Print Message(s)

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(b)(3):10 USC 424

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ENVELOPE

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HEADER

R
291722Z JUN 17
FM AMEMBASSY SAN SALVADOR
TO RUEATES/PTC TEST WASHINGTON DC
INFO RUEWITS/JOINT STAFF NCCS JCS WASHINGTON DC
RUEWITS/JOINT STAFF NCCS OSD WASHINGTON DC
RUZDADA/AFIAA AMHS BOLLING AFB DC
R
291722Z JUN 17
FM AMEMBASSY SAN SALVADOR
TO RUEHC/SECSTATE WASHDC
INFO WHA CENTRAL AMERICAN COLLECTIVE
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC
RHMCSUU/DIA WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC
RUMIESS/SOUTHCOM IESS MIAMI FL
RHMCSUU/JOINT STAFF WASHINGTON DC
RUEKJCS/OSD WASHINGTON DC
RHEHNSC/WHITE HOUSE NATIONAL SECURITY COUNCIL WASHINGTON DC
RUEILBQ/NCTC WASHINGTON DC
RUEABND/DRUG ENFORCEMENT ADMIN HQ WASHINGTON DC
RHMCSUU/FBI WASHINGTON DC
RHMCSUU/DEPT OF HOMELAND SECURITY WASHINGTON DC
RUILAAA/HQ ICE INTEL WASHINGTON DC
RHMCSUU/NGA WASHINGTON DC
RUETIAA/DIRNSA FT GEORGE G MEADE MD
RUEPWDC/DA AMHS WASHINGTON DC
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CONTROLS

~~C O N F I D E N T I A L~~

SAN SALVADOR 000067

********* THIS IS A COMBINED MESSAGE *********

********* START OF SECTION 1 *********

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SENSITIVE

BODY

E.O. 13526: DECL: 2027/05/25
TAGS: PHUM, PGOV, PREL, CASC, KAWC, KCRM, KLIG, KJUS, IAHRC, JUS, SV,
4C
SUBJECT: San Salvador: El Mozote Massacre Trial: Test Case for Civil War Accountability

REF: 17 SAN SALVADOR 376
16 SAN SALVADOR 1082
17 SAN SALVADOR 232
82 SAN SALVADOR 0773
16 SAN SALVADOR 1306
16 SAN SALVADOR 105
17 SAN SALVADOR 486
17 SAN SALVADOR 472
16 SAN SALVADOR 15

CLASSIFIED BY: Jean Manes
REASON: (b), (d)

Note: This cable was first released as 17 SAN SALVADOR 63, but did not include the referenced cables. End note.

1. (SBU) Summary: The 1981 El Mozote massacre remains the largest mass killing (800 civilians) in El Salvador's modern history. The trial of 20 defendants, many from the military's former high command, may provide a barometer for the ability of the Salvadoran justice system to tackle its complex history and stubbornly entrenched impunity. Since July 2016 when the Supreme Court declared the Amnesty Law of 1993 unconstitutional for crimes against humanity and war crimes, a number of notable other civil war era cases have seen traction including the Zona Rosa case (Ref A) and the confirmation of the 1992 30- year sentence of Colonel Guillermo Benavides for the 1989 Jesuit priests' killings. The Attorney General's (AG) office created a specialized Historic Crimes Unit, dedicated to the investigation and prosecution of civil war era crimes, and the Government of El Salvador (GOES) launched a national reparations program to provide small, monthly monetary compensation to registered victims of the civil war and their families (Ref B). The GOES and legislators are exploring a replacement of the Amnesty Law which could impact the ability to prosecute the El Mozote case and others.

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The U.S. government, non-governmental organizations (NGOs) and international community continue to monitor the progress of these cases closely. The Embassy continues to support creating strong democratic institutions in El Salvador, including the judiciary, which should help strengthen accountability and transparency for all types of crime, both current and historic. End summary.

2. (C) Post is closely monitoring progress in these, and other historic gross human rights violation cases.

