

From Amnesia to Memory, from Memory to Justice: the Case of El Salvador

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Abstract: This article contends that the July 2016 constitutional decision overturning El Salvador's amnesty law has presented the country with a new historical, political, and legal opportunity to address the impunity of the most serious crimes committed during the armed conflict of 1980-1992. Improvements in accountability for past atrocities would benefit the present fight against impunity. The prosecution of emblematic cases, if done well, could change the official narratives of denial and forgetting, and provide for the proper recognition of the victims.

Keywords: Armed conflict in El Salvador, impunity, victims, justice, collective memory

Societies recovering from mass human rights violations and periods of political violence have attempted reconciliation in a variety of ways; nevertheless, more often than is desired, transitional processes fail to meet this objective due to the absence of a comprehensive focus and sustained efforts to guarantee truth, justice, reparation, and non-repetition. This is the case of El Salvador.

Twenty-five years ago, in 1992, the government and the FMLN² guerrillas ended a 12-year armed conflict that had left more than 75,000 victims in its wake through Peace Accords brokered under the auspices of the United Nations. At the time, this peace process was considered a successful example of negotiated settlement,³ as it included not only a ceasefire but also a pact that promised to address the root causes of the conflict by transforming the political, economic, and judicial systems.

We now know that it lacked some essential elements, such as a central focus on the victims and the inclusion of broad sectors of society to support the future implementation of the accords.

As the armed conflict receded into the past, the aspirations for structural change lost their momentum, giving way to a post-conflict scenario controlled by the desire to bury historical memory. Most of society

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²The Farabundo Martí National Liberation Front [*Frente Farabundo Martí de Liberación Nacional*] (FMLN) was created in 1980 as an umbrella group of the five armed political opposition groups: the Popular Liberation Forces (FPL), the Revolutionary Army of the People (ERP), the Armed Liberation Forces (FAL), the Armed Forces of National Resistance (RN), and the Revolutionary Party of Central America Workers (PRTC). Pursuant to the peace accords, the FMLN became a political party.

³ See Ricardo Ribera, "El Salvador: La negociación del acuerdo de paz ¿Un modelo para el mundo?" ["El Salvador: The Negotiation of a Peace Accord – A Model for the World?"] *Realidad* 37 (January-February 1994): 89–134, <http://www.uca.edu.sv/revistarealidad/archivo/4e2da01f8b2eeelsalvadorlanegociacion.pdf>.

embraced the idea of wiping the slate clean, whether out of fear or indifference. This was in sharp contrast to the processes undertaken in a significant number of other Latin American countries, where consensus was reached on the need to learn from a past evil—such as war—as the basis for a better future.

Surviving victims endured their living memories in private, with no public acknowledgement of their grief, which only added to the harm they suffered.

This covenant of silence was sealed by an amnesty law⁴ that was broad and absolute,⁵ violating all the relevant international standards. The law remained in force for twenty-three years, until the Supreme Court of El Salvador put a definitive end to it in July 2016.⁶ This court decision caused a stir in various sectors, opening an unprecedented chapter for justice, despite the fact that the political branches of government did not support the prosecution of past crimes.

The amnesty law was enacted immediately after El Salvador's Truth Commission issued its report in March 1993, in open rejection of the Commission's findings and recommendations. The Commission had reached the conclusion that most of the massacres, forced disappearances, and cases of torture during the period from 1980 to 1992 had been committed by members of the armed forces or by death squads linked to the armed forces, and—to a lesser degree—by the guerrilla groups.⁷ This scenario was encouraged by a complicit justice system that was part of a pattern of institutionalized impunity.

The report highlighted cases that illustrated the patterns of violence that erupted in El Salvador during a period of so-called “madness.”⁸ The report stated that, “It is impossible to blame this pattern of conduct on local commanders and to claim that senior commanders did not know anything about it. [...] massacres of the peasant population were reported repeatedly.”⁹

In the majority of these cases, the Truth Commission named the persons it found to have perpetrated, ordered, or covered up the atrocities. It recommended removing all identified public servants and members

⁴ General Amnesty Law for the Consolidation of Peace [*Ley de Amnistía General para la Consolidación de la Paz*], Legislative Decree No. 486, published on March 22, 1993.

