

Case Summary
CJA's Human Rights Prosecution: the Jesuits Massacre
(November 16, 1989, San Salvador)
Filed November 13, 2008 in the Spanish National Court

On November 13, 2008, the Center for Justice and Accountability (CJA) will file a criminal case in Madrid against former Salvadoran President and Commander in Chief of the Armed Forces, Alfredo Cristiani Burkard, and 14 former officers and soldiers of the Salvadoran Army for their role in the notorious “Jesuits Massacre” of November 16, 1989 at the Universidad Centroamericana “José Simeon Cañas” (UCA) in El Salvador. The case will be filed in Spain using the country’s universal jurisdiction law. CJA and our colleagues with the Spanish Association for Human Rights (APDHE) will jointly file the case as popular prosecutors.¹

The complaint alleges crimes against humanity, the cover up of crimes against humanity and state terrorism.

INDEX

I.	INTRODUCTION.....	1
II.	THE VICTIMS.....	2
III.	THE DEFENDANTS.....	...4
IV.	FACTS ALLEGED IN THE COMPLAINT.....	...8
V.	LEGAL ISSUES.....	11
VI.	PUBLIC DOCUMENT.....	...13

I. INTRODUCTION

On the morning of November 16, 1989, El Salvador and the world woke up to the news that six Jesuit priests, their housekeeper and the housekeeper’s daughter had been brutally murdered. The Salvadoran military committed the crime as part of its misguided defense against an offensive launched by the Farabundo Martí Liberation Front (FMLN). The military sought to deflect attention from their role in the killings and blamed the FMLN by spray painting FMLN slogans on the walls at the crime scene which falsely accused the priests of having collaborated with the government. As summarized in Truth Commission report, on the night of November 15,

¹ Unlike the U.S., where criminal charges are initiated by the government, Spanish law allows ordinary citizens and non-government organizations to initiate criminal actions by filing criminal complaints as popular prosecutors. CJA and APDHE will jointly file the case as popular prosecutors in their organizational capacities.

1989, then Colonel Ponce, in the presence of General Juan Rafael Bustillo, Colonel Juan Orlando Zepeda, Colonel Inocente Orlando Montano and Colonel Francisco Elena Fuentes, ordered Colonel Guillermo Alfredo Benavides to kill Jesuit Father Ellacuría and to leave no witnesses. Later that night, Benavides in turn ordered Espinoza Guerra to carry out the mission to kill Ellacuría and to not leave any witnesses behind.

Espinoza Guerra and his platoon arrived at the University of Central America in San Salvador in the early hours of November 16, 1989 and made their way to the Pastoral Center. When the priests came out to see what the commotion was about, they were ordered to go out into the garden and lay face down on the ground, while the soldiers searched the building. At this point, Lieutenant Espinoza Guerra gave the order to kill the priests. In the end, six priests, their housekeeper and the housekeeper's daughter were brutally murdered.

Lieutenant Espinoza Guerra and his troops attempted to cover up their role in the massacre by making it look as if the killings were done by members of the FMLN. They did this by spray painting FMLN slogans on the walls and using a rifle associated with the FMLN in the killings.

In response to a petition filed by Human Rights Watch in 1999, the Inter-American Commission on Human Rights (IACHR) found that El Salvador had violated the victims' rights to life, judicial guarantees and effective prosecution. The IACHR recommended that El Salvador conduct a complete, impartial and effective investigation in accordance with international standards to identify, prosecute and sentence all the responsible parties. The Commission also called for El Salvador to indemnify the affected parties and to adjust its internal laws to comply with the American Convention on Human Rights, which would include revoking the Amnesty Law.

El Salvador still has not taken the necessary steps to comply with any of these recommendations. The Amnesty Law is still in effect, and none of the people responsible for the crime has been brought to justice. Instead, many of them occupy important political positions in the country. This has all happened even though the Jesuits Massacre is, along with the murders of Archbishop Romero and of the U.S. churchwomen, one of the most emblematic cases of impunity from the civil war in El Salvador. It is our hope, that through this litigation, we may help the victims' relatives as well as all Salvadoran victims find the justice they have been denied for the last 19 years.

II. THE VICTIMS

A. Father Ignacio Ellacuría Bescoetxea

Ignacio Ellacuría, S.J., was born on November 9, 1930 in Bilbao, Spain. He served as the rector of the UCA for over ten years. He was a theologian, a philosopher and a gifted intellectual with a fierce commitment to human rights. It was Father Ellacuría's strong advocacy for a negotiated solution to the war that won him the enmity of the military and rightist political sectors. For the last 20 years of his life Father Ellacuría was also involved in pastoral work with the poor.

