

## EL SALVADOR: A FAR CRY FROM PEACE

*El Salvador: un país lejos de la paz*

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### ABSTRACT

El Salvador continues to struggle with elevated levels of criminal violence perpetrated by street gangs, drug trafficking organizations, members of the security forces, and other criminal groups. The Attorney General's Office and courts have taken some positive steps towards tackling impunity for current and civil war-era crimes. However, a history of corruption and favoritism within those institutions continues to undermine citizens' faith in the legitimacy of their actions. Finally, El Salvador confronts a challenging road ahead characterized by uncertainty over the implications of an overturned amnesty law, low rates of economic growth, and a new U.S. president in the White House.

**Key words:** violence, abortion, corruption, transitional justice, United States

### RESUMEN

*El Salvador sigue luchando con altos niveles de violencia criminal perpetrada por maras, las organizaciones narcotraficantes, miembros de las fuerzas de seguridad, y otros grupos delictivos. La Oficina de la Fiscalía General de la República y los tribunales han tomado algunas medidas positivas hacia la lucha contra la impunidad para la corriente y los crímenes de la época de la guerra civil. Sin embargo, una historia de corrupción y favoritismo dentro de esas instituciones siguen a socavar la fe de los ciudadanos en la legitimidad de sus acciones. Por último, El Salvador enfrenta un camino difícil por delante caracterizado por incertidumbre sobre las consecuencias de una ley de amnistía volcada, las bajas tasas de crecimiento económico y un nuevo presidente en la Casa Blanca de los Estados Unidos.*

**Palabras clave:** violencia, aborto, corrupción, justicia transicional, los Estados Unidos

## I. INTRODUCTION

On 16 January 2017, El Salvador celebrated the 25<sup>th</sup> anniversary of the end of its bloody civil war. The Peace Accords were designed to bring about an end to the twelve-year war by implementing a series of social, economic, political, and military reforms that would allow the war's two main political protagonists to pursue their interests and those of their fellow citizens through the democratic process. In many respects, El Salvador's peace process was a resounding success. There were few significant violations of the ceasefire. The rebel Farabundo Martí National Liberation Front (FMLN) successfully disarmed and competed in the 1994 "elections of the century." Delays notwithstanding, several of the worst human rights abusers from the police and military were removed from their positions, as were members of the judiciary who protected them.

On the other hand, it is easy to understand why Salvadorans are disappointed with the ensuing twenty-five years. The war's two main actors, the Nationalist Republican Alliance (ARENA) and the FMLN have dominated the postwar political system. ARENA occupied the presidency from 1989-2009, while the FMLN has maintained power since 2009. They often seem more interested in fighting with each other than addressing the deep-rooted problems that plague El Salvador. Economically, approximately one-third of the population lives in poverty. While a peace dividend and privatization of state-owned industries helped jumpstart economic growth in the 1990s, El Salvador's economy has struggled to attract foreign direct investment and to grow over the last decade. The economic promise that came with the end of the war has failed to materialize. While the war between the FMLN and the Salvadoran military and oligarchy has ended, there has been little respite from violence. For the last fifteen years, especially the last ten, El Salvador has gained notoriety as one of the most violent countries in the world despite not being at war in the traditional sense of the term. Suffocating gang violence and limited employment opportunities have forced thousands of Salvadorans to search for safety and opportunity in the United States.

In the following pages, I detail what happened between January 1 and December 31, 2016, in El Salvador in the areas of criminal violence, criminal and transitional justice, reproductive rights, the economy, and the regional and international environment.

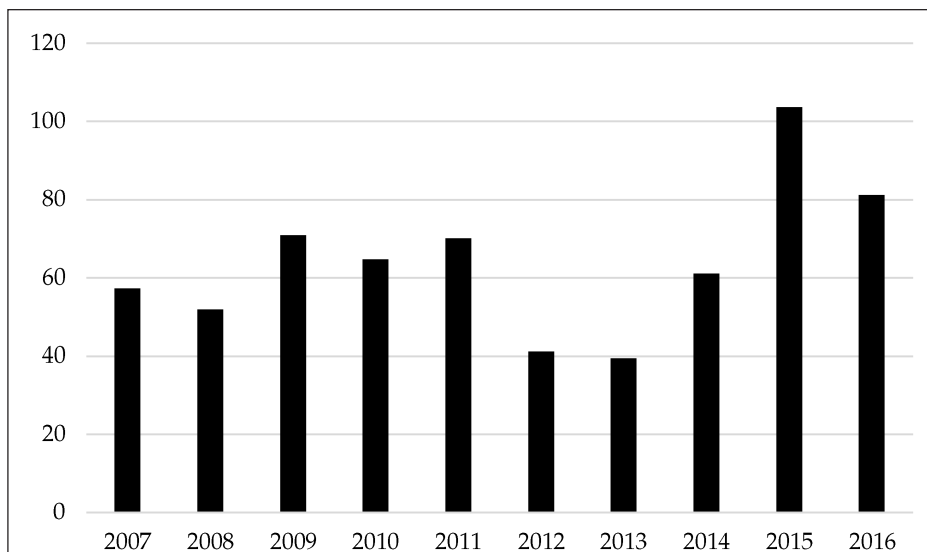
## II. WAR BETWEEN GANGS AND THE STATE

Since its civil war ended in January 1992, El Salvador has found itself among the world's most violent countries. Despite reducing its homicide rate by approximately 20 percent in 2016, El Salvador's murder rate remains eight times greater than what the World Health Organization considers epidemic. Elevated levels of violence have been caused by several factors, including the social and economic inequality and political exclusion that led to the war in the

first place; the conduct of the war, during which the country's security forces attacked all forms of protest, both revolutionary and democratic; and a postwar period which saw the deportation of thousands of young people from the United States, many of whom had been involved in criminal activities.