⁵ The law established an “absolute, full and unconditional amnesty [for] all persons [...] who participated in any manner in committing political crimes, related common crimes, or common crimes carried out by at least 20 persons, prior to January 1, 1992.”

⁶ Judgment of Unconstitutionality 44-2012/145-2013, July 13, 2016.

⁷The Truth Commission received more than 22,000 complaints of serious acts of violence committed in El Salvador. More than 60% of those crimes were extrajudicial executions; over 25% were forced disappearances; and over 20% included complaints of torture. Those who provided testimony attributed nearly 85% of the cases to state agents, paramilitary groups with ties to state agents, and death squads. Accusations were made against members of the armed forces in nearly 60% of the complaints, and against members of state security bodies in approximately 25%. The complaints received held the FMLN responsible in about 5% of the cases. *From Madness to Hope: the 12-year war in El Salvador: Report of the Commission on the Truth for El Salvador*, ch. IV, “Cases and Patterns of Violence.” Available at: <https://www.usip.org/sites/default/files/file/ElSalvador-Report.pdf>

⁸ *Ibid.*, Introduction, p. 1.

⁹ *Ibid.*, ch. IV, sec. C, No. 4, “Pattern of Conduct,” p. 131.

of the armed forces from their posts, and proposed a number of changes to the judiciary and the state security institutions. Most of the recommendations were never implemented.¹⁰

Striking down the amnesty law

Initial attempts to obtain a judicial declaration of unconstitutionality against the 1993 amnesty law were unsuccessful.¹¹ In view of the diminished opportunities in the national justice system, human rights organizations sought international protection, especially from the inter-American human rights system.

At the end of the 1990s, this effort yielded results with the publication of the merits reports of the Inter-American Commission on Human Rights (IACHR) in the cases of the murders of Father Ignacio Ellacuría and other persons (1999) and of Monsignor Oscar Arnulfo Romero (2000),¹² among others. The IACHR declared in its reports that the amnesty law of 1993 was incompatible with the American Convention on Human Rights; it recommended that the State of El Salvador render the law null and void, investigate these crimes fully and effectively, and provide reparations to the victims.¹³

After the IACHR's reports were issued, the Constitutional Chamber of the Supreme Court of El Salvador expedited the processing of an unconstitutionality action challenging the amnesty law, which had been filed in 1998 by human rights organizations. In September 2000, the Chamber handed down a judgment finding that the 1993 amnesty was not applicable to human rights violations, or to crimes that had taken place during the presidential administration in which it was enacted.¹⁴

¹⁰ For more information on compliance with the peace accords, see Roberto Oswaldo López, Carolina Quinteros & Carlos Guillermo Ramos, *State Reform after the Peace Accords: Negotiating and Implementing an Inclusive Political Settlement in El Salvador*, IPS Paper 13 (Berlin: Berghof Foundation, 2015), <http://ips-project.org/wp-content/uploads/2015/05/Paper-1-El-Salvador-english-layout-final.pdf>.

¹¹ In a judgment handed down on May 20, 1993, the Constitutional Chamber of the Supreme Court of El Salvador ruled that it lacked jurisdiction to assess the constitutionality of the amnesty law, finding that the provision on amnesty was an "eminently political act."

¹² Report No. 136/99, Ignacio Ellacuría S.J. *et al.*, December 22, 1999; Report No.37/00, Monsignor Oscar Romero, April 13, 2000. Also of particular note was Report No. 1/99, Lucio Parada Cea *et al.*, January 27, 1999.

¹³ Similar determinations were issued by the human rights protection bodies of the United Nations, such as the Human Rights Committee, the Working Group on Enforced or Involuntary Disappearances, and the Committee against Torture. See UN, Human Rights Committee, Concluding Observations, El Salvador, Doc. CCPR/C/79/Add.34, 18 April 1994; Human Rights Committee, Concluding Observations, El Salvador, Doc. CCPR/CO/78/SLV, 22 August 2003; Human Rights Committee, Concluding Observations, El Salvador, Doc. CCPR/C/SLV/CO/6, 18 November 2010; Report of the Working Group on Enforced or Involuntary Disappearances, Mission to El Salvador, U.N. Doc. A/HRC/7/2/Add.2, 26 October 2007; Concluding Observations of the Committee against Torture on El Salvador, U.N. Doc. CAT/C/SLV/CO/2, 9 December 2009.

