

CRS Report for Congress

El Salvador -- Legal System, Judicial Reform, and Major Human Rights Cases Involving the Military

A Compilation from State Department Reports and Other Sources

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March 23, 1990



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EL SALVADOR -- LEGAL SYSTEM, JUDICIAL REFORM, AND MAJOR HUMAN RIGHTS CASES INVOLVING THE MILITARY

SUMMARY

This report provides a compilation of information, primarily from State Department reports to Congress on El Salvador, covering events through early February 1990. It is divided into four sections.

The first section provides an introduction to the judicial branch of government in El Salvador, including the role of the Supreme Court, the first and second instance courts, and the Justice of the Peace courts.

The second section covers the role of the courts and the various phases of prosecution, including pretrial determinations, the investigation phase, the plenary phase, and the various rights of appeal.

The third section describes the various facets of the U.S.-funded Administration of Justice Program in El Salvador which is managed by the Agency for International Development (AID) and the State Department. This includes a description of the National Legislative Revisory Commission; the Judicial Protection Unit; the Commission on Investigations, including the Special Investigative Unit (SIU) and the Forensic Unit; the Judicial Administration and Training Program; the International Criminal Investigative Training Assistance Program (ICITAP); and the UN Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD).

The fourth section provides a synopsis and the current status of major human rights cases in El Salvador involving the military. These are: the Archbishop Romero case (March 24, 1980); the Sheraton Hotel murders (January 3, 1981); the Armenia Well Murders (1980-82); the Michael Kline case (October 13, 1982); the Las Hojas massacre (February 22, 1983); the Kidnapping Ring case (1982-1985); the Barrera Urquilla case (December 5, 1986); the Santa Ana Murders (August 9, 1987); the San Sebastian murders (September 1988); the killing of Hector Miranda Marroquin and Lucio Parada (July 3, 1989); and the killing of the six Jesuit priests (November 16, 1989).

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Note: Editorial assistance for this report provided by Kathleen McCarthy.

EL SALVADOR -- LEGAL SYSTEM, JUDICIAL REFORM, AND MAJOR HUMAN RIGHTS CASES INVOLVING THE MILITARY

THE JUDICIAL BRANCH IN EL SALVADOR¹

The judicial branch is headed by the Supreme Court of Justice, with 14 magistrates, one of whom is its President. Magistrates are appointed by the Legislative Assembly for five year terms.

Magistrates are required to be Salvadoran by birth, more than 40 years of age, and lawyers who have practiced for at least ten years or who have served as judges on a court of second instance for six years or on a court of first instance for nine years.

The President of the Supreme Court directs the business of the Court and functions as the head of the judicial branch.

The Supreme Court is divided into four chambers: Constitutional Law, Civil Law, Penal Law, and Administrative Law. The Constitutional Chamber, composed of the President and four other magistrates, rules on the constitutionality of laws and hears cases involving the invocation of amparo (appeal against the infringement of an individual's rights) or of habeas corpus. The remaining chambers serve as the last level of appeal in the respective legal categories.

Below the Supreme Court are 14 chambers of second instance, or courts of appeal. Each chamber is composed of two magistrates who hear appeals of decisions handed down in the courts of first instance.

At the next level are the 87 courts of first instance in all chief towns and districts which hear both civil and criminal cases.

At the broadest level of the judicial system are the 193 Justices of the Peace courts located throughout the country. In general, these courts decide only cases involving misdemeanors and minor civil suits.

El Salvador's judicial system, like those of other Latin American countries, follows a Napoleonic code tradition, rather than the Anglo-Saxon common law tradition.

¹ Based on Chapter III of the 1983 Constitution of El Salvador; Europa Yearbook, 1989, pp. 952, 954; and El Salvador: A Country Study [draft version], Federal Research Division, Library of Congress, 1990, pp. 418-419.

THE ROLE OF COURTS AND THE PROSECUTORIAL PROCESS²

THE ROLE OF COURTS IN INVESTIGATIONS

In the Salvadoran system, the courts become involved in the case almost immediately after the crime is committed, as it is the judge who oversees the investigation. If the police conduct a preliminary investigation, they must submit the results to the courts within 72 hours.

JUSTICES OF THE PEACE AND FIRST INSTANCE COURT JUDGES

A justice of the peace handles minor crimes, but forwards major cases to a first instance judge within fifteen days. In cases involving deaths, a judge, usually a justice of the peace, goes to the scene of the crime and "recognizes" the death judicially, while a medical examiner determines the cause of death. If a suspect is arrested, the police may hold him or her for 72 hours of administrative detention for interrogation about the crime before turning him over to the courts.³

PreTrial Determination

The judge then has 72 hours to determine if the evidence shows sufficient cause to hold the suspect, and if so, orders pretrial detention.

Investigation Phase of Trial

The first instance judge then begins the investigation ("instruccion") phase in which he or she actually conducts an in-depth investigation into the crime. The judge lists all of the elements of proof needed in order to determine the guilt or innocence of the accused, then carries out each step,

² From The Department of State Report on the Situation in El Salvador [pursuant to Section 561 of P.L. 100-202], April 1, 1988, pp. 34-36, with headings and some paragraphing added by CRS.

