



[This document is the response of Spanish National Court Judge Santiago Pedraz to the Constitutional Court of Guatemala's December 12, 2007 decision in the Guatemala Genocide Case. The English translation is provided by the Center for Justice and Accountability. It is meant for informational purposes only and is not an official translation]

In Madrid, 16th of January, 2008

Given the previous resolution of the Constitutional Court of Guatemala, together with previously given court orders:

FACTS

The Constitutional Court of Guatemala on 12 December of 2007 issued a resolution finding that Spain does not have jurisdiction over the investigation of the crimes that are mentioned in the present case, (genocide, terrorism, torture, assassinations and illegal detentions against civilians and persons of Mayan ethnicity, including victims who were Spanish citizens).

LEGAL REASONING

FIRST- The facts contained in the case file indicate that between the years of 1961 and 1996, and more gravely between the years 1978 and 1984, in Guatemala there were more than 250,000 victims. Many of them, before their deaths, were subjected to severe torture. More than 45,000 of them remain missing. There were around one and a half million persons internally displaced and some 150,000 sought refuge in Mexico; many of these were also subjected to severe torture. About 430 towns were erased from the map and about 667 massacres counted. Agents of the Guatemalan State perpetrated 93% of these crimes. 83% of the victims were Mayans, 17% were

Ladinos. On the whole, despite the time transpired, these events have not been investigated by the Guatemalan authorities. The crimes remain unpunished.

SECOND- On 31 January 1980 a group of peasants from the department of Quiché peacefully took over the Spanish Embassy in Guatemala with the goal that this diplomatic representation would serve as a valid intermediary for their claims of attacks against them by the Guatemalan government. Despite these intentions, the Government of Guatemala decided that the Police and other Security Forces would enter the diplomatic delegation without consent, and kill all those inside. In the few hours that the incident lasted, none of the pleas of the Spanish ambassador were heard, including his calls to the Interior Minister. The original plan was carried out: to kill the peasants, as well as any third parties present such as Spanish Embassy officials or visitors. Consequently, 36 people died, among them Spanish citizens. The crimes remain unpunished.

THIRD- Given that the activity on the part of the Guatemalan authorities regarding this case has been -- and continues to be -- non-existent, the victims and those harmed, as well as human rights organizations, appealed to international bodies. Legal action was also brought before the Kingdom of Spain, giving rise to the present proceeding.

FOURTH- Those charged to date are: General Efraín Ríos Montt, Chief of Government by a *coup d'état* from 23 March 1982 to 8 August 1983; General Oscar Humberto Mejía Víctores, Chief of Government by *coup d'état*, from 8 August 1983 to 14 January 1986; General Fernando Romeo Lucas García, President of the Republic of Guatemala from 1978 to March of 1982 (apparently deceased); General Ángel Aníbal Guevara Rodríguez, Minister of Defense of

Guatemala during the Government of Lucas García; Donaldo Álvarez Ruiz, Minister of the Interior during the Government of Lucas García; Colonel Germán Chupina Barahona, Director of the National Police during the Government of Lucas García; Pedro García Arredondo, Chief of The Sixth Command of the National Police during the Government of General Lucas García; and General Benedicto Lucas García, Chief of Staff of the Army during the Government of his brother Lucas García. All of these individuals are being sought and are subject to arrest, and the extradition of those residing in Guatemala has been requested.

In the course of the investigation of the crimes (genocide, tortures, assassinations...) the Kingdom of Spain requested of the Guatemalan authorities judicial collaboration by way of timely and appropriate rogatory commissions. Not one of these has been carried out, in spite of multiple attempts on the part of Spain to obtain said collaboration. The Guatemalan State has demonstrated a clear dilatory attitude, not only by the delays in moving the process forward, but also by claiming “problems” with signatures, footnotes, the financial resources of those charged... Furthermore, a simple request to take depositions of witnesses has been delayed repeatedly, even to the point of having the Spanish judicial commission travel to Guatemala only to find that once there, the depositions were to be postponed *sine die*. Because of this, to avoid such delays, this Court has found it necessary to depose the witnesses in Spain, a process that will begin shortly.

FIFTH- In spite of the efforts of the judges of first instance and magistrates of the court of appeals of Guatemala, who in compliance with national and international human rights law allowed, with their authorization, the partial implementation of the international detention order,

the Constitutional Court of Guatemala on 12 December 2007 issued a resolution nullifying the extradition request by the Kingdom of Spain of those charged. The Court finds that Spain does not have jurisdiction to investigate said crimes, even though said crimes involve crimes of universal persecution. They consequently negate the constant, settled, and well-established international doctrine in such cases, subscribed to by those countries that guarantee the defense of human rights. At the same time, with this decision, the Constitutional Court lets it be known that the State of Guatemala assumes full responsibility for violating its international obligations and its own national laws, by ignoring the *erga omnes* (universally applicable) international obligation *aut dedere aut judicare* (extradite or prosecute) recognized by most authoritative doctrine since it was established in the XVII century by Grotius and, today, incorporated into both customary and conventional International Law and International Criminal Law. It bears noting that, beyond its application in customary International Criminal Law, conventional (treaty-based) International Law such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984) the requirement to extradite or prosecute is obligatory, and mentioned repeatedly.

