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Salvadoran Leaders Circle Wagons as International Courts Probe Civil War-Era Human Rights Abuses

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Even as it grapples with a new era of domestic-security woes, violence-plagued El Salvador continues to be haunted by ghosts of its last internal conflict: a 12-year civil war (1980-1992) that resulted in some 75,000 deaths and an estimated 8,000 disappearances.

Salvadoran authorities, busy trying to rein in a violent-crime epidemic that in recent years has meant annual homicide counts of roughly 4,000, would no doubt like to put the specter of the country’s bloody civil war to rest. That’s proving easier said than done, however, as human rights groups—both in El Salvador and abroad—continue to demand legal recourse for numerous massacres, disappearances, assassinations, and other unresolved abuses committed during the war.

Thanks to an 18-year-old amnesty law, the authors of those abuses enjoy protection from prosecution—at least in Salvadoran courts. At the behest of then President Alfredo Cristiani (1989-1994), El Salvador’s unicameral Asamblea Legislativa (AL) passed the Ley de Amnistía General para la Consolidación de la Paz in March 1993, just five days after El Salvador’s post-war truth commission released its findings.

Cristiani, who has been implicated in some civil-war abuses, continues to lead the powerful Alianza Republicana Nacionalista (ARENA). The rightist party governed El Salvador for two decades before losing the 2009 presidential election to Mauricio Funes (NotiCen, March 19, 2009), a moderate backed by the former guerilla alliance, now leftist political party Frente Farabundo Martí para la Liberación Nacional (FMLN).

Funes’ 2009 victory was widely hailed as a significant step in the direction of reconciliation. For the first time, a majority of voters were willing to lean left, while the FMLN, in choosing to support Funes, took a step toward the center. The FMLN’s previous candidates had been former guerilla combatants. Funes, in contrast, is a former television journalist—who cut his professional teeth covering the war.

"I have said it, and I repeat it," Funes said in his March 15, 2009, victory speech. "My government will be moved by a spirit of national unity, and this demands that from now on, from this very instant, confrontation, revenge must be put to one side."

An official apology

Still, Funes’ arrival to power was cause for celebration among rights groups and family members of war victims, who held out hope that the change in government would finally mean some official support—or at least empathy—for their continuing quests for justice and recognition.

Although atrocities were committed on both sides, the Comisión de la Verdad Para El Salvador (CVES), formed as part of the 1992 UN-brokered peace accords, reported that approximately 85% of the acts of violence were committed by state-security forces. One of the state’s many victims was
President Funes’ older brother, killed in 1980. The CVES attributed approximately 5% of the acts of violence to the FMLN.

"One hopes that, if the Frente comes to power, we’ll finally be able to know the truth about what happened to our loved ones," Guadalupe Mejía, who lost a husband and several other family members, told BBC Mundo prior to the 2009 election. Mejía directs the organization Comité de Familiares de Víctimas de Violaciones a los Derechos Humanos (CODEFAM). "[My husband] was a catechist and secretary with a campesino organization. The captured him on Nov. 9, 1977. Soldiers broke his arms. They removed one of his eyes, and they killed him in the mountains."

During the past two years, Funes has lived up to those expectations—in part. Through a number of symbolically potent acts, the president has reached out to the tens of thousands of Salvadorans still mourning the loss of their loved ones. His most notable gesture came on Jan. 16, 2010, when he not only acknowledged the state’s many human rights violations but offered an official apology. The date marked the 18th anniversary of the peace accords.

"I recognize that agents belonging at the time to state organizations, including the armed forces, public-security corps, and also paramilitary groups, committed serious human rights violations and abuses of power," said Funes. "In the name of the Salvadoran state, I ask for forgiveness."

This past March, Funes—accompanied by US President Barack Obama—offered another powerful gesture by visiting the tomb of Archbishop Óscar Romero, a human rights icon assassinated in 1980 by state-security forces (NotiCen, March 31, 2011). The event was particularly significant given the US government’s overt role in supporting the Salvadoran military’s war against the FMLN.

Hear no evil, see no evil

For now, however, symbols are as far as Funes is willing to go. Acknowledging wrongdoing is one thing. Allowing prosecutors to go after the wrongdoers is quite another matter entirely. Like his colleagues on the right, President Funes has made it clear he has no intention of lifting the amnesty law, which he says could threaten the reconciliation process by "reopening old wounds."

Not only does the president stand by the law, but in early June he joined ARENA lawmakers in moving to reinforce the nearly two-decade-old statute.

On June 2, sparked by whispers that the five-judge Sala Constitucional of the Corte Supreme de Justicia (CSJ) was considering a vote to repeal the amnesty law, the Asamblea Legislativa rushed to pass a bill—Decree 743—that ups from four to five the number of votes the Sala needs to overturn existing legislation.

In recent years, the CSJ has been unusually active, using a four-vote majority to make a number of key rulings. Last year, for example, the court cleared the way for independent candidates to seek mayoralties and Asamblea seats. The move was interpreted as a major challenge to El Salvador’s traditional party system, dominated by ARENA and the FMLN. With Decree 743 in place, the Sala’s ability to act as an agent of political change is now extremely limited.