³ Subsequently the State Department, Country Reports on Human Rights Practices for 1989, Report Submitted to House Foreign Affairs Committee and Senate Foreign Relations Committee, Joint Committee Print, 101st Congress, 2nd Session, February 1990, p. 575 made the following clarification: "Following the initiation of the November 1989 FMLN offensive, however, the National Assembly enacted a state of siege which authorizes the extension from 72 hours to 15 days the period of allowable detention before an initial judicial determination is made."

issuing orders for witnesses to come to testify, visiting the scene of the crime, carrying out reenactments of the crime, and ordering the police to perform forensic tests. While the judge is conducting the investigation, suspects accused of major crimes often remain in pretrial confinement, even though the investigation phase may take years to complete.

Plenary Phase of Trial

Once the judge is satisfied that he or she has collected all information possible, the case may be dismissed, or be moved to the "plenary" phase of the trial, in which the judge, the defense, and the prosecution prepare in writing their explanations of what the evidence shows.

Jury Trial in Murder Cases

In murder cases, the final step of the plenary phase is the jury stage, in which the court clerk reads a summary of the evidence and the statements by the judge, defense, and prosecution to a panel of five jurors. About 15 percent of jury trials result in convictions.

RIGHTS OF APPEAL

The accused has the right to file an "amparo" petition (a claim that a constitutional right has been violated) with the Supreme Court at any time during the process, as well as one habeas corpus petition per phase of the process, starting from the time the accused becomes aware that the judge may issue a warrant for his arrest. When any petition is filed with the Supreme Court, all work on the case by the first instance judge ceases and the entire case record is sent to the Supreme Court. The defense may also file **appeals to the second instance (appeals) courts** at certain times in the process, and this too causes the first instance judge to cease work on the case. Finally, a type of appeal known as a **cassation [appeal]** may be filed with the Supreme Court, also causing a halt to work on the case. Some time limits set down in the laws for consideration of these appeals are followed religiously, while others are ignored.

THE U.S. ADMINISTRATION OF JUSTICE PROGRAM⁴

The United States Agency for International Development (AID) provides assistance for the reform and strengthening of the judicial system through the four components of the Judicial Reform Project authorized in 1984: the National Legislative Revisory Commission, the Judicial Protection Unit, the Commission on Investigations, and the Judicial Administration and Training Program. On September 26, 1989 AID transferred to the Department of State management responsibility for the judicial protection and investigative training components of the program. AID retains responsibility for the legislative drafting and the judicial administration and training components. The change in management brings activities with the El Salvador project under the same institutional oversight as administration of justice activities in other countries in Latin America and the Caribbean, where the Department of State exercises delegated authority for investigative training and has also assumed the lead with respect to judicial protection. In addition to the Judicial Reform Project, regional administration of justice projects--specifically the International Criminal Investigative Training Assistance Program (ICITAP) of the Department of Justice and the U.N. Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD)--offer training and technical assistance to members of the Salvadoran criminal justice system.

NATIONAL LEGISLATIVE REVISORY COMMISSION (CORELESAL)

CORELESAL was established to provide an impetus for the modernization of Salvadoran law, serving as a drafting commission. It began reviewing Salvadoran legislation in 1987 and has now completed 11 draft laws, most of them revisions of major codes. Only one of its drafts--a definition of the "small farmer" for purposes of the agrarian reform--has been enacted.

During the last six months, CORELESAL completed drafts of the following laws:

-- amendments to the law on constitutional procedure ensuring conformity with the constitution of 1983 and specifically giving effect to constitutional rights and principles;

⁴ From State Department's Report on the Situation in El Salvador [pursuant to Section 556b of P.L. 100-461], November 16, 1989, covering the April 1, 1989 to September 30, 1989 period, pp. 5-8.

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-- regulations governing the making of arrests and imposition of fines by administrative officers under the 1983 constitution;

-- a new adoption law that emphasizes the protection of children in the adoption process;

-- amendments to the criminal, criminal procedure, and juvenile justice codes, increasing penalties for certain crimes committed against minors and establishing a Juvenile Council to oversee public and private centers offering assistance to minors; and

-- further amendments to the code of criminal procedure providing for recourse against adverse appellate decisions taking the form of reversals and nullifications of lower court rulings.

There are signs that the Legislative Assembly will now move on these and other CORELESAL proposals. The Assembly has indicated an intention to begin formal consideration of amendments to the criminal codes and the state of exception procedures. The Supreme Court has also assumed an active role regarding laws of direct interest to the judiciary. The Court itself introduced the draft law on the National Council on the Judiciary, after making some amendments of its own, and the President of the Court has stated he will do the same with the Judicial Career Law, amendments to administrative procedures, and amendments to the criminal procedure code relating to reversals on appeal.

JUDICIAL PROTECTION UNIT (JPU)

The JPU is currently inactive. The Embassy is discussing with the Salvadoran government initiatives in the area of judicial protection that could be financed with funds remaining for the JPU. The project does fund protection services for a private prosecutor in one of the cases under investigation by the SIU.

COMMISSION ON INVESTIGATIONS

The Commission on Investigations, which oversees the Special Investigative Unit (SIU) and the Forensic Unit, is undergoing a transition under the new Cristiani administration. Previously the Commission was comprised of three members: the Minister of Justice (the chairman), the Vice Minister of Interior and a representative from the office of the President. The Commission is being reorganized and the Minister of Justice has been designated the interim focal point for judicial reform issues.

