

The Road to Spain: The Jesuit Massacre and the Struggle Against Impunity in El Salvador

Almudena Bernabeu and Carolyn Patty Blum
Center for Justice and Accountability, San Francisco, California

The 1989 assassinations of Ignacio Martín-Baró, his Jesuit colleagues at the University of Central America, and their housekeeper and her daughter in El Salvador were shots heard round the world. In the wake of the killings, the Salvadoran government engaged in an extensive cover-up, and ultimately, none of the top military commanders, who planned and ordered the killings, were put on trial. This article traces the frustrated efforts to obtain justice for the crimes in El Salvador. It then examines successful achievements in seeking accountability in United States courts, under the aegis of the Center for Justice and Accountability (CJA), for other crimes committed during the Salvadoran state terror. The article next turns to CJA's efforts to capitalize on a new opening, spurred by the Spanish case against Augusto Pinochet, in the Spanish National Court as an appropriate forum for the criminal accountability of the intellectual authors of the crime. The article updates the reader on the current status of the legal proceedings and regarding the defendants in El Salvador and in the United States. It concludes with some observations about the significance of the case as well as its purpose to honor the lives and legacies of Martín-Baró and his colleagues.

Keywords: El Salvador, Jesuit massacre, accountability, Spanish National Court, universal jurisdiction

The massacre of six Jesuit priests, Ignacio Martín-Baró, Ignacio Ellacuría, Armando López, Joaquín López y López, Segundo Montes, and Juan Ramón Moreno, and their housekeeper, Julia Elba Ramos, and her daughter, Celina Mariceth Ramos, in the early hours of November 16, 1989 was a calculated act

planned at the highest levels of the military leadership of El Salvador (The Commission on the Truth for El Salvador, 1993). The High Command and its allies used the ultimate political weapon—murder—to put a roadblock in efforts to negotiate a peaceful settlement to El Salvador's decade-long conflict. Ironically, the

ALMUDENA BERNABEU is the International Attorney and Director of the Transitional Justice Program at the Center for Justice and Accountability (CJA). For the past 10 years, she has led CJA's Latin America Program, serving on U.S.-based civil Alien Tort Statute litigation against human rights abusers and universal jurisdiction criminal human rights prosecutions before the Spanish National Court. She has participated in numerous panels, conferences and trainings in Europe, Latin America and the U.S., and has published several articles on human rights litigation in national courts and its effectiveness in the struggle against impunity. Ms. Bernabeu holds a law degree from the University of Valencia School of Law where she specialized in Public International Law. She currently is a PhD candidate in Public International Law at UNED University in Spain.

CAROLYN PATTY BLUM is the Senior Legal Adviser to the Center for Justice and Accountability on their El Salvador docket. Blum is a Clinical Professor of Law Emerita at the University of California, Berkeley School of Law. She

founded and directed Berkeley's International Human Rights Law Clinic. She is a Visiting Fellow at Kellogg College, University of Oxford, and teaches and supervises the preparation of the dissertation in the Oxford Masters in International Human Rights Law Program. As an independent human rights consultant, Blum has worked with the International Center for Transitional Justice, the Center for Constitutional Rights, the National Security Archive and other NGOs. Blum has numerous publications in the areas of refugee law, international human rights law, and human rights and film.

WE THANK the anonymous reviewers who provided useful comments for this paper.

CORRESPONDENCE CONCERNING THIS ARTICLE should be addressed to Almudena Bernabeu, International Attorney and Transitional Justice Program Director, Center for Justice & Accountability, CJA, 870 Market St., Suite 688, San Francisco, CA 94102. E-mail: abernabeu@cja.org

massacre, which engendered an outpouring of outrage from across the globe, ended up catalyzing a political settlement to the conflict.

This article documents the efforts to seek justice and accountability for this horrific crime in El Salvador, the United States, and Spain. Despite the fact that the Salvadoran High Command engaged in an extensive cover-up and disinformation campaign about the origin of the murder and the military's responsibility, international pressure, as well as the revelations of a U.S. military adviser, forced their hand. One colonel, several junior officers, and the direct perpetrators quickly were offered up as sacrificial lambs. After further investigations marred by the destruction of evidence, false testimony and stonewalling, and continued attempts to shield the intellectual authors of the crimes from responsibility, a trial was held in El Salvador. Two convictions resulted, and even those who confessed to their own participation in the murders were acquitted. Multiple teams of trial observers filed highly critical reports about the trial and concluded that its validity was questionable (Doggett, 1993).

