

El Salvador: The Issue of Military Impunity

The recent acquittal by Salvadoran courts of several military defendants charged in three longstanding human rights cases indicates, [REDACTED], that the judiciary remains unwilling to confront the armed forces. Despite various reform measures implemented over the past year, [REDACTED] suggests that corruption, incompetence, intimidation, and archaic procedures continue to hamstring the judicial system. In recent rounds of government-rebel talks, the Faribundo Martí National Liberation Front (FMLN) has demanded an end to military immunity from prosecution as part of military and judicial reform packages that are to be negotiated prior to a cease-fire. [REDACTED]

Lack of Accountability

Having largely run the country until 1984, the Salvadoran military has no tradition of accountability to civilians. [REDACTED] indicates the officer corps is a cohesive and insular group with strong, life-long loyalties, particularly to fellow members of each graduation class, or *tanda*. As a result, officers rarely cooperate in the prosecution of their colleagues. For their part, judges, fearing reprisals, frequently decline to arraign members of the armed forces. No senior military officer accused of human rights violations has ever been brought to trial. Recent court actions in three major cases involving military personnel accused of human rights abuses are illustrative of the problem. [REDACTED]

The Kidnapping Ring. From 1982 to 1986, a group of retired and active-duty military officers and rightwing civilians kidnapped at least five wealthy Salvadorans, collecting several million dollars in ransom. In 1986, the authorities arrested four officers who belonged to the ring, including one member of the powerful *Tandona*—the military class of 1966 which now holds most command positions—who was released shortly afterward due to insufficient evidence; arrest orders were filed against five others, including two *Tandona* members who fled the country. [REDACTED] shows the case has been plagued by judicial irregularities and suspicions of corruption. In April, the

presiding judge, who had been assigned to the case only a month earlier, dropped the charges and arrest orders against all but two of the eight remaining defendants on the grounds of insufficient evidence. Despite a public plea from President Cristiani and the prosecutor's advice to appeal, the Attorney General declined to do so, generating rumors that he had cut a deal with the other defendants. [REDACTED]

The San Sebastian Murders. In September 1988, five officers and seven enlisted men allegedly executed 10 peasants suspected of involvement with the FMLN. Although the Army initially attempted a coverup, the case caught the attention of US officials who strongly urged—in direct talks with then-President Duarte and the Armed Forces Chief of Staff—that the killings be vigorously investigated. Following an inquiry—with US technical assistance—a judge concluded in March 1989 that sufficient evidence existed to arrest the suspects. In May, over a year after the arraignment, another judge dropped the charges against 11 of the defendants despite trial statements that, [REDACTED] provided compelling proof of the guilt of all of the accused. Trial proceedings were ordered against the highest ranking officer, an up-from-the-ranks major without powerful classmates to protect him. [REDACTED]

The Michael Kline Murder. In 1982, a group of soldiers killed a US citizen they suspected of serving as a mercenary for the guerrillas. Trial proceedings against the three enlisted men, ordered in 1984, were not completed until June 1990. The courts convicted only one of the three, concluding that shots fired by the other two had not been fatal. [REDACTED]

Problems in the Judicial System

The military's immunity from civilian authority is due, in part, to the weakness of the judicial system. Court officers enjoy no police protection and live in fear of retributions from both the right and the left. [REDACTED]

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Several have been assassinated by the FMLN; in late July, for example, a Justice of the Peace whose son is a military officer was killed by guerrillas. Others have resigned rather than confront the military. Moreover, the shortage of attorneys, difficulties in getting citizens to serve as jurors, and the reluctance of witnesses to testify hinder the expeditious processing of cases.

Efforts to reform the judicial system have made no discernible progress. In the San Sebastian case, for example, the judge disallowed evidence gathered by the Special Investigative Unit, a US-funded criminal investigative unit created in 1985. Furthermore, in selecting the judge who ultimately decided the kidnapping case, the Supreme Court bypassed the newly created, supposedly nonpartisan council it is required by law to consult when transferring or appointing judges.

Role in Peace Negotiations

Armed forces impunity has proved to be a major sticking point in negotiations between San Salvador and the guerrillas. In July, the FMLN rejected a government reform proposal that called for trials in eight cases, including four allegedly committed by rebels, a general amnesty for officers accused of human rights violations, the rebels, and political prisoners, and establishing a military tribunal to punish actions that obstruct the administration of justice. Instead, the guerrillas

demanded that San Salvador prosecute four key cases, including the 1980 assassination of Archbishop Romero and the 1989 Jesuit murders, and purge the armed forces of officers involved in human rights violations. The negotiations in July ended with a broad human rights agreement that still did not address the overarching issue of military impunity.

At the most recent round of talks, started on 18 August, military reform issues continued to cause problems. The rebels, calling impunity the root of judicial ineffectiveness, presented a new, more hardline proposal, demanding the investigation of all murders and disappearances since 1979 and the purging of all corrupt officers as a preliminary step toward the dissolution of the Army. The government has rejected the demands as unreasonable.

Outlook

the issue of military impunity will continue to diminish the chances of an agreement on armed forces' reform—a prerequisite for a cease-fire—in the near term. Although government and military officials give lip service to the need for judicial reform and the end of impunity, the absence of military accountability is likely to persist indefinitely.