El Salvador: The difficult fight against impunity

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Abstract: This work aims to map and analyze the trajectory from impunity to accountability in El Salvador and it is divided into three parts. The first section comprises a brief description of the historical background from the Peace Agreements in the country to the transitional moment. In the next sections, the document explores the establishment of initial TJMs and their implementation, and subsequent movement along the impunity-accountability spectrum, to finish with the conclusions. The study explicitly addresses a few central questions according to (1) contextual factors, (2) the transitional justice mechanisms (truth commissions, trials/amnesty laws and reparation programs) that we are looking at, and (3) implementation (and obstacles) of TJMs.

I. Introduction

This chapter maps and analyzes the trajectory from impunity to accountability in El Salvador from the end of the civil war in 1992 to 2012. In particular, it shows how peace agreements with international involvement shapes the transitional justice (TJ) agenda in ways which are different from the TJ trajectories followed by many post-authoritarian states. El Salvador was a highly militarized state even before the open waged war against the insurgency started from 1980 to 1992. Although military intervention in politics was historically not uncommon, by the end of the 1970's massive attacks were being launched also against the civilian population. Repression in the form of disappearances and killings, rapes, massacres and displacements, were aimed at undermining support for rural guerrillas, who fought against the Army to achieve institutional and socioeconomic reforms as a the reduction of the military power and changes in the judicial system. Multiple sources document the large numbers of Salvadorans who died during the civil war. According to Seligson and McElhinny (1996: 224) more than 75,000 people (in a country of five million people) were killed during the war, about one in 56 Salvadorans (1.8 percent) somewhat less than the figure for the Guatemalan

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1 The Armed Forces of El Salvador (FAES) had killed tens of thousands of non-combatants in 1979 and 1980, before the civil war even began. This repression may have preempted an incipient popular insurrection, but it also locked in a determined social base that enabled the armed left to build a highly effective and sustained insurgency. Elisabeth Wood’s study presents evidence which shows that participants in the insurgency came from a variety of poor rural class backgrounds. The many campesinos who joined government networks and civil patrols or served as government informants came from equally diverse economic backgrounds (Wood, 2003).
2 In this sense, the death rate of civilians in El Salvador was 28 times greater than that of civilians under the military regimes of Argentina and Chile (Loveman, 1998). According to the Truth Commission for El Salvador (1993) the U.N.-sponsored organization authorized by peace agreement to document human rights violations during the civil war, the vast majority (more than 85 percent) of the serious acts of violence analyzed by the commission were carried out by state agents or those acting under the direction of state agents against alleged supporters of opposition organizations (Wood 2003, 8). In contrast to much of the violence in other dictatorship, the violence often occurred in public or the results were displayed in public places. Despite mostly killing peasants, the Government readily killed any opponent they suspected of sympathy with the guerrillas – clergy (men and women), church lay workers, political activists, journalists, labor unionists (leaders, rank-and-file), medical workers, liberal students and teachers, and human-rights monitors. According to Truth Commission (1993, 311), “any organization in a position to promote opposing ideas that questioned official policy was automatically labeled as working for the guerrillas. To belong to such an organization meant being branded a subversive”. Campesinos were frequent victims of the violence.

As other Central American countries, in El Salvador the main item on the transitional agenda was put an end to the armed conflict. Like in other countries in the region that had suffered similar conflict, peace agreements rather than elections marked the transition to democracy. In these countries the transition fundamentally tried to put the military under civilian control to avoid them to dominate the political environment (Collins, 2010: 159).

The negotiated solution to the armed conflict was prompted by the end of the Cold War and the inability of the army to militarily defeat the Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, FMLN), despite aid received from the United States. In this sense, the peace accord in El Salvador emerged from a strategic stalemate on the battlefield (in Terry Lynn Karl’s term 1992, 149) and reflects widely accepted analysis of the conditions that made peace possible in El Salvador. In addition, the end of the Cold War changed the strategic environment for both sides. According to Call (2002, 549) “The gradual collapse of the Soviet bloc reduced the likelihood of continued support for the FMLN from allies such as Cuba. More importantly, it removed a powerful ideological framework that had influenced the FMLN’s political thinking and vision for post-war El Salvador”.

Since the creation of the National Republican Alliance party (Alianza Republicana Nacionalista, ARENA) in 1980s people started to question the “Estado Mayor”. This

2 Seligson and McElhinny (1996, 224) argue that the best estimate of total civilian and military related deaths in the Salvadoran civil war is between 80,000 and 94,000, of which 50,000 to 60,000 were civilians.
3 The Farabundo Martí National Liberation Front (in Spanish: Frente Farabundo Martí para la Liberación Nacional, FMLN) was formed on October 10, 1980 by five left-wing guerrilla organizations: the Popular Liberation Forces (FPL), the Popular Revolutionary Army (ERP), the Communist party's Armed Forces of Liberation (FAL), the National Resistance (RN) and the Workers Revolutionary Party (PRTC). In May 1980 almost all of the important leftist and centrist popular organizations and political parties formed a large coalition called the Revolutionary Democratic Front (FDR), which quickly formed an alliance with the FMLN that would last throughout the war (Call 2002, 546).
4 The Estado Mayor, or Presidential General Staff, is an institution which is part of the Salvadoran armed forces. Its mission is to ensure the safety of the President and his family. After the war, Estado Mayor was accused of being directly involved in human rights violations committed by the state during the armed conflict.
situation weakened the army’s ability to maintain security within San Salvador, as shown by the FMLN’s offensive of November 1989.⁵

UN-mediated peace negotiations began in the spring of 1990 and after nearly three years of negotiations on January 16 of 1992 the Accords of Chapultepec were signed by the Salvadoran government (ARENA) and the FMLN. The peace accords lay out the conditions of how to admit/incorporate the FMLN into civil and political life of El Salvador, as well as mandated the reduction of military power, the demilitarization of the political system, and judicial reform.

The signing of the Accords of Chapultepec in 1992 was preceded by peace in negotiations carried out in many steps and in many different places, which resulted in multiple smaller agreements. The UN Secretary-General’s involvement in these peace talks from the very beginning was fundamental to its success.⁶ The first two agreements – signed in Geneva (April 1990) and Caracas (May 1990), – dealt with the establishment of a framework for peace negotiations and the creation of a general agenda, while the agreement of San Jose (July 1990) emphasised the obligation of the warring parties to ensure respect for human rights, defined as “those rights recognized by the Salvadorian legal system, including treaties to which El Salvador is a party, and by the declarations and principles on human rights and humanitarian law adopted by the United Nations and the Organization of American States.”⁷ Hence, weight was assigned to rights defined both by domestic and international law searching the deference with human rights international protection. However, this deference finished after the signing of the Peace Accord when the parties agreed an amnesty against those international principles.

The Mexico agreement, signed on April 1991, foresaw the need for a constitutional amendment that would ensure the subordination of the armed forces to civilian authority, a justice reform against the impunity, and the establishment of a Truth Commission, supported by United Nations (UN). In September of the same year, in New York, agreements were reached for the creation of the National Commission for the Consolidation of Peace (COPAZ); the reform of the armed forces; the creation of the Ad Hoc Commission to ensure purges of the armed forces; the establishment of a civilian police force; and an agrarian reform. Finally, in January 1992, negotiations closed with the Chapultepec agreement.

A UN Mission was also created for El Salvador (ONUSAL), established to verify the implementation of the agreements. ONUSAL was in operation from July 1991 to April 1995. After it was dissolved, a group of civilian UN personnel, known as the UN Mission in El Salvador (MINUSAL) remained in the country to continue to implement the remaining points of the peace agreements. The cost of ONUSAL was approximately $ 29.2 million dollars.⁸ ONUSAL investment served to accompany the implementation of the agreements reflecting the international community purpose to keep involved in the process after and beyond the signing of the peace.

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⁵ The FMLN launched an offensive on November 11, 1989, which surprised the Salvadoran Army with its effectiveness. The guerrillas gained control of several areas in and around San Salvador. They attacked the residences of the President of the Republic and the President of the Legislative Assembly.

