

[REDACTED]

[REDACTED]

3/4/91

El Salvador: Little Progress in the Jesuit Murder Case [REDACTED]

The Jesuit murder case is moving slowly forward in El Salvador's troubled judicial system, but suspicions that senior military officers ordered the murders or covered up armed forces involvement linger. Conflicting evidence, government stalling, and reluctant military cooperation plagued the inquiry phase, which ended in December. Two prosecutors recently resigned from the case and accused the Attorney General's office of bending to military pressure and hampering their efforts to conduct a thorough investigation. We believe judicial maneuverings and traditional military immunity to civilian authority will continue to work against a speedy prosecution of the case. [REDACTED]

#### Background

Last January, the government arrested six officers and three enlisted men, one of whom deserted and remains at large, for the murders in November 1989 of six Jesuit priests, their housekeeper, and her daughter. The highest-ranking officer arrested, Colonel Guillermo Alfredo Benavides, belongs to the powerful military academy class of 1966, or Tandong, whose members include the Defense Minister and other senior officers. The arrests came at the end of a broad investigation--on a scale unprecedented in Salvadoran judicial history--with technical help

Approved for Release

NOV 1993

[REDACTED]

[REDACTED]

from the US, British, and Spanish Governments. The US-trained Special Investigative Unit (SIU) conducted a professional and commendable investigation that received praise from foreign police experts [REDACTED]. Although poor coordination among the SIU, the Attorney General's office, and other agencies initially delayed the investigation, ballistics tests, handwriting evidence, and statements by military personnel eventually implicated the suspects. [REDACTED]

Last December, Judge Ricardo Zamora, tasked with overseeing the inquiry, ruled evidence was sufficient to try the suspects. He charged the nine soldiers with assassination and acts of terrorism, each charge carrying three to 30-year sentences. A tenth soldier, arrested in July, was charged with destruction of evidence. The defense appealed the judge's decision and the case moved into a pretrial appeals phase during which two judges will decide whether evidence gathered during the investigation and by Judge Zamora is sufficient to go to trial. [REDACTED]

#### Military Cooperation--Some Bright Spots

Armed forces cooperation with civilian authorities in the Jesuit investigation, although at times reluctant, has been greater than in any other human rights case involving the military. Although officers have rarely participated in the prosecution of colleagues, many senior officers and officials, including Defense Minister Ponce--then Chief of Staff--offered testimony. The SIU, headed by a military officer, focused on the armed forces from the start of the inquiry and reportedly proceeded without threats or interference. On some occasions the military was even

[REDACTED]

compliant; after some criticism from the President's office that they were not being responsive to the court, the Armed Forces installed a direct phone line to Judge Zamora from the Defense Ministry. [REDACTED]

#### Problems in the Investigation

Despite these accommodations, long delays in obtaining evidence and the government's lack of aggressiveness in investigating the case provoked charges by international observers that San Salvador is not committed to bringing the perpetrators to justice. [REDACTED] Zamora continually put off asking for evidence and testimony. [REDACTED]

[REDACTED] former Attorney General Colorado--who was replaced in June by Roberto Mendoza--ordered the prosecutors assigned to the case to take no initiatives. At the same time, [REDACTED]

[REDACTED] no one in the Attorney General's office was responsible for managing the case or devising a prosecutorial strategy. Two of the seven prosecutors working on the case resigned in January 1991, accusing the Attorney General's office of barring them from key testimonies and censoring their questions to key military witnesses during the final months of the investigation. [REDACTED]

Although we have no evidence that any officer threatened the Judge, he was clearly hesitant to violate the norms of Salvadoran civil-military relations. [REDACTED] Zamora was reluctant to make requests of or give specific orders to the SIU--headed by Colonel Rivas--arguing that a judge does not give orders to the military. The two men met only once, in March

[REDACTED]

1990, even though both played vital roles in the investigation.

[REDACTED]

Military cooperation, moreover, has been limited to compliance with specific requests. The reluctance of officers to volunteer information, perjury, and the destruction of evidence have fed suspicions of a coverup at high levels.

- Judge Zamora jailed several enlisted men on charges of perjury after they contradicted each other on the witness stand.
- The military Honor Commission, appointed in 1989 by President Cristiani to investigate Army involvement in the murders, accomplished virtually nothing. Members contradicted themselves in testimony, some claiming they submitted a written report to the President while others swore a report was never prepared.
- Military testimony has never established the precise chain of command between Ponce and Benavides on the night of the murders and has failed to clarify doubts about a possible coverup. [REDACTED] some testimony suggests officers were aware of Benavides' role in the murders before his indictment.
- Some 70 military logbooks were destroyed weeks after the killings, an estimated 20 of which reportedly may have given evidence relevant to the case. Lieutenant Yushy Mendoza, one of the murder defendants, testified that Lieutenant Colonel Camilo Hernandez, now a codefendant charged with destruction of evidence, ordered the burning,

[REDACTED]

an accusation Hernandez denies. A notebook allegedly kept by Benavides also disappeared. [REDACTED]

Senior military commanders have not demanded that soldiers with knowledge of the case come forward, nor have they taken action against those who perjured themselves. Furthermore, all defendants have contracted with the same team of defense attorneys--who reportedly may be paid by members of the armed forces--even though several have opposing interests and contradictory defenses. The arrangement has fueled suspicion that the defense team may be more concerned with protecting the armed forces than serving its clients' needs. [REDACTED]

The military, proclaiming its full support for the investigation, has repeatedly denied allegations of a coverup. [REDACTED]

[REDACTED] Benavides is the lone conspirator and that he ordered the killings on his own initiative without prompting from higher authorities. [REDACTED]

he snapped under the stress of the November rebel offensive. [REDACTED]

#### Judicial Impediments Expected

Although the case has progressed to the pretrial appeals phase relatively quickly by Salvadoran standards, Salvadoran law and the inefficient judicial system will probably add to problems and delays in prosecuting the case. [REDACTED] the president of the appeals court, while acknowledging the case requires special attention, refuses to predict when the process will be completed. If the case is moved to trial, compiling a jury will be a lengthy process. In highly sensitive cases,

[REDACTED]

jurors, witnesses, and court officials have been subject to bribery and intimidation. Fear of retaliation could prevent many from coming to serve. Literacy requirements also limit the potential juror pool. [REDACTED]

Rules of evidence may make conviction of some suspects difficult. Laws barring codefendant testimony suggest the main evidence against Benavides, the statements of his codefendants that he ordered them to kill the priests, may be inadmissible. The only evidence against Hernandez on the destruction-of-evidence charge is also codefendant testimony. [REDACTED]

#### Prospects

Judging by past experience, we believe the case is likely to drag on for some time. Other prominent cases continue to crawl through the judicial system, including the murder of six US citizens at a cafe in 1985, and the murder of 10 peasants in San Sebastian in 1988. In the latter case, the judge last year dismissed the charges against 10 soldiers but ordered trial proceedings--which have yet to begin--against the highest-ranking officer, a major. [REDACTED]

Further help from the Armed Forces in resolving conflicting testimony or uncovering new evidence is unlikely. Suspicions of higher-level involvement, therefore, are likely to linger. [REDACTED]

[REDACTED]

[REDACTED] our judgment, the military probably believes the Jesuit case no

[REDACTED]

longer presents any institutional threat as the Armed Forces  
retains the ability to control its own affairs.

[REDACTED]