While postwar El Salvador was by no means peaceful, conditions deteriorated in the first few years of the twenty-first century with the strengthening of gangs such as the *Mara Salvatrucha* (MS-13) and the *Barrio 18* (18<sup>th</sup> Street). In a pattern that would be repeated by presidents of both the left and right, Francisco Flores of the Nationalist Republican Alliance (ARENA) responded to the growing gang violence with a series of *mano dura* (strong fist) security policies. For some analysts (Wolf 2009), these *mano dura* policies were politically motivated rather than serious efforts to reduce the level of criminal violence in the country. Over the next few years, El Salvador's gangs came to threaten the security of the state and its murder rate rose to among the world's highest. Extortion weakened the economy as Salvadoran individuals and businesses paid millions in *renta* to gangs and millions more to unproductive security measures adopted by individuals, businesses, and the government to protect themselves. Frustrated by the ARENA party's inability to tackle gang violence, Salvadorans gave Mauricio Funes of the FMLN a chance to lead the country in 2009. In the early years of the Funes presidency, the FMLN pursued a number of policies that sought a more comprehensive approach to gang violence. However, Funes and the FMLN's signature policy was its support for a 2012 truce between the MS-13 and 18<sup>th</sup> Street gangs (Ortega Monche 2014).

**Figure 1.** Homicide Rate (per 100,000 Salvadorans)



Source: Elaboration by author

The truce lasted for more than a year. Homicides decreased significantly and the Salvadoran government and international community found limited success in providing alternatives for gang members who wanted out of street life. Unfortunately, however, the gangs appear to have emerged from the truce stronger than ever, while the influence of the state has notably weakened. The years 2014 and 2015 saw an explosion of violence as the country's homicide rate soared from 41 (2012) to 103 (2015) murders per 100,000 Salvadorans before settling back to 81 in 2016 (See Figure 1). Police reported that 540 children were murdered last year (Clavel 2017). The violence against children caused some 14,000-15,000 students to drop out of school. The Civil Society Roundtable Against Forced Displacement by Violence and Organized Crime in El Salvador documented 193 cases of forced displacement involving 699 victims (Asmann 2017).

President Salvador Sánchez Cerén of the FMLN completely abandoned the truce after his 2014 election. His government sought to improve security through the adoption of *Plan El Salvador Seguro* (Plan for a Safe El Salvador) and a head-on confrontation against the gangs. Announced in January 2015, the program is a \$2 billion initiative targeted at some of the country's most dangerous communities. Public and private sector representatives from El Salvador, along with international partners, devised a plan that sought to better balance violence prevention with social programs and institutional reform. Unfortunately, while still early, little systematic evidence of the Plan's success exists. A March 2016 report from *La Prensa Gráfica* found that Ciudad Delgado, the community where Plan El Salvador Seguro was launched in July 2015, had experienced no respite from extortion and homicides (Barrera 2016).

During the first two months of 2016, El Salvador suffered through 1,404 homicides. To put this in perspective, New York City, Chicago, and Los Angeles combined accounted for 1,390 homicides in all of 2016 (New York Daily News 2017, 1 February). In March 2016, the Sánchez Cerén government adopted a series of "exceptional measures," including the transfer of high-level gang leaders to solitary confinement in more secure prisons and an increase in the number of military personnel on the streets. While police and gangs had been involved in several violent confrontations in 2014 and 2015 that led to the suspicious deaths of gang members, allegations of widespread abuses within the security forces increased dramatically in 2016.

According to police records, 1,074 armed confrontations between gangs and police occurred between January 2015 and August 2016. Six hundred ninety-three alleged gang members died during these confrontations and another 255 were injured (Lakhani 2017). At the same time, a total of 24 police and soldiers were killed. These overwhelming numbers, eyewitness testimony, and investigative reporting have led many to conclude that the country's security forces have engaged in extrajudicial executions and that death squads are once again operating. The Office of the Human Rights Ombudsman (PDDH) found evidence that the PNC and armed forces had engaged in two high-profile

extrajudicial killings during gang encounters at Finca San Blas in La Libertad in March 2015 and Pajales in Panchimalco in August 2015.

The Attorney General's Office established a Special Group Against Impunity to investigate unlawful killings by security forces. By the end of the year, 41 possible cases were under investigation (U.S. Department of State 2017). The Office of the Inspector General of the National Civilian Police (PNC) brought homicide charges against 12 officers between January and July (U.S. Department of State 2017), including those involved in the San Blas and Pajales murders.

Authorities claim that the year's sharp reduction in homicides was achieved because of "extraordinary measures" adopted by the country's security forces, rather than the presence of death squads or negotiations among rival gangs. Congress and the Administration considered a state of emergency in March that would have given authorities tremendous power "to suppress public meetings, restrict freedom of movement, and monitor mail, e-mail, telephone, and social media communications" (Tabory 2016). These reforms did not go into effect because of human rights and constitutional concerns. Instead, President Sánchez Cerén signed legislation in April that zeroed in on an institution within which gang leaders were orchestrating their criminal activities: prisons. The law restricted the movement and communications of prison inmates and visitors, relocated some high-level prisoners to more secure facilities, and mandated reeducation and work skills programs (Lohmuller 2016).<sup>1</sup> The government also deployed additional military-backed police units throughout urban and rural areas of the country. These Fast Reaction Forces (FERES) authorized soldiers to "detain persons they believe have committed criminal acts" (U.S. Department of State 2017). Six months later, the government approved additional extraordinary measures by transferring several gang members to higher-security prisons and further isolating them. Authorities believed that these individuals were behind the escalation of attacks against police officers and soldiers (U.S. Department of State 2017).

