

From: SMART Archive
Sent: 7/15/2016 5:30:43 PM
To: SMART Core
Subject: San Salvador: Constitutional Court Invalidates Civil War Amnesty Law

Release in Full

~~CONFIDENTIAL~~
Sensitive



MRN: 16 SAN SALVADOR 105
Date/DTG: Jul 15, 2016 / 152130Z JUL 16
From: AMEMBASSY SAN SALVADOR
Action: WASHDC, SECSTATE *ROUTINE*
E.O.: 13526
TAGS: PHUM, PGOV, PREL, SOCI, KJUS, KCOR, KLIB, SV
Captions: SENSITIVE
Reference: A) 14 SAN SALVADOR 139
B) 14 SAN SALVADOR 113
Subject: San Salvador: Constitutional Court Invalidates Civil War Amnesty Law

1. (SBU) Key Points:

- The Constitutional Chamber declared unconstitutional the 1993 Amnesty Law, which prohibited the prosecution of crimes committed by the military and leftist guerillas during El Salvador's Civil War (1980-1992).
- This ruling could potentially open the door to an influx of legal claims brought against members of the military and guerillas for historic crimes that occurred during El Salvador's Civil War.
- Attorney General Douglas Melendez said that his office will comply with the ruling by providing substantive support to prosecute alleged war-time crimes.
- Response to the ruling from across the political spectrum has been restrained, but largely negative. Politicians may look to pass a law that limits the scope and the financial consequences of the decision.

(End Key Points.)

2. (SBU) On July 13, in a historic 4-to-1 decision, the Constitutional Chamber of the Supreme Court declared articles 1 and 4 of the 1993 Amnesty Law unconstitutional. The Amnesty Law provided blanket protection against criminal prosecution and civil liability for crimes committed during the country's Civil War. The Constitutional Chamber ruling held that the law denied Salvadorans certain fundamental rights, including the right to access to justice and the right to compensation for crimes against humanity and war crimes. Specifically, the court held that the law kept the state from fulfilling its obligation "to prevent, investigate, and punish" serious human rights violations and "to repair the damages produced by these violations." (Note:

Released in Full
By Marvin Russell, Senior Reviewer
U.S. DEPARTMENT OF STATE
04/13/2023

Although the decision focused on two articles, it effectively strikes the entire law as the main amnesty protections stem from articles 1 and 4. End note.) The Chamber also ruled that no statute of limitations may apply with respect to crimes against humanity and war crimes, which with the cooperation of the Attorney General's office, opens the door for legal recourse against members of the military and guerillas for historic crimes that occurred during El Salvador's Civil War. (June 1, 1980 – January 6, 1992)

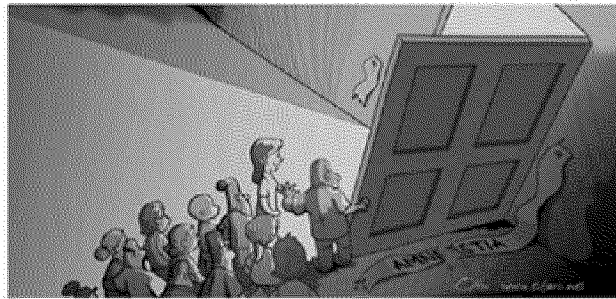
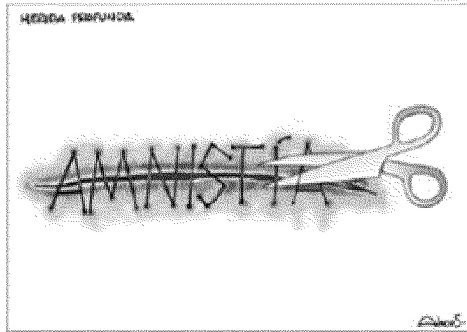
3. ~~(C)~~ The ruling gives victims of historic crimes the authority to seek civil damages and empowers the Attorney General (AG) to move forward with criminal charges. The ruling places enormous pressure on the AG to decide whom to prosecute, and on judges to reopen existing cases. The Constitutional Chamber's decision suggests that the 30 cases highlighted in the Truth Commission report should be prioritized. To date, the Human Rights Unit of the AG Office has largely avoided handling historic crimes cases on procedural grounds, citing statute of limitations and the Amnesty Law. Attorney General Douglas Melendez, who assumed his position in 2016, stated on July 14 that his office will comply with the ruling and that it reflects a "functioning democratic state." The AG Office has said that it is already overstretched, however, and supporting the likely influx of petitions for investigations and prosecutions will stretch its staffing capacity. The AG noted to INL that he will have to create a special team, perhaps from within his small human rights unit, in response to the July 13 decision. (Comment: The AG will likely need more funding, and perhaps external prosecutorial assistance, to conduct historical crimes investigations. End comment.)

4. ~~(C)~~ The Chamber's ruling also notes that crimes against humanity and war crimes committed during the Civil War were not isolated or random acts, but rather stemmed from "guidelines and orders issued by an organized apparatus of power" where the "hierarchy, command...and operation of these armed groups" was visible. In highlighting chain of command, the Court signaled to the AG and future petitioners that the intellectual authors of these Civil War-era crimes could be investigated, prosecuted, and punished alongside the material authors. According to the Truth Commission Report, the AG, and the Human Rights Ombudsman, approximately 80 percent of wartime crimes were committed by the military, 10 percent by death squads, and 10 percent by leftist guerillas. Several members of the government could potentially be open to prosecution for involvement in crimes, such as the 1985 massacre of U.S. Marine guards in San Salvador. High profile individuals that may be subject to potential prosecutions include President Salvador Sanchez Ceren, former President Alfredo Cristiani, Presidential Chief of Staff Manuel Melgar, and Vice President Oscar Ortiz, stemming from their alleged crimes during El Salvador's Civil War.