The Special Investigative Unit (SIU) continues to investigate crimes of national importance, including politically sensitive crimes and crimes characterized as human rights violations. To date the SIU has investigated 85 cases since its formation in 1985. It is largely through the SIU's proven ability to conduct comprehensive investigations using advanced forensic analysis that we have seen legislative efforts to expand the types of evidence that the courts will accept. The SIU also includes white collar crimes in its caseload. At the request of AID, the SIU recently completed an investigation into allegations that bank loans worth approximately 80 million colones (approximately \$12,800,000) were fraudulently obtained from a development bank. The case has been turned over to the courts for prosecution.

The Forensic Unit is by far the most professional forensic laboratory in El Salvador. Recently eight Unit technicians began long-term technical training at a variety of institutions in the U.S.

The Cristiani administration has expressed an interest in placing the SIU and the Forensic Unit within established institutions. The Embassy is now exploring ways with Salvadoran officials to restructure the Commission on Investigations and to assure placement for the SIU and the Forensic Unit within the Salvadoran governmental structure and budget.

JUDICIAL ADMINISTRATION AND TRAINING PROGRAM

In 1989, the Legislative Assembly approved a 37 percent increase in the Supreme Court's budget. Among other things, this increase permitted the courts in the San Salvador area to move to full-time operation, with a commensurate salary increase for the judges. In addition, courts are in the process of receiving office equipment (typewriters, photocopiers, etc.) and motorcycles and bicycles to alleviate the chronic lack of transportation available to judges.

Construction of temporary facilities for the San Salvador Judicial Center was completed and the Center is fully functional. A new permanent judicial center will be built with World Bank support.

The two local currency-funded projects that complement the judicial reform project have also been developed in the last six months:

-- The Attorney General's Human Rights Division, established in December 1987, carries 331 active cases, 165 of which were initiated in 1989. Seventy percent of the active cases are in the investigatory phase, while the others are in different stages of the trial process.

-- As an integral part of the process of strengthening the judicial system, AID supports a public defenders program, also local currency-funded, operated by the Solicitor General's office. The project was initiated in 1988. In the first six months of 1989, the public defender's office received more than 1,000 requests for assistance. Public defender services are limited to the central and western parts of the country but it is anticipated that in 1989-90 services will be extended to the war-torn east.

ICITAP (International Criminal Investigative Training Assistance Program)

El Salvador participates in ICITAP activities in Central America, which are increasingly directed beyond police officers to include other key individuals in the criminal justice system. A Central American Regional Conference sponsored by ICITAP in June highlighted the problems of coordination among judges, prosecutors and police throughout the region. The Attorney General accompanied the Vice Minister of Public Security and other police officials to the conference. They joined in a conference recommendation that each country create a commission with representatives from the several components of the criminal Justice system to improve daily working relationships.

ICITAP presented three courses for Salvadorans within the last six months: a course in police management, an overview of investigative techniques for judges, and an executive seminar for senior police officials. Salvadorans also participated in a regional course in advanced interviewing techniques held in Honduras.

ILANUD (UN Latin American Institute for the Prevention of Crime and Treatment of Offenders)

Representatives of the Supreme Court and the Attorney General participated in an ILANUD seminar on automated case processing held in Uruguay in September. Also in September, the Director of the Human Rights Division of the Attorney General's Office participated in an ILANUD seminar on constitutional and criminal procedure and jurisprudence and the protection of human rights.

HUMAN RIGHTS CASES INVOLVING THE MILITARY⁵**ARCHBISHOP ROMERO (March 24, 1980)**

Synopsis: Archbishop [Oscar] Arnulfo Romero was assassinated while saying Mass in a small chapel in the San Salvador cancer hospice. The government's investigation made little progress until 1985, when the SIU was assigned the case. The SIU reviewed available evidence, followed up on leads, and in 1987 located Antonio Amado Garay, an employee of Capt. Alvaro Saravia, who drove the car used in the assassination. Garay's testimony before a Salvadoran court in November 1987 resulted in an arrest warrant and extradition request for Saravia, who by that time was living in the United States. In September 1988 the U.S. magistrate in Florida signed a Certificate of Extraditability for Saravia. However, in December 1988 the Salvadoran Supreme Court overturned the Salvadoran government's petition to extradite Saravia and precluded resubmission of the petition by ruling that Garay's testimony, upon which the arrest warrant for Saravia had been based, was too dated.

Status: There has been no movement on this case since the last report. The denial by the Supreme Court of the extradition petition for Saravia has rendered the case inactive, although technically still open. Further action on the case would only be possible if the Supreme Court would review previous court decisions and find some basis for overruling them. Saravia and his wife remain in the United States facing charges of violation of immigration law.

Venue: 1st instance court: 4th San Salvador criminal court

SHERATON HOTEL MURDERS (January 3, 1981)⁶

Synopsis: Mike Hammer and Mark Perlman, two American Institute for Free Labor Development (AIFLD) land reform experts, were assassinated along with government land reform chief Roberto Viera in the Hotel Sheraton dining room. The two gunmen were convicted in February 1986, but alleged intellectual authors Lt. Lopez Sibrian and former Cpt. Eduardo Avila remained free. Lt. Lopez Sibrian had all charges against him dismissed, but

⁵ Unless otherwise noted, summaries are from the State Department's Report on the Situation in El Salvador [pursuant to Section 556b of P.L. 100-461], November 16, 1989, covering the April 1, 1989 to September 30, 1989 period, pp. 8-12.

