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Calls For Accountability on 25th Anniversary of El Salvador’s Jesuit Massacre

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In San Salvador, several thousand people participated in a candlelit procession through the campus of the Universidad Centroamericana (UCA), the scene, 25 years ago, of one of the most infamous episodes in El Salvador’s dozen-year civil war (1980-1992). In Washington, DC, more than 1,500 marked last month’s anniversary with a several-day teach-in. And, in Spain, religious organizations and human rights groups held talks, expositions, and tributes in various cities and communities, including in Valladolid, where schoolchildren helped place a ceremonial wreath on a monument dedicated to two of the city’s most dearly departed, Jesuit priests Segundo Montes and Ignacio Martín Baró.

Montes and Martín Baró, together with four of their UCA colleagues, their housekeeper, and her teenage daughter, died early on the morning of Nov. 16, 1989, when members of an elite Salvadoran Army unit burst into the priests’ residence quarters, forced the victims to lie down, and shot them (NotiCen, Nov. 17, 1989). A quarter-century later, the predawn massacre continues to attract global attention—in part because of the stunning brutality of the crime but also because the people who organized and carried out the killings still enjoy impunity.

"Everybody remembers the killings," Almudena Bernabeu, an attorney and rights advocate who traveled to El Salvador for last month’s 25th anniversary events, told NBC News. "It was a horrible war. When the Jesuits were killed, it was one of the most horrible moments, almost like a punch in the stomach. After all that suffering, all those attempts to end the war, the Jesuits were killed."

Indictments but no trial
Bernabeu works for the Center for Justice and Accountability (CJA), a San Francisco, California-based organization that has played a leading role in recent years in efforts to prosecute the authors of the UCA massacre. A blanket Amnesty Law passed in 1993, just days after a UN-sponsored truth commission named several of the crime’s presumed perpetrators, has long kept the case out of the courts in El Salvador. But, in 2008, at the CJA’s behest, it was taken up by a judge with the Audencia Nacional, a high court in Spain, which has a particular interest in the 1989 killings given that five of the six murdered priests, including Ignacio Ellacuría, the UCA’s outspoken rector, were Spanish citizens.

The case took a major leap forward in mid-2011 when the judge, Eloy Velasco, took the dramatic step of issuing indictments and ordering international arrest warrants for 20 former Salvadoran military officers implicated in the killings (NotiCen, July 28, 2011). The list of suspected perpetrators includes Gen. René Emilio Ponce, who died just weeks before the indictments were handed down; Gen. Rafael Humberto Larios, El Salvador’s defense minister at the time of the massacre; Orlando Zepeda, an ex-vice minister of defense; and Rafael Bustillo, an ex-Air Force commander. El Salvador’s 1993 truth commission report accused Ponce of ordering the UCA attack. He reportedly told his underlings to kill Ellacuría and "leave no witnesses."
The indictments led to an unusual situation in El Salvador, where, in August 2011, Larios, Zepeda, Bustillo, and six other men included on Velasco’s list turned themselves in to Salvadoran military authorities, reportedly to avoid pending arrests on INTERPOL warrants (NotiCen, Aug. 18, 2011). They spent the next several weeks holed up on a San Salvador military base but were then cleared by the country’s Corte Suprema de Justicia (CSJ), which used technicality arguments to dismiss the matter and quash any possibility that the ex-military officials could be either tried in El Salvador or extradited to Spain.

The Salvadoran president at the time, Mauricio Funes (2009-2014) of the Frente Farabundo Martí para la Liberación Nacional (FMLN), kept conspicuously quiet despite having decided, just two years earlier, to posthumously honor the murdered Jesuit priests with the country’s highest award, the Orden Nacional Doctor José Matías Delgado. "We want this to be an act of recovering our collective memory," President Funes said during the ceremony, which took place Nov. 16, 2009, the 20th anniversary of the massacre. "For me, this act means [we] pull back a heavy veil of darkness and lies to let in the light of justice and truth. We begin to cleanse our house of this recent history."

Funes was the first person affiliated with the FMLN to win the Salvadoran presidency, which had been controlled during the previous two decades by the hard-right Alianza Republicana Nacionalista (ARENA). The FMLN formed during the civil war as a coalition of armed guerrilla factions. It became a legal political party after UN-brokered peace accords were signed in 1992.

