



United States Department of State

Washington, D.C. 20520

The Honorable  
Patrick J. Leahy, Vice Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

FEB 05 2020

Dear Mr. Vice Chairman:

Pursuant to section 7019(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, P.L. 116-94) (FY 2020 SFOAA) and Senate Report 116-126, please find enclosed a report regarding the central government of El Salvador's cooperation with investigations and prosecutions of those responsible for the 1981 El Mozote massacre.

Sincerely,

Mary Elizabeth Taylor  
Assistant Secretary  
Bureau of Legislative Affairs

Enclosure:  
As stated.

**Report on Cooperation by the Government of El Salvador with Investigations and Prosecutions of Those Responsible for the 1981 El Mozote Massacre**

Pursuant to section 7019(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, P.L. 116-94) (FY 2020 SFOAA) and Senate Report 116-126, the following report provides information describing and assessing cooperation by the Government of El Salvador with investigations and prosecutions of those responsible for the 1981 El Mozote massacre.

This report documents the legal process to pursue justice for the victims and survivors of the El Mozote massacre. The investigative judge remains in the inquiry or fact-finding phase of the trial, including hearing from witnesses and calling for expert testimony. The Attorney General's office is working with the judge but does not hold the role of prosecutor in the current case based on the 1973 Code that the judge is using. The executive branch of government and the Legislative Assembly continue to implement the decisions of the Inter-American Commission on Human Rights on victims' compensation and a registry.

According to the 1993 UN Truth Commission, more than 75,000 people were killed during the internal armed conflict in El Salvador. The 1981 El Mozote massacre remains the largest mass killing in Latin America's modern history. Between December 10 and 13, 1981, government forces killed almost one thousand civilians in numerous villages in the Department of Morazán, which became known as the El Mozote massacre, after the village that suffered the most killings. According to the 1993 Truth Commission report, the El Mozote massacre was part of "Operation Rescue" and carried out by the Salvadoran Army's Atlacatl Battalion, a rapid-reaction unit based in San Salvador under the command of now-deceased Colonel Domingo Monterrosa Barrios. As of September 2018, the Salvadoran government has officially recognized 1,725 El Mozote victims: 988 individuals who were killed (including 539 children), 48 massacre survivors, 660 family members, and 29 forcibly displaced people.

The trial of 20 defendants, many from the military's former high command, on charges relating to the El Mozote massacre was initiated in 1991 by a Salvadoran-based non-governmental organization (NGO) Tutela Legal "María Julia Hernández," and Washington-based NGO the Center for Justice and International Law (CEJIL). Some exhumations were carried out, and many survivors and witnesses filed official statements. However, prosecutors stopped pursuing the case in 1993 with the passage of the Amnesty Law. In 1999, the Inter-American Commission found that El Salvador's Amnesty Law violated the country's obligations under international law. In 2012, the Inter-American Court of Human Rights (IACHR) found the Salvadoran State guilty of violating the human rights to life, personal integrity, private life, private property, and the rights of children in a case filed by family members of the victims of the El Mozote massacre. Following a July 2016 Constitutional Chamber ruling that declared unconstitutional the application of 1993 Amnesty Law, Judge Jorge Alberto Guzmán Urquilla reopened the case, which at the time of this report is nearing the end of the investigative phase, with the trial phase anticipated to begin in the first half of 2020.

The 16 surviving defendants currently on trial face 12 charges, including murder, acts of terrorism, theft, damages, illegal detention, aggravated rape, torture, forced disappearance, and

forced displacement. War crimes, crimes against humanity, forced displacement, and torture were not criminalized by the 1973 Criminal Code. However, on December 14, 2018, Judge Guzmán ruled that the El Mozote massacre constituted war crimes and crimes against humanity, which allows the direct enforcement of international treaties in the case, according to the Attorney General's office. On July 18, 2019, Judge Guzmán added charges of torture, forced disappearance, and forced displacement against the 16 defendants.