⁶ From Department of State Report on the Situation in El Salvador, April 1, 1988, op. cit., pp. 36-37.

the 5th Criminal Court Judge agreed to hear further testimony against Mr. Avila. His defense attorneys, through use of habeas corpus petitions, were able to delay the reopening of the case. A decision that the case was subject to the amnesty law stopped all progress in the case.

Status: 5th San Salvador Criminal Court, Investigation Phase. The Judge temporarily removed herself from the case, and, on December 11, 1987, a Justice of the Peace, assigned to handle Fifth Court business, ruled that the case fell under the [1987] amnesty. The prosecutors appealed, but on December 19, 1987, the appeals court upheld the amnesty decision, freed the convicted murderers, and dismissed the case against Avila. The families' private prosecutor filed an appeal with the Supreme Court, which ruled that the appeal was not filed within the legal time limit.

ARMENIA WELL MURDERS (1980-82)

Synopsis: Between ten and thirty people were allegedly kidnapped by members of the Civil Guard in El Manguito Canton, Armenia Jurisdiction, Sonsonate Department, from 1980 to 1982. They were allegedly taken from their homes at night, accused of being subversives, tied up, blindfolded, and marched to a deep, narrow well. There they were allegedly shot or killed by machete and dumped into the well. In 1983 village residents filed complaints against the local Civil Guard commander, alleging illegal arrest, rape, robbery, homicide and other crimes. Seven Civil Guardsmen implicated in the crimes were arrested that year. In 1984 there was an unsuccessful attempt to exhume the victims' remains from the well. The SIU excavated the well in 1986 and found what appeared to be the remains of eight of the missing persons. Nine Civil Guardsmen remain charged with the crime and seven of these remain in prison awaiting trial. Two Guardsmen, including the commander, are still at large, presumably outside of El Salvador. Following a February 1988 decision by the Santa Ana appeals court upholding a lower court decision not to grant amnesty to the accused, the defense in August 1989 appealed again to the Santa Ana appeals court.

Status: The appeals court has not yet decided the second petition. While there is a time limit within which the courts are supposed to reach a decision on petitions, in practice the courts generally exceed that limit. In addition, the prosecution is contesting the 1st instance court's decision in September 1989 to release five of the defendants for lack of evidence.

Venue: 1st instance court: Armenia 1st instance court

MICHAEL KLINE (October 13, 1982)

Synopsis: American citizen Michael Kline was removed from a bus by several soldiers while travelling through conflictive Morazan Department. The soldiers (Jose Lopez Garcia, Hector Rubine Reyes, and Cristobal Garcia) claimed that they suspected Kline of being an American mercenary for the guerrillas and shot him on the way to detention. The accused petitioned for amnesty in 1987 which was denied by the 1st instance judge in San Francisco Gotera. The defense filed an appeal of the denial of amnesty with the appellate court in San Miguel, which in May 1988 upheld the lower court's decision. The first attempt to form a jury in July 1988 failed when the jurors failed to appear for duty.

Status: Plenary phase: The defendants filed a second writ of habeas corpus with the San Miguel appeals court in mid-1988 contesting the denial of amnesty. The petition is still before the court.

Venue: Venue has been changed from the San Francisco Gotera 1st instance court to the 1st San Salvador criminal court for the plenary phase.

LAS HOJAS MASSACRE (February 22, 1983)⁷

Synopsis: A military unit allegedly acting under orders from Colonel Elmer Gonzalez Araujo entered the Las Hojas Cooperative and shot at least 18 persons. Col. Gonzalez claimed his troops were conducting a combat operation against armed subversives.

Status: Sonsonate Criminal Court, Investigation Phase. The Sonsonate judge issued an arrest warrant for Col. Gonzalez, but shortly thereafter ruled that the case fell under the amnesty. The prosecution appealed, but the Santa Ana appeals court, on February 19, 1988, upheld the lower court decision. The prosecution has filled a "casacion" appeal to the Supreme Court.

KIDNAPPING CASE (Ring arrested April 1986)

Synopsis: A band of military officers (both former and active duty) and right-wing civilians allegedly kidnapped at least five wealthy citizens between 1982 and 1985 and received ransom payments of approximately four million

⁷ From State Department Report on the Situation in El Salvador, April 1, 1988, op. cit., p. 37.

U.S. dollars. A police investigation of the kidnapping of a former Foreign Minister led to the arrest in April 1986 of members of the ring. Three defendants (Orlando Llovera Ballete, Maj. Jose Alfredo Jimenez, and Lt. Rodolfo Lopez Sibrian) were apprehended while another three (Victor Antonio Cornejo Arango, Lt. Joaquin Zacapa, and Lt. Carlos Zacapa Butter) fled the country. Although Col. Roberto Staben was also implicated as intellectual author of the kidnappings, he was set free because of insufficient evidence. The other six defendants were charged under decree 618 with terrorist kidnapping, membership in a subversive organization, auto theft, and possession of arms of war. In April 1987 the defendants filed a writ of habeas corpus which was rejected by the Supreme Court in December 1987, which then returned the case to 1st military court judge Jorge Serrano Panameno for a decision on the applicability of amnesty for the defendants. In May 1988 Judge Serrano was assassinated. A new judge was appointed in August who granted amnesty to the defendants in November for the charges of possession of arms of war and terrorism and transferred the case to the 3rd San Salvador criminal court for further action, claiming he was not competent to try the remaining charges. Criminal court Judge Hector Larios, who was due for transfer, dismissed the case for lack of evidence in March 1989 in one of his last official acts and ordered the three incarcerated defendants released. We believe Judge Larios was bribed. Defendant Llovera was released and is believed to have fled the country. President-elect Cristiani and the Embassy intervened to prevent the release of Lopez Sibrian and to effect the re-capture of Jimenez. Larios' successor, Judge Mejia Angulo, reversed the release order and reinstated charges.