Encouraging developments

The case against the alleged Jesuit-massacre culprits suffered another setback early this year when the Partido Popular (PP), Spain’s conservative governing party, passed legislation constricting the use in Spanish courts of universal jurisdiction, the legal principle upon which Judge Velasco originally based his indictments. Universal jurisdiction holds that certain very serious crimes can be prosecuted anywhere. The change meant that Velasco could still pursue the case on behalf of the five Spanish priests but not the other three victims and not with the crimes-against-humanity charges he had previously been using to pursue the accused.

Several developments since then, however, have given CJA and other rights groups renewed cause for optimism. In March, for the first time in its history, El Salvador elected a former FMLN guerrilla fighter as president (NotiCen, March 20, 2014). The new leader, President Salvador Sánchez Cerén, took office in June and, with a pair of early overtures to rights-abuse victims, immediately raised hopes that his presidency might usher in an era of greater accountability vis-à-vis the country’s many war-era rights abuses (NotiCen, June 19, 2014, and July 17, 2014).

Three months later, the CJA won an appeal in Spain that, at least in the case of the Jesuit killings, reversed the PP law limiting universal jurisdiction. In a unanimous decision, the Audiencia Nacional’s Sala de lo Penal (criminal chamber) ruled Oct. 3 that Spain does, in fact, have jurisdiction to pursue the massacre in El Salvador as a crime against humanity. "This is a decisive decision to restore not only the legitimacy of the Jesuit-massacre case but the integrity of universal jurisdiction; jurisdiction that seeks to provide access to justice to all victims of crimes against humanity, regardless of their origin or residence," the CJA’s Bernabeu said at the time.

Another key piece to the legal puzzle in Spain is former Salvadoran Army Col. Inocente Orlando Montano. The 72-year-old is currently serving a 21-month prison sentence in the US, where he was jailed in late 2013 for immigration violations (NotiCen, Sept. 26, 2013). Montano was found guilty of,
among other things, lying to US immigration authorities about his Salvadoran military background. Rights groups accuse him of far worse crimes, including involvement in the Jesuit massacre. Their claims are corroborated by the truth commission report, which mentions Montano as one of several officers present when Ponce, also a colonel at the time, ordered the attack.

The CJA is hoping that Montano, one of the 20 men Velasco indicted in 2011, will be extradited to Spain (rather than deported to El Salvador) once his US jail term ends in April 2015. For now—without the physical presence in Spain of any of the accused—Velasco cannot initiate oral proceedings. That will change if US authorities comply with Spain’s extradition request. "It would be a trial with three judges, with a lawyer for Montano, either someone he pays or is assigned to him, while we would represent the families of the victims," Bernabeu told the Salvadoran publication ContraPunto last month.

"This is the right time"

Bernabeu and other rights advocates hope that the case will eventually be tried in El Salvador, as well. In March 2013, the UCA’s Instituto de Derechos Humanos (IDHUCA) filed a case before the CSJ challenging the constitutionality of the 20-year-old Ley de Amnistía General para la Consolidación de la Paz, as the Amnesty Law is officially called. The petition coincided with a visit to El Salvador by Spanish Judge Baltasar Garzón, a human rights crusader who famously indicted Chilean dictator Gen. Augusto Pinochet (1973-1990) in 1998 (NotiSur, Nov. 6, 1998). "Any law that prevents people from being prosecuted for crimes against humanity, that fails to protect the victims, is an unjust law," said Garzón (NotiCen, April 11, 2013).

Six months later, the high court’s Sala de lo Constitucional agreed to consider the IDHUCA challenge. Deliberations are still pending. The Amnesty Law also took a hit in late 2012, when the Costa Rica-based Inter-American Court of Human Rights (IACHR) issued a landmark ruling regarding another war-era atrocity, the 1981 El Mozote massacre (NotiCen, Jan. 17, 2013). Among other things, the international court ruled that the Amnesty Law should not be used to protect perpetrators of crimes against humanity. Salvadoran courts should process such cases with or without the Amnesty Law in place, the IACHR ruled.

Bernabeu agrees. In her interview with ContraPunto, the CJA lawyer pointed to Chile and Guatemala as examples of countries that also have amnesty laws but where judges and prosecutors eventually decided to pursue human rights cases regardless. "It’s not necessary to overturn the Amnesty Law. It’s enough to simply not apply it," she said. "I wish Salvadoran judges had as much courage as Chilean judges, who at one point decided not to apply the amnesty laws so that they could prosecute the crimes of the Augusto Pinochet dictatorship."

Bernabeu went on to say that El Salvador’s Fiscalía General (general prosecutor’s office) and judges ought to have a greater sense of responsibility. "Investigating [the Jesuit massacre] is their obligation," she said. "I think politically, this is the right time, although we also thought that was the case during the previous administration."

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