The judge is trying the El Mozote case using the 1973 Criminal Procedural Code, which was the law at the time of the massacre. The 1973 Criminal Procedural Code gives the judge inquisitorial power, so Judge Guzmán does not need the Attorney General to file requests for information or to lead the investigation. The 1973 Procedural Code does not include many of the protections for witnesses or defendants established in later reforms to the Procedural Code. For that reason, Judge Guzmán has ruled that he will exercise his powers to use the 1973 Procedural Code only insofar as it grants him inquisitorial rights during the investigative phase but will use the current Criminal Procedural Code for other matters, including possibly during the trial phase. Although the investigative judge is the prosecutor for the El Mozote trial, the Attorney General's office is providing some assistance.

To date, the evidence developed in the El Mozote case includes roughly 350 exhumed remains and related forensic evidence and testimony by three forensics experts with the Argentine Forensic Anthropology Team (EEAF), victims' eyewitness testimony, and evidence of patterns of illegal behavior by the Salvadoran military during the civil war. As of December 2019, approximately 50 victims and witnesses have testified, including two former soldiers in the Atlacatl Battalion who testified in November 2019 as prosecution witnesses regarding the existence of the massacre and the involvement of specific defendants. Judge Guzmán has also requested information from the Ministry of Defense (MOD) on the ongoing exhumations, through presiding Judge Mario Diaz Soto.

The Historic Crimes Unit of the Attorney General's office is assisting the investigative judge in the El Mozote trial, along with three attorneys representing the victims of the massacre, who serve as "private accusers" under the 1973 Procedural Code. According to David Morales, the former Human Rights Ombudsman who is one of three lawyers representing the victims, nine expert witnesses have provided written testimony to date, including forensic anthropologists, social anthropologists, a military expert and a documentary filmmaker; several forensic experts and psychologists are scheduled to submit reports in early 2020.

Recognizing the significant complexity and resource requirements of the El Mozote investigation and prosecution, the Constitutional Court recommended that Judge Guzman be relieved of his other duties on a range of civil and criminal cases in order to focus on the El Mozote case. The Historic Crimes Unit, created following the 2016 ruling overturning the Amnesty Law, has five prosecutors responsible for handling approximately 200 cases from the civil war era, including providing assistance to the investigative judge in the El Mozote case. According to victims, the prosecutors from the Attorney General's office have been coordinating with the victims' attorneys since 2016.

Judge Guzman has issued two formal orders to the Ministry of Defense to turn over information relevant to the investigation. In addition, in January 2016, the Administrative Dispute Chamber of the Supreme Court upheld a decision by the Institute for Access to Public Information (IAIP) ordering the MOD to disclose military documents and even “rebuild” those that had been lost or destroyed in these cases. The MOD responded that it would only turn over documents after a direct order from the Office of the President. As of March 2019, the Attorney General’s office said it does not plan to demand that the MOD reconstruct, i.e. attempt to recreate, civil war-era documents unless the Constitutional Court holds the MOD in contempt.

Judge Guzman’s first request for information, issued in 2016, sought information about the members of Military Command, the Atlacatl Battalion, and units that participated in the El Mozote massacre. In response, the MOD sent Judge Guzmán the names and contact information for all the Armed Forces commanders and members of the Atlacatl Battalion at the time of the massacre, partially fulfilling the request. Judge Guzman’s second request for information in 2017 sought broader information, including overall military plans and strategies in place at the time, military operations in the area at the time, and the official positions of the defendants at the time. The MOD has responded that the MOD has searched with all due diligence and did not find any of the relevant information in its archives, stating that any remaining documents were burned in a fire or otherwise destroyed. IAIP and some journalists have reported that the MOD has deliberately destroyed documents potentially relevant to civil war-era crimes. The UN Truth Commission on El Salvador may have relevant documents, but NGOs in El Salvador that have tried to gain access to this information report the UN has denied access to the Truth Commission’s records citing a need to protect confidential information such as the names of sources. To follow up on the responses to his requests for information, Judge Guzmán called two military officials in charge of the military archives to testify in February 2018 and to ask about the procedures the military undertook in searching for the information. While they did not confirm the existence of relevant documents, they testified that records could, in theory, exist in files that were not previously searched based on the search process used, but they had not seen such documents nor had specific information about them. On October 24, 2019, Judge Guzmán ordered the executive branch to provide him with all information in the Armed Forces archives and general national archives relating to the El Mozote massacre. In its November 15 response, the Bukele administration indicated that no relevant records had been located following searches of 42 military units. According to the Ministry of Culture, civil war documents were destroyed on May 27, 2013, by military personnel under the direction of Colonel Angel Francisco Baños Serrano. The general archive staff had recommended transferring certain documents, including security operations plans from 1980-1989, to the armed forces’ historical archives to be retained.