With respect to the principal approaches of the Latin American case law rejecting the application of amnesty laws in the prosecution of international crimes, which in turn reflects the standards of the inter-American human rights system, see Ximena Medellín, *Digest of Latin American Jurisprudence on International Crimes*, Due Process of Law Foundation, 2009, p. 273, available at: <http://www.dplf.org/sites/default/files/digestenglishs.pdf>

¹⁴ Judgment of the Constitutional Chamber, consolidated case 24-97/21-98, September 26, 2000.

Although this judgment did not declare the amnesty law unconstitutional, it opened the door for it to be found invalid in cases involving fundamental rights. From that point forward, the amnesty issue could be argued in the courts, and judges had the authority to refrain from applying it (something that never happened). The official line that the past should be left alone so as not to jeopardize peace had resonated with justice authorities, who were used to being accountable to political interests.

Later, in its judgment in the *Case of El Mozote*,¹⁵ the Inter-American Court of Human Rights examined the application of the amnesty law in relation to the criminal investigation into the massacres, ruling its effects null and void and ordering the State to take the necessary measures to ensure that the law not continue to be an impediment to criminal prosecution.

Notwithstanding these advances made in the domestic and international case law, impunity continued to prevail in El Salvador. Numerous complaints filed by victims and their representatives were ignored or dismissed by the justice system.¹⁶

Justice was denied not only through the invocation of the amnesty law but also through other practices of impunity, such as using statutes of limitation to bar prosecution;¹⁷ the unwarranted shelving of cases or simple procedural inactivity, and conducting unserious investigations that were doomed to fail from the start.¹⁸

The 2016 Judgment of Unconstitutionality

¹⁵ I/A Court H.R., *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252.

¹⁶ After peace was restored—and even during the war—victims represented by human rights organizations filed criminal complaints alleging forced disappearances, murder, and torture. Following the judicial reform undertaken to establish an adversarial justice system, complaints were filed with the Office of the Prosecutor General [*Fiscalía General de la República*], in order for it to investigate the facts and open the appropriate criminal proceedings. Evidence gathered by Salvadoran organizations and the Human Rights Ombudsman’s Office shows that despite the persistence and cooperation of the victims, these cases remained pending for years without moving past the preliminary stage, and with no procedural activity whatsoever; in some instances, cases were shelved before the investigation of the perpetrators was even completed. With respect to the inefficiency of the investigation and punishment of crimes committed during the armed conflict, see, e.g., “*La impunidad en El Salvador: tragedia del pasado y del presente*” [“Impunity in El Salvador, A Past and Present Tragedy”], Report presented to the IACHR during its 131st session, on March 12, 2008, by the *Comisión de Trabajo en Derechos Humanos Pro Memoria Histórica de El Salvador* (Pro-Historical Memory Commission) and the Center for Justice and International Law (CEJIL). See also I/A Court H.R., *Case of Contreras et al. v. El Salvador*. Merits, Reparations and costs. Judgment of August 31, 2011. Series C No. 232, paras. 145 *et seq.*

¹⁷ See Resolution of the Human Rights Ombudsman’s Office (PDDH) of El Salvador, October 30, 2002, “Case of the Jesuits,” Report of the Ombudsman’s Office with respect to impunity in the case of the arbitrary executions of Ignacio Ellacuría, S. J.; Ignacio Martín Baró, S.J.; Joaquín López y López, S.J.; Amando López, S.J.; Segundo Montes, S.J.; Juan Ramón Moreno, S.J.; Elba Julia Ramos, and Celina Mariceth Ramos [in Spanish].

¹⁸ During the thematic hearing held before the IACHR on March 19, 2015, the Due Process of Law Foundation (DPLF) and the Human Rights Ombudsman’s Office (PDDH) of El Salvador presented a report on the situation of impunity with respect to grave human rights violations committed during the armed conflict in El Salvador, describing the different patterns of impunity related to these types of cases.

