El Salvador’s Amnesty Law:  
A Monument to Impunity?  

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“Sí podría ser [la amnistía] un efecto de la cultura de impunidad porque lo que buscaron quienes hicieron esta ley era justamente quedar impunes... Entonces la amnistía es un efecto de la impunidad estructural, pero a la vez es una causa para una impunidad cultural, es decir que estos 20 años de impunidad es a raíz de esta ley. Entonces es causa de esto 20 años, pero es efecto porque viene de una cultura de impunidad del pasado.”

- Félix Ulloa, Instituto de Estudios Jurídicos de El Salvador
Overview

On March 20, 2013 the amnesty law in El Salvador turned 20. This anniversary was met with the flaring up and intensification of old arguments debating the law’s initial justification and current necessity, its legality in domestic and international arenas, its impact on society and possible recourses for its removal or augmentation, and the likelihood of its future in El Salvador. This amnesty law is one of the longest lasting to date, and one of the few still in existence in the region which encouraged us to ask “why”. We traveled to El Salvador during the 20th anniversary to meet with experts from various fields and all sides of the argument, attend related events, and visit important historic sites and museums to find answers to these questions.

In the end we found that an amnesty law was something wanted by both sides at the end of the civil war. However, the law that was ultimately implemented and is still in effect today is not that which was agreed upon by both sides. As a result, the legality of the law continues to be a contentious issue. But while popular support of the law continues to dwindle, it remains a constant in El Salvador due impart to continued strong political support, a dysfunctional and corrupt judicial system, and a culture of impunity which the law itself helps perpetuate. Despite a number of developments in the international arena and regional context, the Salvadoran amnesty law is likely to be around for up to even another 20 year.

War & Peace

The 1980 assassination of Archbishop Oscar Romero by military forces appeared to be the last straw that sent an unstable and violent El Salvador into full-fledged civil war. The 12 year civil war was fought between the government and military forces on the right, and the left-wing guerrilla factions on the opposing side. The majority of the civil war saw the National
Republican Alliance (ARENA) party in control of the right-wing government forces, while the five major individual guerrilla factions banded together to form the left-wing Farabundo Martí National Liberation Front (Frente Farabundo Martí para la Liberación Nacional, FMLN) composed of: the Fuerzas Populares de Liberación Farabundo Martí (FPL), the Ejército Revolucionario del Pueblo (ERP), the Resistencia Nacional (RN), the Partido Comunista Salvadoreño (PCS), and the Partido Revolucionario de los Trabajadores Centroamericanos (PRTC).

Through a lengthy negotiation process civil war was officially brought to a close with the signing of a peace agreement on January 16, 1992. Throughout the peace process, and the entirety of the war in general, the topic of amnesty was one that consistently presented itself. General Mauricio Vargas of the government-military forces noted four amnesty laws from various points throughout the length of the civil war and peace process.

“En el proceso salvadoreño hubo cuatro amnistías. La del presidente Álvaro Magaña que fue la primera, que fue allá por el año 1979/80 que fue el gobierno provisional. La segunda fue para miembros de la FMLN que iban a ingresar al país a formar parte de la comisión de la consolidación para la paz COPAZ [National Commission for the Consolidation of Peace]. La tercera fue para aquellos miembros que se llamaban del sector político-diplomático que apoyaban a la FMLN para que ingresaran al país. Y la última fue aquella amplia y general para todos.”

- General Mauricio Vargas

The fourth and final amnesty law which General Vargas refers to is the “National Reconciliation Law.” This amnesty law was agreed upon and signed by both sides on January 23, 1992, after the signing of the final peace agreement. Controversy surrounds the issue of the amnesty law in El Salvador to this day not because of the content of the National Reconciliation Law, but because the amnesty law in effect today was passed on March 20, 1993. General Vargas’ description of the fourth amnesty law as “amplia y general” more closely fits that of the
1993 amnesty law in effect today. This expansive law effectively covers all crimes committed by both sides during the civil war.

