

## **In Effort to Try Dictator, Guatemala Shows New Judicial Might.**

By ELISABETH MALKIN  
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XIX, Guatemala — Tiburcio Utuy thought he saw fear cross the former dictator's face.

A judge had just ruled that the military dictator, Gen. Efraín Ríos Montt, now 86, should stand trial for genocide and crimes against humanity committed under his rule in the 1980s, a decision Mr. Utuy and other Maya survivors of Guatemala's 34-year civil war had gathered in the courtroom to hear in person.

"He won't suffer the same way we suffered — but he will be scared," Mr. Utuy said in his mountaintop village a few days after the ruling in late January. "And maybe he will spend a little bit of time in prison."

Mr. Utuy, 71, is set to be a witness in a trial that few believed would ever take place.

But Guatemala's justice system has begun a transformation. In a show of political will, prosecutors are taking long-dormant human rights cases to court, armed with evidence that victims and their advocates have painstakingly compiled over more than a decade — as much to bear witness as to bring judgment.

"It's sending the most important message of the rule of law — that nobody is above the law," said Claudia Paz y Paz, the attorney general, who many here say has been one of the most important forces behind the change.

In the 17 months that Mr. Ríos Montt controlled Guatemala, before he was overthrown in a coup in August 1983, his soldiers intensified a scorched-earth campaign across the Maya highlands begun by his predecessor in 1981 to flush out leftist guerrillas. The military marched into villages, torturing, raping and killing those who could not run away. They burned down houses and crops, and butchered livestock.

A United Nations truth commission concluded in 1999 that attacks on specific indigenous groups amounted to genocide. "The aim of the perpetrators was to kill the largest number of group members possible," the commission's report said.

Investigators concluded that the war took more than 200,000 lives over more than three decades before the 1996 peace accords. They identified the Ixil, who live in mist-shrouded hamlets here in El Quiché Department, as the hardest-hit Maya group.

Between 70 and 90 percent of the Ixil villages were razed during the war's bloodiest period, between 1981 and 1983. The truth commission documented about 7,000 Ixil deaths and estimated that more than 60 percent of the Ixil were forced to flee into the mountains, where many more died of cold, hunger and disease, or were killed when the army bombed them from the air.

But the report produced no action. The military wielded power behind the scenes over malleable elected presidents. Mr. Ríos Montt became a legislator, which gave him legal immunity from prosecution, and as president of Congress in 2000 he maneuvered his allies into the judiciary.

Prosecutors shelved investigations. When they did try to act, judges paralyzed the proceedings, taking years to consider requests to release military documents or pushing appeals back through multiple lower courts.

Ms. Paz y Paz, 46, a former judge with ties to rights groups, was appointed in December 2010 and switched gears, filing war crimes charges against several members of the military high command. She won the first convictions against officers accused in some of the worst massacres.

After Mr. Ríos Montt's term in Congress expired at the beginning of 2012, it was his turn. A year later, Judge Miguel Ángel Gálvez overruled multiple defense motions to dismiss the case and ruled on Jan. 28 that the trial would go ahead. Oral arguments are scheduled to begin Tuesday before a three-judge panel.

The proceedings will be one of the few times that any credible national court is trying a former leader on charges of genocide, said Paul Seils, vice president at the International Center for Transitional Justice in New York.

"Latin America absolutely leads the way in terms of national authorities trying to prosecute significant crimes," Mr. Seils said, citing trials in Argentina, Chile and Peru.

Mr. Ríos Montt's lawyers have based their defense on the military's longstanding argument that the massacres were excesses ordered by field commanders. Mr. Ríos Montt, they say, had no knowledge of those actions. That was not how the general explained the chain of command at the time. In an interview in 1982 for an American documentary, he exclaimed, "If I can't control the army, then what am I doing here?"

A retired colonel, Mario Mérida, who now heads the government's National Institute for Strategic Security Studies, argued that the trial was politically motivated and influenced by international public opinion.

"There was no institutional policy against any ethnic group," said Mr. Mérida, although he acknowledged that the military never punished any soldier for the massacres. He described the army's actions in the 1980s as "a psychological campaign so that people would abandon the guerrillas" because the rebels claimed to have built a base of support among the Maya.

President Otto Pérez Molina, a former general who served in the Ixil region in 1982-83, said in a recent interview to a Spanish newspaper that Mr. Ríos Montt should be tried for "abuses and undeniable excesses," but not genocide.

Mr. Pérez Molina was elected in November 2011, and his military background set off concern that he might dismiss Ms. Paz y Paz, who was appointed to a four-year term by his predecessor, or hamper her investigations. But he has shown respect for prosecutors' independence, she said.