In July, authorities arrested more than 75 MS-13 gang members and associates, froze 30 bank accounts, and seized several businesses owned by the group. *Operación Jaque* (Operation Check, in reference to the chess maneuver) was part of the government's efforts to drive a wedge between gang leaders and foot soldiers. Salvadoran authorities hoped to convince the soldiers that they were receiving little from their involvement in gang activity, while their leaders were living lives of luxury: "There's a clear difference between the leaders and members of the gangs. The majority of the gang members live in very depressing and deplorable places," [Attorney General Douglas] Meléndez claimed. "The ringleaders have been profiting from the whole gang structure" (Janowitz 2016). Other reporting questioned the supposed lavish lifestyle enjoyed by gang leaders and their families (Martínez et al. 2016).

<sup>1</sup> The measures were extended in February 2017.

Gang members have consistently attributed the decrease in homicides to their own behavior rather than any actions on behalf of authorities. At the same time that authorities were readjusting their strategies to tackle gang violence, the country's main gangs announced that they had reached a March cease-fire agreement amongst themselves (Webber 2016). According to reporting from El Salvador, these negotiations differed from previous efforts because, among other reasons, the main protagonists lived outside the prisons and were not using external mediators (Martínez 2016). The groups also proposed dialogue with the government. In late December, the MS-13 proposed dialogue with the government once again. In this proposal, the MS-13 even raised the possibility that it would disband should negotiations proceed as they hoped.

### III. JUDICIAL DEVELOPMENTS

One of the conditions that has led to El Salvador's exceptionally high homicide rate is the absence of a democratic rule of law. High rates of impunity undermine confidence in the country's institutions and encourage actors to pursue their interests outside of traditional routes. Salvadorans have very little confidence in their institutions, particularly the Attorney General's Office and Supreme Court of Justice (See Table 1). Therefore, one of the proposed solutions to gang and other forms of violence is to restore trust in the country's institutions, particularly those institutions tasked with ensuring public security.

**Table 1.** How much confidence did you have in the following institutions in 2016?

Institution	None	A little	Some	Much
Evangelical Churches	26.2	28.4	12	33.4
Catholic Church	32.6	25.3	9.4	32.7
Armed Forces	20.6	33.5	16.6	29.3
National Civilian Police	20.2	36.6	17.4	25.8
Your Mayor	32.6	33.6	9.8	24
Media	23.7	42	15.7	18.6
Attorney General	30.9	42.3	13.9	12.9
Human Rights Ombudsperson	29.5	40.2	17.5	12.8
Attorney General of the Republic	30.1	42.5	14.6	11.2
Central Government	34.5	43.5	12.3	9.7
Supreme Court of Justice	30.7	46.5	13.1	8.5
Supreme Electoral Tribunal	42.6	39.4	10.5	7.5
Businesspeople	42.8	38.7	12.6	5.9
Legislative Assembly	49.8	36.1	9.1	5
Political Parties	56.4	32.1	8	3.5

Source: IUDOP

For the last two years, the Salvadoran people have demanded that their government pursue an initiative like that pursued by neighboring Guatemala, the International Commission Against Impunity in Guatemala (CICIG). The CICIG is a unique hybrid institution supported by the Guatemalan State and the United Nations to reduce corruption, root out organized crime, and strengthen domestic institutions. After ten years of struggle, the CICIG has proven itself an effective tool in the international community's arsenal in the fight against corruption and organized crime. In a mid-2016 survey, 97 percent of those Salvadorans polled supported the creation of a similar commission for their country. Instead, Sánchez Cerén and the other FMLN leaders claimed that they did not need such international assistance; the country simply required an Attorney General committed to strengthening judicial institutions and attacking corruption and organized crime.

After a protracted struggle, the Legislative Assembly selected Douglas Meléndez as the country's new Attorney General in December 2015; he was sworn in on January 6. Meléndez began his career in the human rights department of the Attorney General's office. While domestic and international stakeholders are still trying to gauge Mr. Meléndez's commitment to the rule of law, the early returns after his first year as Attorney General have been quite positive. Meléndez asked for an increase of over 50 percent in his office's budget to hire more prosecutors, modernize equipment, and replace and add to its number of vehicles. He oversaw the removal or reassignment of previous staff from the Attorney General's office. Meléndez also announced the creation of a new anti-impunity unit, the Special Group Against Impunity (*Grupo Especial Contra la Impunidad*, GEI) to investigate and prosecute politically sensitive corruption cases. While the U.S. agreed to support the unit financially and with some training, sole responsibility over the unit falls to Meléndez.

Meléndez has pursued corruption investigations into three former presidents, including Francisco Flores (1999-2004) and Tony Saca (2004-2009) of ARENA and Mauricio Funes (2009-2014) of the FMLN. Authorities accused Flores of misappropriating over \$15 million USD (\$10 million for ARENA and \$5 million personally) that the country had received from Taiwan following the devastating earthquakes of 2001. Following a cerebral hemorrhage, Flores died at the age of 56 on January 30. At the time of his death, Flores was under house arrest on charges of embezzlement and illegal enrichment.