⁶ Available at: http://www.usip.org/publications/peace-agreements-el-salvador (Access, 3 December 2012)


The peace process in El Salvador has been portrayed as a success by the international community because it managed to bring about the end of the armed conflict. However, like in many other peace processes, there have been limitations in relation to ensuring the right to truth, justice, and reparations for victims and survivors of the conflict. Indeed, although Section 5 of Chapter 1 of the Chapultepec Peace Agreement recognizes the need to overcome the culture of impunity within the armed forces, bringing this issue to the Truth Commission.

In El Salvador the peace accords and the process that preceded it gave attention to the problem of impunity and the necessity to fight impunity throughout the implementation of reforms that were intended to improve human rights. However, as this chapter will show the results are still inconclusive. During the first two decades following the signing of the Peace Agreements the presidency of the republic was continuously occupied by candidates of ARENA; a political right wing party with close ties to the military personnel responsible for many of the atrocities of the past. It was not until 2009 that there was a political shift when Mauricio Funes of the FMLN was elected president. Only since 2009 have there been some timid advances in the shift from impunity towards accountability for past human rights violations, though these shifts have been smaller than expected.

II. Searching accountability

As discussed throughout the chapter, the path from impunity to accountability in El Salvador has encountered difficulties that were not foreseen at the time of the Peace Accords. The Truth Commission provided an important but incomplete truth, followed by a broad amnesty law adopted by Congress guaranteeing impunity. This was followed by the denial of crimes during the 20 years in which ARENA remained in power. The situation began to change in 2000 when NGOs drove exhumations and search for missing. They also lobby for the Supreme Court ruling on the amnesty law. Although they got a ruling that restricted the amnesty law, in practice there was a breakthrough, as will be shown later. It was not until 2009 with the arrival of the FMLN to the government, when there was an important advance especially in relation of symbolic recognition to victims. However, impunity continues. In the next section, we will examine the paths from impunity to accountability in material truth, justice and reparation.

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10 Roberto D'Aubisson was the main founder of ARENA, who after his death, in February 1992, a month after the signing of the peace agreements, the President of the Republic decreed three days of mourning and awarded him for his eminent services rendered to the Republic. In: http://www.arena.org.sv/historia.html (access, 2 December 2012). The Truth Commission, however, pointed him as direct responsible for the murder of Monsignor Oscar Arnulfo Romero: "Former Major Roberto D'Aubuisson gave the order to assassinate the Archbishop and gave precise instructions to members of his security service, acting as a «death squad», to organize and supervise the assassination" (Truth Commission, 1993). Romero had claimed the end of military repression and the respect of human rights. His assassination in 1980 was one of the events that triggered the armed struggle.

11 The signing of the agreements occurred while Alfredo Cristiani (ARENA), occupied the Presidency since then (1992) there have been 4 presidential elections: Armando Calderón Sol (1994-1999), Francisco Flores (1999-2004), Elias Antonio Saca González (2004-2009) and Carlos Mauricio Funes Cartagena (2009-2014). Mauricio Funes is an independent journalist, who was not historically linked to the party and with support from groups from outside the FMLN
TRUTH COMMISSION

As mentioned above, a Truth Commission was established as part of the peace negotiations and mandated to investigate violations of human rights committed during the war since 1980 till 1991, as stated in the report of the Commission.12 The authority of the Commission was expanded by article 5 of the Chapultepec Peace Agreement, entitled “End to Impunity”. The Truth Commission, composed of three international commissioners (the former Colombian president Belisario Betancur; Reinaldo Figueredo Planchart, former Minister of Foreign Relations of Venezuela and Thomas Burgenthal, Former President of the Inter-American Tribunal of Human Rights and the Inter-American Institute for Human Rights), was empowered to make binding recommendations to the El Salvadoran government.13

The Commission, composed exclusively of foreign members, was appointed by the UN Secretary General, referring to the opinion of the parties, as provided in the agreements of Chapultepec (Burgenthal, 1996: 13). The restriction of national participation sought to avoid questioning the impartiality of commissioners. It also sought to generate confidence in the witnesses who collaborated in the development of research and avoid suspicion, in a small country "where everybody knows each other" (Burgenthal, 1996: 58).

The creation of the Commission was motivated by “the need to create confidence in the positive changes which the peace process is promoting and to assist the transition to national reconciliation” (Mexico Peace Accords, 27 April 1991). It was clearly stated that “the commission shall not function in the manner of a judicial body” (MPA, 27 April 1991).14

The Commission operated for eight months, from July 1992 to March 1993. As we show later, the commission findings had a great impact. Although the commission received 22,000 complaints covering all kinds of human rights violations (most of them disappearances, executions and torture), the report only focused on only 33 paradigmatic cases, leaving the


13 “Agreement has been reached to establish a Commission on the Truth, which shall be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties […] The Commission shall be entrusted with the task of investigating serious acts of violence that have occurred since 1980 and whose impact on society urgently requires that the public should know the truth […] The mandate of the Commission shall include recommending the legal, political or administrative measures which can be inferred from the results of the investigation. Such recommendations may include measures to prevent the repetition of such acts, and initiatives to promote national reconciliation.” (MPA. Abril 27, 1991) En: http://www.usip.org/files/file/resources/collections/commissions/El%20Salvador-Charter.pdf (Accessed, 2 December, 2012)

14 “In analyzing these provisions of the mandate, the Commission thought it important that the Parties had emphasized that «the Commission shall not function in the manner of a judicial body». In other words, not only did the Parties not establish a court or tribunal, but they made it very clear that the Commission should not function as if it were a judicial body. They wanted to make sure that the Commission was able to act on a confidential basis and receive information from any sources, public or private, that it deemed useful and reliable. It was given these powers so that it could conduct an investigation procedure that was both expeditious and, in its view, reliable in order to «clear up without delay those exceptionally important acts of violence whose characteristics and impact ... urgently require that the complete truth be made known ... ». So it is clear that the Parties opted for an investigation procedure that, within the short period of time allotted, would be best fitted to establishing the truth about acts of violence falling within the Commission's sphere of competence, without requiring the Commission to observe the procedures and rules that normally govern the activities of any judicial or quasi-judicial body. Any judicial function that had to be performed would be reserved expressly for the courts of El Salvador. For the Parties, the paramount concern was to find out the truth without delay” (TC, 1993)
remaining cases without investigation.\textsuperscript{15} The report, published in March 1993, “From Madness to Hope: The 12-year war in El Salvador” (\textit{De la locura a la esperanza: la guerra de 12 años en El Salvador}), concluded that the armed forces and paramilitaries were responsible for 85\% of the human rights violations. This was of crucial importance as “it helped to ensure the removal of the High Command in March 1993”\textsuperscript{16} (Sieder, 2002: 275) and because, despite pressures, more than 40 militaries were named as responsible for these crimes, anticipating the traditional inactivity of the judicial power on these issues (Sieder, 2002).\textsuperscript{17}

The Commission came up with a long list of concrete and detailed recommendations, which included the following: a) dismissal of “officers of the Salvadorian armed forces who are personally implicated in the perpetration or cover-up of serious acts of violence, or who did not fulfill their professional obligation to initiate or cooperate in the investigation and punishment of such acts,” (TC, 1993); b) dismissal from their office of officials in the civil service and judicial personnel who, according to the report “acting in their professional capacity, covered up serious acts of violence or failed to discharge their responsibilities in the investigations of such acts” (TC, 1993); c) the disqualification from holding public office of any person implicated in the perpetration of the acts of violence described in the report, “for a period not less than 10 years, and should be disqualified permanently from any activity related to public security or national defence” (TC, 1993); d) with respect to judicial reform, “give the tremendous responsibility which the judiciary bears for the impunity […] there is no justification for further postponing the appointment of a new Supreme Court of Justice […] The situation described in this report would not have occurred if the judicial system had functioned properly” (TC, 1993); e) suppression of structural causes linked directly to the acts examined, it means institutional reforms that lead to overcoming the causes of violence, including reforms in the armed forces, in the area of public security, investigation of illegal groups; f) reforms of the administration of justice; protection of human rights; the establishment and functioning of the National Civil Police; g) material and moral compensations to the victims of violence and h) a special forum “should strive to monitor strict compliance with the recommendations” (TC, 1993).

