

Why Canada should Address Jorge Vinicio Orantes Sosa's Alleged War Crimes before Extraditing Him to the U.S.

By Emma McAuliffe

This summer, Jorge Vinicio Orantes Sosa will fight extradition from Alberta to California to face immigration charges. Chief Justice Wittman will preside over the extradition hearing which been set to take place from August 16 to 17, 2011 at the Court of Queen's Bench. This article suggests why Jorge Vinicio Orantes Sosa should have been first charged and tried in Canada for his alleged participation in war crimes during the Guatemalan civil conflict, before being extradited on lesser immigration charges.

The mass killings of indigenous men, women and children at Las Dos Erres in Guatemala took place in early December, 1982. The episode at Dos Erres is an example of the “scorched earth campaign” of the Guatemalan military, in which hundreds of villages were razed and thousands of Guatemalans were killed, imprisoned or disappeared (Kate Doyle, et al, *Ex-Kaibil Officer Connected to Dos Erres Massacre Arrested in Alberta, Canada: Declassified Documents Show That U.S. Officials Knew the Guatemalan Army Was Responsible for the 1982 Mass Murder*, January 21, 2011, [National Security Archive Electronic Briefing Book No. 31](#) at 2). This was done in the name of combating any anti-government insurgency and perceived terrorist elements during the decades-long civil war, where an estimated 200,000 people were killed. The government created Special Forces Units called “Kaibiles”, which were tasked with “quickly deploying to locations throughout the country to seek and destroy guerrilla elements” (U.S. Defense Intelligence Agency Secret Cable, [Army Establishes a Strategic Reaction Force](#), November 19, 1982, at 1). Six months prior to the massacre at Dos Erres, a group of anti-government guerrillas cut through the village while en route to ambush a nearby army base. After the ambush, the Guatemalan army had subsequently suspected the villagers of Dos Erres of supporting the guerrillas (United States Embassy in Guatemala Secret Cable, [Alleged massacre of 200 at Village of Doc R's, Peten](#), December 28, 1982, at 2 (Embassy Secret Cable)). To combat such suspicions, the villagers of Dos Erres had invited the army to visit and investigate their village (Embassy Secret Cable at 2). At midnight, on December 6, 1982 the soldiers of a Kaibil unit entered the village and immediately separated the men and women. The men were tortured, while the women and girls were systemically sexually assaulted. According to survivor testimony, by the afternoon almost all of the inhabitants of the village had been killed by being struck with a sledgehammer and thrown into a well (Embassy Secret Cable at 2). This has since been corroborated with declassified secret cables from the United States embassy in Guatemala, as part of the Guatemala Project, at the National Security Archive at George Washington University (Embassy Secret Cable at 2). Declassified American government documents indicate that a “reliable embassy source” informed United States officials days after the massacre, that the Kaibil unit entered the village disguised as guerrillas, in an attempt to discover anti-government elements among the villagers (Embassy Secret Cable at 2). The same document indicates that since early December 1982, the villagers had disappeared, burnt identification cards had been

discovered in a church, and rumours were circulating that the Kaibiles had killed all the inhabitants and thrown their bodies in a newly covered well (Embassy Secret Cable at 3).

Jorge Vinicio Orantes Sosa is alleged to be the former commanding officer of the Kaibil military unit responsible for the massacre at Dos Erres. He is currently facing extradition from Alberta to California. In an interview with the CBC Radio program “The Current” on January 27, 2011, Orantes Sosa’s Calgary lawyer, Alain Hepner, indicated that his client was arrested on January 18, 2011, by the RCMP at Lethbridge, Alberta while visiting family (Canadian Broadcasting Corporation Radio One, [Guatemala Arrest](#) aired on “The Current”, January 27 2011(Guatemala Arrest)). Orantes Sosa is a resident of Riverside, California, and the arrest was made in co-operation with Californian authorities on a provisional warrant issued in September 2010 (Guatemala Arrest). The California authorities have requested Orantes Sosa’s extradition in regards to his being charged with the federal offense of making a false statement relating to his alleged participation at Dos Erres massacre and his subsequent naturalization and procurement of citizenship in the United States of America (Guatemala Arrest).

Guatemalan human rights activists and human rights lawyers have condemned the inaction on behalf of the Guatemalan government to investigate human rights atrocities. Aura Elena Farfan is the Executive Director of one of the longest-running human rights groups in Guatemala, Asociacion de Familiares de Detenidos-Desaparecidos de Guatemala (FAMDEGUA). She said of Orantes Sosa’s Alberta arrest:

The capture of Orantes Sosa demonstrates that people like him must be outside of Guatemala to face justice elsewhere....we hope that these [other] governments will support [FAMDEGUA’s] efforts and set a real precedent so that human rights are never again violated...not in Guatemala and not anywhere in the world (Guatemala Arrest).