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Ongoing Judicial Process in El Mozote

3. (SBU) Between December 10 and 12, 1981, over 800 civilians were killed by government forces in numerous villages in the Department of Morazan, which became known as the El Mozote massacre. According to the Truth Commission report, El Mozote massacre (named after the village that suffered the most casualties) was part of "Operation Rescue" and carried out by the Salvadoran Army's Atlacatl Battalion,

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a rapid-reaction unit based in San Salvador, under orders from Colonel Domingo Monterrosa Barrios (now deceased). In the early 1980s there were heated disputes in the U.S. Congress over defunding foreign military aid to the Salvadoran government due to allegations of human rights violations. In November 1981, the Department of Defense issued the "Woerner Report" which gave a sunny description of

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the Salvadoran military and praised the high command's reluctance to punish misconduct or extreme violence in favor of supporting loyalty. Soon after the El Mozote massacre, the Embassy reported that there was no evidence to confirm that civilians had been systematically killed and downplayed the gravity of killings (Ref D).

4. (SBU) On September 30, 2016, Judge Jorge Guzman Urquilla of the Second Court of First Instance in San Francisco Gotera, Morazan, reopened the case against those charged as the material and intellectual authors of the massacre (Ref E). Defendants include several members of the senior command of the Armed Forces in 1981. Judge Guzman reasoned that the July 13, 2016 ruling from the Constitutional Chamber of the Supreme Court, which declared application of 1993 Amnesty Law to gross human rights violations unconstitutional (Ref F), allowed for the resurrection of the case. It had been initiated in 1991, but shelved when the Amnesty Law went into effect two years later. The impetus for reopening the case came from an August 19, 2016 petition by Salvadoran-based non-governmental organization (NGO) Tutela Legal "Maria Julia Hernandez" and DC-based NGO the Center for Justice and International Law (CEJIL) to Judge Guzman, asking that he reinitiate the case in light of invalidation of the Amnesty Law. These organizations are "private accusers," who under the 1973 Criminal Procedural Code have the right to submit evidence, call witnesses, and cross examine witnesses and defendants.

5. (SBU) On March 29 and 30, Judge Guzman held hearings to inform the defendants of the charges against them, marking the first time the defendants were summoned before a judicial body to face accusations for crimes committed during the massacre (Ref G). During these first hearings, victims were represented by David Morales and attorneys for the NGO Tutela Legal. (Note: Morales was Human Rights Ombudsman from 2013 to 2016. End note.) [redacted] told PolOff that the El Mozote massacre case is a "test case" for El Salvador's judicial system, and should be seen as emblematic of justice today. With roughly 400 remains recovered through seven

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exhumation processes, victims' eye witness testimonies, and evidence of patterns of illegal behavior by the Salvadoran military during the civil war, [redacted] sufficient evidence exists to B6
demonstrate culpability of crimes against humanity and war crimes at El Mozote. Other Embassy contacts, however, note that El Salvador lacks the forensic expertise to properly assess evidence of this type and from this era. [redacted] it would have been difficult B6
for Judge Guzman to justify not re-opening the case because the July ruling overturning the Amnesty Law specifically called out El Mozote as a case which should be tried. On May 11, Judge Guzman called defendant and former Minister of Defense Jose Guillermo Garcia to testify, but he abstained and sent his lawyer in his stead. As a consequence, Judge Guzman can hold Garcia in contempt of court for his absence, or allow Garcia to send a written statement instead. In 2002 Garcia was found liable for participating in torture and extrajudicial killings while he was Minister of Defense, and a judgment of $54 million was entered against him. He was deported from the United States in January 2016.

6. (SBU) As the 1973 Criminal Procedural Code gives the judge inquisitorial power, Judge Guzman does not need the AG to file requests for information or to lead the investigation. Judge Guzman has requested information from the Office of the President and the Ministry of Defense, as well as information on the ongoing exhumations from formerly-presiding Judge Mario Diaz Soto. Exhumations are proceeding under a separate judicial process. On May 11, the Supreme Court notified Judge Diaz Soto that he was being removed from the case, determining that he had overstepped his judicial obligations. A nine judge majority held that a new judge could ensure that the exhumation process was not jeopardized by administrative mistakes. Prior to the March hearings, the Office of the President sent Judge Guzman the names and contact information for all the Armed Forces commanders and members of the Atlacatl Battalion at the time of the massacre. The Ministry of Defense, however, has continually challenged requests for documents by the Access to Public Information Institute (IAIP), a government institution supported by USAID, and frustrated the release of information that could support judicial processes related to civil war-era crimes. Press reports claim the Ministry of Defense has gone as far as deliberately destroying documents potentially relevant to these types of crimes. (See paragraph 11.)