Creation of Amnesty

The creation of an amnesty law was not technically part of the peace process, but was instead a direct result of the peace process as it was something heavily discussed and agreed upon coincidentally. This is a common occurrence as amnesty laws are generally necessary in order to facilitate the reintegration of the losing faction back into society. In the case of El Salvador there was no “loser” in the civil war, for that reason they created instead the Law of National Reconciliation, as it was a process of reconciliation which brought an end to the war, not an outright victory. The standard of amnesty offered under this law was in accordance with international law, meaning there were clear and specific cases and circumstances that were not eligible for amnesty. Article 6 of this document specified that those responsible for genocide and crimes against humanity would not be extended amnesty. Additionally, any persons named in the UN Truth Commission Report (an investigation earlier agreed upon by both sides) would also not be extended amnesty. These exceptions and all other aspects of this law were accepted by all when signed in 1992.

The amnesty law of 1993, in effect today, overrode many aspects of the 1992 law including the exceptions to amnesty as defined in the Law of National Reconciliation. The 1993 law effectively provided amnesty for all crimes committed during the civil war, without exception. This law was not approved and signed by both sides from the civil war. The law of 1993 was instead unilaterally passed through an ARENA controlled legislative assembly in reaction to the publication of the UN Truth Commission on March 15, 1993.
The UN Truth Commission played an important role in influencing the creation of the 1993 amnesty law. The report attributed approximately 80% of the crimes committed during the civil war to the government forces; it attributed the other 20% to the FMLN guerrilla forces. These crimes were not only attributed to either side, but the report additionally listed names of those responsible for committed the thousands of crimes throughout the civil war, something that was expressly forbidden by the government. This included information and names pertaining to some of the biggest massacres and crimes committed including the El Mozote Massacre, Jesuit Killings, and assassination of Monseñor Romero on the government side; the Zona Rosa attacks, assassinations of mayors, and abuse and mistreatment of suspected spies on the guerrilla side.

The release of the UN Truth Commission wreaked havoc in the ruling ARENA party as many of its ruling elite were listed in the report in association with grave crimes. The government had not expected this report to name people specifically responsible for crimes and had previously agreed to the UN Truth Commission under this pretense. The response by ARENA was to hold an emergency session of the ARENA-controlled national assembly on Saturday, March 20, 1993. Without the presence, knowledge, or agreement of the opposition, the ARENA party, enjoying a majority representation in the legislative assembly, unilaterally passed the current Salvadoran amnesty law just five days after the publishing of the UN Truth Commission report. The resulting law changed the most important features of the previous law: there were no exceptions to amnesty now, meaning that even those listed in the report or linked with egregious war crimes would not be tried, as had previously been agreed by both sides.
Justification

“‘Debería haber perdón y olvida’ dijo Presidente Cristiani”
-José María Tojeira, UCA

While there may be controversy over the final amnesty law enacted, there was never doubt over the common support for an amnesty law. Given that atrocities were committed by both sides during the civil war it is no surprise that there was general support across the board for some type of amnesty law. The right expressed a slightly stronger need for an amnesty law claiming it was a vital stepping stone in the transitional peace process. The right argued that without an amnesty on the table the peace process could not move forward; this may help explain why amnesty laws were continually being agreed upon throughout the lengthy peace process. Some former government and military forces to this day believe that there would have been years more of fighting had an amnesty law not been agreed upon.vii

The left agreed to an extent, but also felt that absolute amnesty was too broad.viii The left further argued that without justice, or at least knowledge of the truth, wounds cannot heal and society will not be able to move on.ix For these reasons the left guerrilla forces were in favor of an exceptional amnesty law; they were prepared to sacrifice some of their members in order to prosecute some of the more extreme crimes committed by ARENA members. The result was the compromised 1992 National Reconciliation Law.