The order from General Ponce that resulted in the Jesuit Massacre was "to kill Father Ellacuría and leave no witnesses." Because of his outspoken criticism of the military dictatorship, Ellacuría was the primary target of the Salvadoran military. Ellacuría maintained that the fundamental cause of the armed conflict in El Salvador was not the aggression of

communism but the structural injustice lived by Salvadorans. For him the only way to end with the war was to deal with this injustice.

B. Father Ignacio Martín-Baró

Ignacio Martín-Baró, S.J., was born on November 7, 1942 in Valladolid, Spain. He was a well-known scholar, social psychologist and philosopher. After his entrance into the Society of Jesus, his superiors sent him to Central America. In 1967, Father Martín-Baró started teaching at the UCA. He served many roles during his tenure, including that of Dean of Students and head of the Psychology Department. In 1986, Father Martín-Baró founded the University Institute of Public Opinion at the UCA which sought to assess the attitudes and opinions of the Salvadoran people. An active community member, Father Martín-Baró also served on the Editorial Board of the UCA magazine *Estudios Centroamericanos*, the *Journal of Salvadoran Psychology* and the Costa Rican magazine *Polémica*.

Father Martín-Baró is the fourth of six children. On the night of November 15, 1989, he placed a telephone call to his sister Alicia Martín-Baró in Spain. During the call, Alicia asked him, “When are things going to improve in El Salvador?” Father Martín-Baró answered, “Oh, many people have to die before that happens.” Just a few hours later, he and the others were killed.

C. Father Segundo Montes

Segundo Montes, S.J., was born on May 15, 1933 in Valladolid, Spain. He was a well known scholar and human rights activist. He entered the novitiate of the Society of Jesus in 1950. Father Montes began his teaching career at the Externado San José, a Jesuit school traditionally dedicated to educate the children of the Salvadoran elite. One of his students, José Ricardo Espinoza Guerra, would later command the soldiers that killed him.

In 1985, Father Montes founded the Human Rights Institute at UCA (IDHUCA), which he directed until his death in 1989. As director of IDHUCA, Father Montes became very popular in El Salvador and the in U.S. due to his work with Salvadoran refugees throughout Central and North America. He was appointed to the boards of the Central American Resource Center and the Center for Central American Refugees. Father Montes also became an informal advisor to Congressman Joe Moakley of Massachusetts on the subject of Salvadoran Refugees in the U.S. Congressman Moakley was later tasked by the U.S. Congress to investigate the Jesuits Massacre.

D. Father Amando López

Amando López, S.J., was born on February 6, 1936 in Burgos, Spain. In 1952, he began his novitiate with the Society of Jesus. He went to El Salvador in the second year of his novitiate and then, in 1954, to Quito, Ecuador to study classical humanities and philosophy. He received degrees in Europe, and then returned to El Salvador in 1970 to teach at the San José de la Montaña seminary. He soon became the school’s rector. In 1973 and 1974, Father López taught philosophy at the UCA.

In 1975, Father López moved to the Central American University in Managua, Nicaragua. His arrival coincided with the final years of the Somoza regime, during which Father López assisted the many suffering people. During the most difficult moments of Somoza’s bombing of civilians, Father López opened the university campus to families in need. In 1979, after the success of the Sandinista revolution in Nicaragua, Father López was named rector of the

university, a post he held until 1983 when conflict between the Church and the Nicaraguan state forced him to resign. In 1984, Father López returned once again to El Salvador and became a philosophy and theology professor at UCA. He also served as pastor of the Tierra Virgen community in Soyapango, a poor neighborhood in the periphery of San Salvador.

E. Father Juan Ramon Moreno

Juan Ramon Moreno, S.J., was born in Navarra, Spain on August 29, 1933. After entering the Jesuit novitiate in 1950, he spent the next eight years in El Salvador. In 1969, Father Moreno traveled to Rome to take courses on spirituality, and in 1970, he returned to El Salvador to direct the Jesuit seminary. While there, he also taught at the UCA.

In 1976, Father Moreno was sent to Panama to create the Ignatian Center of Central America in order to promote Ignatian spirituality. From 1976 to 1980, he built up the Center's library and founded the publication *Diakonia*, which sought to spread information on liberation and spiritual theology. In 1985, Father Moreno returned to El Salvador to organize the Center for Theological Reflection at the UCA. He also taught philosophy and supervised the construction of the Monseñor Romero Pastoral Center. Despite all his academic accomplishments, Father Moreno always longed to work as a priest at a rural parish.