The Guatemalan government has not sufficiently investigated, charged or brought to trial those who initiated and executed the attack on Dos Erres. For almost a decade, the representatives of the deceased of Dos Erres were involved in a “friendly settlement” in co-operation with the Inter-American Court of Human Rights and the Guatemalan government ([Case of the “Las Dos Erres” Massacre v. Guatemala](#) (November 24, 2009) (Inter-American Court of Human Rights) at 2). In 2000, the Guatemalan government expressed its responsibility for the deaths and human rights atrocities at the hands of the army at Dos Erres, and accepted full institutional responsibility for delaying investigations related to the matter. The government also agreed to implement a series of recommendations as prescribed by the Court ([Case of the “Las Dos Erres” Massacre v. Guatemala](#) at 2). However, by 2008, the official statement admitting culpability for Dos Erres was retracted, and the Guatemalan government had not implemented any of the court-ordered recommendations. In response, the Inter-American Court of Human Rights started an action on behalf of the families of the deceased of Dos Erres and stated:

The application is related to the alleged lack of due diligence in the investigation, prosecution, and punishment of those responsible for the massacre of 251 inhabitants of the community of Las Dos Erres, la Libertad, Department of Petén, which occurred between December 6 and 8, 1982. This massacre was performed by the specialized group within the armed forces of Guatemala named *Kaibiles* ([Case of the “Las Dos Erres” Massacre v. Guatemala](#) at 3).

A panel consisting of seven judges delivered their judgement in the case on November 24, 2009. In the decision, the Court found that the Guatemalan government’s investigations into the Dos

Erres massacre did not begin until approximately eleven years after the fact. To this end, the Court found that there was an “unjustified delay by the judicial authorities” and a “lack of an exhaustive investigation, prosecution, and punishment of those responsible” for the massacre (*Case of the “Las Dos Erres” Massacre v. Guatemala* at 3).

While Guatemala has demonstrated a lack of political will to investigate the war crimes and crimes against humanity committed by their Kaibil units, Canada is well set up to prosecute a case of this kind. Canada has statutory and common law authority to try those accused of war crimes and crimes against humanity, and Canadian authorities could charge Orantes Sosa under the *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24 (*CAHWCA*). Through this legislation, Parliament has made clear that those who perpetrate crimes against humanity, genocide, and war crimes in other countries, will no longer enjoy impunity on Canadian soil, but will be subject to stringent criminal prosecution in Canadian courts. The *Act* was enacted to implement Canada’s international obligations under treaty. The long title reads: “An Act respecting genocide, crimes against humanity and war crimes and to implement the Rome Statute of the International Criminal Court, and to make consequential amendments to other Acts”. In reading sections 6 and 8 of the *Crimes Against Humanity and War Crimes Act*, it is clear that every person who commits genocide, a crime against humanity or a war crime is guilty of an indictable offense and may be prosecuted if the person is present in Canada.

The first individual to be successfully tried under the *CAHWCA* was Toronto resident Désiré Munyaneza for his role in the 1994 Rwandan genocide, where an estimated 800,000 Tutsis and moderate Hutus were killed (Canadian Lawyers For International Human Rights, [The Prosecution of Désiré Munyaneza](#), January 15, 2011 (CLAIHR)). Munyaneza’s most recent Quebec Federal Court case, *R c. Munyaneza*, [2009] RDQ no 4283, was a turning point in Canadian human rights law as the case set a precedent in terms of the ability of Canadian courts to hold war criminals accountable for their actions abroad. Munyaneza was charged with seven offenses under the *CAHWCA*, including two counts of genocide, two counts of crimes against humanity and three counts of war crimes (CLAIHR at 1). He was ultimately found guilty of committing murder, inflicting psychological terror, conducting physical attacks, and committing acts of sexual violence on Tutsi persons, contrary to the *CAHWCA* (CLAIHR at 1). As a result of his crimes, Munyaneza was sentenced to serve life in prison with no chance of parole for twenty-five years.

In reading the indictment of Désiré Munyaneza, one can see that the facts alleged to have transpired at Dos Erres are not dissimilar to those mentioned in the charges brought against Munyaneza. In particular, Munyaneza’s indictment is analogous to the allegations against Orantes Sosa in relation to the charges of intentional killing of an identifiable group, and sexual violence (Quebec Superior Court/Criminal Chamber, [Indictment of Desire Munyaneza](#), 2005, at 1 (Indictment of Désiré Munyaneza)). The third count on Munyaneza’s indictment indicates that between April 1, 1994 and July 31, 1994, Munyaneza intentionally killed “members of a civilian population or an identifiable group of people”, the Tutsi, with full knowledge that the intentional killing was part of a “systemic attack” (Indictment of Désiré Munyaneza at 1). The fourth count on Munyaneza’s indictment indicates that between the same dates, he inflicted sexual violence on Tutsi women knowing it was part of a systemic attack on the group (Indictment of Désiré Munyaneza at 1). The indictment makes clear that these acts are defined as war crimes and crimes against humanity under the *CAHWCA* and subject to prosecution in Canadian courts (Indictment of Désiré Munyaneza at 1).