Two years later, after the peace accords had been signed and a U.N. Truth Commission report named the military as responsible for this crime, as well as for thousands of others, the right wing-controlled legislature passed a sweeping amnesty. The two men convicted were set free (Commission on the Truth for El Salvador, 1993; Doggett, 1993). This reality set the stage for the current legal case in Spain.

Efforts at Justice in El Salvador

On the day of the massacre, human rights organizations filed a complaint at the Inter-American Commission of Human Rights (IACHR or Commission), the human rights arm of the Organization of American States. Ten years passed before the Commission decided that case (IACHR Rep. No.139/99). It found El Salvador in violation of one of the most fundamental duties of a state—to investigate, prosecute, and punish those who commit crimes. As a result, the Commission ruled that the Salvadoran amnesty was in violation of this international law obligation as it prevented wrong-doers from facing the appropriate punishment (IACHR Rep. No.139/99, ¶¶). Further, it held that El Salvador had violated its

duty to reveal the full truth of how the Jesuit massacre had happened.

With this judgment in hand, the Human Rights Institute of the University of Central America (IDHUCA) took the case to the public prosecutor's office in El Salvador to request the initiation of criminal proceedings against the intellectual authors of the crime. The prosecutor sent the case to the Criminal Judge with jurisdiction to process it. However, despite the explicit findings of the Inter-American Commission, the first instance judge applied the amnesty law. The case eventually was appealed to the Constitutional Chambers of the Salvadoran Supreme Court. The Court ruled in favor of the petitioners and held that the amnesty could not be applied to human rights violations committed by public officials while in office. How sweepingly this ruling would be applied was yet to be determined.

When the case was remanded to the judge, he quickly resolved the case by ruling that the statute of limitations—a legal principle limiting how many years can intervene between the carrying out of an act and a later trial—had expired. The intellectual authors were protected from prosecution. Since then, no case has been brought by the Salvadoran prosecutor for any crimes committed during the decade-long state terror and civil conflict.

Efforts at Justice in the United States for Crimes Committed in El Salvador

At the same time that human rights advocates in El Salvador pursued accountability for the massacre of the Jesuits as well as for other crimes, lawyers in the United States actively began to pursue options for accountability in U.S. courts. Several different factors were influential in looking to U.S. courts as a possible accountability venue.

First, two unique U.S. statutes make federal courts available as a forum for civil actions for torts, or civil wrongs, committed in violation of international law (Stephens, Chomsky, Green, Hoffman, & Ratner, 2008). In light of the lack of willingness to pursue cases in El Salvador itself, the U.S. option became more attractive. Second, several high ranking Salvadoran military officials, including two former Ministers of Defense and one former Vice Minister of De-

fense, were residing permanently in the United States. Human rights activists had identified their whereabouts. Third, federal courts seemed a particularly appropriate venue because of the intimate involvement of the United States in the conflict in El Salvador. U.S. military and economic aid as well as U.S. training both in-country and at the School of the Americas and other military bases were key mechanisms in propping up Salvadoran military and security forces during the civil war. Without this massive U.S. support, the Salvadoran military could not have stayed in power throughout the 1980s. Finally, as a result of the state terror and civil conflict of the decade, hundreds of thousands of Salvadorans fled their homeland, many to the United States. Instead of welcoming them as refugees deserving of asylum, the United States systematically denied them protection. Litigation on behalf of or in the name of those victims and denial of safe haven to the perpetrators and commanders of abuses who had received refuge in the United States seemed worthy goals.

Simultaneously, the Center for Justice and Accountability (CJA) was becoming internationally known for its significant work in Latin America; it then became the only organization to litigate a series of three cases filed in U.S. courts to advance accountability for crimes committed in El Salvador (<http://www.cja.org/article.php?list=type&type=199>). These cases combined a focus on extraordinary crimes—for example, the 1980 assassination of Archbishop Óscar Romero and the murder of one of the leaders of the Democratic Revolutionary Front (FDR), the left wing political umbrella organization—with the cases of ordinary Salvadorans, some living in the United States, who had endured torture or the assassination of relatives, like tens of thousands of others. In two of the three cases, the defendants were high ranking officials who had taken refuge in the United States (as mentioned above); in another, the defendant was the key organizer of the assassination of Archbishop Romero. Over the course of this litigation, we and our cocounsel familiarized ourselves with the legal parameters; became expert in the law of command responsibility; identified, worked with, and solicited the testimony of expert witnesses from overseas as well as the U.S. academy; indexed and requested further declassifications of thousands of pages of U.S. government documents; reviewed

every report on the human rights situation in El Salvador and met with and solicited testimony from a range of human rights investigators. All three cases ended in resounding victories for the plaintiffs.

