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Guatemala's Highest Court Dismantles Key Massacre Case; Mass Murderers Could Walk

by LADB Staff

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Guatemala's Corte de Constitucionalidad (CC) has struck down the legal basis of a case against 16 Army officers accused of orchestrating the massacre at Dos Erres in the department of Peten during the 36-year internal war that officially ended in December 1996. In a decision reached in December 2004, but withheld until February 2005, the CC declared null all proceedings against the 16 in a Juzgado de Instancia during the last nine years.

The decision ordered the judge controlling the investigations of the case to suspend any further action and nullify any action taken since the Congress passed the Ley de Reconciliacion Nacional in 1966. The decree further stipulated that any such acts that took place during the war must be submitted to deliberation by the Corte de Apelaciones before being tried in the appropriate court to decide whether they are subject to termination. The CC held that the court in the Dos Erres case omitted this step. The decision infuriated accusers because the case had been submitted to a Sala de Apelaciones, which concluded that it was not covered by the amnesty of the Ley de Reconciliacion.

The submission occurred, however, some months after the trial case had begun. "This is precisely what we base the inappropriateness of the decision on. If there was a ruling that dictated that the Dos Erres case was a crime that could not benefit from the Ley de Reconciliacion, it makes no sense that they apply an article that dictates how a case must be processed [in accordance with that law]", said William Ramirez, lawyer for the Familiares de Desaparecidos de Guatemala (Famdegua), the organization that brought the case.

The convoluted thinking that went into the judgment does make sense to other observers, however, despite their unhappiness with the ruling. Human rights advocates have said that, coming from the country's highest court, the precedent weighs ponderously over other courts, which are considering cases in which the same legal issues are in play. The decision will also fuel appeals for people already convicted. If someone wanted to open a door for those accused of war crimes to walk through, this decision would do that.

The case against the 16 officers began in 1994. It came before the Juzgado de Primera Instancia Penal in San Benito, Peten, when victim's families won an order to disinter the dead from the well into which they were stuffed after they were killed in December 1982. Because it happened before 1996, the exhumations were the only actions related to the trial that were not annulled by the CC's judgment.

The most decisive evidence, however, including the confessions of two members of the elite Kaibil force who participated in the massacre, and the testimony of a young survivor of the crime, appeared to have been thrown out by the CC reasoning. It was through the confessions that Public Ministry prosecutors obtained the names of the officers. This was an unprecedented event in the

history of Guatemalan justice; no other case of Army wartime atrocities has ever had the testimony of the actual perpetrators. These two soldiers are now out of the country, and Ramirez fears they would never come back to testify again.

The Dos Erres Massacre The Commission for Historical Clarification (CHC), which was authorized by the Peace Accords of December 1996 and established under UN auspices, documented the Dos Erres massacre. According to this documentation, in October 1982, guerrillas of the Unidad Revolucionaria Nacional Guatemalteca (URNG) ambushed an Army convoy near Dos Erres. They killed 21 soldiers and took their rifles. On Dec. 4, 58 Kaibiles were flown into the area. They were ordered to disguise themselves as guerrillas, invade Dos Erres, and kill the people, whom they regarded as guerrilla sympathizers.

The Kaibiles arrived at Dos Erres at 2:30 the morning of Dec. 6. They forced the people from their houses, put the men in the schoolhouse and the women and children in the two churches. They then searched the town but found no weapons or signs of guerrilla presence. Nevertheless, the officers told their men they would begin "vaccinating" the population after breakfast. They began with the children. They bashed the heads of the littlest ones against walls and trees, bludgeoned the older ones to death with hammers, and stuffed them in the well. They then interrogated each adult, and shot or hammered to death each one. It took all that day and the next to kill everyone. As they were preparing to leave on Dec. 8, another 15 inhabitants of the town arrived.

The well was full, so they took these people a half hour down the road, where they killed all but two teenage girls, whom they strangled a few days later. Two children were also spared, one of whom was later adopted by one of the soldiers. Rape figured prominently during the entire operation. In the end, almost 300 were murdered. The Dos Erres massacre was only one of more than 400 committed during the war that claimed perhaps 200,000 lives.

The importance of this one is that the legal case, were it to run its course, could be a prelude to the prosecution of members the highest echelons of the military and the government, including former Gen. Efraín Ríos Montt, current president of the Congress. Ríos was de facto president of Guatemala (1982-1983) when this massacre occurred (see NotiCen, 2000-03-30). The Kaibiles It was also significant that the Kaibiles were sent on this mission. They are the most elite of Guatemalan armed forces, trained specifically for this kind of work. Despite recommendations they be disbanded, they exist to this day.

The most prominent disbandment recommendation came in April 1998 in the report *Guatemala: Nunca Mas* of the Proyecto Interdiocesano de Recuperación de la Memoria Histórica (REMHI). Two days after release of *Nunca Mas*, Bishop Juan Gerardi was murdered (see NotiCen, 2001-06-14). Widely known as the "visionary" of REMHI, Gerardi explained the necessity for the excruciating detail when he presented the report, saying, "It is a truth that challenges each one of us to recognize our individual and collective responsibility and to commit ourselves to action so that those abominable acts never happen again."

The Centro de Adiestramiento y Operaciones Especiales Kaibil was created in 1975, the name taken from Kaibil Balam, a Mam leader famed for having escaped capture by the conquistadores.

The Kaibil mission is, according to the Ministry of Defense, "to select, by means of arduous, difficult training under physical and mental pressure, members of the Army capable of engaging in commando operations." The CHC says, "The extreme cruelty of these training methods, according to testimony available to the CHC, was then put into practice in a range of operations carried out by these troops, confirming one point of their decalogue: The Kaibil is a killing machine."

The continued existence of the Kaibiles is in large part because of the still-powerful Army's refusal to disband it. In an attempt to justify their presence beyond the signing of the peace accords, then President Alvaro Arzu Irigoyen (1996-2000), addressing a Kaibil graduation ceremony, told the newest members of the killing machine, "Now this new Army of peace will face an enemy that perhaps is much more powerful than the one we faced for many years. We are talking of drug traffickers and criminals who want to corrode the country; they are better armed, equipped, and trained than the enemies we had to face in the past."

The court clarifies, partially

The CC, whose decisions are final and cannot be repealed, responded to a Famdegua request for clarification on Feb. 11. The court emitted a resolution declaring that the testimony of the principal witnesses remains valid. The court said the public outcry against its ruling was based on a misinterpretation of the order, saying the ruling was meant to apply only to a single defendant in one particular legal maneuver, not to the case as a whole and not to the actions of the San Benito court.

The clarification, clearly not discernible in the original edict, came only after human rights groups mounted a protest heard internationally, but it still left the prosecution in an ambiguous position. The case still must be referred to a Sala de Apelaciones for a ruling on applicability of the Ley de Reconciliacion, said the clarification, but the key testimony must be considered. Famdegua had still not received official notification of the clarification on Feb. 14, but considered it insufficient anyway.

The complainants still consider that the clarification does not deal with the validity of the arrest orders issued against the defendants. With that and some other issues in doubt, Famdegua attorney Edgar Perez said they are left without a strategy to proceed further.

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