Legal Uncertainty with the Procedural Code

7. (SBU) The case is being tried using the 1973 Criminal Procedural

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Code, as that was the law at the time of the massacre. While the re-opening of the El Mozote case is an important, positive step for rule of law and ending impunity in El Salvador, the fact that the 1973 Procedural Code is being used means that the discretion of a single judge is driving the process. The criminal legal system was reformed in 1998, shifting from an inquisitive system, in which the judge is actively involved in investigating the case to an adversarial system, in which the prosecutor and defense attorneys conduct investigations and the court acts as an impartial referee. The 1973 Procedural Code also allows private accusers to submit evidence, call witnesses, and cross examine witnesses and defendants. Subsequent reforms were fueled in part by an attempt to have a judicial system driven by institutions rather than individual judges and their personal willingness to take on a case.

8. (SBU) The 1973 Procedural Code does not include many of the protections to witnesses or defendants established in later reforms to the Procedural Code. For that reason, Judge Guzman has decided that he will exercise his powers to use the 1973 Procedural Code only insofar as it grants him inquisitorial rights, but use the current Criminal Procedural Code for other matters. Under the Constitution, judges may rule at their own discretion on all matters for which the Supreme Court has not provided clear guidance. (Comment: [redacted] B5

[redacted] End comment.)

Role and Limitations of the AG's Office

9. (C) [redacted] 1.4(B) 1.4(D) B1

[redacted]

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Other Reparations Measures in El Mozote

10. (SBU) As the El Mozote trial was stalled in domestic courts, victims' groups took their case to the Inter-American Court (CIDH), which handed down a decision in 2012 holding the State responsible for the massacre. As part of the decision, the CIDH ruled that the GOES had to investigate and try the case, conduct complete exhumations, and fully compensate victims of the massacre. On January 31, President Sanchez Ceren swore in members of the Committee for the Integral Social Development of El Salvador, tasked with compensating victims and directly addressing the CIDH's ruling that victims deserve $10,000 to $35,000 each, totaling $17 million, though funding for reparations as well as other key government obligations, are not included in the 2017 budget. Exhumations have occurred in three phases under the technical leadership of Argentine forensic experts, and will likely continue. The first phase was in 1992, when 143 remains were recovered, primarily of children. A second round of exhumations took place between 2000 and 2005, in connection with a 2000 decision by the Salvadoran Supreme Court that declared judges could use their discretion on whether to apply the Amnesty Law in

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cases involving gross human rights violations. According to Gonzalez, no judge at the time wanted to touch the Amnesty Law, but exhumations and identification of remains were seen as a way to provide a measure of justice without inflaming the passion of the military and their supporters. A third round of exhumations began in 2012 but stalled until 2016. Most recently, on November 2, 2016 Supreme Court Justice Florentin Melendez presided over a ceremony returning 13 exhumed remains from the El Mozote massacre to their families.

Past Obstructions to Justice in El Mozote

11. (SBU) Historically, obstructive behavior from different actors has hindered justice in the El Mozote case. Previous attention to the case from former AGs have hurt victims' efforts more then helped. In 2012, for example, former-AG Luis Martinez appointed Mario Ticas as the head of the exhumation delegation, in response to the 2012 CIDH ruling to conduct exhumations. Judge Diaz Soto refused to certify Ticas on the grounds that his academic credentials as a systems engineer did not qualify him to run a forensic exhumation of human remains. This decision was cheered by Tutela Legal and other victims' representatives, who accused AG Martinez of undermining the exhumation process by purposefully appointing an unqualified manager. Judge Diaz Soto eventually re-authorized the exhumations in 2016 when current AG Douglas Melendez appointed qualified personnel to direct the exhumation program once again. B6

