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## Steps Toward Justice in Guatemala

by LADB Staff

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Efrain Rios Montt, former general, president, congressional leader, and presidential candidate (See NotiCen, 2003-07-24 and 2004-01-08) has been indicted in connection with the death of a journalist. He is under house arrest, and has been subpoenaed to testify before the Spanish judge who threw the book at Augusto Pinochet.

After winning the right to run for President in 2003 despite a constitutional prohibition written specifically to exclude him, Rios unleashed an electoral campaign unequalled in recent times for its violence and bloodshed. Guatemalan judge Victor Hugo Herrera of the Juzgado Quinto de Instancia Penal issued an indictment in early March against Rios for premeditated murder, coercion, and threats, and ordered the foundering strongman to a kind of modified house arrest allowing some freedom of movement.

The charges arose out of the events of July 24 and 25, 2003, when mobs of sympathizers of the Frente Republicano Guatemalteco (FRG) raged through the capital, allegedly on orders of Rios Montt, the party leader. A journalist, Hector Ramirez, suffered a heart attack while being chased by the mob and died. The judge said he found cause to bind Rios Montt over for trial on evidence presented by the Ministerio Publico (MP) but acknowledged that the investigation is weak. He gave prosecutors six months to sustain the allegations.

Human rights organizations called the judge's order historic and positive. Said Gustavo Meono of the Fundacion Rigoberta Menchu, "It is favorable in the sense that ever-increasing numbers of judges, prosecutors, and lawyers are going to overcome fears that have practically paralyzed justice in Guatemala when it concerns a military or powerful person."

### *Good enough for Al Capone, but not Rios Montt*

Meono wasn't entirely satisfied, because these are relatively minor charges compared to the accusations of genocide during the internal war years, 1960 through 1996, for which the general might have been charged. The foundation director compared the case to that of Al Capone; "It wouldn't be the first time in history that a great criminal is convicted of a lesser crime. The disturbances and the murder of Ramirez are an atrocity, but they are nothing compared to the massacres of indigenous, and the scorched earth." It was because of the scant possibility of those greater charges ever being levied that Rigoberta Menchu appealed to Spanish justice for trial on those allegations.

Carmen Ibarra, director of the Fundacion Myrna Mack, was more hopeful. She said that opening a case against Rios brings new hope for beating down the doors of impunity, and investigating both the previous government and the army. Constitutional Court gave a party, nobody came Both critics saw their aspirations at least somewhat reinforced, this April.

On the 14th of the month, the Corte de Constitucionalidad (CC), Guatemala's highest and the one that made the final favorable ruling on the constitutionality of the Rios presidential bid, changed leadership. Cipriano Soto, one of the justices who voted with a rigged majority, to the consternation of the majority of the legal and juridical community, ascended to the presidency of the court in a ceremony shunned by all but the judge's own family and two fellow judges who had similarly sold out to the FRG. The installation of the new CC president was an intense embarrassment. The other CC magistrates did not show up, nor did the legal scholars of the Universidad de San Carlos, who, in their traditional caps and gowns usually lend pomp and dignity to these occasions, nor did legislators, officials of the executive branch, nor of the judicial.

Repudiation of the FRG corruption of the system was total. But humiliation depends on the ability of its victim to experience it; Soto remains at the head of the court. As the Guatemalan justice system tests itself yet again on the lesser charge against Rios Montt, it may ultimately be the Spanish courts that mete out punishment for the general's more serious alleged crimes.

On April 21, Meono told the press that Menchu's appeal to famed Spanish judge Baltasar Garzon had met with success and the judge might soon be arriving in Guatemala to conduct a hearing for individuals implicated in cases of crimes against humanity during the war. Meono said Garzon would arrive following the granting of a request for collaboration with a Guatemalan counterpart. Garzon's petition calls for the investigation of Rios Montt, and of four other generals and three former government officials.