In spite of this obligation *erga omnes*, applicable to all international crimes that are *ius cogens* in nature, like those here charged, the highest Guatemalan court says or insinuates nothing about the full effect of these laws and of the obligation of its courts to execute them, and thus Guatemala incurs in a flagrant violation of its international obligations as a State.

These obligations, which are also incorporated into the legislation of many countries as supplementary or background norms, is a basic principle of extradition law. And, more importantly, it is part of the Extradition Treaty signed between Spain and Guatemala. Ignoring this obligation, as the Guatemalan Constitutional Court has done, constitutes a violation of this treaty of judicial cooperation between the Republic of Guatemala and the Kingdom of Spain.

SIXTH- Genocide is a crime under International Law. Therefore, its prosecution becomes obligatory for all the members of the international community. In its ruling, the Constitutional Court of Guatemala characterizes what took place against the Mayan people as a political crime, in the same way it considers the other crimes being investigated. With such a position Guatemala, as a State, violates the obligation assumed by all civilized nations to prevent and punish all crimes as established in the Convention on the Prevention and Punishment of the Crime of Genocide, approved by the General Assembly of the United Nations on 9 December 1948. This only reiterates what has already been sufficiently established, which is that the Guatemalan State has failed to do anything to punish said crime committed against the Mayan people, and therefore Spain can and must universally prosecute said crime.

Taking into consideration the above antecedents, together with the fact that those charged are of advanced age (over 80 years), and the commonly known fact that for lesser crimes the degree of impunity that exists in Guatemala is one of the highest in the world, the resolution of the Constitutional Court, Guatemala's highest legal authority, confirms that the Guatemalan State does not have the will to investigate the aforementioned crimes and to bring those responsible to justice, and is providing a broad blanket to impunity, negating the doctrine mentioned above and,

therefore, placing itself in the sphere of countries that violate their international obligations and disdain the defense of human rights.

SEVENTH-- Consequently, it becomes even more necessary that the Spanish judicial system continue to investigate these crimes. Therefore, as it is clear that Guatemalan cooperation will not be forthcoming in the process against those presumed to be criminally responsible, by denying the request for their extradition, in violation of the already cited *aut dedere aut judicare* obligation, we hereby cancel each and every one of rogatory commissions issued to Guatemala (which have not been acted upon for quite some time) and, in their place, seek other means to continue the investigation.

To this effect, we request of the media (the press, radio, television and digital media) of Guatemala and of neighboring countries—Mexico, Belize, Honduras, Nicaragua, El Salvador and the United States—the publication of an announcement (indicated below) so that the victims, those harmed or adversely affected, witnesses, investigators, etc. may provide to this Court information about the incidents being investigated (except for the firebombing of the Spanish Embassy in Guatemala, for which there is already sufficient evidence in the case file).

Information may be provided to this Court by following the legal channels and other means provided specifically for this case, in conformity with Spanish law, insuring that all information is forwarded in a timely fashion to this Court so that it may be made part of the case file (Diligencias Previas 331/1999).

DECIDED: Each and every one of the rogatory commissions issued to Guatemala in the present case are hereby cancelled. Communicate this resolution to the Guatemalan authorities.

Request of all media (the press, radio, television and digital media) of Guatemala and of neighboring countries—Mexico, Belice, Honduras, Nicaragua, El Salvador and United States—the dissemination of the following statement:

The Central Tribunal of Instruction Number One of the National Court of Spain, in view of the fact that the Guatemalan authorities have refused to collaborate with the investigation, requests of those persons who are victims, those who have been harmed, witnesses, and anyone else who is able to submit relevant information about the **GENOCIDE AND OTHER CRIMES COMMITTED AGAINST THE MAYAN PEOPLE IN GUATEMALA**, to come forth and provide such information to this Court through the appropriate channels available in each country in conformity with established Spanish law. The information gathered shall be forwarded to this Court in a timely fashion, to be incorporated in the case file (*Diligencias Previas 331/1999*).

Provide a copy of this resolution and of the statement to the Chief of Press of the National Court so that the information is forwarded to the media sources mentioned.

Notify the Public Prosecutor and other named parties of this Decision, advising them that it may be appealed.

Agreed and signed by His Honor Mr. D. Santiago J. Pedraz Gómez, Judge

The Central Tribunal of Instruction, Number One. I so attest.