Former president Mauricio Funes has been investigated in connection with his failure to properly explain the source of \$700,000 USD he amassed while president. Vanda Pignato, Funes' ex-wife, who currently serves in President Sánchez Cerén's cabinet as the Secretary of Social Inclusion, is also under investigation. Funes successfully gained asylum in Nicaragua in September after having convinced long-time FMLN ally President Daniel Ortega of the Sandinista National Liberation Front that his life was in danger. Finally, in October, authorities arrested former President Saca and six other individuals who served in his administration. Saca left ARENA to form the Grand Alliance

for National Unity (GANA) after his presidency ended. Saca was accused of illicit enrichment, unlawful association, and money laundering. It is believed that \$246 million dollars of public funds went unaccounted for during his five-year term. In addition to these high profile cases, Meléndez and his office also moved against Leonel Flores, former director of the Salvadoran Social Security Institute (ISSS) and friend of Funes. The Supreme Court's Probity Section found discrepancies in Flores' financial disclosures.

Another area where the new Attorney General has decided to focus his energies has been on the 2012 gang truce, as much remains to be uncovered about the controversial truce negotiated by the government between the MS-13 and 18<sup>th</sup> Street gangs (Allison 2016). Over the last several years, government officials, political party representatives, and Church leaders have entered into negotiations with gangs at the local and national levels. These discussions usually were shrouded in secrecy and led to criticism that the government was negotiating with terrorists. April legislation sought to end such discussions by criminalizing negotiations with gangs; illicit association now carries a prison sentence of up to 15 years (Wade 2016). In May, the Attorney General's Office arrested Raúl Mijango and nearly two dozen government officials and police officers involved in the 2012 gang truce that had significantly reduced violent crime in the country, albeit temporarily. While the Attorney General moved against Mijango and others involved in the gang truce, he did not move against former President Funes or former Minister of Defense David Munguía Payés.

*El Faro* released separate videos demonstrating that both ARENA (Labrador and Ascencio 2016) and FMLN (Martínez and Valencia 2016) had negotiated with gangs in the run-up to the 2014 presidential election. One video released in early 2016 showed ARENA deputy and Vice President for Ideology Ernesto Muyschondt and Ilopango Mayor Salvador Ruano offering gang members a new truce in return for support for ARENA president candidate, Norman Quijano. The video was recorded in February 2014, during that year's presidential contest (Martínez d'Aubuisson and Martínez 2016).

Weeks later, *El Faro* also released audio and video recordings of FMLN officials, current Interior Minister Aristides Valencia and former deputy and Minister of Security Benito Lara, offering financial projects to members of the MS-13 and 18<sup>th</sup> Street gangs in return for their political support prior to the second round of the 2014 presidential election (Silva Ávalos 2016, 9 May). Gang leaders would have managed the micro-credit program that could have amounted to \$10 million. The FMLN's Sánchez Cerén narrowly won the second round. In April 2016, gang leaders criticized FMLN leaders Medardo González, José Luis Merino, and Lara for failing to live up to their part of the agreement that had been reached in the run-up to the second round of the presidential vote. According to a statement released by MS-13 and 18<sup>th</sup> Street leaders, "They met with us and told us the FMLN government would reduce violence against our people and open channels to dialogue" (Martínez d'Aubuisson and Martínez 2016). Both the FMLN and ARENA have engaged in dialogue with gang members but it



has been difficult to determine at what point such dialogue becomes a serious enough issue for the Attorney General to prosecute.

In June, authorities arrested Apopa Mayor José Elias Hernández (ARENA) and fifteen other municipal employees on corruption-related charges. In addition to 22 who were already in prison, the Attorney General's Office arrested 14 gang members connected to the structure. The Attorney General's Office accused Hernández of providing goods, money, and jobs to members of the MS-13 and *Revolucionarios* faction of the 18<sup>th</sup> Street gang in return for votes and a promise to reduce levels of violence (LaSusa 2016). Authorities also alleged that the group murdered a local council member from Apopa because he failed to make extortion payments and because of a political conflict between with the mayor (Gagne 2017).

Hernández was not the only mayor that authorities set their sights on in 2016. The mayors of Monte San Juan, Hugo Balmore Juárez Sanchez, and El Congo, Jose Rodolfo Antonio Hernández Quijad, were arrested on April 25. Both received thousands of dollars in bribes in return for government contracts, which may or may not have been completed. Arrest orders were also issued for the previous mayors of each town, and a third town (Gagne 2016, 29 April). In a separate case, Zacatecoluca Police Chief Vicente de los Ángeles Comayagua Barahona and a dozen other individuals, including four police officers, were arrested in June. Authorities alleged that the police colluded with the 18<sup>th</sup> Street gang in an extortion scheme. The police provided the gang with ammunition and transportation and two gang members had even joined the police force (Tjaden 2016).

In July, former deputy Wilver Rivera Monge was sentenced to 15 years in prison on charges of laundering drug money for Jorge Ulloa Sibrián, known as "Repollo." His wife and son were also given lengthy prison sentences. Rivera was *suplente* for Reynaldo Cardoza in the 2012-2015 legislature. Cardoza, a legislator with the rightwing National Conciliation Party (PCN), was investigated on charges related to drug trafficking and smuggling in 2016.

Meléndez also arrested his predecessor, Luis Martínez, on charges of judicial corruption and obstruction of justice in August. One of the corrupt acts in which Martínez is alleged to have participated involved preferential treatment towards friend and businessperson Enrique Rais. After appearing to have left the country illegally, an Interpol arrest warrant was issued for Rais in January 2017. Rais is accused of fraud and having received preferential treatment from Martínez.

