgment, supra note 1, p. 694.
46 Ibid., pp. 693–694.
47 Ibid., p. 693.
48 Ibid., pp. 693–694.
a view that has been confirmed by much of the international case law dealing with genocide.\textsuperscript{50}

This strict interpretation is based on the drafting history of the Genocide Convention and the rejection therein of the much wider concept of ‘cultural genocide’, which covers ‘any deliberate act committed with the intent to destroy the language, religion or culture of a group \ldots\textsuperscript{.51}’ The reasoning here is that because the drafters chose to limit the definition of genocide to acts which entail physical and biological destruction, the intent with which these acts are committed should also be directed towards physical and biological destruction.

On the other hand there have also been voices, both in domestic\textsuperscript{52} and in international case law,\textsuperscript{53} arguing for a more flexible interpretation, including the (non-physical) destruction of the group as a separate social unit. This interpretation is based on the idea that the legal good protected by the Genocide Convention is the existence of the group as such. While physically destroying members of the group is certainly an effective way of destroying the group, it is by no means the only one.\textsuperscript{54} Proponents of this view have argued that the only form of destruction excluded by the drafting history of the Genocide Convention is a destruction aimed exclusively at certain cultural characteristics of the group.\textsuperscript{55}

\textsuperscript{50} See for example The Prosecutor v. Radislav Krstić, 19 April 2004, International Criminal Tribunal for the Former Yugoslavia, appeals judgment, IT-98-33-A, para. 25. However, Schabas notes that there is also some support in both ICTY and domestic case law for a more flexible interpretation of the word ‘destroy’. Schabas, \textit{ibid.}, pp. 272–273.


\textsuperscript{52} Bundesverfassungsgericht (Federal Constitutional Court of Germany), 12 December 2000, 2 BvR 1290/99, para. 22.


\textsuperscript{54} Blagojević judgment, \textit{supra} note 53, para. 666. In his dissenting opinion in \textit{Krstić}, Judge Shahabuddeen distinguishes between the genocidal acts listed in the Genocide Convention and the genocidal intent with which they are committed. According to him, the fact that the former are limited to physical and biological destruction does not necessarily imply that the latter should be too. Separate and partly dissenting opinion by Judge Shahabuddeen, \textit{supra} note 53, para. 48.

\textsuperscript{55} See for example Bundesverfassungsgericht, \textit{supra} note 52, para. 28.
Over the whole, the judges in the *Rios Montt* case seem to conform to the strict interpretation of the word 'destroy', noting that they are “completely convinced of the intent to produce the physical destruction of the Ixil group”. They infer this intent from a number of factors, including the systematic nature of the attacks against the Ixil group, the indiscriminate victimization of men, women and children, the bombing of those who had been able to flee the attacked villages, the burning of the Ixils' crops and the military's strategy of using hunger as a weapon against those who fled the violence and were hiding in the mountains.

In this context, the judges attach special weight to the systematic sexual violence against Ixil women. They consider the mass rapes to constitute not only a genocidal act, but also an indication of genocidal intent. According to the judges:

... it was decided to rape women, not just as the spoils of war, but also to break the social fabric [of the group] and to accomplish the elimination of the Ixil seed; the sexual violence and the methods used therefore are forms of destroying the group, and confirm the intention to destroy the entire group.

They further point to particular acts of cruelty, such as cutting open the bellies of pregnant women to remove the foetus, because it represented "a seed which must be killed". According to the judges, this is "objective evidence of the intention to make the Ixil group disappear."

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56 Trial judgment, *supra* note 1, p. 699.


58 *Ibid.*, pp. 684–685 and 697. All these facts and circumstances have been accepted in international case law as facts and circumstances that can support an inference of genocidal intent from the acts committed. See for example, *The Prosecutor v. Radovan Karadžić*, 11 July 2013, International Criminal Tribunal for the Former Yugoslavia, 98bis Appeal Judgment, IT-95-5/18-AR98bis.1, para. 80.


60 Trial judgment, *supra* note 1, p. 689–690, translation by the authors. Spanish original: "... que se haya decidido violar a las mujeres, no sólo como botín de guerra, sino también para lograr la ruptura del tejido social y lograr la eliminación de la semilla Ixil, siendo por lo tanto los actos de violencia sexual y métodos usados, formas de destruir al grupo, comprobándose así la intención de destruir al grupo completo."

