11-14-2013

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Rios Montt edges closer to escaping accountability for genocide

by Lauren Carasik (/profiles/c/lauren-carasik.html) - @ajam (http://www.twitter.com/ajam) | November 14, 2013

Despite being found guilty for genocide and crimes against humanity — a verdict hailed around the world as striking a decisive blow against the impunity of elites in Guatemala — former dictator José Efrain Rios Montt appears likely to live out his days in the comfort of his home.

Rios Montt’s conviction in May was a watershed for human rights law. It was the first time a former head of state was convicted of genocide in a national court. The short-lived celebration, however, was extinguished 10 days later when Guatemala’s Constitutional Court annulled the verdict.

Two recent developments in the case’s protracted legal maneuvering cast further doubt on Guatemala’s political will to reconcile with its bloody past. Originally scheduled to resume in April 2014, the trial was postponed again until January 2015, due allegedly to the court’s busy docket. Survivors and their attorneys, who continue to weather threats and harassment, are determined to push forward, but delay will strain their emotional and financial resources. In late October, the Constitutional Court directed the lower court to reconsider its prior
holding that the country's amnesty law did not bar Rios Montt's prosecution.

Rios Montt, who was in power for 17 months in 1982-83 and was backed by the United States under President Ronald Reagan, presided over the bloodiest period of Guatemala's 36-year internal conflict, during which more than 200,000 people were killed, 50,000 disappeared, and hundreds of thousands more displaced, raped, tortured and starved. During his trial for the deaths of 1,771 bil — a Mayan people indigenous to Guatemala — the harrowing testimony of survivors, sociologists, and military and forensic experts revealed the unspeakable suffering unleashed by the dictator's savage counterinsurgency strategy. Assuming that the marginalized, impoverished and dispossessed indigenous population would have a natural ideological affinity with the guerrillas who opposed him, the military that Rios Montt commanded embarked on a calculated plan to exterminate bil communities, which allegedly provided critical logistical support to the insurgents.

Although the conflict formally ended in 1996, Guatemala is still plagued by the violence, racism, exclusion, and social and economic inequality that engendered it. Long-standing efforts to hold those responsible for the atrocities accountable languished in the face of the country's antidemocratic institutions. But the survivors persisted. Against all odds, Guatemala has made some laudable strides against its legendary impunity and corruption, thanks especially to Attorney General Claudia Paz y Paz and the International Commission Against Impunity in Guatemala.

However, Paz y Paz has not announced whether she intends to seek another term. The resumption of the Rios Montt trial was conveniently postponed until just after Paz y Paz's current term is set to expire. Changes in the judiciary are likely before then as well. Meanwhile, the 87-year-old former dictator is frail and his health is reportedly deteriorating. The further delay makes the prospect of the trial's completion, the exhaustion of the appeals process and Rios Montt's incarceration increasingly dim.

Imperfect mechanisms

The prosecution built a powerful case against Rios Montt, bolstered by his own chilling words three decades ago — captured on video and broadcast in the courtroom — in which he proclaimed control over the military, making his denial of responsibility difficult to sustain. Unable to mount a convincing and substantive rebuttal to the accusations, the defense settled on a dilatory and hostile strategy, tying up the case with multiple legal machinations and with courtroom theatrics designed to cast doubt on the legitimacy of the trial and to postpone or derail the proceedings. As the legal maneuvering unfolded, power struggles arose within the Guatemalan judiciary over whether the trial should proceed.

While the case ricocheted from the trial courts to the Constitutional Court, public opinion became deeply polarized. As the testimony inside the courtroom painted a grim picture of Rios Montt's brutality, his supporters launched a campaign to discredit the prosecution's case and those associated with the prosecution. Gruesome newspaper inserts funded by the Foundation Against Terrorism — a group comprising current and former members of the military and their families — denied that genocide occurred and disparaged survivors, human rights defenders, the attorney general, the Catholic Church, foreign governments and others.

"Guatemala illustrates the challenges of progress when
Resistance to constructive national dialogue about the country's sordid history bleeds into the present. Human rights organizations have reported threats against witnesses and lawyers, and have alleged that the government was trying to divide the bil community through financial inducements and outright fraud.

The international community is still grappling with the problem of helping states rebuild from civil conflicts involving mass atrocities. Although states can best reckon with the past and signal legitimacy and genuine transition by holding prosecutions in national courts, Guatemala illustrates the challenges of progress when old power structures responsible for the abuses remain largely intact. The current president, Otto Perez Molina — a commander in the bil triangle at the time of the genocide — was himself implicated in open court during the trial by a former army mechanic testifying by video from an undisclosed location. The incident raised the incentive for government interference to shut down the proceedings.

International mechanisms, however, are also imperfect. Although the global community has reached a measure of consensus on human rights and standards for holding political leaders accountable, the politics of applying these principles in legal proceedings is a different matter. The Cambodian war crimes tribunal — a hybrid held in national courts but made up of both national and international judges — faces geriatric defendants, numerous delays and costs that may deplete both funds and political will before it imparts justice for victims of the Khmer Rouge. The International Criminal Court faces criticism for targeting Africa and ignoring crimes elsewhere, thereby replicating global power imbalances. The impartiality of the International Criminal Tribunal for the Former Yugoslavia has been questioned by various observers. Some contested convictions have been overturned, undermining the authority and effectiveness of its mandate. All of these mechanisms face criticisms for being slow, costly to implement and ineffective.

Illegitimate amnesty

Whether Guatemala's courts can rise to the challenge of impartiality and independence remains to be seen. The 1986 amnesty law cited by Rios Montt's defense was enacted by Gen. Oscar Humberto Mejia Victores, his immediate successor. Mejia Victores granted immunity broadly to protect perpetrators of state terror. However, Guatemala ratified the Genocide Convention in 1950, which prohibits amnesty for genocide. Mejia Victores' amnesty, therefore, was not a valid exercise of state power.

The 1996 National Reconciliation Law passed after the Guatemalan peace accords repealed the 1986 law, but provided amnesty for political crimes. Nevertheless, forced disappearances, torture, genocide and crimes for which culpability cannot be extinguished under Guatemalan or international law were specifically exempted from its ambit. Were amnesty to apply successfully to Rios Montt, other perpetrators of these crimes, including the handful already convicted, may evade justice.

Guatemala cannot build a more just and democratic society unless it demonstrates the political will to reconcile with its past. Despite the tireless efforts of survivors and their advocates and supporters, Rios Montt appears likely to escape justice. The genocide's survivors and their advocates have courageously, meticulously and patiently built their case against the former dictator, to honor the
memories of those who perished and to ensure that history is not repeated. It is no small victory that the resilient survivors have told their stories of the incalculable suffering inflicted by Rios Montt and his military regime for the world to hear. But survivors have endured too much anguish to watch justice slip through their fingers. They deserve a full and fair public reckoning.

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