

the premise for Guatemalan director Jayro Bustamente's award-winning horror movie *La Llorona* (2019), and it will surely echo through popular culture and scholarly assessments for a long time to come. But not everyone in the human rights community agreed with the trial. A group of former peace negotiators called it a threat to the peace process (Asturias et al. 2013). "There was no genocide!" shouted hundreds of Ixils outside court one day (Agence France-Presse 2013). Their protest had been organized by retired army officers, but many Ixils were indeed bewildered by the proceedings. As former refugees, they rightly or wrongly credited Ríos Montt's 1982–1983 regime with ending village massacres and saving their lives.

It remains an article of faith for the Guatemalan right that there was no genocide and that the evidence for it has been fabricated by the guerrillas and their international supporters. This alone, in the minds of many scholars and human rights activists, would justify defending the genocide paradigm. Except on the Guatemalan right, it is beyond dispute that the army murdered thousands of noncombatants on mere suspicion of supporting a Marxist-led insurgency (Schirmer 1998). Also beyond dispute is that the majority of victims were Indigenous—that is, members of Guatemala's 22 Mayan language groups. Yet after the war ended in 1996, evidence of ethnic cleansing was hard to find even in Indigenous departments—Quiché, Huehuetenango, the Verapaces, and Chimaltenango—where the army had killed the most people. Large numbers of refugees returned to their municipios of birth; ethnic territories underwent little change. This outcome calls to mind a distinction made by Scott Straus (2012, 54), who uses genocide as a comparative category in studying political violence:

In civil war, the general objective is to defeat, weaken, or compromise with an enemy as well as to control territory; violence is deployed to achieve those ends. In these scenarios, the ultimate vision of interaction is usually group submission, surrender, or negotiation—but there is a future of sharing territory. The logic of genocide differs. In genocide, negotiation, control, surrender, and submission are off the table. The perpetrating organization pursues group destruction as the best available strategy.

Genocide is such a powerful accusation; how broadly or narrowly to apply the term is subject to fierce debate. The definition in the 1948 international convention—the intentional destruction of a national, ethnic, racial, or religious group, in whole or in part—excludes the extermination of political opponents. Thus, the mass murder of fellow Cambodians, Russians, and Chinese by Khmer Rouge, Stalinists, and Maoists does not fall within the definition. This seems so absurd that broadening the definition of genocide has become the *raison d'être* for genocide studies—an academic specialization that has developed its own research centers, journals, and debates.

Thus, Ben Kiernan (2016) has compiled all the comparative genocide scholars who have and have not included Guatemala as a case. Not everyone agrees with him that Guatemala exemplifies genocide, which Kiernan attributes to debates between totalitarian, postcolonial, and settler-state conceptions of the crime. As an anthropologist, I sense an epistemological weakness in genocide studies that could produce steady expansion of the concept to cover so much of the historical record that the field could end up normalizing genocide as an inevitable feature of capitalism and earlier world-historical processes. Here is the expansionary flaw: once particular genocide scholars decide that their solidarity with a particular group of victims requires affixing the genocide label, anyone who argues that the facts of the case do not add up to genocide can be accused of being a denialist or apologist (in the case of Guatemala, see Drouin 2016; Sanford 2003). Such accusations cut down on the number of scholars willing to argue against ever wider application of the concept.

In anthropology, our job is to talk to ordinary people who are rarely consulted. We hope to learn their perspectives on all kinds of elites: not just army generals and gold-mine executives but advocacy groups and judicial systems. Examining the limitations of Western legal categories is part of this task. Thus, Alison Crosby, Brinton Lykes, and Brisna Caxaj (2016, 266) point out that trials of Guatemalan war criminals have required female survivors to produce "prized rape scripts" at the expense of a broader range of needs reflecting their position at the bottom of Guatemalan society. Henrik Ronsbo and Walter Paniagua (2014) argue that international projects to support war victims have set up a "bureaucracy of loss" that reproduces racial hierarchies and subordinates Indigenous people to the Guatemalan state. Based on his experience with human rights advocacy in El Salvador and Guatemala, Stener Ekern (2010, 237–38) shows how translating local crimes into human rights categories can create a systemic disregard for how the victims and their neighbors view what happened.

None of the above should impede the prosecution of homicides and other violent crimes. If survivors want a judicial process, they have the right to one, regardless of any limitations thereof. But the genocide trial of Ríos Montt was not just a reckoning with a particular defendant who could have blood on his hands; it was also intended to be a history lesson for the Guatemalan people and the international community.

My purpose here is to show why the genocide trial was not a very convincing history lesson—it ignored too much of what victims of the war remember. I will focus on the genocide debate in one municipio, the Ixil Maya town of Nebaj, which supplied most of the 95 survivors who testified against Ríos Montt in 2013. Their testimony shows that his 1982–1983 administration did not stop the Guatemalan army from committing atrocities. But did the prosecution prove that he and the army committed genocide? I argue that it did not based on (1) the counterarguments made by Nebaj skeptics; (2) the pace of violence under Ríos Montt as indicated by witness testimony against him; and (3) the court's acceptance of an extremely broad racial argument,

which also could be used to indict the army's opponents of genocide. Judging from other trials of retired army officers, I conclude, prosecuting specific war crimes will produce more persuasive convictions than prosecuting genocide.

A TRUTH COMMISSION ACCUSES THE GUATEMALAN ARMY OF GENOCIDE

In 1983, a Jesuit priest and anthropologist appeared at the People's Permanent Tribunal in Madrid to accuse Guatemala's military regime of genocide. Ricardo Falla had been pastoring Mayan refugees along the Mexican border in cooperation with the Guerrilla Army of the Poor (EGP), one of four groups in the National Guatemalan Revolutionary Union. Thus, he became the first to interview survivors of a Guatemalan army operation at the Finca San Francisco in Nentón, Huehuetenango. Supervised by officers with enough rank to arrive in a helicopter, soldiers methodically executed 376 nonresisting Chuj Maya villagers.