One element that is particularly interesting in light of the discussion on the proper interpretation of the word 'destroy' is the existence of the so-called 'model villages' described above. Taken in isolation, these model villages could perhaps be seen as the ultimate example of the sort of social destruction described by proponents of a broad interpretation. While the Ixiles living in the model villages were, for the most part, not physically annihilated, their circumstances clearly go beyond 'mere' cultural destruction. In these camps, Ixiles were subjected to "re-education" and militarization, in order to force them into a new "latinised" identity. Men were forced to take part in the so-called PACs that assisted the military in its operations against Ixil villages and refugees hiding in the mountains, while women were systematically raped. As noted by the judges, these measures clearly aim to destroy not only the culture, but also the social fabric of the Ixil group, and thereby illustrate the intent to destroy the group as a distinct social unit.

However, for the purpose of this particular case it is important to keep in mind that the model villages existed against the background of the larger military operations in the Ixil region, which were characterised by large-scale and indiscriminate killing of the Ixil population and inflicting on those who fled conditions of life clearly aimed at bringing about their physical destruction. That those kept in the model villages were allowed to live was, in that sense, an exception. It does not negate the judges' conclusion that, on the whole, there existed the intent to physically destroy the Ixil group. Through their participation in the PACs, the Ixiles kept in the model villages were even used as instruments in the further physical destruction of their own group.

4.2 Individual Criminal Responsibility

Having established that genocide occurred in the Ixil region in 1982–1983, the judgment turns to the question of the criminal responsibility of both accused for this crime. In order to find the accused responsible, the judges have to establish not only that they contributed to the commission of the crime, but also that they made this contribution with the required genocidal intent.

63 Trial judgment, supra note 1, p. 689–690.
64 International case law supports the view that the intent to destroy the group does not require that the perpetrators attempt to kill all members of the group under their control, see Krstić appeals judgment, supra note 50, and Blagojević trial judgment, supra note 53; but see L.J. van den Herik, 'The schism between the legal and the social concept of genocide in light of the responsibility to protect', in P. Kim and R. Henham (eds.), The Criminal Law of Genocide: International, Comparative and Contextual Aspects (Ashgate Publishers, Burlington, 2007), pp. 75–97, criticizing these judgments for that exact reason.
4.2.1 Modes of Liability

The judges analysed the criminal responsibility of the accused on the basis of
Article 36 of the Guatemalan penal code, which deals with autoría, or principal
perpetration. They found Ríos Montt responsible for the crime of genocide
under Article 36(3), which concerns the responsibility of those who "cooperate
in the realization of the crime, either in its preparation or in its execution,
through an act without which it would have been impossible to commit [the
crime]."

According to the judges, Ríos Montt contributed to the commission of the
crime of genocide in two ways. Firstly, there were his active contributions to
the creation of the genocidal plan, through ordering and authorizing the coun-
ter-insurgency strategy and its practical execution.65 Secondly, the judges note
that Ríos Montt, as high commander of the military, "had knowledge of what
was occurring [on the ground] and did not prevent it, even though he had the
power" to do so.66

This wording has lead several international experts commenting on the trial
to conclude that Ríos Montt was held responsible because he "had command
responsibility."67 Indeed, the judges' interpretation of domestic law on autoría
does seem to have been inspired by the theory of command responsibility as it
was developed in international criminal law over the last decades.68

However, international case law has made it clear that under a theory
of command responsibility the commander is held responsible for his own
behaviour, i.e. the failure to supervise his subordinates properly, and not
for the crimes committed by his subordinates.69 Accordingly, "a commander
is responsible not as though he committed the crime himself".70 This concep-
tion of command responsibility seems difficult to reconcile with the judges'