Status: The Salvadoran government on July 11 requested the extradition from the United States of two of the defendants, Victor Antonio Cornejo and Carlos Zacapa, who allegedly are key accomplices. The State Department is preparing the extradition documents for submission to the Department of Justice for action.

Venue: 1st instance court: 3rd San Salvador criminal court

BARRERA URQUILLA (December 5, 1986)

Synopsis: Air Force Sublieutenant Victor Manuel Aguilar Mendez and two enlisted men, Sgt. Jorge Alberto Ramos and Vidal Antonio Pleytes, were observed beating a young man while interrogating him near a main road outside San Salvador. The victim's body was discovered a week later about two miles from the scene. The SIU conducted an investigation that led to the arrest of the suspects in 1987. That same year the 1st instance judge ruled that the report on the "recognition" of the body did not contain sufficient information to show that the victim had been beaten to death. The judge ordered the body exhumed for further examination, but the defense then filed

a habeas corpus petition, blocking further action until the Supreme Court rules on the petition.

Status: The suspects remain in pretrial detention. The Supreme Court has not yet ruled on their habeas corpus writ.

Venue: 1st instance court: Tonacatepeque 1st instance court

THE SANTA ANA MURDERS (August 9, 1987)

Synopsis: Army Lt. Jorge Alberto Rivas Aguirre and two enlisted men from the second brigade abducted four young men leaving a fair in San Salvador and drove them toward Santa Ana, site of second brigade headquarters. One of the men escaped enroute. The bodies of the other three were discovered near the highway on August 10. On August 16, the army dismissed the three soldiers from service and turned them over to the civilian judiciary for prosecution. Lt. Rivas was charged with murder and the two enlisted men were charged with covering up the crime. The Santa Ana appeals court denied a defense appeal to dismiss the charges against Lt. Rivas, but agreed to dismiss the charges against the two enlisted men. The case was then returned to the 1st instance court. Lt. Rivas was found guilty in May 1989 and sentenced on October 1 to 30 years in prison.

SAN SEBASTIAN (September 1988)

Synopsis: Soldiers of the army's fifth brigade detained ten inhabitants of Canton San Francisco, San Sebastian Municipality, San Vicente Department, and walked them away from the village, allegedly to a helicopter pick-up site. Persons in the village heard two explosions and small arms' fire; the next day they found the bodies of the ten Canton residents. The soldiers claimed eight detainees and two guerrillas died when the column moving the detainees to a helicopter was ambushed. The victims' families alleged that the soldiers executed all ten. There were five separate investigations conducted of the case, including those done by the Catholic Church's human rights office (Tutela Legal), the government's human rights office, and the military. Then-President Jose Napoleon Duarte determined that none of those investigations was satisfactory and in November assigned the case to the SIU.

Progress in the investigation went slowly until Vice President Quayle in a February trip to El Salvador stressed our great interest in the case. A special military honor board was formed to review the evidence and in March the board announced that it found sufficient evidence of culpability to dismiss two officers (Maj. Beltran and Lt. Vasquez) and seven enlisted men from service and consign them to the civilian judiciary for prosecution. In late

March the first of several habeas corpus petitions was filed with the Supreme Court, which has only recently ruled on the petitions.

Status: The nine suspects remain in detention. We expect that the Supreme Court will soon send the case to the court of 1st instance in San Sebastian and recommend that no further petitions be entertained during the plenary phase of the case. However, it is likely that additional habeas corpus writs will be filed, further delaying the case, as the burden of proof is greater in the plenary than during the investigative stage. The Embassy has been assured by competent Salvadoran authorities that nonetheless it would be unusual for a habeas corpus petition to be granted at this stage after having been denied at the earlier stage.

Venue: 1st instance court: San Sebastian 1st instance court

HECTOR MIRANDA MARROQUIN AND LUCIO PARADA (July 3, 1989)

Synopsis: Sometime during July 1-3, members of the Atlacatl Battalion operating around Apopa, outside of San Salvador, arrested eight suspected FMLN members. During a field interrogation of the suspects, Lucio Parada died sometime before noon, July 3. On July 3 the remaining suspects were turned over to the 1st brigade in San Salvador. Sometime during the period July 3-12, Hector Miranda Marroquin was taken to Resales Hospital, suffering from injuries sustained while in the custody of the Atlacatl Battalion. On July 7, soldier Cesar Veilman Joya Martinez was placed in detention at the 1st brigade pending the outcome of the 1st brigade's investigation into the death of Parada and the alleged torture of the other suspects. On July 12 Miranda died in the hospital. The remaining six suspects were freed on July 17. On July 23, Joya Martinez escaped from custody. Detention orders were issued on July 24 for Joya Martinez and three other soldiers. On July 26 the military high command ordered the National Guard to conduct an investigation into the incident. The National Guard submitted its report on August 21 but left many questions unanswered, such as the possible complicity of higher level officers in the treatment of the suspects. In October Joya Martinez began making claims from outside El Salvador of his participation in a 1st brigade death squad and U.S. military trainers' knowledge of death squad activities. Joya Martinez at some point entered the United States where he has continued making these allegations.