Meléndez's busy first year in office did not always sit well with the incumbent party, which believed that he was unfairly targeting people related to the FMLN while not pursuing cases as vigorously against members of the ARENA party (see also Réserve 2016). The FMLN's fears that people within the government were working to undermine their legitimacy and socialist agenda extended to the

courts as well. Authorities arrested four suspects, including the communications director of San Salvador Mayor Nayib Bukele's (FMLN) office in connection with a 2015 cyberattack against *La Prensa Grafica's* website on February 16 (U.S. Department of State 2017: 13). The Probity Section of the Supreme Court investigated 72 current and former public officials for illicit enrichment (U.S. Department of State 2017:19). Meléndez's office had investigated 93 corruption cases as of July 18, as well. Meléndez has also reopened an investigation into José Adán Salazar Umaña. Better known as Chepe Diablo, he was a one-time real estate business partner of Oscar Ortíz, the current vice president. Martínez might also have protected Chepe Diablo while he served as Attorney General. The case that most disturbed the FMLN, however, was the pursuit of arms trafficking charges against former defense minister and ambassador to Germany, General Atilio Benítez (Silva Ávalos 2016, 15 September). Like the Chepe Diablo case, Meléndez revived the charges after they had been allegedly swept aside by his predecessor, Martínez.

Although perhaps not equally across all political parties, Meléndez has pursued charges against members of the ARENA and GANA opposition parties. In addition to Saca, Cardoza, and others, Meléndez had Nicola Angelucci arrested in September. Angelucci was president of *Banco Multisectorial de Inversiones* (BMI) during Francisco Flores and Tony Saca's presidencies. Both men were members of ARENA at the time of the alleged corruption.

So far, Meléndez has had the support of the United States. In February, six members of the U.S. congress offered Meléndez their public support. The Attorney General responded by informing them that his corruption investigations were running into trouble with entrenched powers in El Salvador. Surveys in late 2016 demonstrated that Meléndez had the qualified confidence of the Salvadoran people (IUDOP of the University of Central America José Simeón Cañas (UCA)). Seventy percent of those polled evaluated Meléndez's performance as good or very good. A new Attorney General, and a three-year anti-corruption agreement with the United Nations Office on Drugs and Crime (UNODC) to provide technical assistance to El Salvador delivered limited, but important, progress in 2016. Nevertheless, 92% of those polled still expressed their support for a Salvadoran commission along the lines of Guatemala's CICIG.<sup>2</sup>

The Supreme Court of Justice moved to improve the judiciary in 2016, as well. Between January 1 and June 30, it "heard 201 cases against judges due to irregularities, removed four judges, suspended 10 others, and brought formal charges against 63 judges" (U.S. Department of State 2017: 11). The four judges transferred had issued rulings that benefitted businessman Rais. The Supreme Court's decision delivered "a message to the judiciary: the Supreme Court will

<sup>2</sup> A June UCA survey had previously found 97% support for an international commission.

not protect judges who provide legal cover to well-connected suspects” (Gagne 2016, 22 September).

**Table 2.** Transparency International’s Corruption Perceptions Index

2016 Rank	Country	2016 Score	2015 Score	2014 Score	2013 Score	2012 Score
41	Costa Rica	58	55	54	53	54
87	Panama	38	39	37	35	38
95	El Salvador	36	39	39	38	38
123	Honduras	30	31	29	26	28
136	Guatemala	28	28	32	29	33
145	Nicaragua	26	27	28	28	29

Source: Elaboration by author from Transparency International data

According to Transparency International’s Corruption Perceptions Index, El Salvador is in the middle of the pack among the countries of Latin America and the world. On a scale of zero (very corrupt) to 100 (very clean), El Salvador scored 36 in 2016, in between Panama and Honduras. The country’s score has worsened slightly over the last five years, decreasing from 38 to 36. Among the 176 countries and territories ranked, El Salvador appeared 95<sup>th</sup> on the list. The world’s perception of corruption in El Salvador did not change dramatically from 2015 to 2016 but the actions by Meléndez and the new staff in the Attorney General’s Office do provide a limited basis for optimism.

While the Attorney General and the courts have made some progress in the fight against corruption and strengthening of institutions, Meléndez has done little to advance the cause of transitional justice and is instead following the lead of the courts.

#### IV. TRANSITIONAL JUSTICE

In 1993, the United Nations Truth Commission for El Salvador delivered its report on human rights violations from the twelve-year civil war. In *From Madness to Hope*, the Commission found that the vast majority of human rights violations were committed by official and unofficial security forces allied with the State. The report attributed five percent of all reported human rights violations to the FMLN. Five days later, on March 20, conservative parties in the Legislative Assembly made it nearly impossible for victims and survivors of those human rights violations to pursue justice through their passage of the General Amnesty Law for the Consolidation of Peace. During the 1990s and 2000s, regional and international efforts to find amnesty laws unconstitutional found momentum in

Latin America, including most recently in Guatemala and Brazil. For over two decades, El Salvador resisted such initiatives.

However, on July 13, 2016, twenty-three years after its adoption, the Constitutional Chamber (CC) of the Salvadoran Supreme Court of Justice (CSJ) ruled the Amnesty Law unconstitutional. The CC ruled that it violated Salvadorans' rights to justice, truth, and reparation for crimes against humanity and war crimes. The Amnesty Law was also in violation of international treaties, such as the American Convention on Human Rights. The ruling was a tremendous victory for victims of El Salvador's civil war as it opened a path for them to hold individuals and institutions accountable.