65 Trial judgment, supra note 1, pp. 700–703.
66 Ibid., pp. 700, 702.
67 See for example Roht-Arriaza, supra note 33.
68 The judges use the words 'command responsibility' (responsabilidad de mando) explicitly
in relation to Ríos Montt, saying: "In addition to the existence of command responsibility,
the Commander-in-Chief of the army is the highest authority and the one who exercises
command." Trial judgment, supra note 1, p. 701. Furthermore, the prosecution relied on
international case law dealing with command responsibility. See Accusation Ríos Montt,
supra note 28, para. IV.B.
69 The Prosecutor v. Sefer Halilović, 16 November 2005, International Criminal Tribunal for
the Former Yugoslavia, trial judgment, IT-01-48-T, para. 54; and The Prosecutor v. Enver
Hadžhadžihasanović and Amir Kubura, 15 March 2006, International Criminal Tribunal for the
Former Yugoslavia, trial judgment, IT-01-47-T), paras. 74–75.
70 Halilović, supra note 69, para. 54.
eventual conclusion that the accused bears responsibility as a principal perpetrator of and direct participant in the crime of genocide.\textsuperscript{71}

The judges' reasoning here should be understood in light of Article 18 of the Guatemalan penal code, which states that "he who omits to prevent a result that he has a legal obligation to prevent, will take responsibility as if he had produced it himself". Reading Article 36(3) in conjunction with Article 18, the judges could thus hold Rios Montt responsible under a theory of commission through omission because he had both the power, as a military commander, and the legal obligation, as head of state, to prevent massacres against the Ixil population from taking place. However, the judges did not reference Article 18 explicitly in their analysis of Rios Montt's criminal responsibility.

While ambiguity thus remains as to whether it should be qualified as command responsibility or commission through omission,\textsuperscript{72} Rios Montt's 'passive' contribution to the crime is vital to his responsibility under Article 36(3) of the Guatemalan penal code. This is underlined by the way in which the judges dealt with the responsibility of his co-accused. Rodríguez Sánchez was acquitted of all charges on the basis that, in his capacity as Chief of Military Intelligence, he lacked the capacity to give direct orders to the troops on the ground.\textsuperscript{73} The judges therefore conclude that Rodríguez Sánchez did not have the power to stop the crimes from happening and could not be held responsible for them.

In this rather formalistic line of reasoning, the judges do not address the fact that the prosecution, in its accusations against Rodríguez Sánchez, based his responsibility in large part on his (active) contribution to creating the policies that formed the basis for the commission of the crime.\textsuperscript{74} The judges apparently

\textsuperscript{71} Several authors have recognised that the type of command responsibility involving positive knowledge on the part of the commander of the commission of crimes by his subordinates, combined with a failure to prevent or suppress them, comes close to, or could even be seen as, a form of participation in the crime. See for example C. Meloni, \textit{Command Responsibility in International Criminal Law} (T.M.C. Asser Press, the Hague, 2010), pp. 216–224; and A. Zahar, 'Command responsibility of civilian superiors for genocide', \textit{14(3) Leiden Journal of International Law} (September 2001) 591–616, p. 614.

\textsuperscript{72} The prosecution did rely on Art. 18 in its charges against Rios Montt. See \textit{Accusation Rios Montt, supra} note 28, para. IV.B.

\textsuperscript{73} In the words of the judges, relying on the testimony of an expert witness, a Chief of Military Intelligence "does not have the ability to command, for which reason he cannot give orders to a military base, he cannot order that a prisoner be handed over, has no interference in the field of operations and cannot be held responsible for any action." \textit{Trial judgment, supra} note 1, p. 701.

\textsuperscript{74} According to the accusation, Rodríguez Sánchez had provided the intelligence and the analysis that led to the qualification of the Maya-Ixil group as "internal enemy". \textit{Ministerio
were of the opinion that this was not sufficient in itself to hold Rodríguez Sanchez responsible under Article 36(3) of the Guatemalan penal code. Nor did they consider his responsibility under any alternative mode of liability.

4.2.2 Genocidal Intent
Genocide is often called a special intent crime.75 This follows from the definition of the crime in Article II of the Genocide Convention: in order for the enumerated acts to constitute genocide, they must have been committed with the intent to destroy, in whole or in part, a protected group as such. The translation of this special intent into practice has been a challenge. In particular, the question of what degree of intent is required on the part of an individual accused to find him guilty of genocide has generated debate among scholars.