F. Father Joaquín López y López

Joaquin López y López, S.J., was born in Chalchuapa, El Salvador on August 16, 1918. He entered the novitiate with Mexican Jesuits in El Paso, Texas in 1938. Father López y López began his theological studies in the U.S. and completed them in Spain in 1951. He took his vows with the Society of Jesus in 1952.

A few years later, Father López y López began efforts to create the UCA. In 1969, together with a group of women, he raised money and created the organization Fe y Alegria (Faith and Joy), which he directed until his death. During that time, 30 educational centers were opened in marginalized communities across the country and 48,000 people received vocational training and education. Father López y López considered the work of Fe y Alegria to be crucial in addressing the lack of education in El Salvador, one of the most pressing problems in the country.

G. Julia Elba Ramos

Julia Elba Ramos was born in Santiago de Maria, El Salvador on March 5, 1947. Elba's husband, Obdulio, worked as an overseer on a plantation in Santa Tecla, and she worked as a domestic employee in San Salvador. During the coffee harvest, she would leave her domestic job to cut coffee on the plantation where her husband worked. In 1970, the plantation owner was kidnapped and killed, forcing Elba and Obdulio to abandon their jobs. The couple moved to Jayaque, where Obdulio worked as a watchman and Elba farmed corn and beans to provide for her family. Elba and Obdulio had four children, two of whom died. At the time of the massacre, Elba and Obdulio had two living children, one of whom was Celina Meredith.

In 1985, Elba began to work at the Jesuits' residence at the UCA. In 1989, Father Montes offered Obdulio a job as the gardener and watchman of the new university residence as well as a newly built home near the residence. Elba was killed alongside her daughter Celina, her body wrapped around Celina's, trying to protect her from the shooting.

H. Celina Meredith Ramos

Celina Ramos was born in Jayaque, El Salvador on February 23, 1976. In 1989, she finished her first year of high school at the José Damian Villacorta Institute in Santa Tecla. On November 11, 1989, at the beginning of the FMLN offensive, an FMLN patrol bombed one of the entrances to the UCA and shattered all the windows in the Ramos' house. From that night on, Celina and her mother slept in a small room next to the Jesuits' dining hall. The night of the massacre, Celina's father stayed at their home. He was the first to find the bodies of his wife and daughter alongside those of the murdered Jesuit priests.

III. THE DEFENDANTS

A. Alfredo Cristiani Burkard

At the time of the Jesuits Massacre, Alfredo Cristiani Burkard was the President of El Salvador and the Commander in Chief of the Armed Forces. According to the complaint, he played an active role covering up the crime and obstructing the subsequent investigation. At the time of the Jesuits Massacre, Cristiani had been President of El Salvador and the Commander in Chief of the Armed Forces for approximately 16 months.

According to the UN Truth Commission report and the complaint, a few days prior to the massacre Cristiani called Father Ellacuria in Spain and asked him to return to El Salvador. In addition, Cristiani was in almost daily contact with the architects of the scheme to murder Ellacuria and his fellow priests. His office was immediately adjacent to that of General Emilio Ponce.

Cristiani is a member of the ARENA and a successful businessman who married into one of El Salvador's leading oligarch families known as the "Fourteen Families." He was educated at the Escuela Americana (American School) in [San Salvador](#) and [Georgetown University](#) in [Washington, D.C.](#)

B. General Rafael Humberto Larios

Rafael Humberto Larios held the rank of General and was the Minister of Defense at the time of the massacre. According to the Truth Commission report, Larios was present at the meeting on November 15, 1989, where Colonel Emilio Ponce ordered Colonel Benavides to kill Father Ellacuria. Larios also told the Truth Commission that President Alfredo Cristiani met with Colonel Emilio Rene Ponce and Larios for a few hours immediately prior to the massacre at the offices of the Joint Chiefs of Staff. General Humberto Larios resides in El Salvador.

C. General René Emilio Ponce

René Emilio Ponce was born in El Salvador. He graduated first in his class at the Gerardo Barrios Military School in 1966. His class was known as "La Tandona" because its members later became so dominant in the military. The members of La Tandona were in command of the Salvadoran Armed Forces in 1989. At the time of the Jesuits Massacre, Ponce held the rank of colonel and was the Head of the Salvadoran Armed Forces' Joint Chiefs of Staff. Ponce was later promoted to General and held the post of Defense Minister of El Salvador. Eventually he was forced to retire due to the imminent release of the report of the U.N. Truth Commission exposing his part in ordering the Jesuits Massacre.

