



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, 2019 – 10:00 a.m.
2200 Rayburn House Office Building

STATEMENT SUBMITTED FOR THE RECORD

Submitted by:

Washington Office on Latin America

Will Impunity Continue Under El Salvador's New President, Attorney General?
Migration, Insecurity and Impunity

Outmigration from El Salvador and other countries in Central America continues to creep up, and the migrant population is increasingly children and families, rather than single men looking for work, according to data from the Department of Homeland Security. The push factors that drive Salvadoran parents and children to leave their homes and seek protection elsewhere include a toxic mix of insecurity, lack of confidence in state institutions, lack of opportunity, and desperation. As the outmigration from Central America became more visible, in 2015, the United States launched a multi-year strategy to promote prosperity, enhance security, and improve governance in Central America, a strategy for which the Congress has appropriated funds for the last four years. A key part of that strategy has been the focus on institution building, and on working with governments that show the political will to improve their own capacity to fight impunity and corruption, and improve security for all citizens. In the last few years, El Salvador has made slow but real progress in combating impunity—the ability of the powerful to manipulate the political and legal system to protect themselves from criminal prosecution for corruption and human rights abuses. Like most of Central America, El Salvador has a long way to go. But there had been signs of progress.

An unusually independent Constitutional Court challenged long-standing political practices in both the legislative and executive branches of government, and compelled both parties to abide by established procedures in decision-making. In one of its most important rulings, in 2016 the court—following a decision by the Inter-American Court for Human Rights—overturned the 1993 amnesty law that ended investigation or prosecution of wartime human rights abuses.

Following the court's ruling, attorneys for the families of those who died in the infamous El Mozote massacre filed to reopen the prosecution of senior military officials charged with responsibility for the 1981 case, in which nearly a thousand civilians were killed. Investigations have also been reopened into the 1989 killings of six Jesuit priests and two women at the University of Central America, as well as in other cases. By investigating and prosecuting high-level military officials, these emblematic cases are challenging the culture of impunity in El Salvador and setting the groundwork for solidifying a culture in which no one is above the law.

At the same time, an attorney general, elected for a three-year term in 2015, launched a series of corruption probes which eventually led to indictments of three former presidents. While overall the Attorney General's Office left a mixed record in terms of strengthening rule of law in the country, the office did take important first steps in investigating and prosecuting high-level corruption cases.

Significantly, El Salvador's now president-elect Nayib Bukele ran on a campaign that placed the fight against corruption as its centerpiece. Bukele promised to crack down on corruption and proposed establishing a commission to investigate corruption and organized crime, modeled on the commissions currently operating in Guatemala and Honduras. Although the details of such a proposed commission are not yet clear, a key question is whether president-elect Bukele is seeking an internationally supported autonomous body that has investigative powers and works closely with the attorney general in prosecuting cases, or whether the commission would be limited to providing international technical assistance. Advocates support the former proposal.

But as we've seen in Guatemala and Honduras, in El Salvador those who benefit from impunity are now pushing back to protect their privileges.

El Salvador's National Assembly is currently debating a "National Reconciliation Law" that would have disastrous implications for truth, justice, and impunity in the country. The proposed law would halt any current prosecutions involving wartime human rights crimes, including cases like the El Mozote massacre, and would forbid any future prosecutions for most war crimes or crimes against humanity. (The law would permit that a narrow set of war crimes be investigated, but it forbids any prosecutions).

The proposed law was presented by a special legislative commission, first established with the support of all the political parties (both left and right) shortly after the Constitutional Court

overturned the 1993 amnesty law in its 2016 ruling. The commission was charged with developing a proposal that would lead to national reconciliation. Unfortunately, the proposal now under discussion appears to believe that reconciliation requires forgetting, not truth and justice.

The proposal has yet to be finalized or debated on the National Assembly floor, but it's nonetheless extremely troubling that proposals like this are under serious discussion in El Salvador. The approval of such a law would be a major setback in El Salvador's fight against impunity and for the equal application of the rule of law. Understandably, the proposed "reconciliation" law is generating significant controversy in the country, with a group of human rights and victims organizations strongly condemning the proposal, and the country's biggest leftist party the FMLN withdrawing their support.

Another area of concern is the new attorney general: in December, the National Assembly elected a new candidate for the position, declining to re-appoint the current incumbent and naming instead a conservative lawyer, Raul Melara, with no track record of commitment on the issues of corruption and impunity. Chosen in a backroom procedure, and approved unanimously by all the political parties, there is concern that the new attorney general will not advance the important but politically difficult battle against corruption begun by his predecessor.

Early signals have been mixed. In one troubling development, the Attorney General's Office appointed a deputy attorney general whose name has appeared in the context of a high-profile corruption case. However, the Attorney General's Office has also moved to file money laundering charges against three senior figures in the conservative ARENA party, all of whom had previously been named but not indicted in connection with another corruption case.

An important question looking forward is whether Attorney General Melara will maintain and strengthen the specialized investigative units—including the units focused on corruption and on wartime human rights crimes—launched by his predecessor.

President-elect Bukele will assume office on June 1. Between now and then, he too will likely experience political pressures to back away from his commitment to fighting corruption and impunity, and in particular to back away from his proposal to create an international commission against impunity in El Salvador.

The citizens, activists, and officials in El Salvador who are the backbone of any fight against corruption and impunity-- and who will, in the long run, address the drivers of migration -- will need the support of international actors to maintain the progress that's been made in the fight against corruption. Otherwise, El Salvador may have a new attorney general and a new president, but the same structural problems with impunity. Now is the time for the U.S. and the international donor community that has supported human rights and the rule of law in El Salvador to step forward, urge the president-elect and the attorney general to move boldly to

combat corruption and strengthen the rule of law, and offer the political, technical, and financial support to enable them to do so.