

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Enforced Disappearance in Latin America: Taking Stock

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Webcast

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Good morning, Congressman McGovern and distinguished members of the Commission. On behalf of the Due Process of Law Foundation (DPLF) and the National Commission for the Search for Disappeared Persons in the context of the armed conflict in El Salvador (CONABUSQUEDA), I would like to thank you for the opportunity to report on the progress made in the fight against impunity and the search process for victims of enforced disappearance, both in El Salvador specifically and at the Inter-American level.

Throughout the last few decades and up to the present day, enforced disappearance has been a widespread practice in Latin America in the context of political or criminal violence linked to the State. At the same time, the continent has also been a pioneer in State and non-State responses to these crimes, including Truth Commissions, trials on enforced disappearances, not-for-profit forensic anthropology teams, specialized techniques in locating disappeared children and reuniting them with their families, and the families and human rights organizations that have provided solutions and have sustained tireless fights.

Latin American experiences have created innovative ways of conceptualizing and responding to State violence, such as developing a standard against disappearances and clear requirements in terms of investigating this crime and finding the disappeared. At the same time, the Latin American record demonstrates that there is not just one model to addressing enforced disappearances; policies and practices should follow international frameworks but respect cultural and political perspectives and local meanings.

The conceptualization of enforced disappearances as a complex form of human rights violations and the corresponding State duties are due largely to Inter-American Court decisions. Since its first judgements, the Court established a very comprehensive and expansive jurisprudence and standards which have greatly benefited the region.

The Velásquez Rodríguez vs Honduras (1988) was the first judgment on the issue, and under this case's jurisprudence, the first two requirements were set to consider the person to be enforcedly disappeared: the person is presumed disappeared and the burden shifts to the State to prove otherwise.

It is clear that it is the State's responsibility to continue with the investigation of disappearance cases until the fate of the disappeared person is established. However, in most countries where enforced disappearances have occurred or continue to occur, investigations (if there are any) still primarily focus on identifying perpetrators. As a result of this, the relatives of victims are then left with the immense burden to take on the task of searching for their loved ones by themselves. In response, there has been a growing demand for the emergence of State institutions and offices that conduct and/or support searches and identification activities. These kinds of institutions have been created by law or presidential decrees, with different organizational and structure models, in at least four countries: Mexico, Peru, El Salvador, and Colombia.

Regarding El Salvador, its history with enforced disappearances begins in the seventies and continued with the armed conflict that took place from 1980 to 1992. During those 12 years, many people were disappeared and in 1993, the Truth Commission for El Salvador recorded approximately 5,000 cases of enforced disappearances. In addition, since then, multiple victims and human rights organizations have documented at least 8,000 incidents. In 1993, an amnesty law was signed, and it blocked investigation into these and other atrocities until 2016, when the Supreme Court declared the law unconstitutional. However, multiple obstacles still stand in the way of justice by national courts, not only in the Jesuit case or El Mozote case but in dozens of others presented by victims since the end of the country's 12-year civil war.

At the same time, for years, there were no efforts from the government to lead any searches for the missing nor were their disappearances even acknowledged. The first time there was some international recognition of the thousands of missing persons was in 2007, when the Working Group on Enforced or Involuntary Disappearances of the United Nations recommended the establishment of an effective mechanism for the search for missing or disappeared persons, including real participation from organized civil society, after its official visit to the country.

Aided by the Supreme Court's decision invalidating the Amnesty Law, and after extensive work by victims' family members, including sons and daughters of the disappeared who live in the United States, CONABÚSQUEDA was created via Presidential Decree in August 2017, as a non-judicial mechanism, with the mission to investigate and determine the whereabouts of the adult victims of enforced disappearance in the context of the civil war, and facilitate their reunion with or the restitution of their remains to their respective families. This commission is presided over by three commissioners *ad-honorem*, named by the President of the Republic for a five-year term, while also relying on the support of a multidisciplinary technical team. CONABÚSQUEDA is inspired by the legacy of those who have sought recognition of the civilian victims and wishes to be a part of a State that is committed to the guarantee of non-repetition of a painful past.

CONABÚSQUEDA is currently investigating 243 enforced disappearance cases, and recently published a report, the first of its kind in El Salvador, detailing and characterizing the phenomenon of enforced disappearance in the context of the country's armed conflict. CONABÚSQUEDA has also taken the first steps towards the creation of a genetic database system that would help to identify disappearance victims, and initiated the development of a comprehensive victims' registry. These are important advances, and will be vital tools in the search and identification process, but will require greater government investment and political commitment in order to be effective. Unfortunately, thus far, the political will among Salvadoran authorities to promote truth, justice and reparation has been insufficient.

In 2019, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, Fabián Salvioli, and the Inter-American Commission on Human Rights (IACHR), each conducted official visits to El Salvador to evaluate the country's transitional justice process. Both called for immediate action to help victims of the internal armed conflict identify the whereabouts of those who were disappeared by supporting and sustaining the work of CONABÚSQUEDA.

Despite this progress in the search for the disappeared and the El Mozote case, there continue to be grave political risks to the still-fragile transitional justice process underway in El Salvador. One such risk is evident in recent legislative initiatives: El Salvador's congress has spent the last year and a half trying to ram through a new "National Reconciliation Law" that contains its own version of a blanket amnesty for human rights abuses committed during the civil war – essentially a re-working of the unconstitutional Amnesty Law that was repealed in 2016. So far, a strong campaign by victims, and national and international civil society organizations has managed to stop the law's passage, but the fight is far from over. Several steps should be taken in order to maintain momentum and work towards truth, justice and reconciliation in El Salvador.

First, we should support victims' demands for justice and accountability for crimes committed during the war, and in particular, enforced disappearances. Now it is up to the Government of El Salvador to demonstrate a continuous commitment to the search for the disappeared by providing full support for CONABÚSQUEDA's work - including hiring a full team of technical staff and ensuring a sufficient budget. Allowing for progress in the investigations of wartime crimes by the Attorney General, and the sustained implementation of the Reparations Program, will also be some of the main indicators that this country is fully dedicated to non-repetition and to strengthening the rule of law.

Second, for CONABÚSQUEDA to be successful, El Salvador and the United States must now take extra effort and care to preserve and make available to the Commission all government, military, intelligence and security records and other documentation from the conflict period that might shed light, or provide context, to help solve the puzzle of each missing individual. We know that in 2019, Congress charged the State Department with coordinating a government-wide search among all Federal agencies to identify and release to Salvadoran judicial authorities, including the

presiding judge in the El Mozote trial, any and all documents and materials relevant to the period surrounding the time of the massacre. And we are very grateful to you, Congressman McGovern, as you have also been advocating for the Department of Defense to do its part and provide these documents to Salvadoran judicial authorities, including the judge for the El Mozote trial. The failure of El Salvador's military leadership to grant access to historical records has become a huge point of disagreement with civil society, and must be addressed.

Third, the United States should continue to support, and strengthen, regional and international accountability mechanisms that can have an impact in El Salvador and the region. This includes investing in and providing support to the Inter-American system for human rights protection and encouraging transparency and collaboration between El Salvador and the international community – governments and civil society - in addressing enforced disappearances.

Finally, there are no easy solutions in dealing with this type of endemic impunity. It requires a concerted effort by El Salvador's government and civil society, with the assistance of the international community, to address this phenomenon. But, Mr. Chairman, it is the position of DPLF that the foundation for peace and reconciliation in El Salvador going forward rests on achieving truth and justice for the atrocities of the past, a commitment to redress victims of violence, and absolute respect for the human rights of all citizens. Thank you, and I look forward to your questions.