The date of the massacre (July 17, 1982) refuted assurances by President Ríos Montt that the army had stopped committing atrocities. Four months earlier, junior officers had overthrown his predecessor, General Romeo Lucas Garcia, and placed him in charge of a three-man junta. A born-again Protestant, Ríos Montt startled everyone by announcing that God had appointed him to save Guatemala from communist guerrillas and corrupt officials. No one in Guatemalan politics had ever adopted such a dramatic soldier-of-God persona. Among the many changes he announced—in an inspirational manner that reassured some Guatemalans and unnerved others—was an end to army crimes against noncombatants and an amnesty for guerrilla supporters.

Finca San Francisco occurred a month after Ríos fired his two co-triumvirs, becoming the sole head of state, and it was not an isolated event. In Baja Verapaz Department, the army killed 79 Mayan refugees at Los Encuentros on May 14; more than 250 at Plan de Sánchez on July 14; and 92 more at Agua Fria on September 14. On December 6–8, soldiers killed more than 200 non-Indigenous villagers at Dos Erres, Petén. These were only the most well-known of dozens of such acts, which the army accompanied by torching any settlement and farm that might support the guerrillas and their supporters. Entire areas were destroyed and several hundred thousand Guatemalans, mainly Mayan peasant farmers, fled across the border into Mexico.

Under the previous army regime, URNG guerrillas and their civilian base seemed to have the upper hand in the western highlands. Now Ríos Montt's scorched-earth policy showed the URNG's supporters that it could not protect them. The other half of Ríos Montt's strategy, the amnesty, forced all men in contested zones to join the army's civil patrols—a huge counterinsurgency militia that cut off the guerrillas from their food and recruits. Over the next decade, small guerrilla units eluded the army, but the URNG never again succeeded in mobilizing mass support. The only theater of conflict where it prevailed was among Guatemala scholars, in the human rights community, and among European diplomats: here, the Guatemalan army became a byword for savagery and the URNG was still presumed to represent a large share of the Guatemalan people.

Over the next decade, international mediators helped end the civil wars in Nicaragua (1990) and El Salvador (1992) but failed to make headway in Guatemala. Only years of international pressure brought the Guatemalan government and the URNG to the 1996 peace accords. In return for guarantees, the URNG laid down its weapons and joined the electoral process. Both sides also agreed to a United Nations-affiliated Commission for Historical Clarification (CEH). Its 1999 report documented hundreds of mass killings and disappearances by the army and other state security forces in the early 1980s. What made headlines were two broader findings.

The first was that at least 200,000 people had died or disappeared during the violence—dwarfing previous high-range estimates of 40,000 to 60,000 (Sabino 2007, 366–68). The second was that the army had committed acts of genocide against four of Guatemala's 22 Mayan language groups: the Ixil Mayas; the Q'anjob'al and Chuj Mayas; the K'iche' Mayas of Joyabaj, Zacualpa, and Chiché; and the Achi Mayas.

The enormity of the 200,000-plus estimate is underlined by the number of dead and disappeared that the CEH could actually count: 23,671 arbitrary executions and 6159 forced disappearances. Those 29,830 dead or missing persons were obviously an undercount, given the nature of the war, but by how much? Many incidents reached the media soon after they occurred, so the undercount was not necessarily huge. Yet the CEH had multiplied the number of deaths and disappearances that it could document by a factor of 6.7.

The CEH attributed the 200,000-plus number to Patrick Ball, a statistician at the American Association for the Advancement of Science. In 2013 Jean-Marie Simon and I organized a panel for the Latin American Studies Association called "Guatemala: The Numbers Arms Race." Ball accepted our invitation to join us. Among his most interesting points: (1) he thought he could identify about 40,000 countable victims, and (2) this led him to project a total death toll of 132,000—but just for the period 1979–1996 and excluding San Martín Jilotepeque. The additional 68,000, he told us, were someone else's responsibility that he could not defend scientifically. For another study, employing a different methodology, Ball and his colleagues produced an estimate of 37,255 dead and disappeared (Ball, Kobrak, and Spirer 1999, 11, 119).

How exactly the CEH came up with its now-canonical minimum estimate of 200,000 dead is beyond my ability to establish.² Learning more may have to wait until the CEH's internal records are unsealed in 2049. Clearly, however, this is a very high-end estimate. Unfortunately, once activists turned it into a minimum "documented" total, it became the basis for even higher estimates of 250,000 and 300,000 dead, as well as the claim that Guatemala's Mayan population had been subject to a holocaust. Holocaust claims attracted media attention, funding, and volunteers for forensic teams. Since 1992, the Forensic Anthropology

Foundation of Guatemala has, again and again, uncovered shocking evidence of army massacres of noncombatants. In three decades of diligent investigation, of every possible grave, the total number of victims it has documented is 8,159 (Fundación de Antropología Forense de Guatemala, *n.d.*).

The CEH settled on genocide only after considerable internal debate (Oglesby and Ross 2009, 23–26). The finding required adjustment even by scholars who have since come to regard it as unquestionable. Thus, Diane Nelson (2003, 123) put genocide in scare quotes because “what in the 1980s was a class war with an ethnic component . . . is, in the early twenty-first century, a race war.” Until 1980, the majority of noncombatants killed by government forces were non-Indigenous ladinos. The Mayan population had remained on the margins because the war originated as a conflict between left- and right-wing army officers. Even after Mayan villages were accused of supporting the guerrillas and became a target, ladino villages could receive the same treatment.

Still, when the CEH tallied its 29,830 identifiable victims, 83 percent were Mayas. That seemed to justify the commission’s ringing conclusion: the army had “defined a concept of internal enemy that went beyond guerrilla sympathizers, combatants or militants to include civilians from specific ethnic groups.”