\textit{The Truth Commission’s Achievements and Limitations}

The government and the armed forces immediately rejected the commission’s report,\textsuperscript{18} and President Alfredo Cristiani criticized it for not contributing to 'national reconciliation'. As IACHR (1994) say “the Armed Forces of El Salvador, issued a statement on March 23rd, 1993, in which no value was given to the report of the Truth Commission, it is described as "unfair, incomplete, illegal, unethical, partial and daring", and says that "it feels proud of having fulfilled its mission to defend its people, as it is shown in his performances throughout this period (...) the pacification and the preservation of our democratic and Republican system (...).” The FMLN was not satisfied either with the results of the report. All of its opponents

\textsuperscript{15} This happened because the testimony was received only for three months, so it was decided to choose only paradigmatic cases that reflect patterns of violence (TC, 1993)
\textsuperscript{16} Our translation: “ayudó a garantizar la destitución del Alto Mando en marzo de 1993”.
\textsuperscript{17} As reflected in the report of the Truth Commission, the judiciary and especially the High Courts, were closely related to the problems of impunity.
\textsuperscript{18} “Following the publication of the report of the Truth Commission - conducted 15th March 1993 —, there were negative reactions from some of the sectors that were designated as responsible by the experts of the United Nations, as well as from the executive power [...] As for the judiciary, the branch of public power most criticized by the report [...] its reaction was swift. "In addition to the statements made individually by members of that branch, the Supreme Court officially rejected the report of the Truth Commission, which recommended the resignation of its judges" (Comisión Interamericana de Derechos Humanos –IACHR-, 1994) Our translation.
took advantage of the fact that the Commission’s members were foreigners, to try to discredit the results. However, the UN and the United States pushed the Government to accept the recommendations of the Commission (Sieder, 2002: 260).

It is important to stress the fact that the report named individual actors responsible for human rights violations: among them, the President of the Supreme Court at that time and the founder of ARENA, Roberto D’Aubisson. However, the report did not recommend the prosecution of people mentioned in it nor the amnesty.

Although according to its mandate, the recommendations of the Commission were legally binding, the implementation of these reforms depended on the power equilibrium between the Army and the two party signatories to the peace accords (ARENA and FMLN). Since none of these parties were particularly interested in carrying through the reforms, no follow-up unit was established to ensure that the TC recommendations were actually implemented. However, ONUSAL held meetings with representatives of the peace agreement to push for the implementation of the TC’s recommendations. One positive outcome of this process was that Parliament in 1995 ratified the Optional Protocol of the International Covenant on Civil and Political Rights, and formally recognized the jurisdiction of the Inter-American Court of Human Rights. A new criminal procedure code was adopted in 1996, and the structure for the appointment of judges and judicial review was also reformed (Popkin, 2002).

The Truth Commission and Accountability

The fact that El Salvador’s Truth Commission in its final report documented what was largely perceived as an incomplete truth, focussing on a selection of paradigmatic cases, gave the impression of indirectly portraying large numbers of victims as “invisible”. The Commission itself, acknowledged this shortcoming in its report. The implications were an incomplete accountability: despite the importance of the report and the work of the commission, many crimes are not only unpunished but have not even been recognized by an official body.

Implementation of Truth Commission’s recommendations

The recommendations of the Truth Commission have been met to varying degrees. However, there has been no follow-ups or evaluations by official organs at the national or international level, although the establishment of such monitoring measures was one of the recommendations of the Commission.

The reform of the judicial system, has so far not produced significant positive results in the area of addressing past human rights violations, as we will show later. The truth of what happened to tens of thousands of victims is still unknown. Nevertheless, exhumations carried out since 2001 have allowed the identification and whereabouts of some of the victims, as will be detailed later in this chapter.

19 Available at: http://www.usip.org/publications/truth-commission-el-salvador (Access, 2 December 2012)
20 At http://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm (Access, 14 June 2013)
The Ad Hoc Commission

While the Mexico Peace Agreements (MPA), on the 27th of April 1991, agreed upon the creation of a Truth Commission, a new round of negotiations which ended with the New York Agreement, 25th of September 1991, agreed to—among other things—to create an Ad Hoc Commission responsible for the purging of military forces: “II: Purification. (1). A process of purification of the armed forces is agreed upon, on the basis of vetting of all personnel serving in them by an Ad Hoc Commission. (2). Participation by the armed forces will comprise two of their personnel, who shall have access only to the deliberations of the Commission […] The mechanisms for selecting all participants in the Ad Hoc Commission, as well as the voting criteria and other measures relating to the purification, will be dealt with in the compressed negotiations”.

The Ad Hoc Commission was a special commission tasked with reviewing the history of senior military with respect to their human rights performance. It was integrated by three Salvadoran lawyers “of recognized independence of judgement and unimpeachable democratic credentials […] The selection of the three civilian members of the Ad Hoc Commission is the result of a process of consultations carried out by the Secretary-General of the United Nations, the outcome of which has already been communicated to both Parties […] The two officers of the armed forces who are to participate in the Ad Hoc Commission […] shall be appointed by the President of the Republic.” (PA of Chapultepec, 1992), with just three months to develop their work and that issued its report on September 22nd, 1992, which however is maintained in confidential, only being unveiled the list of transfers and dismissals.

The Chapultepec Peace Agreements noted that the evaluation made by the Ad Hoc Commission should “take into account the past performance of each officer, including, in particular: (1) his record of observance of the legal order, with particular emphasis on respect for human rights, both in his personal conduct and in the rigour with which he has ordered the redress and punishment of unlawful acts, excesses or human rights violations committed under his command, especially if there have been serious or systematic omissions in the latter respect; (2) his professional competence; and (3) his capacity to function in the new situation of peace, within the context of a democratic society, and to promote the democratization of the country, guarantee unrestricted respect for human rights and reunify Salvadorian society, which is the common purpose agreed upon by the Parties in the Geneva Agreement. The existence of serious deficiencies in any one of the above-mentioned areas could be sufficient grounds for the Ad Hoc Commission to take the decisions…”.

Approximately 200 senior officials of army were removed, but these removals did not take place until the report of the Truth Commission was issued in March 1993. It should be note here that the Ad Hoc Commission report is confidential, however the inclusion of perpetrators names in the Truth Commission served to purge the army. The members of the High Command who had been removed received military honors (Sieder, 2002: 261), and senior officers were allowed to stay the time they needed to get their pension. Nevertheless, on 7th

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22 This is the real and complete name of this Commission.
July 1993, the Secretary-General for ONUSAL noted that the Government had complied with the recommendations of the *Ad Hoc Commission*.  

Although the Ad-Hoc Commission, more than a mechanism of truth was a form of purging body, the list of names provided by this commission complemented the findings of the Truth Commission. Thus, both commissions were tasked with confirming the human rights violations committed by members of the armed forces, some of them linked to and constituting part in the Government of the time.

The reports of both Ad Hoc and Truth Commission was the denied by the state during the 20 years of ARENA government. This only changed in 2009 with the first political alternation in government. However, as we will explain later, some exhumations were unofficial initiative.

**Graph 1: Truth and accountability**

*El Salvador (1992-2012)*


**JUSTICE: AMNESTY, JUDICIAL REFORM AND TRIALS**

Note that the truth finding efforts that are outlined above took place in a context which ensured impunity for the violations that were documented by the Truth Commission and the state’s failure to protect human rights. The adoption of a wide amnesty and the unwillingness of the State to investigate the crimes, ensure the absence of justice for victims of the conflict in El Salvador despite reforms of the judicial system.