Among those implicated along with Rios are former heads of state Romeo Lucas Garcia (1978-1982), Oscar Mejia Victores (1983-1986), ex-Interior Minister Donald Alvarez, and ex-police chief German Chupina. Garzon would come to Guatemala to hear testimony of witnesses who for one reason or another could not travel to Spain to testify. The procedure requires the cooperation and assistance of Guatemalan courts, and is the outcome of a suit Rigoberta Menchu filed in December 1999 in Spain alleging genocide and state terrorism. Spain has determined its justice system has jurisdiction because of a 1980 Guatemalan police raid on the Spanish Embassy in 1980 that left 37 dead.

Menchu's father, who had taken refuge in the embassy, was one of those massacred. Three of the dead were Spanish. Menchu's Spanish lawyer, Carlos Vila Calvo, said that the defendants must legally show up for Garzon's hearings because the procedure is a hearing, not an arrest. If they don't show up Garzon can ask for an arrest order, both in Guatemala and internationally.

Vila Calvo said Garzon's arrival in Guatemala would depend on authorization from the Ministry of Foreign Affairs of Spain. "They must approve the rogatory commission and send it to the Guatemalan Foreign Ministry where, in theory, there can be no obstacle because of the existence of an international covenant of cooperation." The rogatory commission is a document requesting execution of a judicial order by one jurisdiction from another. "Upon arrival of the petition in [Guatemala], it will be analyzed, and in accordance with what is being requested, a judge will be designated to carry out the action," explained Napoleon Gutierrez, magistrate of the Camara Penal de la Corte Suprema de Justicia (CSJ). This procedure is the function of Gutierrez's court.

Once the judge is assigned, the action will go forward under Guatemalan rules of procedure. One of those rules is that Garzon will function only as an observer, since only a Guatemalan judge can preside. As has so often been the case during his multifaceted career, however, Efrain Rios Montt does not intend to follow the rules. He has made up his own: "I am not a subject of the Spanish Crown," he said. He does not intend to attend the elaborately regulated procedure. "I have here a Prosecutor, a Ministerio Publico, that could cite me, but the other gentlemen represent the crown," Rios told his countrymen on national radio.

Nor is Rios Montt the only one of the indictees to express indignation at the intrusion of the former colonial master of their sovereign state. "I am a respectable man, who has been named 'favorite son' in many municipalities. Let them leave me in peace," said Benedicto Lucas Garcia, Chief of the Estado Mayor de la Defensa from 1978 to 1982.

### *Admitting guilt*

In a third and separate official act with a bearing on Guatemalan justice, President Oscar Berger took responsibility in the name of the state for the murder of Myrna Mack on Sept. 11, 1990 (See NotiCen, 2003-05-08). Members of the Mack family, students and teachers from Monte Maria, where Myrna went to school, campesinos from Zacualpa where Myrna, an anthropologist, did the research into army abuses of people in the countryside, listened with tears and rage as the government begged their pardon. It was that research, and its publication, for which she was killed, and for which the government of Guatemala was condemned by the Corte Interamericana de Derechos Humanos.

Myrna's daughter Lucrecia Hernandez spoke at the event. In a choked voice she said, "When reconciliation is spoken of, it is either very cynical or very naive. One cannot say, let's just start over again, and forget what happened. I still remember her perfume and the nights when she smoked while she worked at the computer. I miss her." Her sister Helen, who has devoted her life to the legal resolution of the case, noted that Myrna's death has helped to pry the lid off the cesspool of official guilt.

Berger promised it wouldn't happen again; there would be a justice system. "We will work to strengthen the Supreme Court of Justice," he said. The president of CSJ, Alfonso Carrillo, admitted that the justice system is inoperative, and recognized Helen for her struggle against impunity. In 2002, Gen. Edgar Augusto Godoy Gaitan, and Cols. Guillermo Oliva Carrera and Juan Valencia were tried for having ordered Mack's murder. Godoy and Oliva walked; Valencia was convicted and sentenced, then escaped. All are free, and only the assassin is in jail.

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