According to the Truth Commission report, on the night of November 15, 1989, Ponce, in the presence of General Bustillo, Colonel Zepeda, Colonel Montano and Colonel Fuentes, ordered Colonel Benavides to kill Father Ellacuría and leave no witnesses. Two days earlier, Ponce had transferred the unit to the command of Colonel Benavides, and its soldiers had performed a search of the Jesuits' residence at the UCA. General Ponce resides in El Salvador and is currently the president of the Asociación de Veteranos Militares de El Salvador "General Manuel José Arce" (ASVEM), an association of military veterans. ASVEM's main mission is to lobby the Salvadoran government to oppose any efforts to lift the Amnesty Law that currently protects its most influential members.

D. General Juan Rafael Bustillo

Juan Rafael Bustillo held the rank of general and was the commander of the Salvadoran Air Force at the time of the massacre. During the FMLN offensive, Bustillo participated in a number of meetings of the Salvadoran High Command. It was after one of those meetings, on the night of November 15, 1989, that Ponce gave the order to Benavides to kill Ellacuría, in Bustillo's presence. Bustillo resides in El Salvador.

E. General Juan Orlando Zepeda

Juan Orlando Zepeda is another member of "La Tandoná," held the rank of colonel and served as the Vice Minister of Defense at the time of the massacre. Zepeda was later promoted to the rank of general. He was present the night of November 15, 1989, when Ponce gave the order to Benavides to kill Ellacuría. Prior to the massacre, Zepeda had publicly accused the UCA of being the center of operations for the FMLN. Zepeda resides in El Salvador and is the current president of Manejo Integral de Desechos Sólidos, the largest residential and commercial trash service provider in El Salvador.

F. Colonel Inocente Orlando Montano

Inocente Orlando Montano held the rank of colonel and was the Vice Minister of Public Safety of El Salvador at the time of the massacre. He was present the night of November 15, 1989, when Ponce gave the order to Benavides to kill Ellacuría. Prior to the massacre, Montano stated publicly that the Jesuits were aligned with subversive movements. Montano resides in El Salvador.

G. Colonel Francisco Elena Fuentes

Francisco Elena Fuentes held the rank of colonel and was the commander of the First Infantry Brigade in San Salvador at the time of the massacre. He was present the night of November 15, 1989, when Ponce gave the order to Benavides to kill Ellacuría. One day after the killings, troops from Elena Fuentes' First Infantry Brigade attempted to intimidate members of San Salvador's Archdiocese by transmitting messages over loudspeakers saying, "We are still killing communists, Ellacuría and Martín-Baró have fallen, surrender, this is the First Brigade." Fuentes resides in El Salvador.

H. Lieutenant Colonel Carlos Camilo Hernández Barahona

Carlos Camilo Hernández Barahona held the rank of major and was the interim Assistant Dean at the Military College in El Salvador at the time of the massacre. He was later promoted to the rank of lieutenant colonel. On the night of November 15, 1989, he was present when Benavides informed the officers at the Military College of the order he had been given to murder Ellacuría and remained silent when asked by Benavides if anyone objected to the order. Later, Benavides ordered Hernández Barahona to organize and plan the operation.

Hernández Barahona organized and attended the meeting held on November 15, 1989 where Benavides ordered Espinoza Guerra to command the mission to kill Ellacuría. After this meeting, Hernández Barahona met with Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos of the Atlacatl Battalion. Hernández Barahona gave them an AK-47 rifle that had been captured from the FMLN and told them to use it to kill Ellacuría. The use of the FMLN AK-47 would serve to point blame away from the Armed Forces and toward the FMLN. Additionally, Hernández Barahona ordered them to leave behind at the murder site propaganda mentioning the FMLN.

Hernández Barahona was also involved in the cover up, by taking part in the burning of a small suitcase containing photographs, documents and money which the soldiers had stolen from the Jesuits. In conjunction with Benavides he ordered that all Military College arrival and departure logs for that year and the previous year be burned. This was done to prevent investigators from learning who had attended the meetings held at the Military College at the time the murders of the Jesuits were being planned and ordered.

In 1992, Hernández Barahona was found guilty by the Fourth Criminal Court of El Salvador of being an accessory to the killings. The judge sentenced him to three years in prison; he remained free on bail while the appeal process dragged on and did not serve a day in prison as a result of the Amnesty Law. He resides in El Salvador.

