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ENVELOPE

RTTUZY NONLEGACY MESSAGE from SMARTNEXT:
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HEADER

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FM AMEMBASSY SAN SALVADOR

TO PTC TEST WASHINGTON DC

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RELEASE IN
PART
1.4(B),B1,1.4(D)

CONTROLS

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SUBJ: SAN SALVADOR: EL MOZOTE MASSACRE CASE REINITIATED
UNCLAS SAN SALVADOR 001306

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

***** START OF SECTION : *****

Classified by Director, A/GIS/IPS, DoS on 05/10/2018 ~ Class:
CONFIDENTIAL ~ Reason: 1.4 B&D~ Declassify on:
05/10/2043

SENSITIVE

BODY

E.O. 13526: N/A
TAGS: PGOV, PHUM, PREL, KJUS, KCRM, KAWC, SV
SUBJECT: SAN SALVADOR: EL MOZOTE MASSACRE CASE REINITIATED

REF: 16 SAN SALVADOR 105

1. (SBU) Summary: On September 30, a judge reopened the case against ELEVEN DEFENDANTS CHARGED AS THE INTELLECTUAL AND Material authors of the 1981 El Mozote massacre of 800 civilians; a crime which is attributed to members of the Atlacatl Battalion of the Salvadoran Armed Forces. The presiding judge reasoned that the July 13 ruling from the Constitutional Chamber of the Supreme Court (reftel), which declared the Amnesty Law unconstitutional, allowed for the

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resurrection of the case which was initiated in 1991 but shelved two years later.

[REDACTED]

1.4(B)
1.4(D)
B1

[REDACTED] Petitioners also worry that without the Attorney General's support, other government agencies will not cooperate with the presiding judge and the case will, once again, stall.

Judge Reopens Case

2. (SBU) On September 30, Judge Jorge Guzman Urquilla, of the Second Court of First Instance in San Francisco Gotera, Morazan, reopened the case against eleven defendants charged as the material and intellectual authors of the December 1981 massacre. Defendants include several members of the senior command of the Armed Forces at

the time of the massacre:

- General Jose Guillermo Garcia, the former Minister of Defense (1979-1983) (Note: General Garcia was deported from the U.S. to El Salvador on January 8, 2016 because he "assisted or otherwise participated" in an "active, direct, and integral" manner with extrajudicial killings and torture during his tenure as Minister of Defense. End note.);
- General Rafael Flores Lira, former head of the Joint Chiefs of Staff (1981-1983);
- General Juan Rafael Bustillo, former commander of the Salvadoran Air Force (1979-1989); and
- Colonel Jaime Flores Grijalva, former Commander of the Infantry's

Third Brigade in December 1981.

The other defendants were lower ranked members of the Atlacatl battalion in December 1981.

3. (SBU) Although the massacre is named for the village that suffered the most extensive massacre, the crime took place over three days in December 1981 in numerous villages in the Department of Morazan. The massacre claimed over 800 civilians, many of them children. (Note:

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The 1993 Truth Commission reports that initial exhumations conducted in 1992 found 200 bodies, but exhumations conducted in 2003 by a team of Argentine forensic anthropologist revealed that over 800 people were killed during the El Mozote massacre. Exhumations continue today, overseen by Judge Mario Oscar Adolfo Diaz Soto. End note.] According to the Truth Commission report, indiscriminate killing was part of "Operation Rescue," and carried out by the Salvadoran Army's Atlacatl Battalion, a rapid-reaction unit based in San Salvador.

4. (SBU) Judge Guzman cited the Supreme Court Constitutional Chamber's July 13 ruling that struck down the 1993 Amnesty Law (Reftel) as his rationale for reinitiating the El Mozote case. The impetus for reopening the case came from an August 19 petition by Salvadoran-based non-governmental organization (NGO) Tutela Legal 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. In response to Judge Guzman's request for an opinion on the case, on September 16 Attorney General Douglas Melendez noted he believes that the matter was settled when the defendants were acquitted without prejudice in 1993 following the passage of the Amnesty Law. In his written response, Melendez noted that he was concerned with legal certainty - suggesting that re-litigating this case goes against the principle that judicial rulings are made in accordance with the law, and that decisions are final.