Support for an amnesty law among civilians was less consistent. While at first there was some widespread support for amnesty, seen initially as an acceptable byproduct of peace, that support mostly faded over time among the general population. Others still never offered their support of the law. Victims and families of victims despised the amnesty because it prevented them ever finding out who committed crimes against them and their families. Poor people felt betrayed and hopeless because they had now had no means to get answers or closure to their
cases.\textsuperscript{xii} In some extreme cases the amnesty law was even viewed as a threat by the government essentially saying “\textit{si ustedes nos quieren juzgar a nostros, nosotros vamos a ir a la Guerra de Nuevo para que no nos juzgue.}”\textsuperscript{xii}

\section*{Legality}

The legal issue shrouding the 1992/1993 amnesty laws proceedings have become the focal point in the battle against and support for the current amnesty law from 1993. The arguments in support of the legality of the current amnesty law, coming mainly from the right, cite that the law was legally passed through the legislative assembly with a majority vote. The fact that the 1993 law did not consult the opposition and differed from the previous law agreed upon by both sides is irrelevant as the 1993 law was approved, as is, by a majority of legislators. The right further asserts that it had previously been agreed upon during peace negotiations that there would be an amnesty law passed at a later point, something the left fervently denies claiming there already was an amnesty law agreed upon so an additional law would not have been necessary.\textsuperscript{xiii}

Counterarguments from the left highlight the fact that the law was passed in “secret” at an emergency session of congress held on a Saturday. They further argue that the law was passed without debate as the opposition was not even present at this meeting so as to debate the topic. Some opposition cite international law in their arguments, claiming as it stands this law could not be legal in any country as it goes against international norms and laws.\textsuperscript{xiv} These arguments refer to international laws and rulings which state that massacres, genocide, crimes against humanity, and other war crimes are not eligible for amnesty. Other arguments refer to the unconstitutionality of the law within El Salvador, per article 244 of the constitution. Article 244
of the Salvadoran constitution states that members of a government cannot give amnesty to themselves; they can only receive amnesty if it is given to them by a subsequent different government.

“Los que están nombrados no están amnistiados porque la constitución dice explícitamente que no pueden ser beneficiados por amnistía los que sean funcionarios durante el gobierno durante el cual cediera la amnistía”

- José María Tojeira, UCA

Arguments For and Against the Law

Advocates for and against the amnesty law have perpetuated the debate. Those in favor of the amnesty law, primarily military officers, conservative political parties, and other segments of the political elite, prefer to look forward and not back based on the claim that reopening the wounds of the past would do more harm than good. The segments of society most opposed to the amnesty law include non-governmental human rights organizations, academics, and the victims of abuses and their friends and families. Opinions vary among those on the left, whose perspectives are often influenced by their role during the conflict and the direction of their lives since the end of the war. At the same time, a general sense of apathy persists among large segments of the population.

Initially, the argument in favor of the amnesty law, based on a need to move on, carried some traction as the fragile peace process was in its opening stages and there was a real risk of a return to hostilities. However, today, El Salvador is more than twenty years removed from the fighting, and while an examination of the past may prove difficult, grotesque, or burdensome, investigating human rights violations would not lead to devolution into civil war. This can be said with a high level of confidence, and it should be noted that the Salvadoran civil war took place within the broader Cold War context. External support via training, funding, and other
means was central to perpetuating the conflict, and as the geopolitical paradigm shifted, peace became a more sustainable option. Proponents of the amnesty law can no longer use a resumption of hostilities as a basis for their argument.

Implementation of the amnesty law prevented further knowledge of the truth and blocked investigation of the abuses. Critics of the amnesty law argue that it was rushed and there was not an agreement on the scale of the amnesty. The preceding amnesty laws, from the Duarte administration and the Law of National Reconciliation of 1992, achieved greater support. While all parties at the negotiations were in favor of some form of amnesty, the swift adaptation and broad coverage of the law that was passed immediately after the publication of the UN Truth Commission’s report did not meet the expectations of many of the negotiators during the peace process. Participants in the negotiations had varying views on the degree to which amnesty was required for a settlement. (Ret.) General Vargas, a key negotiator for the military, claimed that it was absolutely a precondition to the peace accord, while U.S. Congressman Jim McGovern has said, “I get angry and frustrated when I hear people say that the amnesty was part of the Peace Accords. It was deliberately NOT included in the peace agreement. Justice and reconciliation were supposed to follow the release of the Truth Commission’s Report.”

Rubén Zamora, the newly appointed Salvadoran Ambassador to the U.S. and FMLN representative at the negotiations, agreed with Rep. McGovern’s assessment and stated that during the negotiations, President Cristiani held a private meeting with military leaders, where the subject was most likely amnesty, when the military leaders threatened to stall the process during its final stages.