“Con la sentencia de inconstitucionalidad de la ley de amnistía, El Salvador se abre a una nueva etapa de su historia. De nuevo, la Sala de lo Constitucional sorprendió a muchos, tanto a los que esperaban un fallo contrario como a los que ansiaban la derogación de la ley pero habían perdido la esperanza de que los magistrados tuvieran la valentía de sentenciar en contra de la mayoría de los grandes poderes del país. Los que se emplearon a fondo por impedir esta sentencia son los mismos que ahora vaticinan días apocalípticos. Hoy, los que han martillado por conveniencia y oportunismo político sobre el obligatorio cumplimiento de las sentencias de la Sala no pueden menos que aceptarla, aunque no estén de acuerdo con ella. En realidad, lo que hicieron los cuatro magistrados fue darles la razón a las personas, organizaciones y, sobre todo, a las víctimas que por más de 20 años lucharon en contra de una ley inconstitucional, injusta e inhumana” (Noticias UCA 2016, 15 July).

On August 25, the Supreme Court denied Spain's extradition request for former colonel Guillermo Benavides in connection with the 1989 murders of Jesuit priests at the José Simeón Cañas Central American University (UCA). The court ordered Benavides to remain in jail. Five of the six Jesuit priests killed that night were of Spanish nationality. The 16 November 1989, murders of the Jesuit priests and their two female companions has been one of the most active cases related to civil war-era violence.

On 30 September, a Salvadoran judge ordered the reopening of an investigation into the December 1981 massacre at El Mozote. An estimated 800-1,000 Salvadorans, mostly women, children, and the elderly, are believed to have died at the hands of the Salvadoran military in and around El Mozote during the worst massacre of Latin America's Cold War. In March 2017, twenty ex-military officials, including high-ranking generals, were scheduled to appear in court in San Francisco Gotera, Morazán, on charges of murder, aggravated rape, kidnapping, acts of terrorism and other offenses.

In October, the *Instituto de Derechos Humanos de la UCA* (IDHUCA) filed five complaints on behalf of victims of torture, forced disappearances, and murder carried out by state agents between 1975 and 1989 (U.S. Department of State

2017). Days later, Armando Duran filed a complaint against President Salvador Sánchez Cerén and the other four members of the FMLN's general command. Durán was kidnapped and held for nearly forty days by the Revolutionary Army of the People (ERP) in December 1986. In November, the CC ordered an investigation into the 1982 El Calabozo massacre of 200 Salvadorans.

While some argue that the amnesty ruling has the potential to further destabilize a country already suffering through extreme levels of violence, low rates of economic growth, and fiscal crisis, there is little empirical evidence that links the pursuit of transitional justice with an increased likelihood of democratic backsliding. It has not helped that the FMLN and ARENA have been exchanging accusations against each other, with each insinuating that the other is destabilizing the State in an effort to weaken their opponent. With a president who won by a handful of votes in 2014, and who is already a target of legal action because of human rights violations he oversaw as a guerrilla commander of the Popular Liberation Forces (FPL), one of the five political-military organizations that comprised the FMLN during the war, the potential for further instability cannot be ruled out especially as the country begins to prepare for the 2018 legislative and municipal elections and the 2019 presidential elections.

## V. REPRODUCTIVE RIGHTS

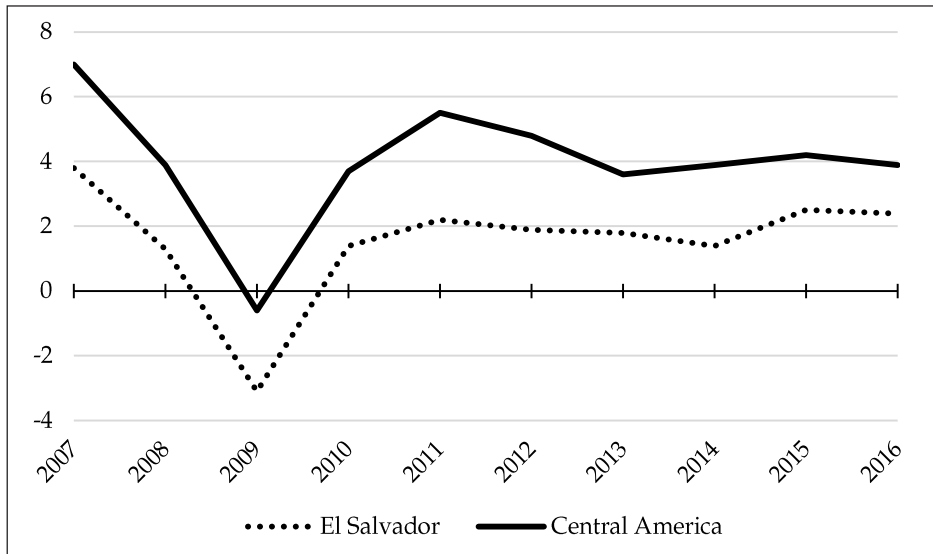
El Salvador passed one of the world's most restrictive abortion laws in 1997. Abortion is illegal under any circumstances. This includes cases of rape and incest, and where the fetus is not viable or the woman's life is in danger. A 1998 Constitutional reform further entrenched this framework by making cases in which woman induces an abortion or consents to someone else terminating her pregnancy faces two to eight years in prison. Women and abortion providers can be prosecuted for murder. The law has put dozens of women behind bars, even when evidence suggests that women might not have aborted the fetuses, but instead suffered miscarriage, stillbirth or other complications. Seventeen women were convicted of homicide and sentenced for up to 40 years in prison for having an abortion between 1999 and 2011 (U.S. Department of State 2017: 23). Three of *Las 17* have so far been released from prison, one after having served her sentence and two for lack of evidence.