Two contrasting approaches to constructing genocidal intent can be found in the literature. The first approach, which has been referred to as the 'special intent interpretation' or the 'purpose-based approach', focuses on the individual perpetrator and his personal motives and requires that he can only be found to be criminally responsible for genocide if it is proven that he personally possessed the special intent to destroy a protected group.76 The second approach to genocidal intent focuses instead on the collective or systemic nature of the crime of genocide.77 As expressed by Claus Kress, this so-called 'knowledge-based approach' to genocidal intent requires that the individual accused had "knowledge of a collective attack directed to the destruction of at least part of a protected group and dolus eventualis as regards the occurrence of such destruction".78

International case law has upheld, at least in theory, the more traditional, purpose-based approach to genocidal intent.79 However, the issue of how to

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78 Ibid., at 577. Greenawalt further specifies that the individual accused should have acted in furtherance of such a genocidal campaign; Greenawalt, *supra* note 76, p. 2288.
79 See for example, Akayesu trial judgment, *supra* note 59, paras. 517–522; and Krstić appeal judgment, *supra* note 50, paras. 134.
prove the genocidal intent under this strict approach provides a challenge for the courts since it concerns the internal world of the accused and is therefore difficult to determine from the outside. International case law recognises that "by its nature, genocidal intent is not usually susceptible to direct proof". As a result, the courts have accepted that "genocidal intent may be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of the atrocities committed, the systemic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or policy". This leads some scholars to conclude that international case law, while paying lip service to the purpose-based approach to genocidal intent, has let the knowledge-based approach in through the backdoor.

In the Rios Montt case, the judges clearly adopted a knowledge-based approach to genocidal intent. Having established, as was discussed in detail in the previous paragraph, that the acts committed show the existence of a genocidal plan or policy, the judges further limit their discussion of Rios Montt's personal intent to his knowledge of and participation in this plan or policy.

In his closing statements Rios Montt had argued that he had no knowledge of the crimes being committed in the Ixil region, which according to him were perpetrated by local commanders who acted with autonomy in their regions. The judges rejected this claim. Pointing to the systematic nature of the massacres executed by the army, they argue that these were not 'spontaneous acts' perpetrated by regional commanders, but the realization of plans prepared by the military high command. In this context, the judges also note that Rios Montt ordered and authorised the military campaign plans that in their assessment formed the basis for the genocidal policy and received regular updates on the way in which these campaign plans were being implemented. Finally, the judges found that the use of helicopters and airplanes in the operations against the Ixiles formed a clear indication that the actions on the ground were planned and involved the military high command.

Having thus established his knowledge of the existence of the genocidal plan or policy and its practical implementation, and his failure to act in spite

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80 Karadžić 98bis appeal judgment, supra note 58, para. 80.
81 Ibid.
82 See, for example, Kress, supra note 76, p. 571.
83 Trial judgment, supra note 1, pp. 697 and 699–701.
84 Ibid., p. 700–701.
85 Ibid., pp. 684 and 702.
of this knowledge, the judges did not concern themselves further with the question whether Ríos Montt personally shared in the intent to destroy the Ixil group as such.86

4.2.3 Assessing the Judges' Construction of Ríos Montt's Criminal Responsibility

Having explained how the judges constructed Ríos Montt's criminal responsibility for the crime of genocide committed by his subordinate troops in the Ixil region, we would like to conclude this paragraph by offering some constructive criticism. While we consider that it represents at least a feasible interpretation of the international law on modes of liability and genocidal intent, we do not think it is the ideal construction for this case. International legal scholars have noted both with regard to command responsibility87 and with regard to the knowledge-based approach to genocidal intent88 that their application is not appropriate in cases concerning the highest-level accused.

More importantly perhaps, the current construction, which hinges mostly on the assertion that he had had knowledge of but did not stop the ongoing practical implementation of an existing genocidal plan, does not fully reflect the extent of Ríos Montt's involvement in, and responsibility for, the genocidal campaign waged against the Ixil group. To say that he had knowledge of an existing genocidal plan obscures the fact that he generated it. To say that he did not stop his subordinates from implementing this plan obscures the fact that, in doing so, his subordinates were acting in accordance with his wishes.