12. (SBU) The Ministry of Defense has also historically been uncooperative in responding to evidentiary requests related to civil war-era crimes to shield the disclosure of internal documents, and

challenging the IAIP, which decides on adherence to freedom of information requests. In two other massacre cases, Tecoluca (1981) and Tenango y Guadalupe (1984), the Ministry of Defense went so far as to appeal a decision by the IAIP to the Supreme Court. In January 2016, the Administrative Dispute Chamber of the Supreme Court upheld a decision by the IAIP ordering the Ministry of Defense to disclose military documents and even "rebuild" those that had been lost or destroyed in these cases. The Ministry of Defense responded that it would turn over documents, but only after a direct order from the Office of the President, which is not required by law and unlikely to occur. The Ministry said that even if they had such an order, no such documents exist because they were destroyed.

Rule of Law and Progress in Prosecuting Civil War Massacres

13. (SBU) In addition to the El Mozote massacre case, open investigations into civil war-era massacres continue, and may be relevant for the likely upcoming dispute on the Criminal Procedural Code. Post is following the progress of these massacre cases carefully:

i. Rio Sumpul massacre: On May 14, 1990, members of Military Detachment No. 1, the National Guard, and the paramilitary Organizacion Nacional Democratica (ORDEN) converged around the hamlet of Las Aradas, in the department of Chalatenango and began to attack with artillery and fire from two helicopters. As the villagers tried to cross the river into Honduras, they were blocked by the Honduran military and 300 civilians were gunned down. Initiated in 1992, Tutela Legal filed a petition to re-start it following the July 2016 decision overturning most of the Amnesty Law. The presiding judge, however, decided that the AG must lead the investigation. He is using the 1973 Criminal Procedural Code to make the AG the chief investigator, and he cannot assign the case to another judge. Tutela Legal has filed a motion for the judge to reconsider, arguing that the judge must act as chief investigator under the 1973 Procedural Code.

ii. Tecoluca massacre: On October 30, 1981, 45 people were massacred in San Francisco Angulo, in Tecoluca, in the department of San Vincente. Exhumations began in 2005, but the local judge decided to stop the process in light of the Amnesty Law. On

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February 5, 2016, the Constitutional Chamber of the Supreme Court ordered the AG to investigate the case, and held that there had been a violation of rights to the victims by omission (failing to investigate). This case, initiated after the Amnesty Law was implemented and before its annulment, is still open and active, and the judge is using the current Criminal Procedural Code.

iii. El Calabozo massacre: As a result of an aerial bombardment campaign in the area of Cerros de San Pedro, in the department of San Vincente, on August 21 and 22, 1982, the Atlacatl Battalion massacred 200 internally displaced civilians as they fled the bombing on the banks of the Amatitan River. On November 15, 2016, the Constitutional Chamber of the Supreme Court ruled that the right to truth of the victims of the massacre had been violated, and ordered the Court of First Instance to review the applicable law and to move the case forward in light of the annulment of the 1993 Amnesty Law. The AG is trying this case using the current Criminal Procedural Code.

iv. Tenango y Guadalupe massacre: On February 28, 1983, approximately 250 civilians were shot fleeing aerial bombardments near Tenango y Guadalupe, Suchitoto, in the department of Cuscatlan. Like the El Mozote and El Calabozo massacres, the Atlacatl Battalion is implicated in this massacre.

14. (SBU) Post is monitoring other civil war-era cases carefully. These include those that have been filed against former members of the left-wing guerilla movement, and current ruling political party, Farabundo Marti Liberation Front (FMLN) as well as against former military members:

i. Armando Duran kidnapping: On July 28, 2016, businessman Armando Duran petitioned the AG's Office to open a case against members of the FMLN leadership for his December 7, 1986 kidnapping. This complaint included President Sanchez Ceren and was the first criminal complaint made after the July 2016 nullification of the 1993 Amnesty Law. Duran's kidnapping was allegedly carried out by members of the People's Revolutionary Army (ERP), he was kept for 37 days, and his family paid a ransom to secure his release.

ii. Zona Rosa and Lolotique assassinations: On February 14, the AG's Office opened eight civil war era cases where the alleged perpetrators were members of the left wing guerilla high command (Ref A). This includes the June 19, 1985 massacre of 13 people at a Zona Rosa cafe, including six American citizens of which four were U.S. Marines, and the January 2, 1991 killing of three U.S.