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AMNESTY

Although part of the peace agreement contained measures (such as the Truth Commission and the Ad Hoc Commission) that were intended to end the endemic impunity that had characterised El Salvador for decades, other measures were in place that hindered accountability, particularly in the field of criminal justice. The Legislative Assembly, just after signing the Chapultepec agreement, approved an Amnesty Law (Decree No. 147/1992) stating that would not apply to those who were identified in the Truth Commission’s report as perpetrators of human rights violations. Moreover, one year later, and notwithstanding the recommendations of the Truth Commission, only five days after the approval of the TC report, Congress passed a new General Amnesty law (Legislative Decree No. 486/1993), which provided the extinction of both criminal and civil liability converting this law in guarantee of the total impunity. According to Collins, “no Latin American transitional settlement (except the Salvadorian) explicitly attempted to rule out private civil action over accountability” (Collins, 2010: 47). More than twenty years after the various peace agreements had been signed, Rubén Zamora, presidential candidate of the FMLN in 1994, admitted that the amnesty violated those agreements.26

Challenging the amnesty law

The amnesty law is a clear obstacle to trials. This law has been challenged by the courts on various occasions. On May 20, 1993 the Supreme Court of Justice ruled that, “the pre-transition norm of the de facto impunity was merely replaced by legally guaranteed and institutionalized version in the form of extremely broad amnesty” (Collins 2012: 166). In 1997 and 1998 there were new attempts to challenge the law. In response the Constitutional Chamber of the SCJ in a ruling of September 2000 confirmed the constitutionality of the law, although in theory this decision opened a door to trials. According to Collins (2010: 173) “the ruling is less generous than it might appear, since the time period eliminates many of the most notorious massive human rights violations (HRVs) of the war period, and since courts have subsequently ruled that even the Jesuit massacre of 1989 did not constitute a «violation constitutional dispositions». But the ruling’s possible application was subsequently limited as much by lack of test cases as by any demonstrable unwillingness of lower court judges to reverse the tradition of impunity”.

The judge’s discretion exists only for certain crimes and at a certain period of time – namely crimes committed during the presidential term in which amnesty was issued, which began on June 1, 1989. Since most of the murders in El Salvador took place much earlier, between 1978 and 1983, when more than 42,000 people died at the hands of government forces (Sieder, 2002: 251), it means the vast majority of crimes could not be prosecuted. The amnesty law is extremely broad and comprehensive, and no court decision has modulated its reach. There are other obstacles to criminal prosecutions too. After the 2000 sentence about the amnesty, the case about Jesuits 27 was tried to be reopened. However, finally the petition was denied alleging prescription.


27 The case concerns the murder at the UCA (Central American University) of six Jesuit priests, including the rector of the university, Ellacuría, and two women, the cook and her daughter's residence, on December 16, 1989. For deeper information see: http://www.uca.edu.sv/publica/idhuca/jesuitas.html (Access, June 15, 2013).
Despite the adverse outcome after application of the statute of limitation, Cuellar (2010) draws attention to the importance of the aforementioned decision, noting that it “is the only case in which the amnesty was defeated in court” (Cuellar, 2010: 138). However, impunity persists, since the final decision was to close the case.\footnote{Our translation: se trata del “único caso en el cual se ha derrotado la amnistía en sede judicial” (Cuellar, 2010: 138).}

**Graph 2:** Amnesty and accountability

**El Salvador (1992-2012)**


**REFORM OF THE JUDICIAL SYSTEM/JUDICIAL REFORM**

The recommendations of the Truth Commission to reform the judicial system made reference to the need to revise the penal process, which had been inquisitorial since 1974. The inquisitorial procedure violated various legal principles, such as expediency and transparency. The proceedings were confidential and mostly written to avoid the control over the information collected during the investigation stage. The procedure also violated the principle of impartiality, as judges were in control of both the prosecution and the actual trial process (in the common law system, there is a division of labour between the prosecutor and the judges). Furthermore, auxiliary bodies used to investigate the crimes, including the National Guard and the National Police, held a high degree of responsibility for human rights violations committed during the civil war. It necessarily deprived them of impartiality when investigating, contributing to impunity.

As a result of the Peace Accords, the process of judicial reform was implemented through constitutional and criminal procedural reform (1996), ensuring a move from the inquisitorial to the adversarial system. The reform recognized the constitutional authority of the Prosecutor...
General of the Republic (Fiscal General de la República, FGR) to conduct criminal investigations, leaving the judges to concentrate on trial proceedings.

Despite these reforms, the system of administration of justice in criminal matters has failed to overcome carry-over authoritarian traditions from the civil war. In this sense, although the FGR is, in theory, an independent body together with the National Civil Police (PNC, the main assistant body of the Prosecutor General’s office)-, they are accountable to the executive and it could affect their independence. Currently, the country does not have the infrastructure necessary for a scientific criminal investigation, and testimony is the principal evidence for criminal investigations. The fact that processes are based only on testimonies not technically supported by other evidences collected, violates the rights of the accused. Finally, the absence of political will by FGR has impeded the efficiency of investigations, and is now the most important factor obstructing accountability in the field of criminal justice.

In El Salvador, judicial reform implemented after the Peace Accords has not served to change the results of accountability (Sieder, 2002: 276), and the change in the court responsiveness to cases of past human rights violations was virtually undetectable (Collins, 2010: 168). After 20 years the prosecutor (FGR) and the judiciary are still not fully independent,\(^\text{29}\) and have not made any effort to investigate past crimes. Unlike for example Chile, Colombia and Guatemala, in El Salvador there are no specialized prosecutors (fiscalías especializadas).

TRIALS

In this section, we examine what is happening in criminal investigations in El Salvador, analyzing also the limitations of these processes. We will aim to show the path from the impunity towards the limited progress in accountability.

Cases of Human Rights violations during the armed conflict

The systematization of the cases of human rights violations during the armed conflict in El Salvador offered in this study will be an important step for the analysis of impunity in the country.

Since there are no existing databases of trials regarding human rights cases from the armed conflict period, the authors have made a first attempt at collecting data on trials as part of a research project.\(^\text{30}\) Until August 2012, there are no studies that provide detailed information about the state of proceedings in the various courts around the country. Access to information has hence been a constant issue, resulting in constraints on the depth of the data obtained.

In spite of these constraints, the authors have managed to get a certain overview of the volume of ongoing court proceedings for past human rights violations. To make a general mapping of the cases presented to the national criminal justice, information was obtained from seven institutions through interviews with their representatives, a governmental figure – the Ombudsman for the Defence of Human Rights - and six non-governmental institutions: Legal Guardianship of the Archbishop of San Salvador (Tutela Legal), the Foundation for the Study

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\(^{29}\) This is because the prosecutor is still subject to the executive and the judiciary do not enjoy stability in their positions, limiting their ability to act against impunity.

\(^{30}\) Project 10-CAP2-1874, “Against impunity and transitional justice in Central America”, funded by the Spanish Agency for International Cooperation and Development (AECID), within the framework of the Permanent Open Call (CAP) for cooperation and development.”
of Applied Law (FESPAD), the Centre for the Promotion of Human Rights “Madeleine Lagadec”, the association for the search of missing children (Pro Búsqueda), the Commission of Human Rights in El Salvador (CDHES) and the Human Rights Institute of the Jose Simeon Cañas University (IDHUCA).31

Besides we reviewed case files with relevant information for 56 cases, of which 33 were being heard by the Prosecutor General’s Office (PGO). Given the restricted access of the criminal investigation records and the lack of cooperation of the PGO and other offices, it remained the task of NGO’s that accompany different cases, to obtain information from the organizations just mentioned and the Committee of Expressed Politics (Excoppes). The information was also received from the Ombudsman (Procurador para la defensa de los derechos humanos) and we had access to files in the Peace’s Courts of San Esteban, Tecoluca, San Vicente, Suchitoto, Usulutan and in San Francisco Gotera.

The data suggests that during the period of human rights violations (1975-1991), 12 cases had been registered by courts within the 14 departments of the country. Between 1980 and 2011, 18 denouncements were filed during the period of civil war and 38 cases were presented to the courts after the signing of the peace accords in 1992.32

The data shows that as of August 2012, of the in total 56 cases, only 44 correspond to principal investigations, 10 are related research. In relation with the stage in the courts: 45 cases undergoing preliminary investigations; one in instruction (that is, the decision of the prosecutor was pending); one which had been given a guilty verdict, but where the amnesty law was applied; one was closed by applying the statute of limitations because; four cases which were closed by applying the amnesty law; one case in which admissibility was under consideration; one case was rejected by the court (the court rejects the possibility of investigating); and in two cases it was not possible to find information.

A great majority of the cases we analysed have failed to go beyond the procedural stages where the body of evidence collected is decisive for the decision of whether or not the case will proceed to the trial stage. Note that many of these cases drag on at the pre-trial stage for years and years. It is evident that prosecutors are making minimal efforts to collect evidence conducive to conducting an effective investigation of the crime(s) in questions.

