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Spanish Justice

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As dusk approached and a light rain fell over Guatemala's Supreme Court plaza, Nobel Peace Prize recipient Rigoberta Menchú sought to buoy the spirits of the human rights activists, local clergy and Mayan women gathered there. "The Supreme Court hasn't given the green light on judging Ríos Montt yet," she said of the longstanding quest to bring the former dictator to trial. "But don't lose hope; we'll fight the rest of our lives to see there's full justice for the genocide in Guatemala."

These days, the justice Menchú hopes for is meted out, in large part, by the high courts of Spain. First they went after Augusto Pinochet, Chile's former despot. Then they trailed Adolfo Scilingo, the Argentine naval captain who had scores of political dissidents thrown from planes. Now Spain's National Court has a new target: former Guatemalan president Efraín Ríos Montt.

The pursuit of Ríos Montt, along with former president Oscar Mejía and other high officials, for the torture and assassination of roughly 200,000 Mayans during Guatemala's thirty-six-year civil war, makes Spain the world's foremost practitioner of universal jurisdiction—a principle approving prosecution beyond territorial boundaries in cases of especially egregious crimes. Other countries have invoked the principle, but since judge Baltasar Garzón ruled Pinochet eligible in 1998 to be tried in Spain for crimes against humanity, the country has taken the lead in prosecuting international human rights violations. "Spain was a pioneer in taking on two extremely important cases," says Alicia Gil, professor of international law in Madrid. "And once the process began, public opinion mobilized spectacularly behind it."

The Guatemala case dates to 1999, when victims including Menchú—whose mother and brother were tortured, and whose father was killed in a 1980 military attack on the Spanish embassy—filed claims in Spain against Ríos Montt and others for terrorism, genocide and torture. At the time, Spain confined its jurisdiction to cases involving Spanish nationals, allowing legal action on behalf of the Spaniards killed in the embassy raid but preventing it for the Mayans, who were the military's primary targets. In 2005, however, Spain broke new ground when its Constitutional Court ruled that claims could be prosecuted regardless of a victim's or perpetrator's nationality.

By June, Judge Santiago Pedraz was flying to Guatemala to take testimony from the accused. No sooner had he landed, though, than defense lawyers filed appeals that forced Guatemala's Constitutional Court to suspend hearings indefinitely—and set the solemn tone for the June 27 vigil where Menchú spoke. Upon his return to Spain, Pedraz issued an international arrest warrant for Ríos Montt and the others and froze their assets. Because the two countries have no extradition treaty, Guatemala's former president will not likely appear in a Spanish courtroom anytime soon. Nevertheless, the international search and capture order effectively prevents the accused from leaving Guatemala. "We're closing the cage," says Almudena Bernabeu, international attorney for San Francisco's Center for Justice and Accountability, which represents the victims.

Why has Spain become so ardent an advocate of universal jurisdiction? Garzón, never bashful about public attention, is partly responsible. But history and politics figure as well. Spain has focused on Latin American countries--former colonies where prosecutions can be seen, notes Bernabeu, "as an attempt to make amends." DePaul University law professor and International Human Rights Law Institute president Cherif Bassiouni dates Spain's interest in universal jurisdiction to the country's 1970s legal battles against the Basque separatist group ETA. "In order to prosecute ETA members hiding in France, Spain developed extraterritorial criminal jurisdiction. From there, it was easy to expand the concept."

Expand indeed. After Menchú's case was restored, Spain's Committee to Support Tibet (CAT) appealed its similarly rejected case against China--and won. Hence Judge Ismael Moreno's pursuit of former Chinese president Jiang Zemin and six fellow leaders for genocide against some 1 million Tibetans from the 1950s to the 1990s, and Spain's similar investigation of Jia Qinglin, former Secretary General of the Communist Party's Municipal Committee, for genocide and torture of the Falun Gong.

Predictably, affected countries have cried foul. China considers the investigation illegal interference and calls the charges "an absolute lie," while Ríos Montt's defenders have tarred Spain's inquiry as renewed imperialism. Even some legal scholars--including universal jurisdiction supporters--believe Spain has overreached. Gil faults classifying persecution for political beliefs (rather than for nationality, ethnicity or religion) as "genocide"--a characterization Spanish courts employed because the country's penal code did not acknowledge "crimes against humanity" until 2003.

For Bassiouni the problem is political. "We're talking about heads of state, senior government officials, who do bad things. Their counterparts would like to see them slapped but don't want to face similar scrutiny. Consider Bush and Cheney. They've authorized torture. Do you think they want to be investigated by Spain?" Bernabeu recognizes the problem. "The most important thing is to make a sustainable case," she says. "We may need to target cases a bit more carefully, aim at lower-ranking officers."

Universal jurisdiction's fate ultimately depends on whether it is enforceable. Scilingo languishes in prison, and in early September Chile's Supreme Court stripped Pinochet of his immunity and said he was fit to stand trial--a decision likely influenced by Spanish precedent. But if home countries won't cooperate, international investigations stall, and no one expects China--or Guatemala--to welcome prosecution or extradition. In fact, Interpol Guatemala recently responded to the Spanish arrest warrant with a statement asserting that Ríos Montt and the others have no criminal charges pending against them in the country.

Still, for human rights organizations, Spain's prosecutions are victories. Bernabeu, who expects to be in a Madrid courtroom with Guatemalan victims this fall, underscores these prosecutions' importance. The accused, she points out, "are now seen as criminals. In Guatemala it may be difficult to enforce, but that doesn't take away the symbolic importance for the community. This helps them heal their history."

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