

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

CAREY R. DUNNE
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
carey.dunne@davispolk.com

April 29th, 2013

Constitutional Court of Guatemala
11 Avenida 9-37 de la Zona 1
Guatemala City, Guatemala

Honorable Judges:

I write on behalf of the Association of the Bar of the City of New York (the Association) to express concern about the suspension of the trial of Efraim Rios Montt and Mauricio Rodriguez Sanchez. We believe that, in order for Guatemala to meet its obligations under international law, the trial must move forward.

The Association is an independent non-governmental organization of more than 23,000 members in over 50 countries. It has a long history of dedication to human rights, particularly through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world. The Committee on International Human Rights has been monitoring the trial of Rios Montt and Rodriguez Sanchez, and the trial's suspension and potential nullification are of great concern to us. Moreover, the Association's Committee on Inter-American Affairs monitors a wide range of legal developments throughout the Americas, including matters related the rule of law.

The Association has serious concerns regarding the independence of the judiciary in Guatemala. We note that the trial was suspended after the publication of a statement criticizing the trial, which was expressly endorsed by President Otto Perez Molina, and which claimed that the genocide trial was an "attack on the Guatemalan state," and a "farce." There have also been numerous reports of threats to the safety of witnesses, judges, and lawyers who have participated in the trial. This type of interference violates international standards on the independence and impartiality of the judiciary.¹ Guatemala's courts must be free to decide the cases before them without being subject to "improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."² It is particularly vital that the judiciary's independence is protected in cases such as this one, whose historic significance makes it an example of the power of an independent judiciary to promote peace, as well as justice. If the trial is nullified in response to political pressure, it will instead become a symbol of the weakness of the rule of law in Guatemala.

¹ See United Nations Basic Principles on the Independence of the Judiciary, *adopted* Sept. 6, 1985, U.N. Doc. A/CONF.121/22/Rev.1.

² *Id.*

We also call to your attention that victims of genocide and crimes against humanity have a right to justice under international law. The Inter-American Convention on Human Rights,³ which Guatemala ratified on April 27, 1978, provides that all persons have the right to “effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.” Likewise, the United Nations Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law requires states to ensure that victims have “effective access to justice.”⁴ The public prosecutor has presented testimony from many victims whose fundamental rights were violated by combatants under the command of the Defendants. Those victims have a right to justice, and Guatemala has an obligation to provide them with effective recourse. By allowing the trial to continue, the Constitutional Court will meet that obligation.

The Convention on the Prevention and Punishment of the Crime of Genocide,⁵ which Guatemala ratified on January 13, 1950, also obligates Guatemala to try these Defendants. That Convention provides that “persons committing genocide or any of the other acts enumerated in [the Convention’s definition of genocidal crimes] shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.” The court has determined that there is sufficient evidence to support the Defendants’ indictment for the crime of genocide, triggering Guatemala’s obligation to try the case. Therefore, in order to satisfy Guatemala’s duties under the Convention, the Constitutional Court must allow this trial to continue.

The trial of Efraim Rios Montt and Mauricio Rodriguez Sanchez is an historic achievement on the part of the Guatemalan state, and presents an opportunity for Guatemala to be an example to the world of fidelity to due process and the rule of law. We strongly urge you to ensure that the trial moves forward so that Guatemala does not instead become an example of impunity, allowing fear to trump justice.

Very truly yours,



Carey R. Dunne

³ Organization of American States, American Convention on Human Rights, Art. 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123. Guatemala ratified the Convention on April 27th, 1978. *See* <http://www.cidh.oas.org/basicos/english/Basic4.Amer.Conv.Ratif.htm>.

⁴ United Nations Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, *adopted* Dec. 16th, 2005, U.N. Doc. A/res/60/147.

⁵ United Nations Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948. S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277. Guatemala ratified the Convention on January 13th, 1950. *See* http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en

cc:

The Honorable John Kerry
Secretary of State
United States Department of State
2201 C St. NW
Washington, DC 20520

His Excellency Ambassador Stephen J. Rapp
Ambassador at Large
United States Department of State
2201 C St. NW
Washington, DC 20520

Hon. Arnold A. Chacon
United States Ambassador to Guatemala
Embassy of the United States
Avenida Reforma 7-01, Zona 10
Guatemala 01010

President Otto Perez Molina
President of the Republic of Guatemala
6ta Avenida 4-46, Zona 1
Guatemala City, Guatemala

Vice President Ingrid Roxana Baldetti Elias
Vice President of the Republic of Guatemala
6ta Avenida 4-46, Zona 1
Guatemala City, Guatemala

His Excellency Jose Francisco Villagran de Leon
Ambassador of the Republic of Guatemala to the United States
Embassy of Guatemala
2220 R St. NW
Washington D.C. 20008