In our opinion, Ríos Montt's participation in, and responsibility for, the crimes committed by his subordinates would have been better articulated if the judges would have chosen to analyse it under another theory of criminal liability, which had been alternatively charged by the prosecution: the theory of indirect perpetration through control over a hierarchical

86 It can of course be argued that the combination of this knowledge and his failure to act may form a reasonable basis to infer Ríos Montt's individual genocidal intent. See W.A. Schabas, 'The Jelisic case and the mens rea of the crime of genocide', 14(1) Leiden Journal of International Law (March 2001) 125-139, p. 132. See also The Prosecutor v. Vujadin Popovíc et al., 10 June 2010, the International Criminal Tribunal for the Former Yugoslavia, trial judgment, IT-05-88-T, para. 830, recognizing that knowledge of the existence of a genocidal plan may constitute "further evidence supporting an inference of intent". However, the judges do not explicitly make this inference.


organization. The evidence presented at trial and accepted by the court could have easily supported such a construction, which would also have been in accordance with recent developments in both international and domestic case law.

5 The Constitutional Court's Annulment Decision

None of the substantive points of law discussed in the previous paragraph played any role whatsoever in the Constitutional Court's decision to annul the trial judgment. It focused completely on a minor irregularity in the


90 For example, the judges accept as proven that Ríos Montt "used the state apparatus to identify the Maya-Ixil ethnic group as internal enemy .... in this vein, the actions executed by the accused, inherent in his power of command over the military, and the military operations executed under his orders.... were directed towards the elimination of the Maya-Ixil ethnic group." Trial judgment, supra note 1, p. 110. The judges also used language reminiscent of indirect perpetration in their analysis of Ríos Montt's participation in the crime, saying that he had "control over the crime" and "control over the military for the application of his strategy". Trial judgment, supra note 1, p. 700.

91 The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, 30 September 2008, International Criminal Court, decision on confirmation of charges, ICC-01/04-01/07, paras. 480–539. The ICC discussed this mode of liability in the broader context of its acceptance of the control-theory for distinguishing between principal and accessory liability, which is a controversial issue in international criminal law and has generated intense academic debate. See for example J.D. Ohlin, E. van Sliedregt and T. Weigend, 'Assessing the control-theory', 26(3) Leiden Journal of International Law (September 2013) 725–746.

92 Corte Suprema de Justicia de la República del Perú, Sala Penal Especial (Special Penal Chamber of the Supreme Court of the Republic of Peru), judgment of 7 April 2009, Exp. No. AV 19-2001 (acumulados), Cases of Barrios Altos, La Cantuta and Sótanos SIE. For an exhaustive analysis of the case, see K. Ambos and I. Meini (eds.), La autoría mediata - el caso Fujimori (ARA Editores, Lima, 2010).

93 For an alternative reading of the modes of liability used in this judgment, see S. Kemps, 'Guatemala prosecutes former president Ríos Montt – new perspectives on genocide and domestic criminal justice', 12 Journal of International Criminal Justice (2014), pp. 147–151. Kemps argues that, in constructing Ríos Montt's "essential contribution" under art. 36(3) of the Guatemalan penal code, the judges were guided by the concept of 'functional control of the crime', which, while also an "offshoot" of the control theory, is distinct from the theory of indirect perpetration through control over a hierarchical organization.
proceedings surrounding one of the many constitutional complaints that had been brought by the defense. In doing so, it provided the ultimate payoff for the defense strategy of frustrating and derailing the trial.

The complaint that led to the annulment decision has its origin in the dispute between Rios Montt's lawyer García Gudiel and the trial judges on the first day of trial, as a result of which Gudiel had been expelled. Upon Gudiel's expulsion, a complaint was filed with the Court of Appeals. On 18 April 2013, the Court of Appeals ordered Gudiel to be reinstated and the proceedings to be suspended until such time. The proceedings were indeed suspended as of 19 April 2013, albeit not in response to the Appeal Court's order but rather as a result of the confusion created by pre-trial Judge Flores and the Constitutional Court. On 30 April 2013, the trial court reinstated Gudiel and resumed the proceedings. On 9 May 2013, the Court of Appeals affirmed that the trial court had effectively complied with its 18 April decision. According to the Constitutional Court, the Court of Appeals erred in this 9 May finding.