Background

5. (SBU) The decision overturning the Amnesty Law stems from a 2013 petition brought by, among others, the Human Rights Institute of the Central American University (IDHUCA), who argued that the law violated El Salvador's international treaty obligations, including the right to truth, that the law was passed without deliberation in violation of Article 135 of the Constitution, and that the law did not provide allowances for, and therefore violates, the Constitutional right to compensation under Article 17 (Ref A). The hasty passage of the law, which immediately followed the Truth Commission Report, was meant, in part, to cement implementation of the Peace Accords by appeasing soldiers who feared persecution for alleged war-time crimes (Ref B). Since its passage, the law has come under criticism by civil society and faced several legal challenges. In both 1993 and 2000 the Supreme Court upheld the law, first ruling that amnesty was a "political" matter and therefore not subject to the Court's review, and later ruling that though constitutional, judges have individual discretion to not apply the law in cases of crimes against humanity. In 2012 the Inter-American Court of Human Rights held that the Amnesty Law was not applicable in cases of crimes against humanity such as the El Mozote case. (Note: The El Mozote case involved the notorious 1981 massacre of over 800 civilians during the Civil War. End Note.)

Reactions



Left Picture: Cartoon from El Diario de Hoy. “Deep Wound -- Amnesty”, shows a negative reaction.

Right Picture: Cartoon from El Faro shows the invalidation of the Amnesty Law opening a door to the light.

7. (SBU) One of the petitioners in the case, Benjamin Cuellar, lauded the decision as “an opportunity to build a normal country.” Various human rights organizations, including prominent NGO Foundation for the Studies of Rights Application (FESPAD) and the Office of the Human Rights Ombudsman (PDDH) echoed the supportive sentiment. PDDH Ombudsman David Morales said the decision “recognizes the fight victims of human rights violations have endured.” He also said that the decision will upend persistent impunity for historical crimes, noting that Attorney General’s Office “historically has not had the will to prosecute crimes against humanity, but this decision will change that.”

8. (SBU) Reactions from across the political spectrum have been largely negative, though restrained, in response to the ruling as politicians consider a path forward. Minister of Defense Munguia Payes stated that he fears the decision will lead to a “witch hunt” against military officers and that it will undo political achievements of the leftist FMLN government. Legislative Assembly President Lorena Peña (FMLN) was cautiously critical and said that the ruling “damages the army that served the oligarchy [an allusion to the Cristiani Administration] ...I don’t believe the FMLN party [whose ranks include several leftist guerrillas from the Civil War] had violated human rights...we will have to read the decision carefully” Right-leaning politicians have also expressed cautionary sentiments and have been collectively restrained. Prominent ARENA legislator Margarita Escobar said that the decision could foster increased societal conflict, and therefore, the scope of the decision must be carefully analyzed.” (Note/Comment: These comments may signal an attempt by politicians to limit the scope of the decision in order to limit the claims that could be brought forth. However, the Supreme Court’s ruling specifically noted in its ruling that the Legislative Assembly may not create amnesties that circumvent the Constitution, their ruling, and international agreements. End note/comment.)

9. ~~(C)~~ **Comment:** This decision represents both a risk and an opportunity for El Salvador. The risk is that it increases political uncertainty, with high-level members of the Salvadoran government facing prosecution and the specter of a devastating financial toll on the state due to reparation payments. On the positive side, it has created a new opportunity for Salvadorans to pursue legal recourse for alleged war crimes and crimes against humanity that took place during the Civil War, providing an opportunity to fight impunity. However, implementation of this decision will require the support and political will of the Attorney General, and the outcome will depend on the capacity of the Attorney General’s Office to investigate and prosecute these politically contentious and decades-old cases. The decision may ultimately have little impact if prosecutors decline to prosecute due to lack of political will, or the Executive, Legislature, or lower courts create significant obstacles to prosecution. Politicians may search for legal loopholes to contravene the decision and limit its scope, if they believe their interests or allies are threatened. Post has investigated the possibility of a tribunal to comply with the decision, but sources tell us this is unlikely. End Comment.

Signature: MANES

Classified By: Name: Jean Manes, Title: Ambassador
Derived From: DSCG 11-01
Declassify On: 2026/07/15
Drafted By: SAN SALVADOR:Laura Arriaza and Andrew Abordonado
Cleared By: DOS/INL:Dokurno, William
A/DCM:Leoni, Mark
POL:Lieberman, Sonam
Approved By: WHA/SNS:Manes, Jean E
Released By: SAN SALVADOR:Arriaza, Laura
Info: BOGOTA, AMEMBASSY *ROUTINE* ; DEPT OF JUSTICE WASHINGTON DC *ROUTINE* ;
WHA CENTRAL AMERICAN COLLECTIVE *ROUTINE*

Dissemination Rule: Archive Copy

~~CONFIDENTIAL~~
Sensitive