After several lawsuits and years of waiting, the Constitutional Chamber of the Supreme Court of El Salvador ruled on July 13, 2016 that the amnesty law of 1993 was unconstitutional because it violated the country's international obligations to investigate and prosecute, and therefore should no longer be applied to crimes against humanity and war crimes committed by any of the factions in conflict.¹⁹ To a large extent, the significant evolution of national and international law in recent years, added to the ceaseless criticism of the amnesty law, virtually forced the Supreme Court justices to take that position.

Addressing the argument that peace processes require different criminal rules than other transitional processes,²⁰ the Court explained that, while there may be a certain "margin of appreciation" in the enforcement of the punishments imposed against the perpetrators at trial, this did not mean ignoring human rights obligations.

The judgment also proscribes the future enactment of any other law with similar effects, prohibits the application of statutes of limitation, reestablishes the obligation to provide victims with access to justice, and establishes guidelines for legislation on reparations.

The judgment of El Salvador's Supreme Court was well-received by the victims because it is consistent with their demands, but many public servants, political leaders, and former and current members of the military expressed their opposition and fear that it would lead to a "witch hunt."²¹ A year and a half later, it is obvious that that has not happened and will not happen. As indicated below, just three cases have been reopened during that time.

Beyond its legal effects and the discontent of some sectors, the judgment overturning the amnesty law has marked a turning point. From the time the judgment was published, it has been assumed that there is a kind of societal permission to talk about accountability for the past without being seen as wanting to attack any side. Different forums have opened up to debate the official narratives, the experiences of the victims—and even of the perpetrators—and to engage in critical and creative thinking about what to do now with that reality. Suddenly, both the victims and those responsible for the abuses are no longer of the opinion

¹⁹ See "El Salvador's Constitutional Court Invalidates Amnesty Law," Roht-Arriaza, Naomi, August 3, 2016. Available at: <https://dplfblog.com/2016/07/22/el-salvadors-constitutional-court-invalidates-amnesty-law/>

²⁰ See, e.g., concurring opinion of Judge Diego García Sayán, I/A Court H.R., *Case of the Massacres of El Mozote and nearby places v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252.

²¹ See, e.g., "¿Por qué es inconstitucional la Ley de Amnistía en El Salvador?" ["Why is El Salvador's Amnesty Law Unconstitutional?"] Telesur, July 14, 2016. Available at: <http://www.telesurtv.net/news/Por-que-es-inconstitucional-la-ley-de-Amnistia-en-El-Salvador-20160714-0032.html>; "El Salvador: Declaran inconstitucional Ley de Amnistía," ["El Salvador: Amnesty Law Declared Unconstitutional"] Prensa Libre, July 14, 2016. Available at: <http://www.prensalibre.com/internacional/el-salvador-declaran-inconstitucional-la-ley-de-amnistia>; "La Justicia de el Salvador Declara Inconstitucional la Ley de Amnistía," ["Salvadoran Court Declares the Amnesty Law Unconstitutional"] el Mundo, July 14, 2016. Available at: <http://www.elmundo.es/internacional/2016/07/14/57875488e5fdeafe6f8b4695.html>; Malkin, Elisabeth & Palumbo, Gene, "Salvadoran Court Overturns Wartime Amnesty, Paving Way for Prosecutions," July 14, 2016. Available at: <https://www.nytimes.com/2016/07/15/world/americas/salvadoran-court-overturns-wartime-amnesty-paving-way-for-prosecutions.html?ref=nyt-es&mcid=nyt-es&subid=article>.

that impunity is insurmountable. The international community and human rights organizations wonder whether the time has come for trials in El Salvador.

Justice on the horizon

The country's courts have gradually begun to undo the application of the amnesty law, reopening the most symbolic cases that had remained closed for more than twenty years. The cases that have been reopened thus far are the massacre of El Mozote, the massacre of El Calabozo,²² and the murder of Monsignor Oscar Arnulfo Romero.²³ These cases are being tried under the system of criminal procedure that was in use at the time, when judges had the power to investigate and impose penalties (inquisitorial proceedings). This raises doubts about the due process rights of victims and defendants, as well as the role of the Office of the Prosecutor, but it grants private prosecutors more extensive rights to bring action on behalf of the victims. Human rights organizations have viewed this last point as an advantage in view of the inactivity—if not obstruction—that has characterized the behavior of prosecutors over the years with regard to the most serious war crimes.