In the course of this work, we built confidence in our abilities to pursue these cases and in the value of suing in alternative forums as long as redress within El Salvador was not available. More importantly, we gained the confidence of allies in El Salvador who felt buoyed by our victories at a time when the accountability landscape in El Salvador continued to remain barren. We built linkages with counterparts there who assisted us as each new case unfolded and who began a discussion with us about the possibility of seeking a forum to demand justice for the Jesuit murders.

The Spanish National Court

The case against Augusto Pinochet in Spain brought to light the real possibility of turning to Spanish courts as a venue to seek accountability for the massacre of the Jesuits. It also stimulated renewed enthusiasm in Chile as well as in other countries to demand accountability—“the Pinochet Effect” (Roht-Arriaza, 2005). A 2005 Spanish Constitutional Court ruling defined the broad parameters of the Spanish statute under which prosecution for Pinochet had been sought: the universal jurisdiction statute. Universal jurisdiction laws refer to criminal codes which require a nation to pursue criminal prosecution of persons who commit crimes so heinous that jurisdiction is conferred even if no direct connection exists between the crime and that nation.

The Jesuit massacre case presented a set of circumstances which did not require the invocation of this pure form of universal jurisdiction. Five of the six priests, including Ignacio Martín-Baró, were citizens of Spain. Spain’s statute clearly allowed for cases to be brought on behalf of victims who were Spanish citizens.

Additionally, as a civil law country, Spain allows private parties to present information to the public prosecutor and the Spanish National Court, the court that hears universal jurisdiction cases, regarding the possible criminal liability of defendants for crimes such as assassination, crimes against humanity, cover up of crimes against humanity, and state terrorism. These are

the crimes for which Salvadoran defendants are implicated in the killing of the priests, their housekeeper, and her daughter.

During this period, a Spanish lawyer joined CJA's staff and became the lead attorney on a range of cases relating to Latin America, including work closely linked to that before the Spanish National Court. For example, CJA became lead counsel in the Guatemala genocide case, and its standing in those efforts bolstered its reputation and capacity to assume leadership in the Jesuit case as well. Working closely with allies in El Salvador, including from the UCA and IDHUCA, CJA and a Spanish human rights organization, Spanish Pro Human Rights Association (APDHE), prepared a filing, equivalent to a civil complaint in a U.S. case, of more than a hundred pages documenting the political context of the killings and naming those involved as planners, commanders, and direct perpetrators of the crime. The case was filed on November 13, 2008, the nineteenth anniversary of the murders.

Accepted for investigation by the court, the case was assigned to Judge Eloy Velasco. As required by Spanish law, Judge Velasco undertook an in-depth inquiry into the crimes. Multiple evidentiary hearings were held in Spain in which Velasco received thousands of pages of reports and other documents and heard the testimony of key witnesses brought to the court by the attorneys in their capacity as private prosecutors. Witnesses included two Salvadoran lawyers who had resigned from the team of prosecutors handling the criminal prosecution in El Salvador because of the gross irregularities in the investigation; they then became representatives for the Society of Jesuits as private parties to the Salvadoran criminal case. Building on her testimony in prior CJA cases, expert witness Professor Terry Karl of Stanford University's Department of Political Science presented a detailed report, supported by thousands of pages of appendixes, in which she carefully laid out the political context of the killings, particularly the escalating attacks on the church and on the peace efforts of Ellacuriá and others, the evidence which indicated the deliberative nature of the crime, the involvement of a group of top commanders concerned with maintaining their own power in the decision to kill the priests, and the step-by-step process of implementing the crime.

Eventually, one participant in the criminal conspiracy came forward and testified as a protected witness before Judge Velasco. His testimony reinforced prior testimonial and documentary evidence that the crime was ordered by the top commanders. He also painted for the judge a vivid picture of the carrying out of the crime.

In May, 2011, Judge Velasco issued a 75-page indictment against 20 defendants for the crime. This indictment itself is an important milestone in the journey to end impunity for the massacre. It makes clear that the trial, which occurred in El Salvador, was a sham and would have no controlling effect or validity on any criminal proceedings in Spain. As a result, Velasco included the two defendants who had been convicted in El Salvador in his indictment as well as renaming all the direct perpetrators who had been tried and acquitted. Judge Velasco enlarged the group of defendants from those named in prior investigations, such as the UN Truth Commission report. In particular, Judge Velasco included the involvement of the Salvadoran National Intelligence Directorate (DNI). Long suspected of having greater involvement than publicly credited, the head of the DNI and a DNI agent who participated in a reconnaissance search of the Jesuit residence on the UCA campus two nights before the killings were included in the indictment. In addition, the indictment named all of the top commanders, including the Minister of Defense, two Vice-Ministers of Defense, the Chief of Staff of the Armed Forces (now deceased), the commander of the Air Force, the Commander of the First Brigade, the commander of the Atlacatl Battalion, and another commander in the joint Armed Forces command.