The reiteration of destructive acts, directed systematically against groups of the Mayan population . . . [including] the elimination of leaders and criminal acts against minors who could not possibly have been military targets, demonstrates that the only common denominator for all the victims was the fact that they belonged to a specific group and makes it evident that these acts were committed “with intent to destroy, in whole or in part” these groups. (CEH 1999a, 48–49)

A legal finding of genocide does not require a high body count, or any body count at all. Genocide can be committed simply by separating children from their parents and socializing them away from their culture. In this case, however, the CEH’s announcement of at least 200,000 dead paved the way for widespread acceptance that the Guatemalan state had committed genocide against Indigenous people.

THE POSTINSURGENCY LEFT LOSES A POPULARITY CONTEST WITH RÍOS MONTT

The CEH had no authority to name perpetrators or prosecute them. The political drive to prosecute army officers originated not in the four guerrilla movements making up the URNG but in their popular organizations. These began as civil society fronts but, even before the 1996 peace agreement, were becoming more independent of the URNG. They were extremely disappointed with the 1994 accord setting up the CEH because it would not be allowed to name perpetrators (Molden 2016, 133). They were even more disappointed with the 1996 Law of National Reconciliation, in which army and guerrilla commanders agreed to a mutual amnesty (Wilson 1997, 21–24).

The men leading the URNG’s four armed groups had compelling reasons to forgive and forget (compare Bornschein 2000, 92). The share of killing that the CEH attributed to them (3 percent) was tiny in comparison to what it attributed to government forces (93 percent). But the guerrilla forces were so much smaller that, per capita, the average insurgent could have committed more abuses than the average soldier.³ An additional misfortune for URNG commanders was that they were *de facto* comandantes-for-life. Thus, they were responsible for much longer periods of command than army officers who rotated through different units, who spent part of their career in noncombat positions, and whose *noms de guerre* were often impossible to penetrate. As an example of legal vulnerability, in 1998 five EGP leaders were indicted (but never tried) for the execution of three of their own cadres. In 2014, a URNG commander was sentenced to 90 years in prison for the 1988 execution of 22 unarmed civil patrolers in Aguacate, Chimaltenango.

The leaders of popular organizations had little to fear in this regard. They had lost family members to government killers, and they thought the mutual amnesty was an outrage. But they faced a larger problem: even in the most army-ravaged areas, many Guatemalans did not agree with the guerrilla movement’s foundational premise that the 1962–1996 insurgency was an inevitable, justifiable response to dictatorship and exploitation. Even in areas such as Ixil country, which had shown considerable support for the guerrillas, there was now widespread anger at the URNG for launching armed struggle and provoking the army’s arrival.

Any political association with the insurgency was such a liability that in the 1990s “recovering historical memory” became crucial to the left’s hopes for winning elections. When Catholic bishops set up their own truth commission, they called it the Recovery of Historical Memory Project (REHMI). By tracking down more testimony about army massacres and exhuming more victims, the left hoped to reshape how ordinary Guatemalans remembered the war. To be politically useful, such memories would have to differ from the plague-on-both-your-houses attitude that so many war-zone inhabitants shared with me and other researchers (Copeland 2011; Ekern 2010; Kobrak 2009; Le Bot 1995; Stoll 1993).

The URNG had always claimed to represent the Guatemalan people. The peace process was based on the assumption that the guerrillas represented a significant share of Guatemalan society. Once the URNG grounded arms, presumably, it could imitate

the success of the Farabundi Martí National Liberation Front (FMLN) next door in El Salvador. The FMLN was transitioning to local electoral victories, civil administration, and eventual control of the national government. But in Guatemala, the URNG became too factionalized to grow into a credible electoral force (Bornschein 2000). The left's share of the national vote peaked in 1999 at 12 percent, then collapsed, and the URNG disappeared from the national political stage.

To the consternation of the Guatemalan left, the votes that it expected to harvest from Mayan peasants went instead to their old nemesis, Efraín Ríos Montt, and his Guatemalan Republican Front (FRG). As a former coup plotter, Ríos was never allowed to complete an electoral campaign for president. But he did become the most persistent lightning rod in Guatemalan politics, with surrogate candidates winning or nearly winning the presidential elections of 1990, 1995, and 1999. Many Mayas joined Evangelical Churches during these years, but even peasants who remained Catholic could find Ríos Montt's avuncular persona and finger-wagging moralism hard to resist. He also benefited from folkloric memories of how the army became less indiscriminately violent during his 18 months in the presidential palace. Thanks to the resulting aura of being *un militar recto*—a righteous army officer who protected the people from bad army officers—his strongest electoral base was in the heavily Mayan departments where the army had killed the most people in the early 1980s.

Underlying this surprising resurrection was a dilemma facing the postinsurgency electoral left. How could it win the votes of up to 900,000 men who had joined the army's civil patrols? The patrols had cut off the guerrillas from their civilian supporters. Serving in them was obligatory. Anyone who refused to join was likely to be interpreted as a guerrilla sympathizer, which could lead to speedy arrest, torture, and execution. For this reason alone, the number of men who served as patrollers dwarfed the number who joined the guerrillas. The majority of patrollers served only because they were forced to, but in active war zones this included participating in the army's counterinsurgency sweeps, and some patrollers became serial executioners and rapists (Foxen 2010, 74–75; González 2002, 381–481).

Guerrillas could also be brutal toward civilians who refused to support them, but that did not prevent peace negotiators from agreeing on modest demobilization packages for them. Unlike the guerrillas, the patrollers did not have their own representatives at the peace talks, so they did not receive the slightest compensation for all their unpaid service to the army. As ex-patrollers observed subsequent aid flows to refugees returning from Mexico, they demanded equal treatment. Ríos Montt and his FRG party took full advantage of this, building a large electoral base among former patrollers in areas that the army had ravaged (cf. Copeland 2011, 501–2).

