

Los crímenes internacionales cometidos en el conflicto armado de El Salvador no admiten amnistía ni otro impedimento para su persecución penal

8 de abril de 2019.

Los abajo firmantes somos organizaciones y personas comprometidas con la protección de los derechos humanos. **Saludamos con entusiasmo los primeros esfuerzos en El Salvador de llevar ante los tribunales a los responsables de crímenes de guerra y de lesa humanidad cometidos durante el conflicto armado interno.** Esto incluye la **decisión de la Sala de lo Constitucional de la Corte Suprema de Justicia, que 2016 declaró inconstitucional la Ley de Amnistía dictada en 1993, y las decisiones de algunos jueces de cortes penales, como el de la masacre de El Mozote.** Estos procesos están siendo seguidos con atención por los sistemas internacionales de derechos humanos y los sistemas nacionales de justicia de otros países del continente y del mundo, especialmente los que enfrentan el desafío de la rendición de cuentas por crímenes atroces cometidos en épocas de violencia política.

La Sala de lo Constitucional al declarar inválida la Ley de Amnistía, **prohibió que en el futuro se aprobara una norma similar, y ordenó a la Asamblea Legislativa (Congreso salvadoreño), revisar y/o aprobar legislación en materia de reparaciones a víctimas, y acceso a la información de archivos en manos del Estado,** como los de las fuerzas armadas.

La Sala también reavivó la vigencia de la Ley de Reconciliación Nacional, una amnistía de 1992 que había sido derogada por la de 1993. Esta norma explícitamente excluye de sus beneficios los delitos de genocidio, desaparición forzada, y tortura, al igual que otros delitos internacionales inamnistiables e imprescriptibles, en consonancia con las normas internacionales vinculantes para el Estado de El Salvador.

Ahora, estamos profundamente preocupados porque **el Congreso** ha incumplido con las obligaciones que le mandata la Sala y el derecho. **Ha creado una Comisión Ad-Hoc formada por cinco diputados, quienes han elaborado una propuesta que sustituye la Ley de Amnistía inconstitucional. De aprobarse, nuevamente se impediría la justicia penal por los más graves crímenes del conflicto armado, en contradicción con la jurisprudencia constitucional y decisiones internacionales.**

Asimismo, tenemos serias dudas sobre la imparcialidad de dicha *Comisión Ad-Hoc*, ya que dos de sus miembros - Rodolfo Antonio Parker Soto y José Antonio Almendáriz Rivas, fueron señalados en el Informe de la Comisión de la Verdad por su responsabilidad en encubrir crímenes de la época, y un tercero, Mauricio Ernesto Vargas, fue parte del alto mando militar en los años más cruentos de la guerra.

El Salvador no debe dar marcha atrás. Tiene la oportunidad de ser ejemplo para el mundo dejando atrás los años de impunidad y de aislamiento de la comunidad internacional. Por eso:

- 1. Llamamos al Congreso a no considerar ni aprobar** ninguna ley que ignore o contravenga una decisión del más alto tribunal del país, y o que se oponga a decisiones internacionales, como las de la Corte Interamericana de Derechos Humanos. Eso sería un atentado al Estado de derecho y un retroceso en justicia.
- 2. Exhortamos al Presidente electo, Nayib Bukele, y al Fiscal General, Raúl Melara,** a dejar clara su disposición de actuar en consonancia con las decisiones de la Sala de lo Constitucional de la Corte Suprema de Justicia y las obligaciones internacionales del Estado.

Confiamos que el país sabrá continuar el camino de la paz basada en la verdad y justicia.

International crimes committed during the conflict in El Salvador do not allow for amnesty or other impediments to prosecution

April 8, 2019.

We, the signers of this letter, are organizations and individuals committed to the protection of human rights. **We welcome the initial efforts in El Salvador to bring those responsible for war crimes and crimes against humanity during the armed conflict to trial. These include the 2016 decision of the Constitutional Chamber of the Supreme Court of Justice**, declaring the 1993 Amnesty law unconstitutional, which allowed justice to be served in El Salvador's courts; as well as actions by particular criminal court judges to **advance investigations, such as the one handling the case of the El Mozote massacre**. These legal processes are being closely monitored by members of the international system of human rights, as well as by actors in the national justice systems of other countries in the continent and around the world – especially those who face the common challenge of accountability for atrocious crimes committed during times of political violence.

When the Constitutional Chamber declared the Amnesty Law unconstitutional, **it prohibited the approval of any similar legislation in the future, and ordered Congress (the Legislative Assembly) to revise and/or approve legislation on reparations to victims, and assure that judicial authorities would have needed access to access to information by the State** and the armed forces.

The Constitutional Chamber's decision also reinstated the National Reconciliation Law, a 1992 amnesty that had been superseded by the absolute amnesty 1993. The Court's ruling explicitly excludes the crime of genocide, forced disappearances and torture, as well as other crimes not subject to amnesty by the norms of international law and the international obligations of El Salvador.

Now, **we are deeply concerned that Congress** has failed to implement the Constitutional Chamber's order. Rather, it has created **an Ad-Hoc Commission made up of five Congressional representatives, who have proposed new legislation that would replace both the unconstitutional Amnesty Law and the 1992 law If approved, this new proposal would create new barriers to criminal prosecution for the gravest crimes committed during the armed conflict, contradicting constitutional jurisprudence and international decisions.**

The draft text of the proposed "National Reconciliation Law" is problematic on multiple counts. The most blatant is that it provides for a "full, absolute and unconditional" amnesty, which is prohibited under international law and by the Supreme Court judgment ruling against the prior amnesty law. While the law permits investigation of "war crimes" and "crimes against humanity", it proposes a narrow definition of these crimes that does not comply with the understanding of these terms under international law. Furthermore, eliminates criminal penalties for these crimes, does not require any reparatory action by the perpetrator (such as providing a formal apology or relevant testimony), and impedes the participation of the victims in any judicial process.

Moreover, we are worried about the impartiality of the *Ad-Hoc Commission* given that two of its members – Rodolfo Parker Soto and José Antonio Almendáriz Rivas – were singled out in the Truth Commission's report as being responsible for covering up crimes. A third member, Congressman Mauricio Ernesto Vargas, was part of the military high command during the bloodiest years of the war.

El Salvador must not take this step backwards. It has the opportunity to set an example to the world, leaving behind years of impunity and isolation from the international community. For these reasons:

1. **We call on Congress not to consider or approve** any legislative proposal that ignores or contravenes a decision made by the highest court in the land, or that contradicts international decisions, such as the Inter-American Court of Human Rights' judgments. This would undermine the rule of law and represent a serious setback for justice in El Salvador.
2. **We urge the President-elect, Nayib Bukele, and the Attorney General, Raúl Melara**, to make it clear they will act in accordance with the decisions made by the Constitutional chamber of the Supreme Court of Justice and the international obligations of the State.

We trust that the country will choose a path to peace based on truth and justice.

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