Judge Velasco then issued the first group of arrest warrants, which were transferred to Interpol for international implementation. One of the defendants, Inocente Orlando Montano, is a resident in the United States. Thanks to the Spanish indictment, U.S. authorities arrested Montano for multiple criminal acts of immigration fraud for failing to disclose his successive command positions in the Salvadoran military—which culminated in his position as Vice-Minister of Defense for Public Security at the time of the massacre—on his application to obtain temporary protected status in the United

States. At the time of this writing, the U.S. criminal case against Montano is pending.

In August 2011 in El Salvador, nine of the defendants turned themselves in to military authorities. Their efforts were intended as an end run around civilian control, as they argued they should only be subject to military jurisdiction. Unfortunately, the Salvadoran Supreme Court issued a problematic ruling that the arrest warrants were invalid because the Spanish judge had not yet issued an extradition request. Even though these nine defendants are free in El Salvador, they cannot travel outside the country without risking arrest elsewhere.

In January 2012, extradition requests for 13 Salvadoran defendants, issued by Judge Velasco, arrived in El Salvador. These requests are pursuant to the formal requirements of the El Salvador-Spanish extradition treaty. The defendants likely will challenge their extradition, and this will be the next obstacle along the road to accountability for the massacre. Similarly, a formal extradition request for Col. Montano (and another U.S.-based defendant) has been issued. U.S. courts once again will be a site to contest the impunity of a top Salvadoran military commander.

The Road Traveled Thus Far

The Spanish National Court case to gain criminal accountability for the murder of Martín-Baró and the five other priests, their housekeeper, and her daughter, although still ongoing, has already proven its significance. Despite previous efforts of accountability and important preexisting investigations, such as the U.N. Truth Commission and the U.S. Congress Task Force on the murders led by Congressman Joseph Moakley, this crime has never been properly and fully investigated and prosecuted by appropriate criminal justice authorities. The timeliness and importance of this effort is shown by the tens of thousands of pages of U.S. government declassified documents that, finally, have been organized and reviewed, and the dozens of newly disclosed documents obtained and admitted as evidence in a court of law.

Moreover, the case raises critical legal issues about the role of commanders in the execution

of crimes of this nature. It also challenges whether El Salvador and the United States will make good on the legal requirements of their extradition treaties with Spain. It tests the political will of both governments and the mettle of incipient judicial institutions in El Salvador, a decisive step to be taken by a young democracy facing an unpredictable transitional justice moment. The necessary conversation in El Salvador about these killings, killings which can never be forgotten, is a significant aspect of a larger legal, political, and social struggle to end impunity not only for the crimes of the repressive military regime in El Salvador but also to ensure that gross human rights abuses must never be tolerated and must be prosecuted.

Finally, and in our opinion as important, the efforts of the legal team, the Jesuits' relatives, and the Spanish National Court to investigate and seek final justice have revived the discussion about the critical work of these men and their legacy to the world. For example, in Spain, Ignacio Ellacuría and Ignacio Martín Baró's work has long been ignored by the press, the TV, and the general public. Their work and their commitment to the poor, however, is timeless. The hope instilled by their words and acts—for the still-suffering people of El Salvador and for all of us, seeking justice for the victims of human rights violations—is a priceless gift that they left us.

References

- Doggett, M. (1993). *Death foretold: The Jesuit murders in El Salvador*. Washington, DC: George Washington University Press.
- Ignacio Ellacuria et al. v. El Salvador, Rep. No. 139/99 (IACHR Case No. 10.488, Dec. 22, 1999).
- Roht-Arriaza, N. (2005). *The Pinochet effect: Transitional justice in the age of human rights*. Philadelphia, PA: The University of Pennsylvania Press.
- Stephens, B., Chomsky, J., Green, J., Hoffman, P., & Ratner, M. (2008). *International human rights litigation in U.S. courts* (2nd Ed.). Leiden, The Netherlands: Martinus Nijhoff Publishers.
- The Center for Justice and Accountability, El Salvador Case Docket. <http://www.cja.org/article.php?list=type&type=199> (last visited Nov. 17, 2011).
- The Commission on the Truth for El Salvador. (1993). From madness to hope: The 12-year war in El Salvador. UN Doc. S/25500.