I. Lieutenant José Ricardo Espinoza Guerra

José Ricardo Espinoza Guerra held the rank of lieutenant and was a member of the Atlacatl Battalion at the time of the massacre. Espinoza Guerra and the platoon under his command were assigned to Benavides at the Military College on November 13, 1989 by a direct order from Ponce. On the evening of November 13, 1989, Benavides ordered Espinoza Guerra to search the Jesuits' sleeping quarters as part of a reconnaissance mission prior to the killings. Espinoza Guerra informed Benavides of the presence of Ellacuría at the UCA.

On the evening of November 15, 1989, Benavides ordered Espinoza Guerra to carry out the mission to kill Ellacuría and not to leave any witnesses behind. Espinoza Guerra and his platoon arrived at the UCA in the early hours of November 16, 1989 and made their way to the Pastoral Center. When the priests came out to see what the commotion was about, they were ordered to go out into the garden and lay face down on the ground, while the soldiers searched the building. At this point, Lieutenant Espinoza Guerra gave the order to kill the priests. In January 1990, Lieutenant Espinoza Guerra confessed his participation in the crime to the CIHD. Espinoza Guerra resides in El Salvador.

J. Second Lieutenant Gonzalo Guevara Cerritos

Gonzalo Guevara Cerritos held the rank of Second Lieutenant. He was assigned to the Atlacatl Battalion at the time of the massacre. Although Espinoza Guerra commanded the unit,

Guevara Cerritos was also an officer with command authority over the troops that carried out the massacre.

In January 1992, Guevara Cerritos was sentenced to three years for instigation and conspiracy to commit acts of terrorism for his role in the Jesuits massacre. He was later released as a result of the Amnesty Law and continued in active service in the armed forces.

Guevara Cerritos came to the U.S. in 2005 and worked as a janitor in a motel in Los Angeles. He was deported back to El Salvador in April 2007 because of his role in the Jesuits massacre. Guevara Cerritos resides in El Salvador.

K. Private Oscar Mariano Amaya Grimaldi

Oscar Mariano Amaya Grimaldi was a private in the Salvadoran Army and was assigned to the Atlacatl Battalion at the time of the massacre. In 1992, during the criminal trial conducted in El Salvador, Amaya admitted to receiving an AK-47 from defendant Hernandez Barahona and to killing Fathers Ellacuría, Martín-Baró and Montes. He was not convicted. Amaya's whereabouts are unknown.

L. Sergeant Antonio Ramiro Avalos Vargas

Antonio Ramiro Avalos Vargas was a sergeant in the Salvadoran Army and was assigned to the Atlacatl Battalion at the time of the massacre. In the 1991-92 trial, he admitted to killing Fathers López and Moreno. He was not convicted. He resides in El Salvador.

M. Corporal Angel Pérez Vásquez

Angel Pérez Vásquez was a corporal in the Salvadoran Army and was assigned to the Atlacatl Battalion at the time of the massacre. In the 1991-1992 trial, he admitted to shooting and killing Father López y López. He was not convicted. Pérez Vásquez resides in El Salvador.

N. Deputy Sergeant Tomás Zárpate Castillo

Tomás Zárpate Castillo was a deputy sergeant in the Salvadoran Army and was assigned to the Atlacatl Battalion at the time of the massacre. He later admitted that he shot Julia Elba Ramos and her daughter Celina. He was not convicted and resides in El Salvador.

O. Private José Alberto Sierra Ascencio

José Alberto Sierra Ascencio was a private in the Salvadoran Army and was assigned to the Atlacatl Battalion at the time of the massacre. Sierra Ascencio admitted to shooting Julia Elba Ramos and her daughter Celina to the CIHD but was later tried in absentia and acquitted of the crime.

IV. FACTS ALLEGED IN THE COMPLAINT

A. The FMLN Offensive November 11, 1989

The FMLN launched an offensive on November 11, 1989, which surprised the Salvadoran Army with its effectiveness. The guerrillas gained control of several areas in and

around San Salvador. They attacked the residences of the President of the Republic and the President of the Legislative Assembly. They also attacked the barracks of the First, Third and Sixth Infantry Brigades and those of the National Police. On November 12, the government declared a state of emergency and imposed a 6 p.m. to 6 a.m. curfew.

At a meeting of the General Staff on November 13, security commands were created to deal with the offensive. Each command was headed by an officer under the operational control of then, Colonel Ponce. Colonel Benavides was designated to head the military complex security command, a zone which included the Military College, the Ministry of Defense, the National Intelligence Department (DNI), the residence of the U.S. Ambassador and the UCA campus. A national military radio channel was also established.