The Office of the Prosecutor defended the amnesty law before the Court in the unconstitutionality action,²⁴ and has repeatedly invoked it to avoid bringing cases. This and other prior history creates doubts about whether the Office will change course significantly.

²² More than 200 civilians, including children, adolescents, and older adults, were the victims of extrajudicial executions carried out during a military operation of the Armed Forces of El Salvador. The crime was perpetrated on August 22, 1982, by troops from the Atlacatl Infantry Battalion and other participating military units, in the Canton of Amatitanes, municipality of San Esteban Catarina, Department of San Vicente.

In 1992, a criminal case was opened pursuant to a complaint filed by survivors of the massacre with the Trial Court of San Sebastián, and a number of investigative proceedings were ordered. Those investigations stalled with the enactment of the 1993 amnesty law, although it was not formally applied to this specific case. On September 27, 2006, through their lawyer and with the support of the Madeleine Lagadec Center for the Promotion of Human Rights, the victims initiated a private prosecution against six individuals who were senior officials of the Armed Forces at the time, linking them to the perpetration of five serious crimes during the massacre. The trial court judge ordered the case to remain “shelved” pursuant to the amnesty law in force and on the grounds that the statute of limitations had expired.

However, on November 11, 2016, the Constitutional Chamber handed down *Amparo* Judgment 558-2010, ruling that the refusal to investigate the massacre violated the constitutional rights of the surviving victims. On the basis of this judgment, the case was reopened on December 12, 2016. The Court requested information about the posts held by the suspects in the military at the time of the massacre, but has still not named them as defendants.

²³ Monsignor Oscar Arnulfo Romero, an internationally renowned spiritual leader, was assassinated on March 24, 1980 in the city of San Salvador by members of a death squad acting with the tolerance and support of the State. The Truth Commission identified the members of the death squad that perpetrated the murder.

The case was formally shelved by the Fourth Criminal Court in 1993 pursuant to the amnesty law. After the law was declared unconstitutional, the current Fourth Investigating Judge (formerly the Fourth Criminal Judge) reversed the dismissal without prejudice of the case against the only living defendant to be prosecuted, reopening the case on May 12, 2017.

²⁴ See open letter from various human rights organizations to the Prosecutor General of El Salvador “*Preocupación ante la posición de la Fiscalía General respecto del deber de investigar crímenes de derecho internacional y graves violaciones a derechos humanos*” [“Concern over the position of the Office of the Prosecutor General with respect to the duty to investigate international crimes and grave human rights violations”] available at:

In December 2016, the Office of the Prosecutor created a special prosecutors' group to investigate cases from the armed conflict, in keeping with the judgment of the Constitutional Chamber.²⁵ This progress toward the creation of a specialized institutional culture has been overshadowed by the public statements of the Prosecutor General, who has said that he lacks the funds to get the group up and running. At this time, its workings and prosecution strategies are still unknown. What stands out is the fact that no new cases have been brought before the courts, nor are any investigations being conducted with respect to the cases that have already been brought.

Human rights organizations and victims are mobilizing, little by little, to continue with the criminal complaints in this new scenario for which they were not entirely prepared.

It is not known for certain whether some of these court proceedings entail conducting more exhaustive investigations into all of the perpetrators, or whether they will soon be brought to trial. El Salvador is uncharted territory when it comes to national trials for international crimes (crimes of humanity and war crimes). For the time being, all indications are that the judges are relying more on the initiative of the victims' representatives to gather evidence or develop arguments than on their own powers. As we stated earlier, the Office of the Prosecutor does not appear to be very interested in taking on more of a leading role.

The case that has shown the most progress at this point is the case of the massacre of El Mozote.²⁶ According to official figures,²⁷ 978 people were murdered there by members of the armed forces during a military operation carried out in December 1981, in what is considered the largest mass killing of civilians in Latin America in recent decades. To date, eighteen former members of the armed forces have been charged with nine crimes, including murder and rape, under the laws in force at the time. In December 2012, the Inter-American Court of Human Rights held that the acts committed in this massacre constitute grave human rights violations, and contain the requisite elements to be classified as international crimes.