Basically, the Constitutional Court is of the opinion that the trial court did not comply with the Court of Appeal's 18 April decision because it had not suspended the proceedings in direct response to it. The Constitutional Court continues that the trial court bypassed the suspension order when it resumed the proceedings on 30 April and reinstated Gudiel. According to the Constitutional Court, the trial court should have not resumed the proceedings until the Court of Appeals confirmed that it had fully complied with its orders. On this basis, the Constitutional Court annuls all procedural acts undertaken after 19 April.

The Constitutional Court's annulment decision has been severely criticised, by both international and domestic experts. The most poignant critique of the decision came from within the Constitutional Court itself, in the form of two strong dissenting opinions. The dissenting judges note, inter alia, that the Constitutional Court overstepped its competence as, in effect, the Constitutional Court's decision did not concern an issue of constitutional law.

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94 See supra, Section 3.3.
96 Ibid., p. 10–11, 14.
97 See for example Burt and Thale, supra note 5.
98 See Annulment decision, dissenting opinion by Judge Gloria Patricia Porras Escobar (hereafter: Porras dissent); and Annulment decision, dissenting opinion by Judge Mauro Roderico Chacón Corado (hereafter: Chacón dissent), both available at <www.right2info.org/resources/publications/votos-razonados-may-21-2013>, 5 December 2013.
but rather a very detailed point of procedural law.99 Dissenting Judge Chacón further notes that the effects of this decision, which include annulment of the trial judgment, are flagrantly disproportionate to the procedural defect found by the majority.100 Judge Porras adds that this is especially so because this defect should be measured against the victims' constitutional right to access to justice, which is severely harmed by the majority's decision.101

Formally, the annulment decision 'only' requires that the closing statements by the parties involved and the trial judgment itself would have to be repeated. The actual results of the decision, however, have been more far-reaching. The trial judges of High Risk Court A have been forced to recuse themselves, as they can no longer be seen to be impartial in the trial having already given their opinion on it once. It is not clear yet whether the trial will actually resume in January 2015, nor is it clear whether, if the trial is resumed at all, the all-new set of judges would be able to base their judgment on the evidence already presented in court by the prosecution or whether all the evidence would have to be presented anew.102

6 Societal Impact of the Trial

Given the annulment decision by Guatemala's Constitutional Court, it may seem that the entire trial has been in vain. We argue that this is not the case for three principal reasons. First of all, the genocide trial has been, and if it resumes will continue to be, an important step in Guatemala's incomplete process of reckoning with its traumatic past. Secondly, the professionalism and determination with which the Public Prosecutor's Office and the trial judges have handled the genocide trial is a further step in eroding the 'project of impunity' in Guatemala. Thirdly, and perhaps most crucially, the trial contributes to empowering the victims of Guatemala's civil war.

6.1 Reckoning with the Past

Although internationally it is well accepted that the Guatemalan military committed genocide against the indigenous population in the early 1980s, domestically the truth about the civil war remains more contested. When the UN-backed Truth Commission presented its report in 1999, the army and the government refused to accept its conclusions. Domestic enquiries into what

99 Porras dissent, supra note 97, para. B.4.
100 Chacón dissent, supra note 97, para. B.
101 Porras dissent, supra note 97, para. B.5.
102 Prensa Libre, supra note 6.
had happened during the civil war years were even less tolerated. The truth commission installed by the Guatemalan Catholic Church presented its report in 1998. Two days after the presentation the commission's director, Bishop Gerardi, was brutally murdered.\textsuperscript{103} Such violence long stifled any meaningful debate on the violence employed by the military during the civil war.

The army and its supporters, meanwhile, have always maintained that incidental violent excesses may have been committed, both by the army and by the guerrilla, but that there was never a genocidal campaign by the army against the indigenous population. This line of reasoning is still openly defended by many influential persons, including President Otto Pérez Molina.