In July, ARENA deputy Ricardo Andrés Velásquez Parker introduced a bill that proposed increasing the penalties for having abortion from 30 to 50 years. Months later, in October, FMLN deputy Lorena Peña introduced a bill to ease the abortion ban, including legalizing abortions in cases of rape, incest, and dangerous pregnancies. International organizations and domestic women's organizations continue to work to overturn or weaken the law, while conservative forces such as the Catholic Church and evangelical groups oppose all such efforts (Moloney 2017).

## VI. STRUGGLING ECONOMY

For the last several years, weak institutions, corruption, gang violence, and low tax collection rates have caused El Salvador’s economy to lag in comparison to its Central American peers. There is little to indicate that the rate of GDP growth will accelerate significantly anytime soon (see Figure 2).

**Figure 2.** Real GDP growth (Annual percent change)



Source: Elaboration by author from IMF 2017

After experiencing moderate success in lowering the country’s poverty rate and putting people to work, the country is no better off today than it was ten years ago. According to a report released in October 2016, 35.2% of all homes were in conditions of poverty in 2005. By 2015, that number had only improved to 34.9% (González Oliva 2016a). The number of unemployed Salvadorans reached 200,934 in 2015; the total number of unemployed Salvadorans had last surpassed 200,000 in 2005 (González Oliva 2016b).

Salvadorans living abroad sent \$4.6 billion to the country in 2016: equivalent to 17% of the country’s GDP. Although this figure is lower than the all-time high of 19% that remittances reached in 2006, the country still has one of the highest remittance rates in the world. According to El Salvador’s Consumer Protection Office, 20% of all Salvadoran households receive remittances, 44% receive \$113 or less each month in remittances, and 86% spend their remittances on consumption, such as food and clothing (Defensoría del Consumidor 2017). These remittances are a vital lifeline for lower- and middle-income Salvadorans.

The FMLN has run into difficulties in attempting to strengthen the country's finances. On 13 July, the Constitutional Court overturned the \$900 million issuance of bonds designed to "strengthen the security, education, and health budgets" of the country on the grounds that the second vote in favor of the bonds was secured when an alternate legislator participated (Freedman 2016).<sup>3</sup> The ruling came on the same day as the Constitutional Court's ruling on the Amnesty Law. According to Elaine Freedman, the three other rulings published that day comprised "a package whose aim was to economically weaken the government, affect the States' legal security, and generate insecurity among the population" (2016). Finally, the Constitutional Court also ruled against a 13% increase in the cost of electricity that the FMLN intended to use to assist those at the lower end of the income spectrum and to support investments in alternative sources of renewable energy (Freedman 2016). According to Freedman (2016), "Almost all of the legal arguments of the Constitutional Bench's rulings against public officials have coincided with the proposals and interests of the Salvadoran oligarchy and its political and business bodies: ARENA, ANEP, and the Salvadoran Foundation for Economic and Social Development." The National Minimum Wage Council, a regulatory body made up of government, labor and private sector representatives that sets minimum wages in El Salvador's private sector, approved a new minimum wage in December. As of January 1, the monthly minimum wage will be as follows: \$300 for laborers in commerce, service, and industry; \$224 for rural agricultural workers; \$295 for workers in the textile industry; and \$200 for seasonal coffee and cotton pickers (Walsh-Mellet 2017). The government hopes that higher minimum wages will lower the country's overall poverty rate.

## VII. REGIONAL AND INTERNATIONAL ENVIRONMENT

El Salvador continues to find itself in a challenging regional and international environment. On the negative side, a slowdown in the U.S. and global economies has weakened demand for exports. Organized crime and various criminal organizations involved in transporting illicit narcotics from South America to the U.S. and Europe spread greater violence throughout Central America, a key drug trafficking corridor. Finally, when the FMLN came to power in 2009, Venezuela had the makings of a key regional partner for the first leftist government of El Salvador. However, the political and economic support that might have been offered by Hugo Chávez's 21<sup>st</sup> century socialist model ended with his death in 2013.

On the positive side, the FMLN has been fortunate enough to govern El Salvador at a time when its U.S. partner has been somewhat accommodating, at least

<sup>3</sup> The Court went beyond this unusual, but narrow, reading of the bond issuance to also rule unconstitutional the common use of alternate legislators. The use of such alternate legislators lacked "democratic legitimacy" (Freedman 2016).

compared to the previous administrations. Four months after his inauguration, President Barack Obama sent Secretary of State Hillary Clinton to President Mauricio Funes' inauguration. President Obama later traveled to El Salvador in March 2011. The importance of these two acts should not be understated as the U.S. fought a twelve-year war against the FMLN through its backing of the Salvadoran government and military in the 1980s. In addition to this political support, the U.S. has included El Salvador in a Partnership for Growth initiative and a second Millennium Challenge Corporation (MCC) compact. These initiatives, especially the \$277 million compact, were pushed through despite the objections of Republicans in Congress who were skeptical about the FMLN, both for historic reasons and for the alleged involvement of high-level FMLN functionaries in generalized corruption, the drug trade, and ties to the Revolutionary Armed Forces in Colombia (FARC).

In 2016, the FMLN and the U.S. continued to work together to find a solution to the crisis that has caused hundreds of thousands of Salvadorans to flee their homes. The Global Report on Internal Displacement estimated that there were nearly 300,000 victims of forced displacement in El Salvador in 2016 (Ayala 2016). On 18 September, 18<sup>th</sup> Street gang members forced community members from El Castaño to flee their homes. The municipality of Caluco established a shelter to house those forced from their homes, in a process reminiscent of the refugee camps established during the war. In addition to those internally displaced, tens of thousands of Salvadorans have left their country for the safety and economic opportunity provided by the United States and other countries.