<http://www.dplf.org/sites/default/files/20162009203020es20incidencia20carta20pbca20deber20de20inv20final20publica.pdf>

²⁵ See La Prensa Gráfica "*Fiscalía crea grupo que investiga los crímenes de la Guerra*," ["Prosecutor's Office Creates Group to Investigate War Crimes"] January 16, 2017, available at: <http://www.laprensagrafica.com/2017/01/16/fg-crea-grupo-que-investiga-los-crimenes-de-guerra>. See also press release of the Inter-American Commission on Human Rights, "IACHR Urges El Salvador to Continue Fighting Impunity for Serious Crimes of the Past," February 9, 2017, available at: http://www.oas.org/en/iachr/media_center/PReleases/2017/012.asp

²⁶ For additional information on the criminal proceedings in this case, see "Seeking Justice in El Salvador: Progress in the El Mozote Case," May 11, 2017, available at: <http://www.dplf.org/en/news/seeking-justice-el-salvador-progress-el-mozote-case>

²⁷ See El Faro "*El Estado hace oficial el número de víctimas en El Mozote: 978 ejecutados, 533 niños*" ["State Makes Official the Number of Victims in El Mozote: 978 Executed, 533 Children"], December 4, 2017.

So, is the possibility of justice in El Salvador finally visible on the horizon? We do not have the answer. What we do know is that the first steps have been taken, essentially thanks to the tenacity of the survivors and the courage of some judges. Nevertheless, the task is formidable and fraught with challenges.

First, there is the question of the political will (or the lack thereof) to comply with the amnesty judgment. Equally important is the failure to fully comply—which could also reflect a lack of understanding—with the international human rights standards and obligations derived from them, as well as with the care that must be taken in dealing with the victims of atrocities.

In the midst of these shortcomings, the search for justice is, in addition to a legal imperative, a psychological and social need for the victims to find explanations and meaning in their experiences. These years marked by arbitrariness and amnesia have compounded their grievances.

In this way, the trials underway are politically, legally, and historically relevant. Their outcome could be an instrument of progress for the judicial system, collective memory, and the restoration of the victims' dignity at the individual and community levels.

A few legal snares have arisen, and will continue to arise, over the course of these initial attempts at prosecution in El Salvador in connection with the possibility of justice for past abuses, but they can be surmounted. They include the effective participation of the victims at all stages; the dual classification of crimes using national and international definitions of criminal offenses without affecting the principle of legality; and the application of the procedural law in force at the time of the events as opposed to the law of criminal procedure currently in force.

Similar issues have been tackled and overcome in countries such as Argentina, Chile, Colombia, Guatemala, and Peru, with determination and specialized technical capabilities. The Supreme Court of Argentina held that, despite being characterized as common crimes, the acts committed were also crimes against humanity, meaning that their prosecution could not be barred by statutes of limitation or amnesty. The Chilean Supreme Court established that forced disappearance is an ongoing crime, based, *inter alia*, on the International Convention for the Protection of All Persons from Enforced Disappearance, which at the time was not yet binding on Chile.²⁸ The Constitutional Court of Colombia has handed down a number of judgments on the interrelationship between national law and inter-American law. In the *Sepur Zarco* case, a Guatemalan criminal court ruled for the first time that acts of sexual violence and sexual slavery committed during the country's internal armed conflict were crimes against humanity. And the Supreme Court of Peru, in the judgment against Alberto Fujimori in the case of *Barrios Altos, La Cantuta, and SIE (Army Intelligence Service) Basements*, developed the theme of indirect perpetration extensively.²⁹ El Salvador should use these examples to chart its own route to justice.

²⁸ *Case of Miguel Ángel Sandoval (Juan Miguel Contreras Sepúlveda, et al.)* – Case File No. 517-04, Supreme Court, Criminal Division, November 17, 2004.

²⁹ *Cases of Barrios Altos, La Cantuta, and SIE Basements (Alberto Fujimori Fujimori)* – Case File No. A.V. 19-2001, Special Criminal Division, Superior Court of Justice of Lima, April 7, 2009.

The human rights movement and the recovery of memory

Human rights organizations and victims' organizations have been present since the end of the armed conflict, as reservoirs of memory and resistance.³⁰ "The fact that they are still working to preserve the memory of the events and demand a reparations policy that validates and supports their collective memory is an act of affirmation and resistance," asserts social psychologist and victims expert Sol Yañez.³¹ Those men and women maintained permanent work spaces together for many years, including the "Committee for the Construction of the Monument to the Civilian Victims of the Armed Conflict," erected in the city of San Salvador and recognized nationally and internationally as a protected cultural asset.