RÍOS MONTT IS BROUGHT TO TRIAL

The URNG's electoral failure to launch meant that the wider left never gained much presence in the Guatemalan state. Unable to elect more than a few mayors and parliamentarians, it was unable to tap state patronage networks as the FMLN had in El Salvador, then use these to build its voter base. As a poor second best, the Guatemalan left could only turn its popular organizations into nongovernmental organizations (NGOs) and seek funding from international donors; thus, aid projects became a substitute for votes. Exhuming war victims, helping former refugees develop new sources of income, and organizing women were supposed to revive the electoral left, perhaps even build a Maya-based political party. Unfortunately, the projects encouraged local leaders to adjust their priorities to the requirements of aid bureaucracies in Europe and North America. Calling the shots were not elected politicians responding to constituents but unelected activists and their European and North American donors. Once key decisions were being made by outsiders, parceling out economic benefits (or failing to do so) undermined the left's goal of strengthening community and widening solidarity.

International donors and activists were, for example, deeply engaged in the return of refugees from Mexico. Because many such refugees had joined the URNG's popular organizations in Mexico, their return to Guatemala was expected to win back the hearts and minds of the much larger Mayan populations that had sided with the army. In practice, the refugee returns became too conflictual—over the Maya movement, women's rights, prewar land claims, responsibility for war crimes—to carry out this mission. In like manner, exhuming war victims may have had more negative repercussions than positive ones. Exhumation teams generated many headlines and also many bitter memories that pitted ex-civil patrollers, ex-guerrillas, and different kinds of victims against each other.

Mayan distrust was one reason that Guatemala's NGO-centric left placed so much hope on redress from the international legal sphere—the International Convention on Genocide. The 1996 mutual amnesty law had specifically exempted genocide, so prosecution on this basis was always possible, but Guatemalan courts rejected the first such cases. This is why activists turned to universal jurisdiction, the legal doctrine that courts in one country can come to the aid of victims who lack judicial recourse in other countries.

Universal jurisdiction's finest hour came in 1998 when a Spanish court issued a warrant for General Augusto Pinochet. The former Chilean dictator's arrest in London—for the torture and murder of Spanish citizens during a 1973 coup d'état—eventually led to his conviction in Chilean courts. The same Spanish judge who authorized Pinochet's arrest, Baltasar Garzón, was also willing to indict Guatemalan defendants. Bringing the genocide case to Spain was Rigoberta Menchú, a K'iche' Maya woman

whose family had been targeted by the army, who then joined the Guerrilla Army of the Poor, and who went on to win the Nobel Peace Prize. Menchú's complaint included Ríos Montt; his predecessor as chief of state Romeo Lucas Garcia (died 2006); and his successor General Oscar Mejía Victores (died 2016). Unfortunately, even in Spain universal jurisdiction proved to be a political football. While Menchú and her lawyers obtained one hearing after another, these never led to an actual trial.

Even as the Spanish campaign faltered, horizons brightened in Guatemala. Corruption in all three branches of government became so blatant that Guatemalan reformers and their allies in the European Union, the United Nations, and private foundations devised a way to bypass officials who seemed to be complicit. In 2006 the Guatemalan government was persuaded to accept a new United Nations body, the International Commission Against Impunity in Guatemala (CICIG). CICIG sponsored new high-risk courts, to prosecute criminal networks extending into the Guatemalan state.

Meanwhile, human rights activists had been quietly recruiting witnesses to prosecute retired army officers for war-era crimes. Two key NGO partners were the Center for Legal Action for Human Rights (CALDH), organized by Guatemalan lawyer Frank LaRue in the United States, and the Association of Justice and Reconciliation (AJR) in Guatemala. According to Karine Vanthuyne and Ricardo Falla (2016, 213–18), CALDH organized AJR to give survivors any kind of support that they needed to become witnesses. Some witnesses had to be convinced that, just because they or their dead relatives had made the fatal choice of supporting the guerrillas, this did not mean that they were to blame for their fate.. AJR also had to convince witnesses to identify themselves as Mayas—a macroidentity that was new to much of Guatemala's Indigenous population—so that their testimony could support a case claiming genocide of the Mayan people.

The trial of Ríos Montt, when it finally came to pass under Attorney General Claudia Paz y Paz, was a tremendous success in the news media. It was broadcast worldwide by the Open Society Justice Initiative, and it has become a standard reference in international journalism about Guatemala. But some aspects of the trial fell short of international judicial standards. Just getting it under way required endless procedural duels with hostile magistrates seeking to stop it. Defense attorneys did their best to disrupt the proceedings and create a mistrial. When Judge Yassmin Barrios read the decision, the courtroom erupted in cheers. The trial's redeeming feature, and its most unforgettable one, was the testimony from 95 survivors, most of them Ixils from Nebaj. Of all the issues posed by this memorable event, I will now focus on three: (1) skeptical reactions by Ixils and other Nebajenses, (2) what trial testimony adds to the debate over the pace of violence under Ríos Montt, and (3) whether trial testimony proved intent to commit genocide.

SKEPTICAL REACTIONS BY IXILS AND OTHER NEBAJENSES

Divided memories of the war have long been obvious in Ixil country. Widely regarded as a stronghold of the Guerrilla Army of the Poor in the early 1980s, the three Ixil municipios went on to elect Ríosmonttista candidates to run their town governments in the 1990s and early 2000s. During the genocide trial, Nebajenses were quick to notice that witnesses never referred to the guerrillas. This was not a minor omission. Led by outsiders, EGP cadres had been active in Ixil villages for years before the first army patrols arrived. Once cadres established a clandestine network in a village, then surfaced and announced that they were in charge, villagers who refused to go along with this revolution in village authority could be executed (Guzaro and McComb 2010, 82–83, 104–13).

