

GUATEMALA APPEAL CASE

Crimes against humanity remain unpunished in Guatemala

On 6 May 2001 twenty-one indigenous communities affiliated with the Association for Justice and Reconciliation (AJR), legally represented by the Center for Human Rights Legal Action (CALDH), presented allegations to the Public Prosecutor's Office against General José Efraín Ríos Montt and others for war crimes, genocide and crimes against humanity committed during Guatemala's internal armed conflict that lasted for 36 years and ended with the signing of the Peace Accords in December 1996.¹

Prolonged delays in the five-year investigation

After the complaint was filed with the Public Prosecutor's Office, a special prosecutor took testimony from approximately 114 eyewitnesses to the massacres (this includes testimonies in the separate case against Lucas García² and others). However, the special prosecutor was transferred in December 2004 and a second special prosecutor was appointed in July 2005, but in June 2006 he, too, was transferred. Two months later, yet a third special prosecutor was appointed.³

Unfortunately, the office of the attorney general has failed to make progress over the past five years to investigate vigorously the extremely grave allegations. In addition to the repeated changes of special prosecutors and delays in replacing them disrupting the continuity of the investigation, there are a number of other reasons for the slowness of the criminal investigation:

- Apart from testimonies from eyewitnesses, few other lines of investigation have been pursued. Amnesty International understands that no serving or former military officers have been subpoenaed to provide testimony;
- The Defence Ministry refused requests by the Public Prosecutor's Office to hand over military documents due to "state security" and the special prosecutors have not attempted to obtain court orders compelling them to produce the documents during in camera hearings with safeguards for any legitimate security concerns;
- There have been numerous dilatory appeals by General Efraín Ríos Montt and the others on procedural questions;
- Some courts lack independence from the political branches of government and can be susceptible to political pressure. There is no

¹ The complaint also listed Horacio Egberto Maldonado Schaad, Luis Gordillo, Mario López Fuentes and Oscar Mejía Victores.

² General Fernando Romeo Lucas García was the President of Guatemala from 1 July 1978 to 23 March 1982. During Lucas García's regime political repression and killings of opposition figures were high. He was also responsible for the Spanish embassy fire in January 1980, in which 35 people died. There are criminal proceedings opened against him in Guatemala and Spain for accusations of genocide, torture and other crimes against humanity. General Romeo Lucas García died on 27 May 2006.

³ (See E/CN.4/2002/72/Add.2, p.56) In his report on his mission to Guatemala in May 2001 the UN Special Rapporteur on the independence of judges and lawyers states "The Special Rapporteur was informed that prosecutors also receive threats when dealing with sensitive cases. For instance, the prosecutor who withdrew the charges against General Montt in the Guategate case said that he had since received death threats [...]".

effective system to strengthen their independence and protect those judges and lawyers who are threatened.⁴

The criminal investigation in Spain and the extradition request

Given the stagnation of the case in the Guatemalan judicial system, the lack of political will of the government in supporting measures to end impunity for past human rights violations, in 1999 the Nobel Peace Prize-winner Rigoberta Menchú filed cases of genocide, torture and murder in Spanish courts.

The Spanish National Court (*Audiencia Nacional*) took jurisdiction of the case in 2006, after Spain's Constitutional Court (*Tribunal Constitucional*) ruled in 2005 that Spanish courts can exercise universal jurisdiction over crimes under international law committed during Guatemala's internal armed conflict.

National Court Judge Santiago Pedraz carried out a fact-finding trip to Guatemala in June 2006 but was forced to return empty-handed due the "obstructionism" and lack of cooperation of those accused of atrocities and of the Guatemalan judicial system.

However, despite these obstructions, on 7 July 2006 Judge Santiago Pedraz charged several former Guatemalan military officers, including Ríos Montt, with genocide, torture, and other crimes against humanity, and issued international arrest warrants for their involvement in atrocities committed under their command responsibility.