The mass exodus of women and children from El Salvador, as well as Honduras and Guatemala, forced the U.S. and the countries of the Northern Triangle to intensify their cooperation on a number of economic, political, and security related initiatives. One priority has been making progress on the \$750 million aid package approved in December 2015: The Plan for the Alliance for Prosperity in the Northern Triangle. President Sánchez Cerén and the other Northern Triangle presidents met with Vice President Joe Biden at the White House on 3 May to discuss the region's progress towards reaching various benchmarks for the distribution of the plan's funds. Vice President Biden "highlighted the importance of increasing government revenues, combating corruption, protecting human rights defenders, and implementing a plan to professionalize the police force and reduce the role of the military in internal policing" (The White House 2016).

While the U.S. and El Salvador have made progress in supporting the plan, ongoing corruption, abuses by security forces, and political attacks against the Attorney General's Office have caused a certain amount of tension. U.S. Republican Senator Marco Rubio accused José Luis Merino of involvement in drug trafficking and money laundering. Merino is an influential figure within the FMLN. As mentioned earlier, Attorney General Meléndez began investigating the Salvadoran ambassador to Germany, Atilio Benítez. According to the FMLN, U.S. Ambassador Jean Manes improperly pressured members of the



Salvadoran Legislative Assembly to lift Benítez’s immunity, angering members of the FMLN. To the consternation of the FMLN, the U.S. has also supported Meléndez’s corruption investigations into officials linked with the party. As a result, the FMLN sent Deputy Blandino Nerio and others to Washington, D.C. in September to register their dissatisfaction with U.S. officials (Silva Ávalos and Avelar 2016). On 19 December, a bipartisan group of 12 Members of Congress reaffirmed their support for Meléndez and the region’s other Attorneys General (Engel and Ros-Lehtinen 2016):

*December 19, 2016*

*Dear Attorneys General Melendez, Aldana and Chinchilla:*

*As strong advocates of the Northern Triangle’s Alliance for Prosperity Plan, we write to express our continued support for your excellent work fighting corruption and organized crime in El Salvador, Guatemala and Honduras. Please count on us to push for continued assistance to your offices in the coming years, particularly as you fight corruption, promote transparency, and end impunity in your countries.*

*We believe it is imperative that your political leaders allow you to carry out your work free from any interference. Recent efforts in the region intended to impeach or remove Attorneys General – or shorten their terms – send a troubling message regarding legislative and executive branch support for the impartiality of your offices. While we recognize there are constitutional provisions allowing for the possible removal of Attorneys General when justified, our Congress is skeptical of recent maneuvers to remove Attorneys General who are clearly committed to fighting corruption and organized crime. In addition, we think it is crucial that your successors be selected through fair and transparent processes that emphasize professionalism, impartiality and honesty above all else.*

*Finally, given the dangerous nature of your work, we believe it is essential that you and the prosecutors in your offices have access to the best possible personal security protection. We look forward to working with you to ensure that your security needs are fully met.*

*We very much appreciate your outstanding efforts to curb impunity in the Northern Triangle. Holding individuals who commit crimes responsible for their actions is fundamental as we all work together to improve citizen security in Central America. We look forward to our continued, joint efforts.*

In November, Donald J. Trump’s surprising victory over Hillary Clinton brought a great deal of uncertainty over how the new administration will approach El Salvador and the rest of the region. President Trump has promised a hardline on immigration and trade, which might severely threaten El Salvador. Any sustained effort by the Trump administration to deport the 500,000 Salvadorans living in the U.S. without authorization, end Temporary Protected Status (TPS) for nationals living legally in the U.S., or disrupt remittances will likely have

negative consequences for El Salvador. President Trump has demonstrated little interest in civilian diplomacy and U.S. economic and security assistance to other countries, which might also undermine The Plan for the Alliance for Prosperity in the Northern Triangle and any follow up initiatives. Finally, while President Trump has halted U.S. involvement in the Trans-Pacific Partnership and described NAFTA as one of the worst trade deals in history, he has said nothing about whether he will seek to revise the terms of CAFTA-DR.

## VIII. A LOOK AHEAD

There is little evidence of progress in El Salvador in 2016. In terms of security, the murder rate decreased by approximately 20 percent. However, it remains unclear how much of this decrease was the result of a shift in tactics by the country's main gangs or security forces. Regardless of the cause (or causes) of the decrease in homicides, there is little indication that the results will be sustainable. On 11 January 2017, El Salvador experienced its first murder-free day in two years. Two months later, over thirty Salvadorans were murdered within a 24-hour period.

There is hope that the country has found a valuable ally in the war against impunity with the arrival of Douglas Meléndez as Attorney General. He has made more progress toward uprooting corruption in a single year than his predecessor did in an entire term. However, the courts remain politicized and corrupt, giving Salvadorans little reason to trust these institutions even when their rulings seem to be positive for the people of the country. A strong test for the courts will be how they handle transitional justice cases, such as the 1981 massacre at El Mozote, that are beginning to come before them.

El Salvador continues to possess one of the world's most restrictive abortion laws. The country is also in the midst of a financial crisis. While ARENA and the FMLN have found common ground on legislation to ban mining (March 2017), there has been little indication that they will be able to compromise on reproductive rights or the country's finances. Finally, the FMLN and El Salvador confront a more uncertain situation vis-à-vis the United States. The Trump administration and emboldened Republicans in Congress have shifted the government's rhetoric away from finding common ground with leftwing governments in Cuba, Nicaragua, and Venezuela. It is too early to tell what that means for U.S. policy towards El Salvador, but greater confrontation between the two countries is more likely than it has been for the last eight years.

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