In my interviewing about the war, survivors usually blamed the army for most of the killing but, even for those deaths, extended part of the blame to the EGP—for firing the first shots in a locality and for ambushing soldiers in ways that exposed civilians to reprisals. Consider the following from a man who was shot twice—first by the guerrillas as he patrolled for the army and later by a drunk soldier:

The guerrillas concealed themselves and when a soldier came by—*pom, pom, pom*—he was dead. Another soldier came by—*pom, pom, pom*—also dead. How many innocents died because of this! Many! Pregnant women, children, elders. By the soldiers and by the guerrillas too. If you weren't in agreement with them, the guerrillas strangled you in the bush.

In 1982, the EGP retaliated against the newly organized civil patrols with a series of massacres that were never fully reported (compare Kobrak 2013, 222). It soon stopped doing this. But for years afterward, Ixil refugees told me, anyone under the EGP's control who showed signs of surrendering to the army could be arrested and executed (Stoll 1993, 150–51, 332–33). When Ríos Montt's defense team questioned witnesses about their experiences with the EGP, they seemed to deny any knowledge of it. For the many Nebajenses who had been threatened by guerrillas as well as soldiers, this tarnished the proceedings with bias.

The post-1996 peace process was very successful in ending score-settling between the two sides. But blood debts remain, and these weigh heavily, not just on past killers but also on their family members. This is apparently why, among Nebaj Evangelicals, Jailey Philpot-Munson (2009) found considerable opposition to exhumation of war graves even though nearly everyone had lost at least one relative to the army. Again and again, Evangelicals told Philpot-Munson, they were afraid that bringing up the dead

would activate blame and revenge. Conveniently, of course, this attitude shielded relatives and neighbors who had killed for the army. But it also shielded relatives and neighbors who had killed for the guerrillas.

Krisjon Olson has explored the dilemmas facing one of the women who testified against Ríos Montt. The woman's kin network seems to have fought on both sides of the war, or at least been accused of doing so, including four siblings who died and two others who suffered lengthy detention. Her children were active in local groups that supported the peace process, but the family was of two minds about joining the genocide case. According to one son: "We have our debts, we survived the war, even in this place, and now we must live with the peace—whoever or whatever we owe." Olson adds that their

history of their town is less about being caught in the midst of a conflict without stakes or being inscribed in a catalogue of war crimes. Theirs are stories of entanglement and conversion as some preach unconditional forgiveness and others advocate action. But most vacillate, caught in the contested nature of their own experience which makes them willing to pardon but unable to name names. (2016, 347)

Meanwhile, according to the son, his mother prayed that she might never have to "testify against the civil patrollers who saved her children from starvation"—the same ones she suspected of having tortured a brother-in-law.

Two months after the genocide verdict, I spent two weeks in Nebaj and was able to sound out 55 Nebajenses on how they felt about it (Stoll 2013). Of forty-five Ixils, 20 approved of the genocide verdict, 14 did not, six leaned toward disapproval, and five were either neutral or did not care to respond. Of the six ladinos and four K'iche' Mayas who gave me their opinion, none approved of the genocide verdict; together, ladinos and K'iche's make up about 15 percent of Nebaj's population.

For the first time, I heard a wide range of Nebajenses use the term *genocide* to refer to the war; in this respect, the genocide prosecution was successful. How Nebajenses responded was not just a function of their religious loyalties: there were Catholics who defended Ríos Montt and Protestants who lambasted him. Nor were their responses merely a function of the side on which they had fought. The four ex-soldiers I interviewed were not as dismissive of the genocide conviction as I expected; each acknowledged that the army committed atrocities and merely argued that the guerrillas did, too. Of the three ex-guerrillas I interviewed, one defended the genocide conviction, another declined comment, and the third said:

It's all the same to me. As far as I'm concerned, there were two groups, there was a confrontation, a war, both sides are at fault. Ríos Montt arrives, offers an amnesty so people will come (opens arms wide), what more do you want? People were confused between the two groups, some went with the government and others with the guerrilla, and many people died. The army is responsible for many bones and so are the guerrillas.

This is how I would explain all the differences of opinion: Nebajenses had very different experiences under Ríos Montt's brief but memorable time in office, depending on whether or not they had joined the guerrilla movement, then on their luck with suspicious soldiers, suspicious guerrillas, jealous neighbors, and other opportunities for disaster in a trigger-happy period. Judging from what they told me, the best predictor of how they felt about putting Ríos Montt on trial for genocide is how they fared under his amnesty. If the army killed family or friends after Ríos Montt declared amnesty, they favored the genocide conviction. But if his amnesty diminished the perils they faced, they were more likely to question the genocide conviction.

WHAT TRIAL TESTIMONY SAYS ABOUT THE PACE OF ARMY ATROCITIES UNDER RÍOS MONTT

Trial testimony against Ríos Montt did not include these divided opinions, but it can still tell us something about the pace of army violence. What about the claim by the ex-dictator's Nebaj defenders that, during his 18 months in the presidential palace, they experienced a significant drop in army violence? The crucial year is 1982, with General Romeo Lucas Garcia in power until Ríos Montt took office in a March 23 coup. At the national level, when the Catholic truth commission (REHMI) chronologized massacres by date, these came most frequently in January and February (51), at a slower but still-sickening pace from March to August (77 over six months), before trailing off (16) in the final four months of the year (ODHAG 1998, 4:513). In a roughly congruent statistical analysis by Patrick Ball (CEH 1999b, 256), the most lethal months of the war were January to July 1982.

Turning to the Ixil region, let us now consider the 95 testimonies from Indigenous witnesses at the 2013 trial. Thirty-two testimonies are dated ambiguously to 1982 and 1983. This is not surprising in view of wartime conditions, but imprecise dating means that we must reluctantly bypass them for the purpose of sequencing. The remaining 63 testimonies distribute as follows:

- Seven witnesses date their experiences to before Ríos Montt took power.