They have also kept active the "Working Committee on the Historical Memory of El Salvador," which promotes symbolic activities and processes to recover memory, as well as political positions against impunity.

Over the past three years, with the support of the Human Rights Ombudsman's Office (*Procuraduría para la Defensa de los Derechos Humanos*), these historical organizations activated a National Victims' Assembly, which identified a list of demands from different branches and institutions of the State.

These contributions are valuable, and have kept the struggles alive. However, we can also say that in recent years those organizations were missing opportunities to influence public policies; they have had little ability to get involved in more current agendas and work in a coordinated fashion with long-term vision. Now things are changing.

Another effect of the amnesty judgment has been the cohesion and renewal of the human rights movement. This new energy has resulted in the construction of an updated work agenda for the organizations, with actions that seek to overcome different manifestations of impunity, as well as to advance truth and reparations processes.³² Most notably, there are initiatives to create a National Search

³⁰ See "El Salvador," in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, Cuéllar Martínez, Benjamin, 2007, Due Process of Law Foundation, p. 43.

³¹ See "*De la locura a la impunidad: la paz pendiente en El Salvador*" ["From Madness to Impunity: Pending Peace in El Salvador"], Yañez, Sol, July 2016, available at: <https://dplfblog.com/2016/07/07/de-la-locura-a-la-impunidad-la-paz-pendiente-en-el-salvador/>

³² On January 16, 2017, during the official ceremony to commemorate the 25th anniversary of the Peace Accords, a wide-ranging group of human rights and victims' organizations presented the President of the Republic with a list of 25 outstanding claims for peace related to memory, truth, and justice. See <https://www.diariocolatino.com/propondran-ley-reconciliacion-reparacion-victimas-del-conflicto/>.

See also press conference and statement released one year after the amnesty judgment, "*Organizaciones vigilantes al cumplimiento de la inconstitucionalidad de la ley de amnistía*" ["Organizations Monitoring Compliance with the Judgment on the Unconstitutionality of the Amnesty Law"], FESPAD, July 24, 2017, <http://fespada.org.sv/organizaciones-vigilantes-al-cumplimiento-de-la-inconstitucionalidad-de-la-ley-de-amnistia/> <https://www.diariocolatino.com/comite-pro-memoria-historica-demanda-investigacion-crimenes-lesa-humanidad/>

Commission for Missing Persons³³ and lobby the country's Legislative Assembly for a Comprehensive Reparations Law.³⁴

With respect to criminal justice, organizations have created space for coordination where they have agreed to prioritize some emblematic cases from the armed conflict³⁵ for impact litigation. Their objective is to combat the procedural inactivity of prosecutors and judges, advocate for punitive proceedings against public servants who obstruct criminal justice, and above all to help place victims and perpetrators where they belong in the public discourse.

This movement is also seeking partnerships through which to communicate and disseminate judicial proceedings, in order to affect policy and provide psychological and social support, as well as to handle impact litigation comprehensively, as its nature requires.

Final words

³³ Based on a proposal presented by human rights and victims' groups, and after a process of dialogue with the government, Executive Decree #33 was issued in August 2017, creating a National Commission to search for persons who disappeared during the war in El Salvador. This Commission, which is slated to begin operations in 2018, is expected to provide answers to the relatives of 10,000 disappeared persons about the fate of their loved ones. See *Revista Factum*, "Los hijos de los desaparecidos de la guerra piden investigar casos" ["Children of those Disappeared in the War Ask for Cases to be Investigated"], January 30, 2017, <http://revistafactum.com/los-hijos-de-los-desaparecidos-en-la-guerra-piden-investigar-casos/>. See also, "Finally! A Search Commission for Missing Persons in El Salvador," September 25, 2017, Due Process of Law Foundation, <http://www.dplf.org/en/news/finally-search-commission-missing-persons-el-salvador>