Regarding the type of violations registered in our database, there are 24 cases of forced disappearances, 11 cases of extrajudicial executions, 8 cases of massacres, three cases of torture, one case of sexual assault, one case of forced disappearance with extrajudicial execution, and one case without data. The largest number of cases relating to forced disappearance responds to the consolidation of a litigation strategy by Pro-Búsqueda, an organization dedicated to the search for missing children.

Of the 56 cases registered, only two cases are identified perpetrators and only one of the cases under study corresponds to an act committed by the guerrilla forces of the FMLN. On the

31 We also consulted the Criminal Chamber of the Supreme Court of Justice (SCJ), and the Prosecutor General’s Office. The Criminal Chamber of the SCJ said that the cases on which we requested information was not within its jurisdiction, except those which had been filed an appeal. As of December 2012, there were no such appeal cases in El Salvador. The Prosecutor General’s Office did not respond to written requests for information.

other side, none of these cases has enabled domestic civil proceedings to obtain reparation or civil recognition of responsibility.

Since 2001 some judges have supported the request of relatives of victims of massacres to advance the exhumation processes. Although this represents a step forward in protecting the rights of the victims, the exhumations have failed in the necessary protocols for the pre-constitution of the evidence. The exhumations have not resulted in the initiation of any criminal investigation, despite the Prosecutor General’s Office being informed of these proceedings.

We found 10 cases in which exhumations had taken place, of which half had been supported by human rights organizations. However, nowadays these organizations or government institutions don't have a systematic record of all exhumations that have been made. 13 humanitarian exhumations had been conducted by the peace's judge of Suchitoto (Cuscatlan), between the years 2001 and 2011. According to information from this court, these cases had been supported by the Centre for the Promotion of Human Rights “Madeleine Lagadec”.

Justice, Achievements and Limitations: Obstacles to the implementation of justice?

In the Salvadorian case, it is reasonable to conclude that, although some progress has been made to ensure (truth and) justice, large-scale impunity for past crimes still prevail. Despite the recommendations of the Peace Accords, the structure of the justice system (i.e. the appointment procedures for magistrates; superior judges’ control over first instance judges etc.) helps to maintain status quo, which offers no guarantees of the rights of the victims. The lack of transparency in appointment procedures for judges coupled with an established tradition of partisan political connections have allowed high levels of political interference in the judicial decision making.

Nevertheless, some tiny steps have been made towards more accountability. The decision of the Constitutional Chamber (CC) of the Supreme Court of Justice (SCJ) in December 2010 to ensure victims the access to justice is a case in point. In this decision the Court addressed about the constitutionality of the monopoly of criminal action by the FGR. The Supreme Court determined that the initiative of the public criminal prosecution is not the exclusive prerogative of the FGR and urged to the Legislative Assembly to reform the criminal proceedings to guarantee the victims the possibility to exercise criminal action, when the Prosecutor General’s Office, by negligence or disinterest, fails to do so.

As a consequence the National Assembly issued Decree 1010 of 2012, which reformed the criminal procedural legislation, in particular article 17 of the Code of Criminal Procedure. The amendment allows the conversion of criminal public action to initiate criminal proceedings on a private action, in the case that the prosecutor (FGR) does not comply with his constitutional obligation to promptly investigate. This is an advance in the rights of the victims, who for decades have faced a pattern of repeated omission on part of the FGR. However, given the short period that has passed since this measure was legally adopted, its effectiveness is still uncertain.

Another factor that may enhance future criminal trials is article 144 of the 1983 Constitution, which states that international treaties signed by El Salvador are laws, and that Salvadorian
law can’t go against the provisions of the treaty. However, article 145 establishes the primacy of the constitution, saying that treaties that restrict or affect the constitutional provisions cannot be ratified. So, international treaties, both in terms of human rights as in other matters, are above the law but under the Salvadorian Constitution.

One aspect that becomes evident in El Salvador has been a blockage of these judicial processes from the beginning. Skaar (2011: 41-43) points out the lack of implementation of many judicial reforms in El Salvador, and therefore the difference between de jure and de facto judicial independence. Skaar further notes that demands for justice have been weak in this country, compared to the activity of human rights organisations and victims in other countries. Collins (2010) also draws attention to the latter, pointing out several possible causes of impunity in El Salvador: the amnesty law(s), the lack of evidence, the lack of willingness of trial judges to reverse the culture of impunity, the lack of particular demands for justice and the blocking by the prosecution (Collins, 2010: 173-174).

From impunity to accountability

Although, as noted earlier, in the only case of conviction involving armed conflict (Jesuits) had been granted amnesty, we should mention a few measures that could open doors for claiming rights of victims through the domestic trials.

These measures include the 2000 ruling on the constitutionality of the amnesty; two orders (providencias) on June 26 and December 8, 2009 where the Constitutional Chamber of the Supreme Court of Justice ruled habeas corpus in cases of girls Sofia Garcia Cruz and Maria de los Angeles Ortega, ordering the attorney to advance the research; and the sentence on December 2010, under which the prosecution no longer has a monopoly of prosecution

El Salvador, then, has the longest surviving amnesty law in the Central American region, which includes civil and criminal liability for all types of crimes, without exception. This in spite of the Constitutional Chamber of the SCJ taking a first step towards accountability in 2000 judgement mentioned above: “The verdict acknowledged for the first time the existence of a technical loophole with regard to crimes that, first, could be argued to violate fundamental constitutional rights; and, second, had been committed by public employees within a certain time period late in conflict. The loophole arises from Article 244 of the Salvadorian Constitution, which states that «any violation, infraction or alteration of constitutional dispositions will be especially penalized by law; and civil or criminal responsibilities incurred by public functionaries, whether military or civilian, to that end will not be eligible for amnesty, commutation or pardon within the duration of the presidential period in which they were committed»” (Collins, 2010: 173). 35

33 "Article 144- International treaties concluded by El Salvador with other States or international organizations, constitute laws of the Republic when they enter into force, in accordance with the provisions of the Treaty and of this Constitution. The law may not modify or repeal what was agreed in a treaty in force for El Salvador. In the event of a conflict between the Treaty and the law, the Treaty shall prevail".

34 "Article 145- Treaties cannot be ratified if they restrict or somehow affect the constitutional provisions, unless the ratification is done with the corresponding reservations. The provisions of the Treaty on which you make the reservations are not law of the Republic.” Our translation, the original text says: “No se podrán ratificar los tratados en que se restrinjan o afecten de alguna manera las disposiciones constitucionales, a menos que la ratificación se haga con las reservas correspondientes. Las disposiciones del tratado sobre las cuales se haga reservas no son ley de la República”.

35 “The first part of the article [244] could be used to argue that, where a judge accepted that such grave infraction had been committed, the duty to «especially penalize» would preclude the application of amnesty. The
However, as yet most criminal investigations are at the preliminary stage and in the Prosecutor's head, it means they have not reached formal investigation stage, no substantial progress has been made, and the statute of limitation has already been declared in the only case where it was established that amnesty (Jesuits) was not possible. From now on, to move from impunity to accountability, in terms of judgements, as well as to deal with the obstacle of delay in the judicial investigation and the possibilities of granting Amnesty benefit, we must think in the statute of limitation.