Victims, their friends and families, academics, human rights organizations, and segments of the middle class are the most vehemently opposed to the amnesty law. For many, the wounds have never healed. A lack of investigation has deprived the victims of the knowledge of who the
aggressors were in numerous cases. Even without formal trials, knowing the truth is essential, so that the victims can make the decision for themselves whether or not to forgive those responsible. The UN Truth Commission did not serve as a replacement for judicial proceedings nor an exhaustive investigation that covered every abuse during the war. The intent was merely to provide a credible and independent investigative report of specific events that could be used as a basis for further domestic actions.

While conservatives in the Legislative Assembly have a more unified position in favor of the amnesty law, the FMLN and the left hold more diverse opinions. The voices of academics and human rights non-governmental organizations are firmly against the law. The FMLN is divided. Critics of the FMLN on the right, such as conservative lawyer Francisco Betrand Galindo, and on the left, such as Felix Ulloa of the Instituto de Estudios Jurídicos de El Salvador (IEJES), find that politician’s support for repeal of the law is hollow. They vocally support it knowing that it would never pass and they would not then be responsible for repealing it. While there is genuine support for repeal by some, abuses were committed by all sides during the war and those in power on both sides might be subject to prosecution in the absence of amnesty. The validity of this argument is unclear and further investigation might help to shed more light on the situation.

A lack of political will and a sense of apathy in sectors of the population are further obstacles to eliminating the amnesty law. El Faro reporter Ricardo Vaquerano noted, “People are concerned with feeding their families, finding jobs, and their security,” meaning that the daily concerns for average citizens prevent greater political awareness and participation. The legacy of intimidation and impunity may further discourage political participation.
Recent Political Developments

Executive

When Mauricio Funes was elected president in 2009, it marked the first time that the FMLN had ever held the office. His election ended a succession of ARENA leaders who had been in power since 1989. During the civil war, Funes was a journalist and not directly involved in the fighting. He is considered a moderate. Last year, President Funes offered the first apology on behalf of the government for the massacre at El Mozote during a visit to the site. His action shifted the government’s stance and a more proactive position on human rights. At the same time, reactions to his visit varied. Some people, including those we interviewed at El Mozote, felt that the action was not enough and were not comfortable with the large number of state security forces that were present. The actions of President Funes have been mostly symbolic and not substantive. While his actions are a step in the direction of reconciliation, so far it has not been enough to satisfy those that continue to seek truth and justice. Vice President Salvador Sánchez Cerén has taken a stance in opposition to the amnesty law and has openly called for its repeal.

Table 1: Asamblea Legislativa Composition by Political Party

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<thead>
<tr>
<th>Political Party</th>
<th>Number of Seats in Asamblea Legislativa</th>
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<tbody>
<tr>
<td>FMLN</td>
<td>31</td>
</tr>
<tr>
<td>ARENA</td>
<td>28</td>
</tr>
<tr>
<td>GANA</td>
<td>11</td>
</tr>
<tr>
<td>PCN</td>
<td>7</td>
</tr>
<tr>
<td>Others</td>
<td>7</td>
</tr>
</tbody>
</table>
Legislative

The Asamblea Legislativa of El Salvador is a unicameral legislature with 84 seats. In a recent development, the FMLN now holds a plurality of seats. The current composition of the legislature can be seen in Table 1. Previously, the conservative ARENA party had the most representatives. Critical functions of the Asamblea Legislativa include the approval of justices to the Supreme Court, the Fiscalía General\textsuperscript{xx}, and the Prosecutor for the Defense of Human Rights.\textsuperscript{xxi} In 1983, the new constitution placed oversight of the Fiscalía General in the legislative branch to depoliticize the institution, but in reality, the reform may have backfired. The Fiscalía General lacks funding, staff, technical skills, and independence.

