

7-17-2003

## Guatemala's Highest Court Lets Gen. Rios Run

LADB Staff

Follow this and additional works at: <https://digitalrepository.unm.edu/noticen>

---

### Recommended Citation

LADB Staff. "Guatemala's Highest Court Lets Gen. Rios Run." (2003). <https://digitalrepository.unm.edu/noticen/9115>

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiCen by an authorized administrator of UNM Digital Repository. For more information, please contact [amywinter@unm.edu](mailto:amywinter@unm.edu).

## Guatemala's Highest Court Lets Gen. Rios Run

by LADB Staff

Category/Department: Guatemala

Published: 2003-07-17

In what is already being called "a new type of coup," Guatemala's Corte de Constitucionalidad (CC) has ruled that Gen. Efraín Ríos Montt is eligible to run for the presidency of the republic. The ruling allows the 77-year-old perennial candidate, now president of Congress, to right a wrong he suffered in 1974, when, by widely accepted accounts, he was elected president but fraudulently deprived of the office. The ruling may also have destroyed any semblance of a judicial system in Guatemala.

Ríos began working for this moment in 1990 (see NotiCen, 2003-06-26), when he first sought a high-court ruling allowing him to run despite the existence of Article 186 of the Constitution, which withholds eligibility for the office of president to anyone who participated in the overthrow of the government, as the general did in 1982 when he assumed the presidency following a coup that curtailed the regime of Gen. Romeo Lucas García (1978-1982).

Since 1990, Ríos Montt's siege on the Constitution has been turned back repeatedly. In all, 55 jurists have voted against him; only nine have supported him. But four of those nine sit on the current court and, in a 4-3 decision, have given him the right to run. In a single stroke, these four have overturned past decisions by the Registro de Ciudadanos (RC), the Tribunal Supremo Electoral (TSE), the Corte Suprema de Justicia (CSJ), and the CC.

Textually, Article 186, paragraph a, of the Constitution says the presidency is open to "neither the leader nor the chiefs of a golpe de estado, armed revolution, or similar movement who have altered the constitutional order, nor those who, as a consequence of such acts, assume the leadership of government." There is no argument that the constitutional article describes exactly what Ríos Montt did, and this has been the basis upon which the majority of judges have ruled through the years. Those few who have voted otherwise have asserted that, in denying him participation, Ríos Montt's fundamental right to elect and be elected was violated. They have also supported the argument that Article 186 could not be imposed *ex post facto*.

This Constitution went into effect in 1985; Ríos Montt took the presidency in 1982. It is unknown whether these were the arguments of the majority of the court this time as no written decision has been made public. But these were the judgments of Edmundo Vasquez Martínez of the CSJ and Hector Zachrisson of the CC in 1990. These two cast the sole votes in their respective courts in favor of the general.

Nobel Peace laureate Rigoberta Menchú called the decision a "golpe de estado," and charged that the ruling Frente Republicano Guatemalteco (FRG), which the general also heads, had packed the court. "The FRG usurped the court, which is supposed to be the wellspring of morality, legality, and constitutionality," she said. The decision is a serious blow to post-war efforts to establish an institutional basis for the implementation of the provisions of the 1996 Peace Accords, the agreement that brought an end to the internal war in December of that year (see NotiSur, 1996-12-13).

A statement from the Alianza contra la Impunidad spoke of the decision as a strike against the state of law, shaming the people, making the profession of judge a dirty political business and the Corte de Constitucionalidad a circus. The anguish was not limited to rights activists or lawyers.

Business magnate Dionisio Gutierrez called the damage to institutionality irreparable, risking the destruction of the burgeoning democracy and making the country "practically a de facto state." He warned Guatemalans to prepare, "because today, more than ever, the risk of electoral fraud is great." Roberto Castaneda, president of the powerful *Comite Coordinador de Asociaciones Agricolas, Comerciales, Industriales y Financieras (CACIF)*, spoke for the most influential within the private sector in repudiating not only the decision but also the political manipulations that preceded it. But from among the statements of revulsion and repudiation that swept across traditional racial, class, and economic divisions, perhaps those with greatest portent were statements like Deputy Anabella de Leon's, who said that, "while the Constitution exists, he [Rios] is blocked from participation in the elections, and the TSE cannot obey this resolution, because nobody is obligated to obey illegal orders." De Leon was calling on the country to ignore the CC, a possible first step in the breakdown of institutional order.

### *A possible way out*

There have also been calls for bringing the case to the Inter-American Court of Human Rights (IACHR) but an analysis of the consequences and feasibility of that has yet to be discussed publicly. Another possibility lies with the TSE. If procedure is followed, the high court will now return the case to the CSJ, whose judgment it overturned. The CSJ, in turn, must return the case to the electoral court, which must then return it to the RC, which had declined to put with Rios Montt's name on the list of official candidates. The RC would theoretically be instructed to list the general as a candidate and that would be the procedural end of the matter.

But Roberto Molina, president of the *Centro para la Defensa de la Constitucion (Cedecon)*, says that Deputy de Leon, in saying that nobody has to obey illegal orders, has a constitutional leg to stand on. Article 156 of the magna carta says that no one, including the TSE, has to do anything that contradicts the law or the Constitution. The TSE, as the highest electoral authority, could, on constitutional grounds, refuse to order the RC to register Rios Montt. While sure of his constitutional ground, Molina is uncertain whether the tactic can or will be implemented. First, he said, "it is necessary to analyze what the resolution of the magistrates was based on and how it was written." Also, "We will need to see the reaction of the citizenry and the different sectors of society. We have demonstrated that the right of resistance and of not obeying orders that contravene the Constitution exist. We have to be attentive to what the human rights organizations have to say."

The initial wave of reaction clearly supports generalized resistance. Guatemala's largest daily *Prensa Libre* editorialized, "Mario Ruiz Wong, Francisco Palomo, Manuel de Jesus Flores, and Cipriano Soto [the four CC justices who were the majority] stabbed constitutional order in the back and, being at the service of Riosmontism and embedded in the CC, complied with the unworthy mission with which they came: to permit the participation of Efraim Rios Montt as a candidate in the elections, by means of a vote rigged and advertised by the ex-conspirator...." The impassioned piece noted the possibilities of going to the IACHR and of indicting Rios after lifting his congressional

immunity, but saved the full force of its wrath for the magistrates. "The CC has just created a new kind of coup, one perpetrated by those who have the moral obligation to defend the Constitution and instead become, plainly and simply, its executioner."

From Paris, the Federacion Internacional de Ligas de Derechos Humanos requested that the CC vacate its decision, "in accordance with the legal dispositions currently in force in Guatemala, and on the basis of past decisions of the CC itself and of the IACHR." Prensa Libre released a poll at the beginning of July indicating that Rios Montt was preferred by 7.9% of those who intended to vote in the Nov. 9, 2003, election. He trailed Oscar Berger of the coalition Gana, the favorite, who had 39.9%, and Alvaro Colom, of Unidad de la Nueva Esperanza (UNE) with 13.1%.

-- End --