On May 11, 2018, Judge Guzmán called defendant and former Minister of Defense Jose Guillermo García to testify, but he failed to appear in person, sending his lawyer instead. As of December 2019, Judge Guzman has not issued a ruling on Garcia’s failure to appear in person but Garcia did appear with other defendants at a court hearing in November 2019. In 2002, in a civil lawsuit, a Florida court found García liable for participating in torture and extrajudicial killings while he was Minister of Defense and entered a judgment of \$54 million against him. He was deported from the United States in January 2016.

On June 22, 2018, the Constitutional Court held a hearing regarding on compliance with its 2016 ruling holding the Amnesty Law unconstitutional. The court called on Minister of Defense David Munguia Payes, among others, to testify about any steps the MOD has taken to disclose information on massacres by the Salvadoran armed forces in civil war cases, including in the El Mozote case. The Minister of Defense delegated that role to Vice Minister of Defense Carlos Mena. Mena repeated what the MOD has said since at least 2012: There are no files on civil war operations linked to human rights abuses at the MOD.

As part of its 2012 decision, the IACHR ruled that the government of El Salvador had to investigate and prosecute the El Mozote case, conduct complete exhumations, and fully compensate victims of the massacre. The government has made progress towards complying with some but not all of the requirements in the IACHR's ruling. In January 31, 2016, President Salvador Sánchez Cerén swore in members of the Committee for the Integral Social Development of El Salvador, tasked with compensating victims and directly addressing the IACHR ruling that victims deserve \$10,000 to \$35,000 each (totaling \$17 million). On December 11, 2018, the Office of the President of El Salvador reported that the government of El Salvador has spent \$10 million to compensate 219 survivors and relatives of persons executed by the Salvadoran armed forces in the El Mozote massacre. It also noted that, since 2016, the Ministry of Public Works had invested \$4.6 million dollars in improving 47.58 kilometers of roads in the area surrounding El Mozote, and stated that the government of El Salvador would invest \$400,000 to develop a scholarship program for 131 relatives of school-age victims. The government has also built a high school and clinic in El Mozote as part of its victims' restitution program.

In May 2018, the IACHR ordered the Salvadoran government to fully implement the "Single registry of Victims and Relatives of Victims of Serious Violations of Human Rights during El Mozote and Surrounding Places Massacre." On February 14, 2019, the Legislative Assembly approved a Special Law and Temporary Provisions for the Establishment of the Family Status of the Victims of the El Mozote Massacre. It will help identify victims, their relatives, and survivors, and will allow them to rectify errors in birth certificates, death status, and marriages, among others. The law also creates an inter-agency committee composed of personnel of the Planning Secretariat of the Presidential Office, Ministry of Economy Statistics and Census Unit, National Registry of People, and Solicitor's Office to facilitate the process of documenting the family status of victims. The law will expire in August 2020.

On December 27, 2019, the Inter-American Commission on Human Rights published preliminary observations from their December 2-4 visit to El Salvador, in which they called on the Salvadoran government to provide victims and judicial authorities access to military archives from the civil war, and to attempt to reconstruct any records pertaining to the El Mozote massacre that may have been destroyed.