Attorney General May Not Need to Participate in Case, Though His Advocacy Would Strengthen It

5. (SBU) Judge Guzman decided to move forward with the case despite the Attorney General's tepid support. He submitted requests for pertinent case information from the Office of the President and the Ministry of Defense, as well as information on the ongoing exhumations from presiding Judge Diaz Soto. Judge Guzman acts as the "inquisitor judge" because the case was initiated before the criminal

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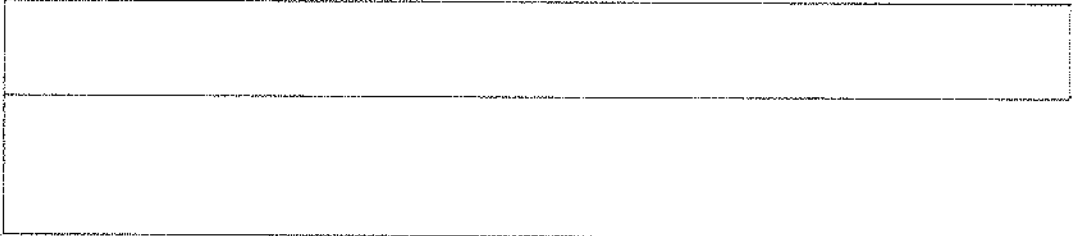
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code was amended in 1998, which made the Attorney General the sole "inquisitor" in the country. Under the older, 1973 criminal code, a judge acts as the prosecutor. Thus, Judge Guzman can move forward with the case even without Attorney General Melendez's full backing.

6. (SBU) Attorney General Melendez's letter indicates that he may struggle to devote resources or political capital to the case. According to Embassy contacts, resources are currently stretched to meet the urgent security crises, and political pressure on the Attorney General is high following recent high-profile corruption indictments. These constraints are further amplified by worries over possible budget cuts. Moreover, many Salvadorans are far more

***** START OF SECTION 2 *****

concerned with pressing economic and security challenges than adjudicating civil war era gross human rights violations (see chart BELOW). MANY SENIOR political leaders say their constituents have no interest in raising these issues or "re-opening old wounds" that might destabilize the delicate political balance established in 1992.



1.4(B)
1.4(D)
B1

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"Main problems in the country, in perspective." Red: Delinquency; blue: Economy; black: war.
Source: University of Central America's Institute for Public Opinion (IUDOP), 2016.

7. (SBU) Without the Attorney General's full support, petitioners worry that government agencies may not cooperate with the requests for information made by Judge Guzman. This is not an unfounded concern. In a similar case, related to the 1981 massacre in Sumpul, the judge was denied access to information from the executive

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on the grounds that the judge did not have the right to that information and, more vaguely, that that information was unavailable.

CEJIL Sub-Director for Central America and Mexico Marcela Martino is

particularly worried that this will be a major obstacle to pushing the El Mozote case forward. She also noted that there is a danger to

the physical safety of the documents in question, which could "disappear."

Comment

8. (SBU) The issues facing El Salvador today, especially with respect to criminal justice, are stark; the Attorney General's Office and the judicial system are overtasked and underfunded. With criminal cases flooding the judicial system and economic pressures mounting for everyday Salvadorans, it is difficult to convince many that 35-year old crimes deserve their day in court - along with all the time and money needed to carry out such an endeavor. Additionally, the conviction rate for criminal cases is very low - Insight Crime estimates that 90 percent of cases do not result in a conviction. While impunity for historic crimes can contribute to a culture of impunity today, Tutela Legal, CEJIL, and the tireless efforts of victims, next-of-kin, and survivors of the El Mozote massacre have a hard public opinion battle on their hands. Moreover, while a judge may be able to keep the El Mozote case alive, the case will likely face significant procedural obstacles, including lack of evidence and slow-rolling by government agencies or individuals who have no interest in cooperating with the investigation. GoES agencies that have not historically wanted to see civil war era crimes addressed will likely be as obstructionist as possible. Family members face a daunting challenge of raising public and official interest in these cases in a country where most seem to want to bury the issue along with the victims.

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