After guerrillas blew up one of the main gates of the UCA and crossed into the campus on November 11, a military detachment was stationed to watch who went in and out of the UCA. Starting on November 13, no one was permitted onto the campus without authorization.

Also on November 13, Colonel Ponce ordered Colonel Joaquin Arnoldo Cerna Flores to arrange for a search of the UCA premises. According to Colonel Ponce, he ordered the search because he had been informed that there were over 200 guerrillas on the UCA campus.

B. Planning

The night of November 15, between 10 p.m. and 11 p.m., Colonel Benavides met with the officers under his command, including Major Hernández Barahona. Benavides explained that he had just come from a meeting at the General Staff where special measures had been adopted to combat the FMLN offensive. Those present at the General Staff meeting had been informed that the situation was critical and that all known subversive elements must be eliminated. Benavides said that he had received orders to eliminate Father Ellacuría and to leave no witnesses. Benavides asked for any officers who objected to the order to raise their hands. No one did.

Minister of Defense Humberto Larios, also a defendant in the case, testified to the UN Truth Commission to El Salvador that early on November 16, just few hours before the massacre, he met at the office of the Joint General Staff with the chief Emilio Ponce and former president Alfredo Cristiani where they discussed troop levels in the area surrounding UCA.

Benavides then ordered Hernández Barahona to organize and plan the operation. It was decided that troops from the Atlacatl Battalion would be used, under the command of Lieutenant Espinoza Guerra.

Later in the evening after the main meeting, Hernández Barahona met with Espinoza Guerra and Second Lieutenant Guevara Cerritos of the Atlacatl Battalion. In an attempt to deflect attention from their role in the deaths, Hernández Barahona ordered them to use an AK-47 rifle that had belonged to the FMLN to kill Father Ellacuría. He also instructed them to leave a sign and propaganda making it look like it was an FMLN operation. The AK-47 was given to Private Amaya Grimaldi.

C. The Massacre

In order to reach the UCA, it was necessary to pass through the defense cordons of the military complex. Lieutenant Martínez Marroquin arranged for the Atlacatl soldiers to pass. By then it was in the early hours of November 16, 1989. The soldiers made their way to the Pastoral

Center, which was the residence of Ellacuría and the other priests. The soldiers first tried to force their way into the Pastoral Center. When the priests realized what was happening, they actually let the soldiers in. The soldiers searched the building and ordered the priests to go out into the back garden and lie face down on the ground.

Espinoza Guerra, who was in charge of the unit, gave the soldiers the order to kill the priests. Fathers Ellacuría, Martín-Baró and Montes were shot and killed by Private Amaya Grimaldi, and Fathers López and Moreno by Deputy Sergeant Avalos Vargas. Shortly afterwards, the soldiers, including Corporal Pérez Vásquez, found Father López y López inside the residence and killed him. Deputy Sergeant Zárpate Castillo shot Julia Elba Ramos and her daughter Celina. Private Sierra Ascencio shot Julia and Celina again to make sure that they were dead. All of the deceased were unarmed and defenseless. No casualties or injuries were suffered by the military.

The soldiers took a small suitcase belonging to the priests, with photographs, documents and \$5000. They fired a machine gun at the façade of the residence and launched rockets and grenades. Before leaving, they wrote on a piece of cardboard, “FMLN executed those who informed on it. “Victory or death, FMLN.”

D. The Cover Up

On November 16, 1989, after the operation, Hernández Barahona went to Colonel Ponce’s office to report on what had happened at the UCA. He reported that he had a small suitcase with photographs, documents and money which the soldiers had stolen from the Jesuits a few hours earlier. Colonel Ponce ordered it destroyed because it was evidence of the Army’s responsibility. They destroyed the suitcase at the Military College.

Upon returning to his unit, Espinoza Guerra informed the Commander of the Atlacatl Battalion, Lieutenant Colonel Oscar Alberto León Linares, of what had happened and the fact that they had killed six priests and two women at UCA.

Once news of the killing became public, President Alfredo Cristiani assigned the investigation of the crime to a special police unit called the Commission for the Investigation of Criminal Acts (“CIHD”). With Cristiani's knowledge, the unit began a process of covering up the crime and destroying the evidence.

Rivas Mejía also advised Benavides to make sure that no record remained of those entering and leaving the Military College that would link military personnel to the killings of the Jesuits. Subsequently, Benavides and Hernández Barahona ordered that all Military College arrival and departure logs for that year and the previous year be burned.