- Twenty-five witnesses describe events that occurred between March 23 and June 9, 1982—the day that Ríos Montt became sole chief of state. This period included a string of massacres in Ixil country, reported soon after they occurred, that killed some 400 people.
- Twenty witnesses describe ferocious massacres in the last half of 1982. These include soldiers and civil patrollers killing 36 fleeing civilians at the village of San Francisco Javier on August 14; then the burning of 50 to 75 people in their houses at Secal, Cotzal; then the execution of 22 people in Santa Marta; and repeated attacks against Sajsibán that killed several dozen noncombatants.
- Eleven witnesses describe continuing army havoc in 1983. Houses are burned, women are raped, helicopters kill, and Juana Reynoso Chávez says the army killed “many” and “innumerable” people in an attack on refugees at Visumal. Aside from her testimony, the largest stated death toll by these final 11 witnesses is nine.

The above testimony wrecks the argument that Ríos Montt stopped atrocities against noncombatants—obviously he did not. These continued to occur at regular intervals. But it supports a common observation by Ixils: army killing diminished in the latter part of his administration. Conceivably, Ríos Montt was trying to restrain homicidal regional commanders but had only limited success. However, army killing could also have diminished because the EGP, having lost so many supporters to the newly organized civil patrols, pulled most of its fighters back to the Mexican border in June 1982. This would have reduced the number of guerrilla ambushes in which the army interpreted nearby civilians as accomplices. Still another possible reason is that, after the army organized all remaining adult males into civil patrols, it had fewer excuses to classify them as enemy combatants.

The distribution of testimony also helps explain why Ríos Montt acquired a reputation as more predictable and less violent than the previous president, Lucas Garcia. Virginia Garrard-Burnett (2009, 88) argues:

It is the pattern of this arc—the dramatic acceleration in chaotic and frenetic violence under Lucas, followed by more violence, but in a more predictable pattern, that eventually gave way to an enforced peace that probably accounts for why many Guatemalans associated Lucas with violence and Ríos Montt with peace in the years immediately following this period.

In Ixil country, the army began burning any village it entered under Lucas Garcia; it finished the job under Ríos Montt. Soon it was resettling refugees under its control into a new system of model villages, each guarded by soldiers and civil patrollers. These were concentration camps, according to human rights groups, and they could indeed be totalitarian: the penalty for being caught trading with the guerrillas was death.

However, the success of the model villages was due to more than surveillance and terror. As army offensives made life impossible for refugees in EGP-controlled areas, the model villages became a more plausible avenue for survival. Since the villages nucleated refugees in the vicinity of their prewar farmsteads, they were now within walking distance of crops and firewood. The army also allowed them to leave for several months a year to work on coastal plantations—a source of cash upon which they had long relied. In contrast, the EGP prohibited the refugees under its control from going out to plantations. If they did, they could fall into the army’s hands and provide information that could cause more deaths. Hence, the revolution did not grant leaves of absence. But for Ixil refugees who surrendered to the army or were captured by it, resettlement in a model village could return them to a semblance of their former lives. By 1987 they were petitioning the army to set up new ones.

This is how the army won the war—not by destroying a way of life but by coercively redefining it. If so, the Nebaj experience belongs on one side of Straus’s distinction between genocide and civil war: it represented subjugation, not extermination. As one Nebajense asked me during my 2013 canvas of reactions to the Ríos Montt trial:

Genocide permits an amnesty and development poles? Many communities were organized in this period. If there had been genocide, the town of Nebaj would not be here. It would be a big plantation owned by rich people, of cattle or coffee.

Why would genocide prosecutors choose a witness population with such divided opinions? Two reasons emerge from Vanthuyne and Falla’s (2016, 214–19) account of witness recruitment. First, a support program among Chuj Mayas, who could have testified about the massacre at the Finca San Francisco, gradually fell apart. In 1999, the Chuj survivors were eager to testify, but the delays, expense, and stress of joining a distant legal process over which they had no control eventually led to their withdrawal. Second, in 2009, army documents about a counterinsurgency sweep in the Ixil area surfaced. With those documents in hand, prosecutors decided, they could demonstrate Ríos Montt’s and the army’s intent to commit genocide.

DID THE 2013 TRIAL PROVE INTENT TO COMMIT GENOCIDE?

Proving genocide in court is famously difficult because it requires “intent to destroy” the group in question. Above and beyond the actual crime, demonstrating intent is a serious additional burden for prosecutors because it requires proving a state of mind. Documentary evidence for state of mind, such as the Nazi regime’s Wannsee Conference, is often missing. In the Guatemalan case, no army directives to exterminate an ethnic or racial population have ever come to light. As a defender of the genocide paradigm concedes: “In Guatemala there was never an elite proposing the elimination of indigenous peoples, nor were there organizations or groups organized specifically to kill indigenous people of any particular ethnic group” (Vela Castañeda 2016, 231).

In 2009, a Washington, DC, advocacy group obtained 359 pages of army documents about a July 1982 offensive in Ixil country. Operation Sofia was one of many offensives against an EGP-controlled area sheltering thousands of refugees from previous army attacks. The leaked Sofia reports describe the killing of 21 people in different encounters. They identify 11 of the dead as guerrillas or Local Irregular Forces (FILs)—civilians who supported the EGP more or less as civil patrollers supported the army. The documents also identify ten of the 21 dead as women, children, or men trying to escape. Last but not least, they report the capture of 1247 noncombatants (National Security Archive 2009).⁴