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military service members when their Huey UH-1H helicopter was downed in Lolotique, San Miguel. The complaints were brought to the AG by a right-leaning representative of the non-governmental organization Victims of Terrorism in El Salvador, Alvarez Consuegra.

iii. Jesuit Priests assassinations: On April 6, the First Appellate Criminal Court of San Salvador upheld the 30 year sentence against Colonel Guillermo Alfredo Benavides Moreno handed down in 1992 but cut short by the passage of the 1993 Amnesty Law. The November 16, 1989 killing of six Jesuit priests, their housekeeper and her daughter led to the 1992 trial of multiple defendants, but only Benavides was convicted (Ref I). Benavides was among the 17 defendants named in a complaint before the Spanish National Court and a December 21, 2015 extradition request from Spanish Judge Eloy Vasco. On February 5, 2016, Benavides was arrested in a nighttime raid along with three other former soldiers, and all were released on August 26, 2016 except for Benavides. After his 1992 conviction Benavides appealed, but it was never resolved since the passage of the 1993 Amnesty Law resulted in his conviction being set aside. [redacted] Former Minister of Defense Colonel Inocente Orlando Montano Morales is also named as a defendant in the Spanish trial, and is currently in jail in North Carolina awaiting extradition. On May 16, U.S. District Judge Terrence Boyle denied Montano's petition for conditional release while appealing his extradition. B5

iv. Monsignor Romero assassination: On May 19, the Fourth Court of Instruction for San Salvador ruled that former Captain Alvaro Rafael Saravia would face trial again for the 1980 murder of Monsignor Romero. A judicial proceeding against Saravia was cut short after the passage of the 1993 Amnesty Law, and on March 23 Tutela Legal petitioned the court to reopen the case under the 1973 Criminal Procedural Code. Fourth Court of Instruction Judge Rigoberto Chicas reasoned that the nullification of the Amnesty Law allowed for the reopening of the case. He also used a 2004 civil ruling by a U.S. District Court against Saravia, which found him liable for crimes against humanity for his role in the assassination of Romero and ordered him to pay $10 million in damages, as further grounds for reopening criminal proceedings in El Salvador. Saravia went into hiding after the U.S. case was filed, and has been in hiding since. According to Tutela Legal director Mauricio Gonzalez, the organization unsuccessfully petitioned the AG's Office to reopen

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the Romero case last year.

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What Salvadorans (Say They) Want

15. (C) Salvadorans themselves appear to have very mixed views on both the relevance and importance of bringing these cases forward. Political leaders and elites on both left and right have told Embassy officers that they see no advantage to opening old wounds; they claim the trials serve only to push increasing polarization and the threat of tit-for-tat plaintiffs trading accusations will not resolve any current problems. Others, particularly among some academic and civil society groups, feel strongly that the potential for accountability is critical to moving past civil war era divisions that continue to plague the country. Polling data on these issues is mixed. When asked directly about opening investigations or supporting search commissions, many of those polled support some kind of justice, truth commission, or transparency. For example, a January 2017 poll by the Institute for Public Opinion (IUDOP) showed 66% of those polled agreed with the statement "The Attorney General should investigate war era human rights violations." However, few Salvadorans list civil war era justice when asked about problems facing the country; IUDOP, Gallup, and Latino Barometer consistently list crime, unemployment, and violence, but human rights for any era rarely breaks 1% and civil war-specific crimes is hardly mentioned.

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16. (SBU) Comment:

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At the end of the day, Salvadorans will need to determine for themselves how best to close this difficult chapter of their history. Post will continue to remain in close contact with local and international civil society organizations interested in these cases, and will monitor the progress as they (slowly) move through the courts. End comment.

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