Status: An arrest order was issued by a Salvadoran court for Joya Martinez in October. The three other soldiers charged with the homicides have been dismissed from military service and turned over to the civilian judiciary for prosecution. The military continues its own investigation into

the incident. The Embassy has urged the military to investigate thoroughly Joya Martinez' charges of death squad activity at the 1st brigade.

Venue: 1st instance court of Quezaltepeque

KILLING OF JESUIT PRIESTS (November 16, 1989)⁸

Chronology of Events and Investigation

November 16

- Father Ignacio Ellacuria, five other Jesuit priests, and a domestic employee and her daughter are killed by gunmen at the University of Central America.
- At approximately 06:30 civilians discover the bodies and church officials are notified. The crime scene is contaminated by civilian on-lookers and media personnel before investigators arrive.
- Salvadoran President Alfredo Cristiani condemns the murders and orders an immediate investigation by the U.S.-funded and trained Special Investigative Unit (SIU).
- The SIU seals the crime scene, gathers evidence, and begins to interview possible witnesses. Autopsies are performed on the victims.
- U.S. Ambassador William G. Walker publicly expresses the U.S. Government's outrage at the crime, calling it "a barbaric act."

November 17

- U.S. pathologists view the bodies and review the autopsies' reports. In a preliminary assessment, they conclude that the SIU is performing a competent investigation and that the autopsies are thorough and professional.
- President Cristiani requests investigative assistance from the U.S., Spain, Canada, and the United Kingdom.

November 19

- Funeral services for the Jesuits are held at the Central American University. Ambassador Walker and President Cristiani attend.

November 22

- FBI agent arrives in country to provide technical assistance to the SIU and to receive a briefing on the investigation.

⁸ From material provided by El Salvador Desk, Department of State, March 23, 1990, with some headings added by CRS. The material is in a different format than previous material, and seems to be current only through early February 1990.

November 23

-- Embassy is advised that a possible eye-witness to the murders, Lucia Barrera de Cerna, is leaving El Salvador for the U.S. for security reasons, with the assistance of the French and Spanish Embassies. Embassy legal officer and FBI agent accompany Mrs. Cerna to Miami in a French military aircraft, after State Department arranges air clearance and immigration authorization.

-- Party is met by French and Spanish consuls and local Jesuits. The Jesuits express concerns about security and it is agreed to meet the next day, after the Cernas have completed immigration documentation.

November 24-December 1

-- The SIU Director and polygrapher arrive in Miami. Mrs. Cerna and husband are questioned at FBI headquarters by the SIU Director and FBI agents. The Cernas give contradictory versions of what they may have heard and/or seen the night of the murders. After the interviews, the Jesuit community assumes responsibility for the Cernas.

November 30

-- The Embassy establishes a task force to formally coordinate on-going U.S. Government assistance to the Jesuit investigation.

December 1

-- Ambassador Walker, accompanied by U.S. Southern Command Commander General Thurman, stress the importance of a thorough investigation into the Jesuit killings to the Salvadoran military high command.

December 4

-- Embassy officials meet with Roberto D'Aubuisson (ARENA party President-for-life and Legislative Assembly Deputy) to discuss media reports of his possible responsibility for the killings. He denies any involvement and promises full support to the investigation, including his willingness to be polygraphed.

December 9

-- President Cristiani offers a reward (250,000 dollars) for information leading to the arrest of the murderers, as well as relocation outside of El Salvador, if requested.

December 10

-- The SIU completes interviewing all officers commanding units in the University area the night of the killings.

December 11

-- The SIU establishes a hotline for anonymous callers having information on the murders.

CRS-17

-- The SIU identifies the army unit that had conducted a search of the University on November 13, three nights before the murders. The unit is part of the Atlacatl immediate reaction battalion and was under the temporary operational control of Col. Guillermo Benavides, Director of the Military Academy.

-- The SIU begins polygraphing soldiers from the units stationed in the area the night of the crime. It also identifies the lot number of the bullets used in the murders.

December 15

-- The SIU reports having conducted 147 interviews of soldiers and having run over 300 ballistics tests on the weapons of soldiers who were near the University on November 16.

December 16

-- The police officials sent by the Spanish Government to monitor the investigation depart El Salvador. They report that the SIU is conducting an objective, professional and thorough investigation.

December 22

-- Col. Aviles, Father Tojeira, the Jesuit Provincial, and Father Estrada, the new Rector of the Central American University, receive a full and detailed briefing on progress in the investigation.

December 20-22

-- A member of the U.S. Military Group in El Salvador receives third-hand information implicating Col. Benavides as the intellectual author of the murders. The U.S. military officer does not pass the information to his superior officer.

December 28

-- An FBI polygraph expert performs quality control checks on the SIU's polygraph tests.