Against this background, the genocide trial represents a significant step for Guatemalan society in coming to terms with its traumatic past. Firstly, it has ignited an intense public debate about this past. Secondly, the quality of the evidence presented in the so-called ‘trial of the century’ and the daily broadcasts from the courtroom on national television served to infuse the debate with facts that were previously only known to a small circle of victims and activists. Eye-witness testimony of the extreme cruelties committed against the Ixil population, including women and children, were widely publicised in the Guatemalan press and make the army's position that it did only what was needed to protect the country increasingly difficult to maintain.

On the other hand, the debate ignited by the trial is not a particularly civil one. It has been harsh and full of personal attacks on individuals involved in the trial and threats of violence. One of the most vocal opponents of the trial, the so-called 'Foundation Against Terrorism', has been particularly direct in accusing Attorney General Paz y Paz and Judge Barrios of subversion, Marxist tendencies and terrorism.\textsuperscript{104} A group of more mainstream Guatemalan politicians, including two former vice-presidents, claimed that the trial represented an “attack on the Peace Accords” and that a conviction could lead to renewed political violence.\textsuperscript{105}

\textsuperscript{103} For a compelling overview of the murder of Bishop Gerardi and the ensuing investigation, see F. Goldman, \textit{The Art of Political Murder – Who Killed the Bishop?} (Grove Press, New York, 2007).

\textsuperscript{104} \textit{See particularly} the \textit{La Farsa del Genocidio} ('The Farce of Genocide') series of publications by the Foundation Against Terrorism, <http://es.calameo.com/accounts/2633951>, 5 September 2013.

\textsuperscript{105} \textit{Traicionar la paz y dividir a Guatemala} ('Betraying the peace and dividing Guatemala'), a statement published in several leading Guatemalan newspapers on 16 April 2013, signed by twelve influential Guatemalan politicians, <www.plazapublica.com.gt/sites/default/files/traicionar_la_paz_y_divdir_a_guatemala_o.pdf>, 5 September 2013.
However, in the Guatemalan context, the fact that the antagonism has so far been limited to words and has not spilled over into physical violence is a victory in itself. It stands in sharp contrast to the way in which the trial against the murderers of Bishop Gerardi played out. This trial was also presided over by Judge Barrios. She survived a bomb attack on her home on 21 March 2001, the night before the trial was due to start. Over the course of the proceedings, more than ten witnesses and other people involved in the trial were murdered.106

The reactions by the likes of President Pérez Molina and the Foundation against Terrorism are a clear indication that the wounds of the past have not healed and that many of the causes underlying the internal armed conflict remain unresolved. Openness on what has happened, sustained by solid evidence in court, is the only way for Guatemalan society to finally come to grips with its past. That this is now possible without it leading to violence and deaths, is progress.

6.2 **Eroding the Project of Impunity**

At first glance the Constitutional Court's annulment decision seems to be a resounding confirmation of the ever-prevailing impunity in Guatemala. However, the fact that the Constitutional Court saw itself forced to hit the emergency exit-button the way it did shows that those favouring the rule of law over the rule of force are slowly winning ground.

The impunity that characterises the Guatemalan judicial system is not merely the result of incompetence and omission; rather, impunity requires the continuous and deliberate commission of acts undermining the justice system on the part of those segments of Guatemalan society that benefit from it. It should not be forgotten that, although the military officially lost its power in 1996 with the signing of the Peace Accords and the de-militarization of Guatemalan society, the power structures that rule Guatemala remained essentially unchanged.107 Those who have an interest in suppressing any efforts towards justice for the crimes committed during the civil war were long able to do so. The genocide trial, which saw both the Public Prosecutor's Office and at

106 See Goldman, *supra* note 104. Eventually the trial court presided by Judge Barrios convicted three army officials and a priest for their involvement in the killing of Bishop Gerardi.

107 For example, Ríos Montt has continued to be a powerful figure in Guatemala well after the end of the civil war. He ran for Congress in 1999 and served as its president from 2000 to 2003, while the protégé that he put forward, Alfonso Portillo, won the presidential election of 1999. Portillo was extradited to the United States for money laundering charges on 24 May 2013, only four days after the Constitutional Court's annulment decision.
least part of the judiciary rally behind the cause of the Ixil population, shows that the project of impunity in Guatemala is crumbling.