Many of the representatives from both the ARENA and FMLN parties are former combatants. We interviewed Diputada Nidia Diaz, a former guerrilla commander, prisoner of war, and now a representative of the FMLN, who described the level of cooperation in the Asamblea Legislativa, “It is difficult, but... there are a great number of issues that the parties resolve together.” To everyone’s credit, the ability to govern in the post-war climate would have been extremely difficult under the circumstances, and one of the greatest success stories of post-war El Salvador is the political reintegration of former guerrillas and the level of cooperation among political parties that has been achieved. El Salvador is unique in Latin America, in that the party that was in power during the war (ARENA) remained in power while the guerrillas (FMLN) were incorporated into the political system. Leaders who were once fighting each other on the battlefield during the war are now resolving conflicts in the Asamblea Legislativa.
Judicial

“No hay independencia judicial”
-Ovidio González, Tutela Legal

The judicial system in El Salvador is similar to other Latin American countries. Spanish colonial legacies persist in the structure of the courts. After independence from Spain, the organizational structure did not progress at the same level as judicial systems in Europe. Modernization efforts in Europe occurred throughout the 20th century, but did not take place until much later in Latin America. El Salvador uses a civil law system with some elements of common law. One of those elements is judicial review. The Corte Suprema is divided into five Salas or chambers, the Sala de lo Constitucional is responsible for determining the constitutionality of laws. If the amnesty law were to go to the Corte Suprema, it would be heard in the Sala de lo Constitucional. The decision of the court would be to uphold or annul the amnesty law.

The greatest obstacle to the prosecution of human rights violations is the fact that the judicial branch has not heard any cases of abuses of human rights, with the exception of one of the people responsible for the assassination of Monseñor Romero. Numerous problems complicate the matter. First, the courts do not have the power to open a case, only the Fiscalía General can bring the case before the court. Another problem is that the reforms that were to be implemented as a part of the peace process were not fully implemented.

Problems persist including politicization, intimidation, inadequate funding, and corruption. During the civil war the judiciary was incapable of prosecuting violations of the law committed by the military, paramilitary groups, or political elites. Intimidation was used; it was not unheard of for a judge to be kidnapped. While that was not a very common tactic, a more every day concern was independence of the judiciary. Judges had to be appointed, and it was unlikely that anyone without ties to conservative elements of society would be appointed. The
military is often given greater leeway or the benefit of the doubt in times of war. They are viewed as defending the nation from an existential threat and actions that would not be acceptable under other circumstances are often sanctioned. The legacy of these problems persists today. Reform efforts have improved the system, but it has a long way to go to be a truly effective branch of the government.

In a report published in 1994, the Inter-American Commission on Human Rights (IACHR) stated:

“The Salvador Government argues that the amnesty approved by the Legislative Assembly is based on the provisions of Additional Protocol II to the Geneva Conventions.

In the Commission's view, the Protocol cannot be interpreted to cover violations of the fundamental human rights set forth in the American Convention on Human Rights.”

The IACHR would continue to make decisions on the amnesty law again in 1999 and 2000. An underlying finding is that treaty obligations such as the Geneva Conventions and the American Convention of Human Rights are not subject to the amnesty. El Salvador has not signed on to the Inter-American Court of Human Rights. Further, international courts lack the ability to enforce their decisions. What they can do is serve as a precedent for use in domestic institutions.

El Salvador’s ten year statute of limitations is another obstacle to opening cases. Since the abuses were committed more than twenty years ago, the statute of limitations poses an additional obstacle to opening cases. An interesting way of circumventing the statute of limitations that has been used to prosecute war criminals in other countries is to examine cases of missing persons. In some jurisdictions, a crime is only considered to be open once a person or body is found. Therefore the statute of limitations does not begin until that time. Application of
this legal loophole would be possible in El Salvador, though there is no guarantee that it would work.

A Culture of Impunity

“Es cultura, tenemos una cultura de impunidad”

-Félix Ulloa, IEJES

Impunity is a massive problem in El Salvador. It has permeated throughout every aspect of society. Impunity for crime, political corruption, judicial bribery, and other forms are problems in and of themselves, but the impact also causes an overarching stress on citizens who live in fear. One of success stories of the peace process is the integration of police forces into the Policía Nacional Civil (PNC). Former soldiers, police, and guerrillas worked together in the newly created organization. Leadership of the PNC has been disproportionately from the right.