-- The head of the Jesuit order arrives in El Salvador to review progress in the investigation. He meets with President Cristiani and receives a briefing from the SIU.

January 2

-- President Cristiani reiterates that the focus of the SIU's investigation is on the military.

-- The [U.S.] MilGroup officer tells his superior of the information he received implicating Col. Benavides. Col. Menjivar, the MilGroup Commander, with an Embassy political officer, report this information to Salvadoran Chief of Staff Col. Ponce.

January 3

-- The prosecutors and judge assigned the case begin to review the SIU's evidence.

January 6

-- Scotland Yard sends a team to review developments in the investigation.

January 7

-- President Cristiani announces that the SIU has developed evidence implicating members of the Atlacatl unit in the murders. Two officers and 45 enlisted men in the unit are ordered confined to barracks. President Cristiani also announces the formation of a special military honor board to review the SIU's evidence.

January 8-10

-- Staff members of the House Task Force on the Jesuit murders investigation visit El Salvador.

January 9

-- A U.S. Department of Justice expert provides quality control on the SIU's ballistics tests.

January 10

-- Auxiliary Bishop Msgr. Rosa Chavez publicly states that he and the Catholic Church are satisfied with the progress in the investigation.

January 11

-- Supreme Court President Mauricio Gutierrez publicly applauds the investigation and assures that the accused will receive a fair trial. If found guilty they will be punished, whether they are civilians, military, or influential people, he is reported saying in a local journal.

January 13

-- President Cristiani announces the findings of the military honor board, concluding that nine members of the military (Col. Benavides, three lieutenants, and five enlisted men) are under suspicion for the murders. Eight are taken into custody, while the ninth, who deserted the army in December, is being sought.

January 18

-- Salvadoran Attorney General Colorado announces that his office will act as the official prosecutors of the military personnel implicated in the murders of the Jesuits.

January 19

-- The judge [Ricardo Zamora in the San Salvador 4th Penal Court] announces that there is sufficient evidence to hold all eight prisoners under provisional arrest for the next stage in the judicial process.

January 22

-- Defense attorneys file writs of habeas corpus demanding that eight [accused] be released on the ground that the provisional detention order was improperly filed. In addition, the release of Col. Benavides is demanded on the additional ground that he has been implicated by accomplices and under Salvadoran law the testimony of co-conspirators is inadmissible as evidence against other co-conspirators.

January 26

-- The judge denies the defense's motion to revoke the provisional detention against the eight accused, sustained his detention order, and ordered that the witnesses begin to be brought before the court to testify.

February 1

-- Col. Benavides is officially removed as Director of the Military Academy as part of a general order of military assignments.

Questions and Answers on Key Issues:

U.S. Embassy Resources Devoted to Investigation

Q: What Embassy resources were devoted to the Jesuits killing [case]?

A: The Embassy set up an internal task force headed by the DCM [Deputy Chief of Mission] and including representatives from the legal office, the political section, the DAO [Defense Attache Office], and the Mil Group. Technical assistance and investigative support has been provided by FBI personnel.

Adequacy of Investigation by the Government of El Salvador (GOES)

Q: Do you believe that the GOES did as complete a job as possible in the investigation of the Jesuit murders?

A: The GOES investigation of the Jesuit murders was prompt, impartial, and professional. This evaluation was shared by the FBI, Scotland Yard and Spanish Government officials, all of whom independently scrutinized the investigative process. The U.S.-trained Special Investigative Unit painstakingly collected evidence, conducted hundreds of ballistic and fingerprint examinations, and interviewed more than 100 potential witnesses.

All of this took place during a period of intense guerrilla activity in the capital, making even routine operations both dangerous and difficult.

Q: Why did it take the GOES almost two months to discover that the army units assigned to the area of the UCA [Central American University] were responsible for the killings?

A: Following the initiation of the FMLN offensive on November 11, San Salvador and regional capitals were engulfed in a brutal ground war which resulted in the displacement of thousands of civilians, with hundreds of others killed and wounded. Normal government and private operations ceased for weeks. Event flooded on top of event, with the offensive, the Jesuits killing, the Sheraton siege, and the invasion of the better-off neighborhoods by the guerrillas following one after the other. Thousands of troops were brought into the city to deal with the guerrilla threat. In this context, it was difficult for the military to reconstruct which units had been where during a particular period. Ultimately the military provided the accurate information which helped the investigators break the case and led to arrests.

Despite the difficult circumstances, investigators followed all leads while conducting systematic interviews of all persons who might possibly have witnessed or participated in the events of the night. Repeated ballistics tests were required to identify the weapons used during the killing, and the SIU carefully compiled a strong physical case before confronting members of the various units whose testimony to the SIU did not correspond to the Unit's understanding of events.

The SIU conducted a thorough, professional investigation which has resulted in arrests. It is important to note that these arrests were based primarily on available physical evidence, rather than witness testimony which could be changed, challenged, or retracted. U.S., Spanish and British authorities have scrutinized the investigative process and found it meets professional standards.

U.S. Military Trainer's Role

Q: If, as reported in the press, a U.S. military trainer knew about the Salvadoran military's involvement in the case as early as December 20, why did the U.S. Ambassador not know about it in early January?