Graph 3: Trials and accountability
El Salvador (1992-2012)

III. (National and) International Contextual Factors Contributing to the Shift towards Accountability

The lack of political will of the government to prosecute those responsible for crimes related to the armed conflict together with the inefficiency of the judicial system and the very broad scope of the amnesty, have led to seek justice before Internationals Courts. In this sense, the Inter-American system of human rights protection and the courts of other countries, have pressured national courts providing greater accountability that in domestic level.

second part potentially contradicted Article 1 of the amnesty law, which had amnestied crimes committed right up to 1 January 1992. This mean that incumbent President Cristiani –elected in 1989- was attempting to introduce amnesty for crimes committed within his own presidential period, in contravention of the constitution’s specific prohibition. The Supreme Court’s 2000 ruling acknowledged this contradiction, but stopped short of resolving it. Instead it passed the buck to lower courts, declaring that individual judges would have to decide whether amnesty should be applied to any future cases brought before them involving «infractions of constitutional rights» (not defined) or crimes committed by «public functionaries» between 1989 and 1 January 1992” (Collins, 2010: 173).
The role of the IACHR and IACtHR:

In November 1989, the day after the murder of the six Jesuit priests and their collaborators in the Universidad Centroamericana (UCA), the case was put forward to the Inter-American Commission of Human Rights (IACHR) (Cuellar, 2010: 136). The IACHR in a report of December 1999, declared the responsibility of the Salvadoran Government for the murders, and recommended the investigation and punishment of those responsible, as well as repairs to the victims’ families and the repeal of the amnesty law. The case was brought by the NGO Americas Watch before the Commission, providing the inactivity of State for investigation and punishment of the crime, as indeed happened.36

The IACHR had already in an earlier report of 1994 on the situation of human rights in El Salvador stated that the Commission estimated, “on the basis of preceding considerations, - regardless of the eventual need for negotiations of peace, and eminently political reasons-, that large parts of the general amnesty law passed by the Legislative Assembly of El Salvador constitute a violation of international obligations by that country by ratifying the American Convention on Human Rights, allowing, on one hand, the figure of "reciprocal Amnesty", which did not have a recognition of responsibility as a prelude (despite recommendations of the Truth Commission); its application to crimes against humanity; and the elimination of the possibility of obtaining adequate compensation for victims”. 37

Also, in 1999 the Commission issued a substantive report ON the cases of Víctor Hernández Vásquez and Lucio Prada Cea and others, 38 recommending, in both cases, to investigate the facts and punish those responsible and repair the victims. In the case of Prada Cea and others the Commission stated that the Salvadoran State is responsible for "ensuring the effective exercise of the rights guaranteed by the Convention to all citizens, despite the provisions of the law on General Amnesty for the consolidation of peace (Decree No. 486), to which end, it must rescind ex tunc the law in case if necessary”. In 2000 there was a new ruling from the Commission, this time in the case of the extrajudicial execution of Monsignor Oscar Arnulfo Romero, which insists on the recommendations of the before mentioned cases.39

In answer to the previous pronouncements in late 2007 the Salvadorian government requested a special audience with the Inter-American Commission, a move that could be seen as a challenge of impunity in the country. In the same sense, in the year of the fifteen anniversary of the peace accords, the government described the Salvadorian transition as “still fragile”

36 In later writings on request “the petitioners argue that the crime was planned and executed by government agents belonging to the Armed Forces of El Salvador. They add that research conducted by the Salvadoran authorities was ineffective. Despite serious evidence and witness testimony that implicated senior officials, the intellectual actors were not investigated. Furthermore, the only two military convicted for the murder were benefited the General Amnesty Law of 1993, which ensured complete impunity for the crime.” In: http://www.cidh.org/annualrep/99span/De%20Fondo/El%20Salvador10.488.htm (Access, June 17, 2013)
making reference to the supposed links between continued amnesty and continuing pace (Collins, 2013: 177).

At the same time, the Inter-American Court of Human Rights (IACtHR) issued a sentence of 1 March, 2005 in the case of the Serrano Cruz sisters, which resulted in the establishment of the National Commission for the Location of Missing Children (Comisión Nacional para la Búsqueda de Niños y Niñas desaparecidos). In 31 August, 2011, the IACtHR ruled in the case of Contreras and others, in both cases, the Court ruled against the Salvadoran State and ordered investigations, prosecutions, and both material and symbolic reparations. In the Serrano Cruz sisters case, the Court in addition decided that "the State shall adopt the following measures in order to determine the whereabouts of Ernestina and Erlinda Serrano Cruz: functioning of a National Commission in search of young people who disappeared when they were children during the armed conflict and participation of civil society"; the creation of a web site's search; and creation of a system of genetic information [...]. "The State must designate [...] a day dedicated to children which, for various reasons, disappeared during the internal armed conflict".

On 25 October, 2012, in the case massacres in El Mozote and surrounding places, the IACtHR for the first time ruled on the issue of amnesty in El Salvador. This ruling is essential, not only because it clearly positioned itself against the application of amnesty, but also for the clarity and forcefulness of its ruling. The ruling considered amnesty not only to be a violation of international norms but also of the peace agreements. The judgment of the Court also ruled on the complete lack of effect of the decision on Constitutionality of 2000, which supposedly modulates the amnesty.

40 "Witnesses, included former FMLN peace negotiator Salvador Samayoa, were called on the support the government’s insistence that the Salvadorean amnesty had been a consensual arrangement between the main political factions of the day" (Collins, 2010: 177).


44 By pointing out: "it is evident that the ratio legis of the Amnesty Law for the Consolidation of Peace, chapter I ("armed forces"), section 5 ("overcoming of impunity"), of the Peace Agreement of 16 January 1992, rendered inoperative, granting amnesties and leaving unpunished all serious offences against international law committed during the internal armed conflict, although that would have been determined by the Truth Commission as matters to investigate and punish. Thereby, the enactment of the law on General Amnesty for the Consolidation of Peace opposed expressly what the parties involved in the armed conflict had established in the Peace Agreements, which ordered the cessation of hostilities"(inter-American Court, 2012, paragraph 292).

45 On the facts in the study, the Court said: "in the present case, it has been twenty years since the investigation of massacres in El Mozote and surrounding places was closed […] The decision of the Constitutional Chamber of the year 2000 […] has not had any effect in the present case, and after twelve years of its issuance, it seems illusory that it shall translate into a chance to effectively reopen the investigation […] the Law on General Amnesty for the consolidation of Peace has resulted in the establishment and perpetuation of a situation of impunity due to lack of research, chase, capture, prosecution and punishment of those responsible for the facts" (Inter-American Court, 2012, paragraph 294 and 296).
The role of human rights cases in Spanish courts:

Gross human rights violations stemming from the civil war in El Salvador did not only appear before the regional commission and court of human rights. It was also subject to treatment by Spanish courts. Due to its universal jurisdiction, these courts decided to hear several cases.

Article 23.4 of the Spanish Organic Law of Judicial Power establishes the competence of Spanish jurisdiction to judge crimes of genocide, crimes against humanity, and terrorism committed overseas, even when these crimes are committed by non-nationals. While in the sentences STS 319 and 1362 2004 of the Spanish Supreme Court confirmed the competence of Spanish jurisdiction for prosecuting crimes committed in both Chile and Argentina, the Court in 2003 refused jurisdiction for offenses that had been committed during the civil war in Guatemala. This decision was overturned by the Spanish Constitutional Court in its judgment STC 237/2005. In 2009 the Spanish Organic Law of Judicial Power was amended by introducing limitations on Spanish courts’ jurisdiction, requiring that the crime to be prosecuted had to have a connection with Spain, i.e. that the case had affected Spanish citizens. In El Salvador, the Criminal Code of 1997, Article 10, (still operational) recognizes the principle of universality of criminal justice.

In May 2012, the Supreme Court of Justice of El Salvador denied extradition claimed by Spain. A Spanish court had ordered the extradition of a group of 13 officers (in retirement) of the Salvadoran army, processed by the Spanish National Audience for the murder of six Jesuit priests and their collaborators in the Centro American University (UCA) in 1989.

According to press reports, the Supreme Court relied on Article 28 of the Salvadoran Constitution, which says that extradition is not admissible against nationals under any circumstances, nor if it concerns foreigners for political crimes.

This case was modified after the facts for which extradition is claimed, but the SCJ said that the existing rule could not be applied retroactively. In the Salvadoran press (La Prensa Gráfica) on Thursday 10th of May 2012 the headline was: “Slain Jesuit case in El Salvador will be filed in Spain.”

The case was conducted in Spain by Judge Eloy Velasco of the Association Pro Human Rights in Spain (APDHE), and the Center for Justice and Accountability (CJA) in San Francisco (USA) put forward a complaint in 2009. Already the previous year the Salvadoran Court had denied, on two occasions, the execution of the arrest warrants. As already seen, in the domestic sphere, after the rule of the SCJ on the Amnesty Law in 2000, there was an attempt to open the case of Jesuitas. However, the case was closed alleging prescription.