When war criminals are not subject to prosecution, it serves as a monument to the impunity present within a culture. If someone who is guilty of a massacre is not prosecuted, then the legitimacy of the courts is undermined. So what are the legal implications? The short answer is that there are few if any legal consequences to committing a crime. Gangs and street crime are serious problems in El Salvador and the culture of impunity exacerbates the situation. Judicial reform is urgently needed.

Future of Amnesty in El Salvador

There are two options available in terms of changing the integrity of the amnesty law currently in effect in El Salvador: repealing the law and annulling the law. The two options are achieved by different processes and therefore have different implications in their end results. Regardless of their differences, neither option is likely to happen in the near future.
Repeal

The repeal option is something that would be achieved through the legislative assembly. The assembly as a whole would have to vote to throw out the amnesty law of 1993. This means that the law would no longer be in effect from that day forth. It is important to note with this result that repealing a law is not retroactive. This means that the repeal of a law takes effect on that day and can only be enforced moving forward. After repealing a law one cannot reopen and prosecute cases from the past that occurred under the jurisdiction of the now appealed law. In terms of the Salvadoran amnesty law, this means that if the law is repealed it would still be impossible to prosecute any crimes that occurred during the civil war because they have already been pardoned by the implementation of the amnesty law in 1993.

The single notable exception is the case of disappearances. Disappearances represent a unique situation because these types of crimes are active until the person or body is found. This means that someone charged with the disappearance of a person during the civil war could be prosecuted if the body is found, dead or alive, after the amnesty law is repealed; if the person is found while the amnesty law is still in effect then the criminal can never be charged with this crime.

A change like this would be largely a symbolic act by the legislative assembly as there would realistically be little to no legal repercussions due to the fact that repealing laws is not retroactive. Even so, this change is very unlikely in the near future. Those responsible for crimes during the civil war are currently in power within their political parties, the legislative assembly, or elsewhere in the government. These people have too much to potentially lose with the repealing of the amnesty law, and wield too much power to let a repeal of the law happen.
change like this would not happen until those that fought and were leaders during the civil war are no longer in positions of power within the government or their respective political parties.

**Annul**

Annulling the amnesty law of 1993 is a process that would have to go through the Supreme Court, as opposed to the legislative assembly. In order to annul the law the Supreme Court would have to determine the law to be unconstitutional. This option differs from repealing the law in one important way: it would be retroactive. By the Supreme Court ruling that this law never was legal under the constitution, any crimes that had been “pardoned”, actually never were legally so. This means in theory that you could prosecute any crime that happened during the civil war, not just the most egregious war crimes, but single murder or rape cases as well.

The catch in this scenario is that in El Salvador all crimes have a 10 year statute of limitation. This means only crimes committed in the past 10 years could be prosecuted. Being that the amnesty law has been in effect for 20 years and that the civil war ended 21 years ago, any crime committed during the civil war has certainly been committed more than 10 years ago and therefore cannot be prosecuted. The only exception to this technicality, once again, is cases involving disappearances. Because these are “continuous” cases, they do not end until the person is found, from which point the 10 year limitation would begin counting. This means that if the amnesty law were annulled, any case involving a disappeared person that was found within the 10 years of the annulment date could be prosecuted, as well as any case of a person found after the annulment date. Much like the repeal option, annulling the amnesty law is also very unlikely to happen. This is mainly due to the judicial system flaws and corruption mentioned earlier in this paper.
Looking Forward: Elections

In 2014 El Salvador will hold presidential elections followed by congressional elections in 2015. Both of these elections have the possibility to be influential in either reinforcing the amnesty law or removing the amnesty law. However, people realistically only expect one outcome – that the amnesty law will remain through these elections and the terms that follow. Those against the amnesty law rejoiced when an FMLN candidate won the presidency for the first time in 2009, hoping that this would spell the end of the 1993 amnesty law. On the other end of the spectrum, ARENA party members and former government and military officials from the civil war feared for their freedom and safety with the election of Mauricio Funes; they feared he would get rid of the amnesty law in one way or another. Both sides were wrong in their hopes and fears – there was no change to the status of the law. This administration has acted in neither direction in regards to the law. Funes has not openly spoken out against the law, but has also not openly supported the law. The administration has instead rid itself of any responsibility and has chosen to leave it to the judicial system to decide.