Prior to the successful trial of Désiré Munyaneza, *R v Finta*, [1994] 1 SCR 701, was Canada's most high-profile trial of a alleged war criminal. Imre Finta, a legally trained, former captain in the Hungarian Gendarmerie was alleged to have been the commanding officer of a unit responsible for detaining a group of Jewish persons and deporting them to concentration camps during the Second World War. Decades after the alleged acts were committed, Finta was charged in Canada with a number of offenses including crimes against humanity and war crimes. Ultimately, the Crown's appeal of the acquittal in *R v Finta* was dismissed, which observers attributed to the deterioration in memory of eye witnesses, and conflicting witness testimony. After the *Finta* decision failed to convict on war crimes charges, the Canadian government's policy towards prosecuting alleged war criminals shifted from the realm of criminal law towards immigration law (CLAIHR at 1).

The *Finta* decision shed light on some of the complexities faced by courts prosecuting war crimes. At paragraph 182 of the *Finta* dissent, La Forest J. establishes the *mens rea* requirement for a court to convict on war crimes and crimes against humanity stating: "the accused would have to have known that a state of war existed and that his or her actions even in a state of war, would shock the conscience of all right thinking people" (*Finta* at para 182). Also, the Supreme Court made clear the "military defense doctrine" was not available to an accused "where the orders in question were manifestly unlawful" (*Finta* at para 95). This suggests that if there was sufficient evidence to prosecute Orantes Sosa, his role as a military commander would not be a sufficient defense to the annihilation of an indigenous village.

The *Munyaneza* decision and the enactment of war crimes legislation have rejuvenated Canadian law in regards to our ability to meaningfully prosecute war crimes and crimes against humanity. Canada's *Munyaneza* case and war crimes legislation also have sent a strong signal to the international community to take action in prosecuting these individuals who may not be brought to justice in their home countries (CLAIHR at 1). In light of the *Munyaneza* decision, Canada is in a strong legal position to try Orantes Sosa for his alleged participation in the massacre at Dos Erres.

The recent case of Florida resident Gilberto Jordan, suggests that if Canada orders Orantes Sosa's extradition to California, he will be brought to trial on immigration fraud alone. A September 2010 press release from the United States Department of Justice indicates that Jordan admitted to being a Kaibil soldier in the Guatemalan military and participating in the massacre at Dos Erres (The United States Department of Justice, Office of Public Affairs, [Former Guatemalan Special Forces Soldier Sentenced to 10 Years in Prison for Making False Statements on Naturalization Forms Regarding 1982 Massacre of Guatemalan Villagers](#), September 16, 2010 at 1 (US Department of Justice Press Release)). Like Jorge Vinicio Orantes Sosa, Gilberto Jordan faced charges of making false statements under oath on his citizenship application relating to his participation in the Dos Erres massacre. U.S. District Judge, William J. Zloch, ultimately sentenced Jordan to ten years in prison for unlawfully procuring his U.S. citizenship (US Department of Justice Press Release at 1). In his judgement, Justice Zloch vehemently condemned the human rights atrocities at Dos Erres and indicated that the United States Department of Justice seeks out violators of human rights with the goals of proving their serious crimes and stripping them of their "ill-gotten citizenship" (US Department of Justice Press Release at 1). By this example, despite the fact that the allegations faced by Orantes Sosa are in clear and sharp contrast with international and domestic law, a swift extradition to the United States to face charges of naturalization fraud may see Orantes Sosa serve only ten years for the offense of naturalization fraud. Moreover, to extradite Orantes Sosa to California, without

fully examining the pressing and egregious allegations against him, could ensure that he is never tried for his alleged crimes at Dos Erres.

Canada's *Extradition Act*, S.C. 1999, c. 18 ("*Extradition Act*") provides insight into whether the Canadian government can defer Orantes Sosa's extradition. Under s. 47(d) of the *Extradition Act* the Minister may refuse to order an extradition if the Canadian government has already undertaken the criminal prosecution of the accused for the acts in question.

The United States Government gave little more than lip service to Gilberto Jordan's admitted and willing participation in the war crimes and crimes against humanity at Dos Erres, and it is more than likely that the Kaibiles will not be tried in Guatemala at any point in the near future. However, Canada has its own legislation and case law allowing for the effective and successful prosecution of alleged war criminals. If the government of Canada does not prosecute Orantes Sosa when he is on Canadian soil, the government runs the risk of significantly undermining the public's trust in the administration of justice. Moreover, if Canada does not take this opportunity, the government may share in the responsibility for the indemnity of a war criminal. The wounds left by the massacre of Dos Erres are immense and indelible, and there must be full accountability for the war crimes and crimes against humanity committed in December 1982. Aura Elena Farfan, hopeful that justice will be served in Canada, stated: "It has become far too common for people who cause so much damage in their own countries to find refuge in democratic countries where they can hide and where they can pass as honourable neighbours without anyone knowing that their hands are stained with blood" (Guatemala Arrest). Canada is well prepared under statutory and common law to attempt such an undertaking. All that is required now is the political will.

A version of this comment was published in the Alberta Civil Liberties Research Centre Newsletter [Centrepiece](#), Vol. 17(2) (2011).