The fact that the genocide trial took place before a domestic court is crucial in this context. A sentence against Ríos Montt rendered by a Spanish judge acting on universal jurisdiction, or by an international tribunal, might not have been overturned by a corrupt Constitutional Court. However, the impact of a Guatemalan sentence, even an overturned one, is incomparably more profound. That indigenous groups and NGOs can succeed in bringing down one of the iconic representatives of the Guatemalan establishment, and do so with help of the Guatemalan state apparatus, is unprecedented and ground-breaking for Guatemala.

Moreover, upholding impunity works best when done inconspicuously, away from the public eye. Faced with the advances made in the genocide trial, the agents of impunity in Guatemala saw themselves forced to come out into the open. The strategy of frustrating and obstructing trial proceedings in the background had served well for over a decade but eventually had been exhausted, as the genocide trial had come to a conclusion. When the Constitutional Court majority annulled the already concluded trial, it exposed itself directly as an obstacle to justice. In that sense, the genocide trial can serve as a point of reference for improving the quality of Guatemala's judiciary.108

6.3 Empowering Victims
Perhaps most fundamentally, the genocide trial represents an important new step in the relationship between the Guatemalan state and the indigenous victims of the military dictatorships. As the trial judges noted, racism against indigenous people is pervasive amongst the Guatemalan elite and state-apparatus. Until today, indigenous people lack adequate access to education and healthcare and ethnic inequality is high.109 The genocide trial marks the most significant instant in which a branch of the state has reached out to those marginalised groups and furthered their interests.

In fact, not only did a branch of the state reach out to the indigenous population, but the victims themselves were crucial in bringing about this change in their relationship with the state. The victims and survivors of the genocide played a leading role throughout the decades leading up to the trial and during the trial itself through the participation of victim groups as co-prosecutors. Through the trial, victims have been able to fight back and to assert their

108 See also CICIG, Los jueces de la impunidad, 28 November 2012, a CICIG report that identifies 18 judges as being agents of impunity.
human dignity in the face of their oppressors. No longer are indigenous people mere objects of Guatemalan state policy, but they vindicate their rights and demand a more responsive and inclusive state.

7 Conclusion

The genocide trial against Ríos Montt has had a profound impact on Guatemala. Amplified by daily broadcasts from the courtroom on national television, the trial marked a step further in Guatemala's process of reckoning with its past. The international community has played an important role as an 'enabler' of this trial, through the UN-backed Truth Commission, the Inter-American Court of Human Rights, the Spanish courts and CICIG. Crucially, the international community encouraged the Guatemalan authorities to hold this trial themselves rather than do it for them. That the trial was undertaken by the domestic justice system led to a societal impact more profound than any international trial could have had.

Holding trials of this magnitude domestically in a weak justice system is of course susceptible to vulnerabilities. The defense employed a strategy based on abuse of process and obstruction from the beginning, in which they were allowed more freedom than might have been allowed in an international setting. The pressure on everybody involved in the trial resulting from the smear campaigns in the media and the statements by president Pérez Molina was immense. Although Judge Carol Patricia Flores failed to derail the proceedings, the majority of the magistrates of the Constitutional Court in the end succeeded in stopping the trial on dubious grounds.

However, notwithstanding the negatives of holding such a trial domestically we believe that the positives carry greater weight. Not only is Guatemala dealing with its own past today, the trial can also serve as a point of reference in further improving Guatemala's justice system. The sophistication with which the prosecution and the trial judges dealt with a charge as complex as genocide is unprecedented in Guatemala's courtrooms. Most importantly, the trial empowered victims and represents a breakthrough in the generations-old

110 Right after Judge Barrios read the conviction the victims in the courtroom started singing the famous poem by Guatemalan poet and activist Otto René Castillo, himself murdered by the army in 1967, 'Sólo queremos ser humanos' ('We only want to be humans'), a powerful expression of the sentiment that the trial is in recognition of the human dignity of the indigenous victims.
relationship of suppression and exploitation between the state and the indigenous population.

As this article has shown, the international community has a valuable role to play in situations like Guatemala's, and domestic courts have a valuable role to play in the fight against impunity for international crimes. The future of the genocide trial against Ríos Montt is uncertain at this point, but it definitely deserves the continued support of the international community.