This general disinterest is probably the best that amnesty law opponents could ask for after the presidential elections of 2014. If FMLN is reelected they will probably maintain the same stance. If ARENA is elected, however, they will reignite their full support of the law, which would be the best option for the right-wing amnesty law supporters. In regards to the congressional elections in 2015, there will likely be no major change in congressional support for the law either, regardless of the results. This is because the people running for new terms are still widely people who were involved in the civil war, be it on the government or guerrilla side. These officials fear the potential consequences too much to lend any amount of support to repealing the law.

The only possible change that has been mentioned with any sort of hope for the future is augmenting the law to allow for investigations on cases. People from the left and the right, those in support and in opposition of the law in its entirety, have all said that it is important for the people to know what happened during the civil war to their loved ones for closure and in order to learn for the future. A
change like this, which pleases the populous by allowing crimes to be investigated but doesn’t threaten politicians because the amnesty is left intact, is a possible change which could be agreeable to all and potentially passed through the legislature.xxxii

**Regional Context**

Though El Salvador is hardly the only country in Latin America to have adopted an amnesty law as part of a process of post-conflict reconciliation and political transition, it stands out in the region for its failure to prosecute a single individual responsible for any of the numerous abuses of human rights committed during the civil war, either on the part of government forces and those aligned with them or on the part of the guerrillas. While most other amnesty laws in Latin America have been challenged in some form or had their effective scope limited by court decisions or specific provisions in the amnesty, the blanket amnesty law that El Salvador adopted in 1993 has remained in effect, and efforts by human rights organizations and international courts to challenge the law on the grounds that it conflicts with the country’s obligations under international law have largely met with resistance and hostility or—at best—indifference and inaction by El Salvador’s political elites and judicial bodies. The lack of progress in investigating the crimes of the civil war period and bringing those responsible to justice is not exclusively a result of the continued legality of El Salvador’s amnesty and the fact that many who benefit from it remain in positions of power and influence, though these remain significant factors. Institutional dysfunction and the prevalence of gang violence and other problems that, for many Salvadorans, take precedence over the search for justice for crimes of the past also stand as obstacles to the truth and accountability movements that have gained momentum in several other countries in the region. Nevertheless, the far-reaching and unconditional nature of El Salvador’s amnesty law, as well as the circumstances of its creation,
place it symbolically at the center of the impunity debate in El Salvador—a fact that has led some critics to describe the law as a “monument to impunity.”

Where opponents of the amnesty laws in Argentina, Uruguay, and Chile have, with varying degrees of success, managed to confront the impunity engendered by the amnesties in those countries, the conditions that have facilitated challenges of these kinds have largely been absent in El Salvador. Further compounding the problem, El Salvador remains host to a number of factors—not least among them the continued influence of the primary beneficiaries of the amnesty and their political allies—that have helped maintain a political climate favorable to amnesty. A recent contribution to the literature on political amnesty and human rights accountability describes the gradual weakening and eventual repeal of the Argentine and Uruguayan amnesty laws—the result of a convergence of political factors culminating in the overturning of the laws—as cases of the “democratic displacement” of amnesty, comparing this pathway to justice with the “creative circumvention” of Chile’s amnesty through the use of specific provisions in the law to allow for trials to proceed in spite of the persistence of the Pinochet dictatorship’s 1978 self-amnesty. The authors contrast these examples with the current status of El Salvador’s amnesty law, as well as that of Guatemala, which they say are emblematic of an “accountability impasse” in these countries.xxxiii

In both Argentina and Uruguay, segments of the human rights non-governmental organizations and legal communities had attempted to challenge the legitimacy of amnesty laws that both countries had adopted in order to shield members of their repressive former regimes from prosecution for human rights violations. These challenges helped to lay much of the groundwork for the eventual repeal of the laws, but this would not occur until shifts in the overall political context in both countries, including changes in the executive, legislature, and judiciary,
created a climate more receptive to the demands of civil society organizations calling for an end to impunity.