Population control is a standard objective in counterinsurgency, so how would such an operation demonstrate the army’s intent to destroy the Ixil people in whole or in part? The Sofia documents prove an intent to commit genocide only if we read into them a distinction that the CEH made in 1999 between motive and intent. Thus, according to Liz Oglesby (one of the prosecution’s expert witnesses) and Diane Nelson,

the Guatemalan army’s ultimate motivation was to defeat the guerrillas, but in order to do so it intentionally targeted entire groups, like the Maya-Ixil, that it considered to be enemies of the state. Military documents from the era show how the army viewed Guatemala’s indigenous populations in general, and the Ixil population in particular, as real or potential “internal enemies” with a proclivity towards supporting the insurgents. Historically based racism contributed to conflating Mayas (or at least specific groups of Mayas viewed as especially “rebellious”) into the category of internal enemy. The state’s attack against the Ixils and other Maya communities was motivated by political and military criteria, rather than purely racial objectives. The state wasn’t killing all Mayas; it was killing those it deemed “bad Mayas.” . . . The army’s doctrine of annihilation led to entire communities being labelled “bad Mayas” in a scorched earth assault and militarized reconstruction. The question is not whether the violence was counterinsurgency or genocide; the point is that it was both counterinsurgent and genocidal. (2016, 139)

At the trial, a succession of experts attributed the army’s “bad Maya” category to Guatemala’s centuries-old tradition of racism. But why would this legacy cause the Guatemalan army, which until this point had ignored the Ixils, to suddenly identify them as an internal enemy and burn down their villages? What prosecution witnesses carefully omitted from their testimony was the obvious trigger: by 1981 the army had come to believe the EGP’s claim that it was a “guerrilla army of the poor,” which represented the Ixil people. Such claims were grandiose, but this became clear only in hindsight. At the time, the EGP’s claims seemed almost beyond refutation, not just to the Guatemalan army but to the international left, because the EGP had succeeded in recruiting Ixil fighters and supporters to launch devastating raids on army troops. The larger goal, the EGP declared, was to overthrow the Guatemalan state. If that did not make Ixils look like an internal enemy, what would?

Only gradually did human rights observers grasp that the EGP was led by non-Indigenous career revolutionaries. Only gradually did they grasp that the EGP won the allegiance and logistical support of some Ixils but imposed itself on others. Guerrilla movements make up for their lack of military strength by embedding themselves in civilian populations. The difficulty of distinguishing between combatants and noncombatants increases the risk that government forces will target civilians and commit war crimes (Wickham-Crowley 1991, 82–86). This is precisely how the EGP operated, with hit-and-run tactics that left villagers behind to bear the brunt of army reprisals.

What about the distinction between motive and intent? In any war for control of a civilian population, this distinction can be used to inflate a belligerent’s tactical motives to the strategic intent of genocide. For example, consider the prosecution’s argument that the Guatemalan army was classifying the Indigenous population into “good” and “bad” Mayas. Judging from a detailed account of executions by both sides, EGP cadres drew the same distinction among the Ixil refugees under their administration (Guzaro and McComb 2010, 106). Indeed, any military force dealing with a politically divided civilian population would be tempted to impose the same distinction between friends and foes.

In such situations, according to international humanitarian law, belligerents must respect the right of civilians to remain neutral. Unfortunately, neither side in the Guatemalan conflict recognized this right. In the case of the EGP, it claimed to represent *el pueblo*, which consisted of those civilians who supported the revolution or acquiesced to it. As for civilians who opposed the revolution, the EGP classified them as reactionaries, which meant that they could be *orejas* (ears) or informers collaborating

with the army. In the largest guerrilla massacre of the war, in June 1982 at the pro-army hamlet of Chacalté, the EGP attacked at dawn and killed more than a hundred Ixils (ODHAG 1998, 3:175–77). If these were “bad Mayas,” then the EGP’s tactical motive of punishing reactionaries could prove its own strategic “intent to destroy, in whole or in part” the Ixil people—that part of the Ixils who cooperated with the army.

COMMAND RESPONSIBILITY FOR WAR CRIMES WOULD HAVE BEEN EASIER TO PROVE

To insist on the EGP’s share of culpability, as do so many Nebajenses, is not to exonerate the Guatemalan army. The army’s brutality toward helpless villagers and prisoners reflected an entrenched, institutional disregard for the Geneva Conventions (Schirmer 1998). The army, not the EGP, was responsible for a large majority of the killing. Some Ixils oppose the genocide indictment, and the indictment might not sit well with traditional ideas of community obligation, but that does not negate the right of other Ixils to go to court. Given the village massacres that occurred under Ríos Montt, putting him on trial was a considerable accomplishment. So was the testimony of the Ixil witnesses—possibly the most powerful testimony ever heard in a Guatemalan courtroom. Like other trials of retired army officers, this one was instructive for the current officer corps. Clearly, judicial impunity for their profession is at an end, and this is a step forward in the struggle for Guatemalan democracy.

If the prosecution had been content to try the former president for war crimes and crimes against humanity, it could have rested on a simple point that was already part of the indictment and beyond refutation: Ríos Montt was at the top of a military hierarchy, which made him responsible for crimes committed by troops under his command. If troops develop a pattern of killing civilians, prisoners, and wounded as protected by the Geneva Conventions, and if their commanders fail to take steps to stop them, the commanders become legally liable. This is the doctrine of command responsibility, which is how the Allied Powers convicted Nazi and Imperial Japanese leaders of war crimes after World War II.

In a statement to the court, Ríos Montt claimed to have no knowledge of the army crimes established by the prosecution. Three decades before, when a US military attaché attended a meeting of senior commanders, Ríos Montt

emphasized the fact that the plan was made very general to permit each commander as much freedom of action as possible in his assigned area. . . . [He] said he was leaving the details up to them and that he expected results. Civilians and their properties were to be respected. He wanted each commander to take special care that innocent civilians would not be killed; however, if such unfortunate acts did take place, he did not want to read about them in the newspapers. (cited in Garrard-Burnett 2009, 90–91)

Such words can be read in more than one way. There was enough continuity from the previous administration that, in the eyes of some observers (e.g., Porrás Castejón 2010, 92), Ríos Montt’s main contribution was to add more appealing slogans to his predecessor’s approach. In 2013, the prosecution showed that the pattern of behavior in different locations could not have been produced by lower-level officers operating independently (Roht-Arriaza 2013)—this also helped establish command responsibility.