Shortly after the investigation began, Ponce arranged for Colonel Nelson Ivan López y López, head of unit I of the General Staff who had also been in charge of the General Staff Tactical Operations Centre on November 15 and 16, to join CIHD in the investigation of the case.

In November 1989, CIHD heard testimony from two witnesses: Deputy Sergeant Germán Orellana Vázquez and police officer Victor Manuel Orellana Hernández Barahona. Both witnesses testified that they had seen soldiers from the Atlacatl Battalion near the UCA since 5:00pm that night. These witnesses both changed their statements.

CIHD did not take a statement from Benavides during the time frame immediately following the killings, even though the incident had occurred within his command zone. According to the court dossier, the first statement Benavides made was to a Special Honor Commission on January 11, 1990.

On January 2, 1990, a month and a half after the murders, Major Eric Warren Buckland, a U.S. military adviser, reported to his superior, Lieutenant Colonel William Hunter, a conversation he had a few days earlier with Colonel Carlos Armando Avilés Buitrago. During that conversation, Avilés had told Buckland that he learned, through Colonel Nelson Ivan López y López, that Benavides had arranged the murders and that a unit from the Atlacatl Battalion had carried them out. Avilés also said that Benavides had asked Rivas Mejía (the head of the investigations commission) for help. Hunter told the Chief of the U.S. Military Mission, Colonel Milton Menjivar, about the allegation that the military was involved in the killings. Colonel Menjivar arranged a meeting in Ponce's office with both Buckland and Avilés where Avilés denied having told Buckland that Colonel Benavides was involved in the killings.

In January 1990, a few days after Buckland's statements, Alfredo Cristiani established a Special Honor Commission, consisting of five officers and two civilians, to investigate the murders. The Honor Commission questioned 30 members of the Atlacatl Battalion, including Lieutenant Espinoza Guerra and Second Lieutenant Guevara Cerritos, and a number of officers of the Military College, including Colonel Benavides.

Espinoza Guerra and Guevara Cerritos, as well as the soldiers who had participated in the murders, confessed their roles in the crime to the Honor Commission. However, a civilian member of the Commission, Rodolfo Antonio Parker Soto, the legal adviser to the General Staff, altered their statements in order to delete any reference to the existence of orders from superiors. He also deleted some references to other officers, including one to Hernández Barahona.

On January 12, 1990 the Commission submitted its report to President Cristiani. The report identified nine members of the military as being responsible for the murders, four officers and five soldiers. Colonel Guillermo Alfredo Benavides Moreno, Lieutenant José Ricardo Espinoza Guerra and Second Lieutenant Gonzalo Guevara Cerritos were accused of murder, acts of terrorism, acts preparatory to terrorism and instigation and conspiracy to commit acts of terrorism. Deputy Sergeant Antonio Ramiro Avalos Vargas, Deputy Sergeant Tomás Zarpate Castillo, Corporal Angel Pérez Vásquez and Private Oscar Mariano Amaya Grimaldi were accused of murder, acts of terrorism and acts preparatory to terrorism. Private Jorge Alberto Sierra Ascencio was tried in absentia for murder and Lieutenant Colonel Carlos Camilo Hernández Barahona was later accused of being an accessory.

The pre-trial proceedings took over eighteen months. During this time, Ponce, Zepeda, Montano and General Gilberto Rubio pressured lower-ranking officers not to mention orders from above in their testimony to the court.

The jury trial was held in September 1991. The trial proceeded with many irregularities. The Salvadoran Armed Forces and the Salvadoran Government did not respond to requests from the trial judge, Ricardo Zamora, to produce evidence and witnesses. The jury decided the verdicts on the charges of murder and terrorism. The other charges were left to the judge to decide. Only two of the ten defendants on trial, one of which was Benavides, were found guilty of murder, instigation and conspiracy to commit acts of terrorism and were sentenced to the maximum sentence of 30 years in prison.

Espinoza Guerra and Guevara Cerritos were found guilty of instigation and conspiracy to commit acts of terrorism and were sentenced to three years. Hernández Barahona was found to be an accessory to murder and was sentenced to three years. Except for Mendoza Vallecillos and Benavides, none of the defendants were sent to prison. Mendoza and Benavides were later released when the Amnesty Law was passed under Cristiani's rule.

V. LEGAL ISSUES

CJA and APDHE will jointly file the case as popular prosecutors. *See* note 1 above.