In 1983, during the early stages of Argentina’s transition to democracy, the government of Raúl Alfonsín overturned the blanket self-amnesty that the previously ruling junta had enacted earlier in the same year, but the perceived threat of military destabilization of the civilian government led to a pair of new amnesty laws to be adopted in 1986 and 1987. This was a reflection of the continued power of the military in Argentina and the Alfonsín administration’s fears about the possible consequences of prosecuting members of the junta for crimes of the Dirty War. Argentina’s presidents throughout the 1990s favored a discourse of reconciliation over accountability and justice for human rights abuses, but reforms to the armed forces gradually weakened the military as a politically influential actor. Additionally, mobilization on the part of human rights non-governmental organizations helped contribute to increasing momentum and public pressure for judicial investigations, while in absentia trials carried out by foreign courts for cases involving their own citizens set precedents and added to the pressure on the Argentine government to bring cases to trial. These efforts gained increasing support in Argentina’s judicial system, particularly with the federal judge Gabriel Cavallo’s declaration in 2001 that the amnesty laws were unconstitutional and conflicted with Argentina’s obligations under international treaties to investigate and punish serious violations of human rights. Finally, with the election of Néstor Kirchner in 2003, the truth and justice movement had an ally in the presidency, and the new president promptly supported accountability efforts on various fronts, from allowing for the extradition of individuals facing charges in foreign courts for disappearances and other crimes carried out under the junta to ratifying the UN’s Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity,
which Argentina had signed in 1968 but never previously ratified.xxxvi With the backing of
President Kirchner, Argentina’s congress voted in 2003 to nullify the amnesty laws, effectively
determining that the laws were never valid to begin with, and in 2005 the Supreme Court of
Argentina validated the congressional vote when it ruled that the laws were unconstitutional.xxxvii

Conclusion

Given the unique circumstances that have allowed other countries to confront impunity
for human rights abuses after adopting amnesties as a mechanism of transitional justice, and the
fact that the political environment in El Salvador has not only lacked most of these conditions
but also in many ways been uniquely suited to perpetuating impunity, the persistence of the
country’s amnesty law is, sadly, unsurprising. The outcome of cases in foreign and international
courts—such as those of the accused war criminals facing extradition charges for their alleged
involvement in the 1989 Jesuit massacre—do carry the potential of setting an important example,
increasing domestic and international scrutiny on the government for crimes of the past and
creating greater pressure to take decisive action against impunity, and promoting a more
favorable climate for investigation in El Salvador. Nevertheless, it is clear that many obstacles to
pursuing truth and justice for victims of wartime abuses remain in place. Barring a stronger
international impetus, greater public pressure by civil society organizations and support from the
general public, and greater political will on the part of legislators, judicial bodies, and the
president to take on the amnesty, it is unlikely that a serious challenge to the law will arise in the
short term, though in the longer view some change is certainly possible.
In the short term, the most likely form for a challenge to the amnesty to take would be a court ruling on the inapplicability of the amnesty in a given case. The Salvadoran Supreme Court’s 2000 decision has already created this opening, but to date no such rulings have been made, though a more sympathetic judiciary may exhibit a greater willingness to rule on the amnesty and demonstrate that the persistence of the amnesty law does not necessarily need to mean impunity will always reign.

“Bueno, eso es lo que queremos para lograr la justicia…que no quede impunidad.”
- María Trinidad Díaz, Asociación Comité de Desarrollo Turístico El Mozote

“La ley de amnistía no favorece a la justicia. Sólo favorece a los cuales cometían los crímenes.”
- Don Juan Bautista, Residente de El Mozote

“No queremos venganza, queremos justicia.”
- José María Tojeira, Universidad Centroamericana


Díaz, Maria T., and Don Juan Bautista. Personal interview. 17 Mar. 2013.


Ibid.


Díaz and Bautista.


Attorney General in English.


Supreme Court in English.

Constitutional Chamber in English.


Civil law does not use precedent in the same way that it is used in the common law tradition.


Ibid.
xxxi  Ibid.
xxxii  Ibid.
xxxiv  Par Engstrom and Gabriel Pereira, in Olsen, Payne, and Reiter, pg. 98.
xxxvi  Ibid, pg. 115.
xxxvii  Ibid, pg. 115-117.