Well before Ríos Montt’s trial, Guatemalan courts were using command responsibility to convict other retired officers. Thus, in 2009 Colonel Marco Antonio Sánchez Samayoa and three military commissioners were sentenced to 53 years for disappearing eight people in El Jute, Chiquimula. During the case, the Constitutional Court ruled that certain crimes are not included in the 1996 mutual amnesty. This cleared the way to prosecute more officers for crimes under their command. In 2016, an ex-base commander and military commissioner were sentenced for the sexual enslavement of Q’eqchi Maya women and the disappearance of their husbands. The following year, four officers were convicted of the 1981 disappearance of a boy and the rape of his sister. One of the officers, along with seven others, is also being prosecuted for what exhumation teams have found underneath an army base that they used to command: clandestine burials of at least 558 people, apparently victims of army kidnappings. Such cases suggest that, going forward, war crimes at specific times and places will be a more resilient indictment than genocide. As Stener Ekern (2010, 238) has argued, so will crimes against humanity.

Clearly, the activists and institutions who put Ríos Montt on trial have made history: this was the first time an ex-chief of state has been prosecuted for genocide by a court in his own country. Advocates also have popularized the genocide label among ordinary Guatemalans and in the international media—this is a victory for their conception of historical memory. Genocide is such a powerful symbol of evil, they believe, it will force Guatemala’s governing elites to make concessions to popular movements (Molden 2016, 325). Unfortunately, such concessions have yet to be made. Instead, the genocide case has contributed to a powerful backlash.

Angered by the trials for this and other wartime offenses, retired army officers have played a central role in electing Guatemala’s most recent presidents, Jimmy Morales (2016–2020) and Alejandro Giammattei (2020–). Methodically, the two administrations have dismantled the state apparatus that enabled prosecutions of war crimes and corruption (Fuentes 2022). The anticorruption CICIIG commission has been shut down. So has the Secretariat of Peace and the Presidential Human Rights Commission. Other branches, such as the justice ministry’s Specialized Anti-corruption Unit, are under siege (Burt and Estrada 2020). Judges willing

to indict retired army officers and corrupt office-holders are being purged. In the Guatemalan congress, politicians of the right, including Ríos Montt's daughter Zury Ríos, are seeking to outlaw any further prosecution of war crimes (Washington Office on Latin America 2021).

As of this writing (June 2022), the Guatemalan state seems to be reinstitutionalizing impunity. The country's achievement—of national courts prosecuting retired army officers—could be coming to an end. Just as the guerrilla movement won the international media war but lost the war for the hearts and minds of Guatemalan campesinos, genocide-trial advocates prevailed in the international media arena but not in Guatemalan politics. Here, they still seem to be losing, and so is everyone else who wishes to see a more democratic Guatemala. Would prosecuting Ríos Montt for command responsibility rather than genocide have made any difference? I do not know. But in future assessments of the war, we should give more thought to whether genocide is an accurate description of the Guatemalan army's crimes.

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ENDNOTES

¹ For the retrial, Ríos Montt's defense team recruited its own Ixil witnesses, including victims of an EGP massacre, to complement the prosecution's Ixil witnesses. The defense proceeded to argue that “no Ixil died for being Ixil” (Escalón 2016). Following Ríos Montt's death, the trial of his codefendant General Mauricio Rodríguez Sánchez continued. On September 26, 2018, the court affirmed that the army had committed genocide against the Ixil Mayas, but found Rodríguez not guilty on grounds that as intelligence chief he was outside the chain of command.

² Here are the main steps in Ball's (CEH 1999b, 237–62) approach: (1) If the CEH's and two other databases of victims do not overlap each other, they list a total of 54,643 dead from 1978 to 1996 (238); (2) Since a sample of 1,412 cases from the CEH database shows an overlap of only 11.3% with the two other databases, the three databases contain an estimated nonduplicated total of 47,803 dead (239). Because the overlap percentage is based on a sample, not a complete comparison, I suspect that it is too low; (3) Through sampling procedures, Ball estimates that another 84,468 assassinations were committed between 1978 and 1996 that never were reported to the three databases (245). This is a multiplier of 2.77; in view of all the reporting and investigation that occurred, I suspect that this multiplier is too high; (4) To Ball's estimated total of 132,000 killings between 1978 and 1996, the CEH added generous estimates of the number who were killed from 1960 to 1977 (22,000), of the number who were “disappeared” (kidnapped) from 1960 to 1996 (40,000), and of the number killed in regions not covered by the three databases (7500), to arrive at a total of 201,500 killed and disappeared from 1960 to 1996 (CEH 1999c, 73).

³ In 1997 the URNG's demobilization of 2,959 members and their children produced an estimated 800 to 1000 combatants. Yvon Le Bot (1995, 195) estimates that in 1981–1982 there were 6000 full-time guerrilla combatants plus “some thousands provisionally and precariously armed” from a support base of more than a quarter million people. But if the URNG was defeated for lack of weapons, as is frequently argued, then many of the 6000 full-time combatants either were not fully armed or did not exist. During the same period the army reached a strength of 36,000 soldiers and as many as 900,000 patrollers. Thus, if there were ever 6000 full-time guerrilla combatants and 10,000 part-time Fuerzas Irregulares Locales (FILs), which is a generous estimate (Schirmer 1998, 41, 47), they would have been outnumbered 58.5 to 1 by 936,000 government counterinsurgents. Yet, if the guerrillas and their FILs committed 3 percent of the violence, their share of the violence would have been outnumbered only 31 times by the government's 93 percent share of the violence.

⁴ Thanks to researcher Ben Parker for his careful analysis of the Sofia documents.

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