A. Jurisdiction

In 1985 Spain approved an Organic Law establishing the operational rules of its Courts and Tribunals. Article 23 of the 1985 Law generally establishes the rules of jurisdiction of Spanish courts in criminal cases. The law incorporates several types of jurisdiction. The first principle of "territoriality" allows Spanish courts to exercise jurisdiction when the criminal act took place on Spanish soil. A second principle of "personality" gives jurisdiction when the perpetrator of the crime is Spanish. The law also recognizes jurisdiction under the principle of "protection of national integrity" regardless of who committed the crime.

Spanish courts also have jurisdiction over cases regarding particular crimes. This principle takes into consideration the nature of the crime and the international obligation of the states to prosecute it, regardless of who committed the crime and where the crime occurred. Some of those crimes are specified in the law (genocide, terrorism, piracy). In subsection (g), article 23 also recognizes universal jurisdiction for "any other [criminal act] which, according to international covenants and treaties, should be prosecuted in Spain."

Under the authority of article 23.4(g), investigating judges in Spain initiated in 1996 universal jurisdiction cases arising out of Chile and Argentina. The Argentine cases involved an investigation into approximately 100 suspects. The Chilean cases focused on General Pinochet and his subordinates. Since that time, many other cases have been initiated, including the Guatemala Genocide Case where CJA is lead counsel.

B. Venue

1. Spanish National Court

The Spanish National Court (SNC) is located in Madrid and has jurisdiction throughout the whole country. The SNC criminal section has jurisdiction over (1) cases relating to more than one province; (2) serious monetary and drug trafficking cases; and, (3) serious crimes committed outside the country when, according to the laws and international treaties, Spanish courts have jurisdiction to prosecute them. A recent Organic Law also gives the SNC jurisdiction over the execution of European arrest warrants and requests for extradition.

2. Procedure

The criminal division is made up of six chambers. An instructing or investigative judge preside each chamber. After accepting the case, the investigative judge undertakes the investigation that can take anywhere between 30 days to several years.

After the instruction phase is concluded, the instructing judge closes and transfers the case to a tribunal, a panel of three judges, who presides the trial or oral phase. Under Spanish criminal law, no defendant can be tried *in absentia*.

C. Charges

The complaint alleges crimes against humanity, state terrorism and the separate crime of the cover up of crimes against humanity. Spanish law provides for universal jurisdiction on all of these crimes.

1. Crimes against Humanity

The Spanish Penal Code provides courts with jurisdiction over crimes against humanity in Book II, Title XXIV, Chapter I, article 607. This new article was created by Organic Law 15/2003. The language of the statute is taken directly from Article 7 of the Rome Statute. When, as in this case, the crime against humanity results in the death of the victim(s), it is punishable by 15-20 years in jail.

a). Murder

The Spanish Penal Code provides jurisdiction over murder in Book II, Title I, article 138. Article 139 states that when the murder is premeditated the punishment will be increased to 15-20 years in prison. Under the Code, a murder is premeditated when 1) it derives from the existence of a plan to commit the crime; 2) all of the people involved have knowledge of the plan; and, 3) the victims could not reasonably expect the attack (the “surprise” element).

2. State Terrorism

The Spanish Penal Code provides jurisdiction over terrorism in article 571 of the current Penal Code and article 174 bis b) of the 1973 Penal Code that establish that will be responsible for State terrorism those who cooperate with an armed groups with the intention to subvert the power of the State or seriously alter the general peace.

3. Cover-up of Crimes Against Humanity

The Spanish Penal Code provides jurisdiction over the cover up of a crime in art. 451.3 of the current Penal Code even when the defendant did not directly participated in the crime, when he/she helped those responsible to avoid the investigation from the authorities or to be found or arrested for the crime if the actual crime is a crime against humanity or a crime against persons protected in case of an armed conflict (war crimes) and terrorism. This last provision was incorporated by Organic Law 15/2005 November 25 that adapted the Spanish Penal Code to the Rome Statute.

D. Theories of Liability

The complaint charges direct liability, command responsibility, accomplice liability and joint criminal enterprise.

VI. PUBLIC DOCUMENTS

Numerous reports and books have been written about the massacre in Spanish and English including: El Salvador Truth Commission Report (1992); Moakley Task Force Report (November 1991); Report No. 139/99 Case 10.488 –OEA - Inter-American Commission for Human Rights; and, Martha's Doggett book, "Death Foretold," published by the Lawyers Committee for Human Rights (1993).

Last updated: November 12, 2008