In addition to the criminal cases against El Salvadorans that have been tried in Spanish courts, there have been some civil lawsuits against El Salvador nationals in the US. Although these

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46 Recursos de amparo promovido por Rigoberta Menchú y otros, contra resoluciones judiciales adoptadas por la justicia española. Available at: http://www.boe.es/boe/dias/2005/10/28/pdfs/T00045-00057.pdf (acceso, 19 de junio de 2013)

47 The Salvadorian Criminal Law also applies to crimes committed by any person in a place not under the jurisdiction of El Salvador, provided that they affect property internationally protected by specific agreements or norms of international law or involve a serious impairment to universally recognized human rights.

have been mainly been high-profile cases, they have not generated particular interest in the media and neither resulted in a justice “cascade effect” in domestic courts (Collins, 2010, 222). The US has also deported of foreigners considered "terrorists and violators of human rights on U.S. soil". Among them features former Salvadoran Defense Minister Guillermo García, who held office between 1979 and 1983. During this period he was head of the army, and massacres, disappearances and torture increased in numbers while he was in command. Guillermo García though he had already been found guilty in a civil trial in Florida, was deported to the El Salvador.

During this period, also in the United States there are deportation proceedings against foreign "terrorists and human rights violators on USA soil," including former Salvadoran defense minister Guillermo García, who held that position from 1979 to 1983, period when massacres, disappearances and torture increased. He also had been convicted in a civil trial held in Florida.

REPARATIONS

Though the El Salvadoran government and justice system have been very reluctant to deal with criminal prosecution for past human rights violations, some progress has been made in the field of victims’ reparations. As will be seen, this has occurred mainly in the symbolic sphere and often motivated by the action of the NGOs or decisions of the Interamerican system that have pressured in this sense. In the governmental level may see a change with the political change of 2009.

Even though a Plan for Compensation was initially established to benefit the families of the war victims in 1992 for disabled as a result of the conflict as well as their familiars in accordance with the recommendations of the Truth Commission, the victims of human rights violations and their families hardly received any reparations.

The United States Institute of Peace in July 1992 pointed out that “the government has not implemented the recommendation [of the Truth Commission] of establishing a fund for the payment of reparations to victims”. The UN Secretary-General in 1993 rule on the delays

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50 Fund for the protection of wounded and disabled as a result of the armed conflict, Legislative Decree Nº 416, 1992. “Article 22.-beneficiaries of this law are: Salvadoran people crippled or disabled as a direct result of the armed conflict in the country, as well as those parents that have lost their children, and unable or under aged who lost their parents for the same reasons...”.

51 In the opinion of Sieder (2002: 262), “Nor Cristiani, nor his successor, Calderon Sol, or the members of the high command have ever acknowledged in public the responsibility of the State in serious violations of human rights.” Neither the FMLN admitted its responsibility and ignored who advised guerillas commanders identified in the report had no public charges. The Government has not proposed any program for the benefit of individuals or communities most affected. No national monument has been erected and few exhumations have been conducted in multiple graves that exist throughout the country. The exhumation carried out at El Mozote and the monument there raised –all under the auspices of the United Nations– to commemorate the murder of more than 1,000 people, are a rare exception”.

and difficulties in the programs of restitution of land and reintegration of ex-combatants and war crippled.\textsuperscript{53}

The National Reconstruction Plan (PRN), implemented in 1992-1996, was aimed to achieve the integration of former rebels into the productive system, by granting loans and grants for training programs. In rural areas was established Land Transfer Program (ITP), which has been described as a failure, due to low production performance and abandonment of properties. By other hand, the disabled pension awards were only made until 1995 (Silva, 2000).

\textit{Toward symbolic reparations}

Even though there was little progress in the field of victims’ reparations for the first twenty-five years after the government officially had committed to pay reparations, there was a notable change when the FMLN government came to power in 2009. This suggests that political will is a central factor in determining whether reparations are granted to victims, or not.

During the 20 years of ARENA government, “reparations for HRVs were virtually nonexistent” (Collins, 2010: 161). The symbolic recognition in memory of the victims (such as monuments, memorials etc) during successive ARENA governments and the erection in 2003 of the Monument to Memory and Truth (\textit{Monumento a la Memoria y a la Verdad}), were invariably promoted by NGO’s (Lazo Fuentes y Rey Tristán, 2011: 229) – not the state.

After 2009, The FMLN government’s prime focus has been on symbolic reparations, mostly of collective character. Many of these reparations come in response to civil society demands/initiatives, or in response to decisions of the (IACtHR). At the beginning of his presidential period Mauricio Funes received a proposal from various organisations linked to the Pro Historical Memory Committee, entitled, "Politics to guarantee the rights of the victims of Human Rights violations" (2010). This lead to a transformation of the relationship between the Government and the victims of the war, opening up a space for dialogue, recognition and propositional spaces (those that allow dialogue between the government and victims). However, the implementation of policies of reparation and historical memory are still pending, as we explain in the next lines.

Funes has carried out a series of reparations, especially at the symbolic level: "posthumous award in 2009 to the Jesuits murdered by the army public request for forgiveness by the President in 2010 for violations of human rights carried out by Government officials during the war; request for forgiveness by the Government in 2010 to the family of the murdered Archbishop Romero; as well as the promotion of the Salvadoran government to the UN's "International Day for the Right to Truth", on March 24, 2011, the date of the assassination of

\textsuperscript{53} "On 23 November, 1993, the Secretary-General informed the Council that, several key aspects of the Peace Agreements were still experiencing serious delays, including the land transfer programme and the programmes of reintegration of ex-combatants and war disabled. A year after having reached an agreement on the land-transfer programme, despite the commitments made by both parties to expedite the process, had granted property titles to less than 10% of the potential beneficiaries. The main problem remained consisting to determine who was entitled to land. The difficulties that have arisen, and the slow progress of the program, made potential donors reluctant to make new contributions. The Secretary General appealed to the parties so they were flexible and acted in the belief that the other technical, financial and legal difficulties could be overcome if showed the necessary political will."

Archbishop Romero; the date of the murder of Monsignor Romero" (Lazo Fuentes and Rey Tristan, 2011: 230). On 16 January, 2012, in the Act of commemoration of the massacre of el Mozote, President Funes apologised to the victims and announced the creation of the national programme for victims of grave violations of human rights in the context of the armed conflict in the country.

By Decree No. 5 of January 15, 2010, and in response to IACtHR’ judgement in the case of the Serrano Cruz sisters, the National Commission for the Location of Missing Children was established and began its functions on 14 March, 2011. As of May 2013, there are no public documents on the progress of its work. Hence, we cannot say anything about the implications of this national commission on accountability, though we consider its establishment a positive step in the right direction.

In 2010 the National Commission to Repair Victims of Human Rights Violations During the Internal Armed Conflict was created, by Decree No. 57 of 5 May. However, apparently, "the UN Human Rights Committee after its Examination has criticized the report presented by the State due to the shallow depth in content of the National Reparations Programme, as it fails to comprehensively ensure all aspects of the right to adequate reparation and does not provide for the active participation of the victims"(Lazo Fuentes y Rey Tristán, 2011: 30). Likewise, representatives of several NGO's pointed out in interviews that currently, a comprehensive reparation policy does not exist.