According to international law, no state has a better claim than any other to initiate an investigation and, if there is sufficient admissible evidence, a prosecution for crimes committed against the entire international community. Indeed, in certain cases, any state may exercise such jurisdiction even if the territorial state has commenced an investigation or even a prosecution or has reached a final judgment. It is crucial that investigations on human rights violations and prosecution of those responsible are not hampered by political consideration. Amnesty International is calling on the Guatemalan authorities to comply with Guatemala's obligations under international law by ensuring the judicial process initiated on 6 May 2001 in Guatemala against General Efraín Ríos Montt and others for crimes against humanity is carried out in a prompt, impartial and effective manner while also supporting the legal process initiated by judge Santiago Pedraz in the Spanish Courts. If it does not carry out such an investigation in accordance with international standards, then it should promptly extradite the accused to Spain.

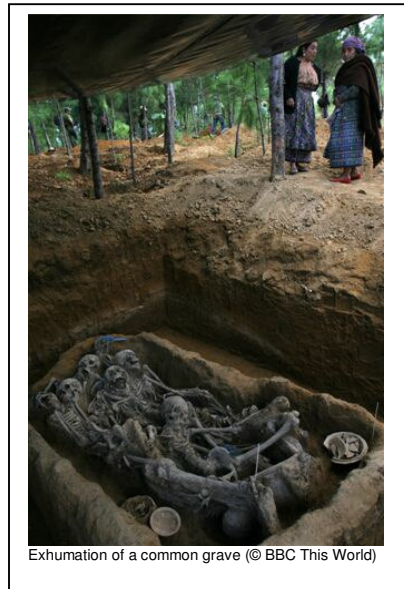
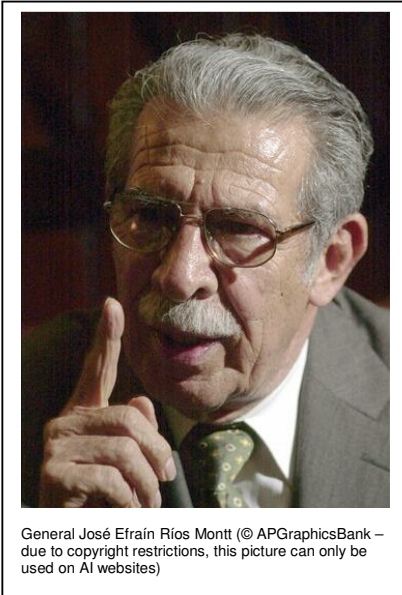
Background information

In 1998 the UN-sponsored Commission for Historical Clarification (a 'Truth Commission') concluded that over 200,000 people had 'disappeared' or were killed during the internal armed conflict which ended in 1996. Of the victims it could document and identify, 83 per cent were of Mayan origin. Some 93 per cent of human rights violations were attributed to government forces.⁵ General José Efraín Ríos Montt headed the Government of Guatemala from March 1982 to August 1983, which corresponds to one of the highest peaks in human rights violations of the 36-

⁴ (See E/CN.4/2002/72/Add.2, p.9) On his mission to Guatemala the Special Rapporteur on the independence of judges and lawyers found that there were widespread threats against and harassment and intimidation of judges, and that the Government and the Supreme Court had failed to provide the requisite protection.

⁵ Guatemala Memoria del Silencio. Tomo V, Conclusiones y Recomendaciones. Comisión para el esclarecimiento Histórico. UNOPS, 1999. page 21, paras 1 & 2; and page 25, para 15.

year internal armed conflict. These included killings, rape, torture, enforced disappearances and genocide perpetrated against the indigenous population.



TAKE ACTION!

→ **Write to the Attorney General in Guatemala:**

- Expressing concern on the lack of progress in the judicial process followed in Guatemala against General Efraín Ríos Montt and others despite the efforts of Guatemalan NGOs, human rights lawyers and families of victims of human rights violations;
- Reminding the Guatemalan authorities of their obligation under international law to try those accused of human rights violations in a prompt, fair and effective manner or extradite them to another state.

Appeals to:

Attorney General and Head of the Public Prosecutor's office
Fiscal General de la República y Jefe del Ministerio Público
Lic. Juan Luis Florido
Edificio Ministerio Público
Tercer Nivel, 8a. Avenida 10-67, Zona 1
Ciudad de Guatemala, 01001
Guatemala
Fax: +502 2251 2218

Copies to:

Centro para la Acción Legal en Derechos Humanos (CALDH)
6ª Avenida 1-71, zona 1
Ciudad de Guatemala
Guatemala
Fax: +502 2230 3470
Email: caldh@caldh.org