

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing

On

New Government, Ongoing Agenda: Human Rights, Corruption and Accountability in El  
Salvador.

March 13<sup>th</sup>, 2019

2200 Rayburn House Office Building

Good afternoon, Congressman McGovern and distinguished members of the Commission. On behalf of the Cristosal in Central America, I would like to thank you for the opportunity to report on progress made in advancing justice for war crimes and crimes against humanity committed during the Salvadoran Civil War, the current situation of violence and internal displacement, and human rights violations in the El Salvador's penitentiary system.

In 2016, the constitutional branch of the Salvadoran Supreme Court declared the 1993 Amnesty Law unconstitutional. The ruling left null and void a law that froze investigation and prosecution for some of the worst atrocities perpetrated on the American continent in modern times for nearly three decades.

Political will among Salvadoran authorities to promote truth, justice and reparation has been insufficient. In July 13, 2018, in a hearing on compliance with the Constitutional court's order, the court found the Attorney General to be partially compliant for reopening cases of war crimes and crimes against humanity while also failing to dedicate adequate resources and personell to their cause. The legislative assembly was found to be non-compliant with the court order for failing to legislate a new national reconciliation law. The Minister of Defense was found to be non-compliant for failure to open access to military archives, and the executive non-compliant for failing to present a national plan for reparations of the victims.

The 1981 El Mozote Massacre is the most advanced of the cases reopen subsequent to the 2016 ruling. Sixteen senior and junior military officers have been charged for nine-crimes including mass murder, torture and rape. The case is largely driven by efforts of the victims and their families with support and legal representation from civil society organizations. The attorney general has neither contributed substantively to the process nor acted as an obstacle to justice. The judge overseeing the discovery phase of the trial has acted with independence and demonstrated a commitment to adhering to international standards on transitional justice and relevant Inter-American and constitutional jurisprudence pertaining to case. After hearing victims present testimonial evidence and reviewing the forensic evidence, the judge determined that in addition to the crimes of mass homicide, rape and terrorism, the crimes committed in the village of El Mozote in 1981 constitute a crime against humanity.

Despite progress in the El Mozote case, there continue to be grave political risks to the still fragile transitional justice process underway. In July of 2018, The Legislative Assembly created an "Ad Hoc Commission" to "study" the Constitutional Court's ruling and propose new legislation for "national reconciliation." The Ad Hoc Commission recently produced a draft law proposing a new "broad, absolute and unconditional amnesty" for crimes committed during the armed conflict.

As you know, extreme levels violence, impunity, and a failure of public policy to protect victims persist in present day El Salvador and continue to drive both internal displacement and cross border movements of Salvadorans. According to a national survey conducted by Cristosal and the Public Opinion Institute of the University of Central America (IUDOP), 5.2% of Salvadorans reported to have been internally displaced due to violence in 2018. 12% reported they, or someone in their household, were forced to leave the country because of violence and 5.2% percent households reported having children that were forced to abandon their studies because of violence.

In August 2018, the constitutional wing of the Supreme Court, in a landmark ruling, declared that the state's failure to protect victims of internal displacement constitutes a systematic

violation of the constitutional rights of all Salvadorans. The magistrates ordered the executive to formally recognize internal displacement by violence, the legislative assembly to reform the legal and policy framework to meet international standards on response to internal displacement and prioritize funding for programs to assist victims in the national budget.

The Constitutional Court's ruling sets a historic precedent establishing the rights of internally displaced people and charts a path for building a policy response to humanitarian crisis in the Northern Triangle of Central America that merits international attention and support.

The failure to create programs to assist victims in one of the most violent countries in the world is a consequence of a security policy approach that singularly prioritizes punitive and repressive actions against the population. The underlying premise of this approach to citizen security is the false theory that in times of insecurity it is necessary to violate the rights of some citizens to guarantee the security of others.

Consistent with this doctrine, in April of 2016, following the failed gang truce, the Salvadoran Legislature adopted a series of temporary reforms to the penal code aimed at reestablishing control over prisons and reducing homicide and extortion perceived to be orchestrated from within the prison system.

Under the extraordinary measures, 15,033 people including both sentenced prisoners and people still awaiting trial, were kept in lock down in their cells for two years with no pastoral and family visits or direct access to legal representation. The approximate overpopulation of the cells was 280%, conditions that contributed to the disproportionate suffering and death of the population targeted by the extraordinary measures relative to the rest of the prison population.

In 2017, 66% of overall prison deaths occurred in prisons under the extraordinary measures. 95% of the diagnosed cases of malnutrition among prisoners in the first nine months of 2018 were in prisons under the extraordinary measures, and during that period 15 people died of malnutrition. The lack of light and ventilation directly contributed to the propagation of tuberculosis in these prisons where inmates were not allowed to leave their overpopulated cells. In 2018 there were

1,400 cases of tuberculosis in the prison system, 44% of these were in just three of the ten prisons under the extraordinary measures.

Mr. Chairman, it is the position of our organization that the foundation of peace and security in El Salvador rests on truth and justice for the atrocities of the past, a commitment to protect and assist victims of violence, and absolute respect for the human rights of all citizens.

Thank you and I look forward to your questions.