54 La Corte Interamericana de Derechos Humanos, en sentencia del 1 de marzo de 2005, sobre el caso de las Hermanas Serrano Cruz Vs. El Salvador, estableció como medida de reparación a las víctimas la creación de una Comisión Nacional de Búsqueda de Jóvenes que desaparecieron cuando eran niños durante el conflicto armado interno.
55 Original en español. Traducción nuestra: “el Comité de Derechos Humanos de la ONU ha criticado en su Examen del informe presentado por el Estado la poca profundidad del contenido del Programa Nacional de Reparaciones, pues no asegura de manera amplia todos los aspectos del derecho a la reparación adecuada y no contempla la participación activa de las víctimas” (Lazo Fuentes y Rey Tristán, 2011: 230).
56 Pro-Búsqueda, Fespad, Tutela Legal, Comité de Ex pesos Políticos. Project 10-CAP2-1874, “Against impunity and transitional justice in Central America”, funded by the Spanish Agency for International Cooperation and Development (AECID), within the framework of the Permanent Open Call (CAP) for cooperation and development”, by the researcher in the fieldwork in the country, from August 2011 to January 2012.
Table 1. An overview of reparations in El Salvador (1989-2012)

<table>
<thead>
<tr>
<th>Administration</th>
<th>Date</th>
<th>Policy or measure</th>
<th>Carried out by</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2003</td>
<td>Monument to Memory and Truth</td>
<td>NGO’s</td>
</tr>
<tr>
<td></td>
<td>2007</td>
<td>Day to commemorate children who disappeared during the armed conflict</td>
<td>Government, in compliance with IACtHR verdict</td>
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<tr>
<td></td>
<td>2010</td>
<td>Public apology for HRVs by state agents</td>
<td>Government</td>
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<tr>
<td></td>
<td></td>
<td>Public apology to the family of assassinated archbishop Oscar Romero</td>
<td>Government</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Creation of National Commission for the Location of Missing Children (Comisión Nacional para la Búsqueda de Niños y Niñas desaparecidos)</td>
<td>Government, in compliance with IACtHR verdict</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Creation of National Commission for Reparations to Victims of HRVs (Comisión Nacional de Reparación a las Víctimas de Violaciones a los Derechos Humanos), charged with drawing up a reparations programme to be implemented by the President’s Office</td>
<td>Government</td>
</tr>
<tr>
<td></td>
<td>2011</td>
<td>Salvadoran state proposed to the UN the establishment of an International Day for the Right to Truth “Día Internacional del Derecho a la Verdad”</td>
<td>IACtHR verdict</td>
</tr>
<tr>
<td></td>
<td>2012</td>
<td>Public apology to victims of the El Mozote massacre</td>
<td>Government</td>
</tr>
</tbody>
</table>


In the above table can see clearly how the actions taken before 2009 (during the ARENA governments) are not only few, but are driven by NGOs or decisions of the Interamerican system. From 2009 onwards is seen action driven directly by the government, and some by the Court. This progress, of great importance, is still largely subscribes in the symbolic sphere. In this sense, it should be accompanied by substantial reparation measures, whose implementation would correspond to the National Reparation Commission, not yet active. The next graph evidences an important step towards accountability although it is far away from the optimum level.
IV. Conclusions

As demonstrated in this chapter, the Salvadoran transitional process, initially accompanied by the international community, promised accountability for human rights violations committed during the civil war. A number of obstacles, of which the real lack of alternation in government for 20 years is the most important, have made progress in accountability much slower and less extensive than initially hoped for.

Initially, ARENA and the FMLN, the signatories of the 1992 peace agreement, agreed to establish a Truth Commission. This positive step in terms of accountability was immediately counteracted by Congress passing an amnesty law at the same time that the TC launched its report in March 1993, which made criminal prosecution for the violations documented by the Truth Commission virtually impossible. The expression "mutual Amnesty", used by the IAHRC in its 1994 report, shows how the two signatory parties of the peace agreement also agreed to impunity, to the benefit of both parties. The government’s reluctance to deal with the past was further demonstrated in its unwillingness to implement the reparations recommended by the Truth Commission.

The public debate, however, was limited and mainly focused on ending the conflict, so the political discourse surrounding the establishment of TJ mechanisms never focused on victims’ rights. In this sense, while the Truth Commission was seen as a way of ending impunity, the Congress guaranteed impunity for human rights violations by passing an amnesty law, which made it impossible to assign criminal and civil responsibility.
The Peace accords foresaw the need for new institutional arrangements, such as the reduction of military power; the demilitarization of the political system; and a strengthening of the judicial sector through judicial reform. However, in practice, the balance of power between the FMLN and ARENA has largely determined what reforms have been carried out, as well as the scope of the reforms.

It is Recall that El Salvador is a country where the same political party held the presidency and dominated the government for more than 20 years. A true political shift came only in 2009 when ARENA was defeated by the FMLN candidate. After the peace accords in 1992 these two parties have jointly controlled the majority of votes over 80% of the votes for the legislative assembly in 2009 (MOE-UE, 2009: 50). At the same time these two political parties who hold greater ideological distance in Latin America (Alcántara, 2008: 155).

Various institutions have been put in place to ensure more accountability, but in practice these institutions have been weak/have not managed to produce the desired result”. The Constitutional Chamber, which is part of the Supreme Court, is influenced by partisan dynamics, as is the country's bureaucracy, in general. The pacts between political forces have distorted the institutional reforms implemented after the peace agreements, leaving ineffective the checks and balances system. As Sieder (2002) and Collins (2010: 160) observed, “transitional justice in El Salvador was «party-dominated process» in which human rights issues «all but disappeared from the political agenda»”.

It should be noted here a controversial issue in early 2012 when there was appointed a military officer for the Ministry of Public Security, violating one of the key points of the Peace Accords: the separation of national defense from public safety57.

The problem of political partisanship and lack of judicial independence has been compounded by the absence of a strong civil society/strong or unified human rights organisations. Our field research conducted in El Salvador in connection with this project allowed us to detect problems of communication and collaboration among NGOs that support the human rights cases before the courts pr previous instances, as well as problems with the management and information trade-off within the organizations themselves. Other studies have already observed the weakness of these organizations and the lack of tradition of lawsuits and litigation strategies.58 Only two of the organizations we consulted had a clear strategy for litigating cases of forced disappearance of children (Pro-Búsqueda) and for cases of massacres (Madeleine Lagadec). Although these organisational weaknesses has slowed down the action on human rights cases, NGOS have nevertheless managed to put human rights violations on the agenda and hence advanced the public debate on human rights.

Another factor which has had a negative impact on accountability for civil war abuses is the absence of an independent media sector. The mass media in El Salvador is monopolized by influential business groups, mostly aligned with ARENA, which has not helped the human

57 The extraordinary power and autonomy that the military had until mid-1990 (Alcántara, 2008: 156) was maintained because of the military linkages with ARENA (the political party that held the presidency for 20 years) and because their broad social support (LAPOP, 2010: 123). Pérez y Córdoba (2003: 12) estimate civilian control of the armed forces of Central America and in the case of El Salvador found that the subordination of the military is minimal and its prerogatives are many.

58 Collins said: “The relative absence of specific legal strategy on the part of HROs—as, indeed the very fact that so many of these organizations do not have a developed or prioritized accountability agenda—can therefore be interpreted as itself a rational response to an extremely negative prevailing opportunity structure” (Collins, 2010: 193).
rights issue. Overall, we can conclude, as does the UNDP Human Development Report (2010) that public participation in El Salvador is limited to voting.\textsuperscript{59}

Finally, an obstacle to accountability for past violations is the current serious situation of violence in the country. In 2009 there were 71 homicides per 100,000 inhabitants making El Salvador one of the most violent societies in the world.\textsuperscript{60} The high crime levels coupled with low conviction rates for i.e. homicide indicate that the judicial system is not capable to deal adequately with human right violations – past or present.

Despite this rather grim picture, there has been some progress in the field of accountability. The persistent claims for truth, justice and reparation, both domestically and internationally, have led to the recent recognition of responsibility by the State for past violations, headed by President Mauricio Funes. This was an important political move after decades of government denial of any responsibility for these massive violations. Other important steps towards more accountability have been judicial pronouncements such as the IACtHR in the El Mozote case, and the Constitutional Chamber ending the monopoly of criminal action (that now is not only a prerogative of FGR); and the creation, at least in the formal level, of a national reparation program, whose advances are yet to be seen.

For the criminal prosecutions to advance in the courts, there must be a change in the current system where a prosecutor lacking independence, de facto, keeps the cases archived inactive. Moreover, the reparation mechanisms that have been proposed by the present Government, some by provision of financial international institutions, should also contribute to a greater awareness and dissemination of the truth, if and when implemented.


\textsuperscript{60} The World Health Organization considers homicide epidemic at rates higher than 10 per 1000,000\textsuperscript{60}. This serves to minimize the importance of past crimes and argue the impossibility of his judicial investigation (Cuellar, 2010: 145).
Graph 5: From impunity to accountability: An overall picture
El Salvador (1992-2012)


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