"For the first time, we are seeing an independent constitutional chamber that is not tied to the political landscape, and this independence is exactly what political parties are afraid of," analyst Alfredo Mena Lagos told the Inter Press Service news agency.
By gathering votes from the Asamblea’s smaller conservative parties—the Gran Alianza por la Unidad Nacional (GANA), Partido de Conciliación Nacional (PCN), and Partido Demócrata Cristiano (PDC)—ARENA was able to pass Decree 743 without support from the FMLN. To put the law into play, however, the far-right party still needed approval from the president. Funes could have vetoed the measure. Instead he signed it—in less than 24 hours.

Later, once it was confirmed that the CSJ’s "plan" to overturn the amnesty law was nothing more than rumor, the suddenly repentant ARENA proposed another vote to overturn the controversial decree. The FMLN is again refusing to follow ARENA’s lead, only this time the leftist party’s inertia serves to keep Decree 743 in place. Observers say that is because the FMLN, though initially critical of the decree, also stands to benefit from it.

"[The amnesty] is the backbone of the peace accords. There was forgiveness and we moved on....It serves the interests of both the military and [FMLN guerrillas], who killed 26 mayors. People from both sides. That’s why we’re at this point right now," explained ARENA Dep. Guillermo Ávila Qüehl during a June 13 meeting of Asamblea lawmakers.

**Clamoring for closure**

The amnesty law no doubt does serve the interests of El Salvador’s primary political players—on both the right and left. It is debatable, however, whether it is in the best interest of the country as a whole. Rights groups, in particular, are quick to challenge the notion that lifting the amnesty law would compromise the post-war reconciliation process.

"This isn’t about opening wounds," said Gisela de León, a lawyer with the San José, Costa Rica-based rights group Centro por la Justicia y el Derecho Internacional (CEJIL). "The problem is that those wounds never closed in the first place. There never was a process of real reconciliation. The victims never felt like there was [legal] closure."

Blocked by the amnesty law from pursuing their inquiries in Salvadoran courts, CEJIL and other human rights organizations—determined to seek some kind of legal closure—continue to present civil-war-related cases before tribunals outside the country.

In 2008, the San Francisco, California-based rights group Center for Justice and Accountability (CJA) helped bring a case before Spain’s Audiencia Nacional regarding the 1989 massacre of six Jesuit priests, their housekeeper, and the housekeeper’s 16-year-old daughter. Five of the priests were Spanish nationals.

El Salvador’s 1993 truth commission report concluded that the murders were planned and executed by military forces. The CJA insists the orders came from top-ranking officials, many of whom still live in El Salvador.

The case took a huge leap forward on May 29, when Spanish Judge Eloy Velasco issued indictments and arrest warrants for 20 Salvadoran officials, including former defense minister Rafael Humberto Larios. Also on the list was another former defense minister, René Emilio Ponce, who died in May. The 20 men are accused of murder, terrorism, and crimes against humanity.

So far, Salvadoran police have not cooperated with Interpol. The case of the murdered Jesuit priests—one of the civil war’s most high-profile massacres—was originally handled in a Salvadoran court,
which in 1991 convicted two military officers. Thanks to the amnesty law, the officers were pardoned two years later.

"It is a powerful and symbolic message against impunity and sends a clear message to the military that were involved in human rights abuses and crimes against humanity," Abraham Abrego of the Foundation for the Application and Study of Law told the Los Angeles Times. "It restricts the possibility of these military officers fleeing to other countries, because if they try to escape, other countries that have judicial cooperation with Spain can arrest and send them to a tribunal in Spain."

More recently, CEJIL announced plans to sue the Salvadoran state for its role in a five-day succession of massacres that took the lives of nearly 1,000 civilians. The killing spree occurred Dec. 9-14, 1981. The largest of the multiple massacres is known as El Mozote. The sole survivor of El Mozote, a woman named Rufina Amaya, passed away in 2007.

Proceedings will take place in the Inter-American Court of Human Rights in Costa Rica (IACHR), which, according to CEJIL’s de León, could eventually oblige the Salvadoran government to strike down the amnesty law. The El Mozote massacre case was originally handled by the Inter-American Commission on Human Rights (IACHR). Both the court and the commission are part of the Organization of American States (OAS).

The Washington, DC-based commission determined this past March—more than 20 years after it first began examining the case—that the Salvadoran government has failed to meet the commission’s nonbinding recommendations.

"The idea is that for the victims, there is an acknowledgment of the truth. These are people who relive these events day in and day out, and they ought to vindicated," de León told the Associated Press.

Despite President Funes’ clear support of the amnesty law, the CEJIL attorney maintains hope that the moderate leader could still make an about face. "We don’t know what the government’s official position will be. When the case was being handled by the IACHR, past leaders wouldn’t even acknowledge that the massacre had occurred. The attitude of this government is different."

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