During several days of hearings in Guatemala City in recent weeks, Mr. Ríos Montt sat expressionless behind his legal team, occasionally thumbing through a copy of the Constitution. A sticker on the back of his courtroom chair noted that it had been donated by the United States government, evidence of the aid from the United States and European countries to bolster Guatemala's effort to establish the rule of law.

In the audience, staring intently, were some of the victims, many of whom speak only indigenous languages and are unable to follow the proceedings, which are in Spanish.

"They are just starting to listen to us now," said Anselmo Roldán Aguilar, 47, of the victims' group Association for Justice and Reconciliation, which filed the first case against Mr. Ríos Montt and his high command more than a decade ago. Mr. Roldán lost his father and five brothers and sisters in the war.

At the beginning, the victims were afraid to speak out. Isolated by language and discrimination, displaced by the war, and traumatized by the massacres, they tried to rebuild lives in the villages they had fled.

The United Nations truth commission broke that silence. Other evidence emerged: forensic anthropologists have been exhuming the bodies for 20 years, using clothes and other artifacts to identify the remains in hastily dug graves. Only a fraction of the victims have been identified, but the exhumations offer chilling proof that the victims were noncombatants.

Fredy Peccerelli, the head of the Guatemalan Forensic Anthropology Foundation, said teams had unearthed bodies buried around a church, cataloged the number of children in mass graves and gathered accounts from survivors.

"This is terror," said Mr. Peccerelli, who will testify at the trial. "This is a strategy to make sure that anyone and everyone who is opposed to you is afraid of you; not only now, is afraid of you forever."

More information came from the release of American government files, declassified by the National Security Archive in Washington. They showed that American diplomats and intelligence agencies knew that the Guatemalan Army was carrying out the massacres, even though the Reagan administration argued in public that human rights conditions were improving.

When the early cases stalled, lawyers turned to Spain's National Court, which claimed universal jurisdiction in cases of crimes against humanity. Victims and witnesses traveled to Madrid to testify before a Spanish judge.

Mr. Utuy was among them. In 1982, he fled with his wife and children into the mountains after soldiers had razed Xix twice and killed whomever they could chase down, he said, including a neighbor who was pregnant. "When I saw them cut her belly, I began to cry," he said.

The family survived bombing and machine gun fire from army helicopters, but then Mr. Utuy was captured while searching for food. For eight months, he was tortured and interrogated on military bases, he said. Finally he was let go, bullets whizzing by as he walked off the base.

Almudena Bernabeu, a lawyer with the Center for Justice and Accountability, a San Francisco-based human rights group that helped bring the Spanish case, said that Mr. Utuy's testimony could help corroborate a military document known as Operation Sofía. Rights groups say it describes the campaign against the Ixil and clarifies the chain of command to Mr. Ríos Montt.

In Operation Sofía, "it said that 100 percent of the Ixiles collaborated with the subversives," making them "an internal enemy," said Juan Francisco Soto, a lawyer for the Center for Legal Action on Human Rights, which represents the victims groups. "By assuming that 100 percent were guerrillas, it is saying that everybody, men, women, children, elderly people are all enemies, and by qualifying them as enemies you are legitimizing attacks on them."

A court ordered military documents to be turned over in 2009, and the military began to comply, one of several cracks in the wall that had blocked the case. Guatemala's government also invited a United Nations legal panel, the International Commission Against Impunity in Guatemala, to help strengthen its prosecutions against corruption and illegal security groups.

Under prodding from the commission, the attorney general was replaced and two special trial courts were set up to deal with high-impact cases, including drug-trafficking, corruption and war crimes. New judges on the Supreme Court threw out procedural appeals that had delayed the investigations.

"Guatemala has taken important steps towards consolidating a democratic rule of law over the last three years," said Edgar Pérez, a lawyer. "There is a long way to go — you can't expect that this is all fixed in two or three years."

Francisco Dall'Anese, the commissioner of the United Nations panel, said the Ríos Montt trial had set in motion a course that would be difficult to halt.

"Opening the trial against Ríos Montt is like filling a tank of gas for those who have been pressuring for many years and thought it was a lost cause," he said. "Now they see a light at the end of the tunnel and they won't stop."

When Francisco Rivera was just a child, soldiers killed his mother, along with two of his brothers, in the village of Pexla Grande. His older sister dragged him into the mountains to hide.

In December, Mr. Rivera, now 32, learned that the remains of his mother and one brother had been identified. They were buried this year in one of 44 government-supplied crypts laid out in neat rows in the village cemetery.

Up the mountain above the village rooftops, a monolith is engraved with the names of Pexla Grande's 77 victims.

"Here's the proof, they can't say it's a lie," said the village's mayor, Andres Solís Santiago. "I hope the judge follows the law."

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