A: A U.S. military trainer heard fourth hand [from Salvadoran Colonel Aviles] about a conversation in which a Salvadoran military official allegedly had claimed knowledge of the killings. Perhaps because he believed that other Salvadoran and U.S. Embassy personnel had the same information, he delayed passing the information until January 2 to his superior. Embassy officers then passed the information on to the Salvadoran investigators and to the

highest levels of the Salvadoran Government and military. The investigators were already tracking down this lead based on other evidence and testimony that the SIU had developed separately.

Q: Why did U.S. MilGroup Commander Col. Menjivar not report the information to the [U.S.] Embassy before sharing it with the Salvadoran military?

A: Col. Menjivar briefed certain members of the Embassy shortly after he learned about this matter. He then raised it that afternoon with Col. Ponce [Salvadoran Chief of Staff] and informed the [U.S.] Charge the next day (January 3).

Q: What is Colonel Aviles' status now?

A: Aviles has not been detained and is not under investigation. His proposed transfer to Washington has been put on hold, however. He remains in charge of the C-5 shop -- psychological operations -- at the joint staff of the armed forces.

Q: Is anyone looking into the allegation that Col. Rivas and Col. Lopez y Lopez of the SIU knew of Col. Benavides' involvement in the crime in December?

A: The U.S. MilGroup major learned from Col. Aviles that Col. Benavides had approached Rivas; Aviles heard the story from Col. Lopez y Lopez. At best, we had uncorroborated third-hand information. The U.S. officer and Col. Aviles both failed polygraphs trying to establish this point.

We would expect that the SIU suspected Benavides' involvement in the crime before charges were actually lodged. The SIU built a sound case based on evidence, primarily ballistics tests and sworn testimony. From day one of the investigation, the SIU focused almost exclusively on the military. The unit quickly began to look closely at the testimony of the squad of troops from the Atlactl Battalion which had searched the UCA on November 13.

The American officer's testimony served to corroborate the SIU's investigation. After the SIU had accumulated sufficient evidence, it presented it to the appropriate judicial authorities.

Q: Did coordination of the case within the [U.S.] Embassy break down after the [U.S.] major told his superior what he knew?

A: The American major told his immediate superior, who informed the milgroup commander. The milgroup commander requested the American major appear before Chief of Staff Colonel Ponce to repeat his information.

The coordination within the Embassy -- specifically, informing the Charge of the intended approach to Colonel Ponce with the information -- could have been better handled. Charge Dieterich should have been the one to make the decision on whether and how to tell the army high command about the American officer's allegation. However, the importance of the case, and the desire of all concerned to assist in getting to the bottom of it, lead to inadequate coordination.

Q: Did the [U.S.] Embassy "blow" Aviles?

A: We believed that the [U.S.] major had information relating to a murder case which we want to see solved. There was a moral choice to be made: whether to consider the need for justice in the killing of the Jesuits more important than the need to protect a source (Col. Aviles). The judgement was made that seeking justice for the killers of the Jesuits was more important. It was the right choice.

Judicial Steps in Case

Q: What are the next steps in the judicial process?

A: The case is now in the instructional phase. It is roughly equivalent to a grand jury proceeding under the American system of justice. Judge Zamora using an "auxiliary organ" -- in this case, primarily the SIU -- to investigate, and prosecutors from the Fiscal (Attorney General) to prepare the prosecution, builds the evidentiary basis to support an allegation of a criminal act. This phase is scheduled to last 120 days, terminating on May 12, 1990.

The SIU's report on the crime is now being reviewed by Judge Zamora. He is reinterviewing witnesses and defendants, and looking at the technical reports the unit prepared. He has the authority to direct the SIU, or any other investigative unit, to expand its inquiries into any aspect of the case. To date, no suspects beyond those already charged have been identified by the judge, the prosecutors, or the SIU.

At the end of the instructional phase, the judge decides whether to dismiss the proceedings for lack of evidence or to proceed to the plenary phase.

The plenary phase is what we would call the trial itself. In this phase, the State (the Fiscal) presents its case that a crime has been committed and attempts to establish the guilt of the accused. This case will be decided by a jury; conviction can be voted by a majority. The plenary phase can last as long as three months.

The maximum penalty for murder in El Salvador is 30 years imprisonment.

Timeframe for Case

Q: What is the timeframe for the prosecution of those accused of killing the Jesuits?

A: The case is now in the "Instruction Phase," which has a 120-day limit (in this case, to expire May 19, 1990). In practice, this time limit is often exceeded. Either the prosecution or the defense may appeal the judge's eventual decision to try the case.

Adequacy of Judge

Q: Isn't the judge the same as in the [Archbishop] Romero case?

A: Yes. Judge Ricardo Zamora was also the judge in the murder of Monsignor [Oscar] Arnulfo Romero, the Archbishop of San Salvador. Although his association with the unresolved Romero case is worrisome, we understand that Zamora is a graduate of the UCA and is well known to the UCA law school faculty. The Jesuits have not criticized his selection.

It is worth noting that the most recent thwarting of justice in the Romero case came in December 1988 as the result of an action by the Supreme Court, not Judge Zamora. The Court ruled that Alvaro Saravia's testimony was inadmissible because it was too old and because it constituted co-conspirator testimony, which cannot be allowed in the Salvadoran system.

Nonetheless, we intend to monitor closely Zamora's handling of this case.