³⁴In August 2017, a broad group of victims, churches, academics, and human rights organizations introduced a comprehensive reparations bill, drafted through a participatory process. This legislative bill reflects one of the recommendations of the Truth Commission, as well as the amnesty judgment, in which the Constitutional Chamber of the Supreme Court of El Salvador ordered the Legislative Assembly to "consider measures for the comprehensive reparations of the victims needed to ensure their satisfaction, compensation, and vindication." The bill proposes the creation of a Reparations Fund, a victims' registry, and different measures of symbolic and material reparations, in order to guarantee restitution, compensation, rehabilitation, satisfaction, and non-repetition. Although a reparations program was created in 2012 through Executive Decree 204, there have been serious difficulties in its implementation and its results have been minimal, giving rise to frustration and dissatisfaction, which has compounded the harm suffered as a result of the human rights violations. In addition, a reparations program should be given the force of law in order to enjoy greater stability over time and in terms of national budget resources. See *Transparencia Activa* "Presentan proyecto de Ley de Reparación Integral para víctimas de la guerra" ["Draft Comprehensive Reparations Law for War Victims Introduced"], August 30, 2017, <http://www.transparenciaactiva.gob.sv/presentan-proyecto-de-ley-de-reparacion-integral-para-victimas-de-la-guerra>. See also *Contrapunto* "Presentan ley para reparación de víctimas del conflicto armado" ["Bill Introduced for Reparation of Victims of Armed Conflict"], September 1, 2017, <http://contrapunto.com.sv/politica/sociedadcivil/presentan-ley-para-reparacion-de-victimas-del-conflicto-armado/4591>

³⁵ One of these cases is the abovementioned case of the massacre of El Mozote. See *Contrapunto* "Organizaciones sociales solicitaran reabrir caso El Mozote" ["Non-governmental Organizations Request Reopening of El Mozote Case"], August 17, 2016, <http://www.contrapunto.com.sv/sociedad/ddhh/organizaciones-solicitaran-reabrir-caso-de-el-mozote/1458>. See also joint statement, "18 miembros de las Fuerzas Armadas son llamados a comparecer por las masacres de El Mozote" ["18 Members of the Armed Forces Summoned to Appear for El Mozote Massacres"], Center for Justice and International Law, <https://www.cejil.org/es/18-miembros-fuerzas-armadas-son-llamados-comparecer-masacres-mozote>

A quarter century after the signing of the Peace Accords, the price that El Salvador has paid by trying to sweep the horrors of the civil war under the rug has been high: unstoppable spirals of criminal violence, a society that believes repression is the only path forward, a State that responds with more violence, and a political class bent on maintaining the *status quo* at all costs.³⁶

The country should not miss the opportunity to confront impunity that the invalidation of the amnesty law has provided: the challenge is for criminal justice—hopefully as public policy—to be inclusive of the victims and exemplary with respect to those most responsible.

Both sides are concerned about the reopening of cases reaching economic and political elites, which would bring unpredictable consequences. Many dominant voices have urged the authorities to focus as a priority on the current problems of power struggles among criminal gangs, widespread extortion, and serious corruption, rather than on cases arising from the armed conflict more than 30 years ago. Nevertheless, the mechanisms of horror used by today's crime groups, the insufficient investigation of the responsible organizations, and the scant attention paid to victims are, in part, a legacy of the issues that have remained pending since the armed conflict. Impunity for the crimes of the past encourages today's impunity. Addressing the former will make it easier to tackle the latter; at least, that is the hope that provides the encouragement to continue.

Throughout these past 25 years, any attempt to talk about political violence and its impacts has been seen as a move to either legitimize or discredit one of the two dominant political groups, the left or the right. As a result, it was impossible to even identify the problems, let alone find solutions. Framed in this way, it seemed that there was no room for anyone who was not a partisan actor; the victims were left without a place in the public discourse, in the collective memory that is just now beginning to be recovered.

Before we are able to turn the page on the armed conflict and its legacy, we should look back in order to gain awareness and learn lessons. The past must be returned to its rightful place: a place of acknowledgement rather than denial. A place where the dead are honored, the disappeared are sought, and the efforts of those looking for them are commended. Where the perpetrators are held to account and non-repetition is encouraged. It is not too late for El Salvador.

³⁶ For more information about the current situation in El Salvador as it relates to public safety, see “*Mano Dura*, The Politics of Gang Control in El Salvador,” Wolf, Sonya, January 2017.