
PARTICIPANTS' PAPERS

FIGHTING ORGANIZED CRIME IN EL SALVADOR: CHALLENGES

*Ena Isabel Amaya Soto**

I. THE LEGAL SYSTEM IN EL SALVADOR

In 1983 the Constituent Assembly in El Salvador decided to create a new Constitution, and they decided that the power of the State should not be vested in just one person; therefore with this new Constitution they divided the power of the State into three main Organs: Legislative, Executive and Judicial. Since then, it has been the Judicial Organ that has dedicated some of their efforts to preparing the courts that had already been created by the Legislative Organ.

With that having been said, it is important to point out that the Legislative Organ not only creates the courts, but also brings to life those specific laws to fight common and organized crime, and without these laws there is no way for these courts to exist. If you take a look to some of the special laws in El Salvador, you may find that there is a specific chapter that orders the creation of that specific court; for example, nowadays with the Special Law for a Life free of violence against women, the Legislative Organ reserved a chapter in this specific law that talks about the necessity to create a unique court that will only handle these kinds of crimes.

Between the years of 1995 to 2005, the amount of complaints relating to kidnaping, extortions, and drug trafficking started to increase, and the Legislative Organ decided to create the Special Law against Organized Crime and crimes of complex realization. Consequently in 2007 some new courts were born, and these were known as Anti-Mafia courts. To confront this kind of crime, the District Attorney's Office also created Special Units to investigate these crimes committed by the organized groups such as gangs, drug lords, auto-theft rings, etc.

The legal system in El Salvador has evolved so much in response to the needs of society, just as the society and the ways of committing crime have changed, so it has changed the legal system, just to accord to the reality that El Salvador is living especially when it comes to organized crime.

Before the year of 1998 it was the judge who investigated every case that was presented in court, and the job of the prosecutor was only to review the evidence and confirm the investigation that had already been made by the judge; however, in 1998 a new Penal and Procedure Penal Code were enacted, changing the way that the cases are investigated, making the District Attorney's Office responsible for the investigation with the help of the Police Department.

This new Penal Code was made for common crimes, so when the crime evolved from a simple offender to organized crime, the Executive Organ asked the Legislative Organ to create special laws to fight organized crime. Since then, the Legislative Organ has been reforming some of this common and special laws, just to make it easier to fight organized crime; however, it is important to recognize that a country not only needs laws, it also needs all the resources to put this law to work and get the results expected since the creation of these special laws.

A. Entities Responsible for Investigating Organized Crime and for Adjudication

El Salvador's Constitution separates the two institutions that investigate organized crime: one of them depends on the Executive Organ (President of the Republic and Ministers), this entity is call the Policia Nacional Civil (Police Department), where all the investigators and policemen can only investigate if the other entity orders them to do so; this other entity or institution is the Fiscalia General de la Republica (District

* Prosecutor, Special Unit of Extortion, District Attorney's Office, El Salvador.

Attorney's Office), and it is this enterprise that has the duty by express command of the Constitution to investigate all crimes, to defend and represent the interests of the State.

The District Attorney's Office directs the investigation in accordance with the provision of article 74 of the Code of Criminal Procedure; therefore, it has a monopoly on the investigation because the police department cannot investigate on their own or by initiative because they will always need direction of the District Attorney's Office by one of the prosecutors.

Because of the way that the investigation has been designed, the investigators are limited to work under the orders of a prosecutor. In El Salvador, this represents a big problem because of the number of cases that enter each day, making it difficult for just one prosecutor to be able to have control over all of the cases that are assigned in one day.

In my personal experience, back in November of 2010 when I became a prosecutor, I was given 1,973 cases, which implies around 1,973 possible victims and the same number of investigated persons (only if by chance you have just one victim and one person to investigate), and for the same number of cases there were only around four or six investigators to work with more than fifteen prosecutors, making the investigation pretty slow and difficult to achieve a good result by the time the prosecutor wants to take the case to the court.

El Salvador is made up of 14 Departments, and according to recent studies the population is 6.098 million, and for that amount of population you have in the whole country just four anti-mafia courts that are responsible to sentence the cases that are brought to them by the prosecutors. In these anti-mafia courts, there is only one judge for each one of them, and sometimes a judge takes around four or five months to finish a sentence because of the number of persons that are being judged, or the amount of felonies or proof presented in these courts.

B. Problems Facing the Investigation on Organized Crime.

Even though the legislature has given the District Attorney the authority to investigate and pursue all crimes, that does not mean that the prosecutor has all the tools to do so; sometimes you will find sub-regional offices that only have thirteen prosecutors for a whole department in El Salvador.

When it comes to organized crime, this type of investigation is done by a Special Unit, depending on the crime being investigated, so it will be the Special Unit that responds to investigate. There are 10 Special Units at the District Attorney's Office, and each one of them has around 10 or 14 prosecutors for the whole country. Thus, there are sometimes hearings that are not covered due to insufficient personnel in that Special Unit or even in the Common Units.

Despite the lack of human resources and vehicles, the District Attorney's Office has been able to work on big cases to fight organized crime, not only on topics of drugs and firearms, but also taking on big structures of corruption, gangs, economic crimes and some others that are currently affecting the country.

Nowadays in El Salvador, the Constitution orders that from the General Budget of the Nation, only 2% goes to the District Attorney's Office; as a result you may find the lack of resources in some offices, and even worse the lack of human resources to pursue all the crimes committed in El Salvador. The prime solution for this would be that the Legislative Organ decides to change the law, precisely the part of the Constitution that regulates the distribution of the General Budget of the Nation. Another solution can be that some of the public servants reduce their salaries and use part of that money to strengthen the police departments and the District Attorney's Office.

Even though it is sometimes quite difficult to conclude some investigations, the DA's Office has decided to establish certain criteria to prioritize the investigation of some cases. Right now, the new District Attorney has decided to prioritize the investigation of those cases that involves organized crime-gang members, corruption, drug trafficking, money laundering, etc. The reason is that these types of crimes directly affect the economy of the country, they lead to lower foreign investment, less jobs, and finally lower tax collection. The authorities in El Salvador are now applying a special law called Extinction of Dominion, and with this law the DA's Office goes after the properties of those persons who are being investigated for any kind of crimes,

especially if they are committed by organized crime groups; the consequence here is that all those properties that cannot be justified by the accused are confiscated by the State, and some of them go to auction and the money is divided between the Ministry of Justice and the DA's Office.

C. Current Situation Concerning Organized Crime in El Salvador

Currently in El Salvador organized crime has increased, mostly because there are not sufficient resources, but despite that, most of the judges, prosecutors and investigators are making great efforts to fight these kinds of crimes, especially because they are affecting directly the economic situation of the country. One of the biggest problems right now with organized crime is that the small and medium sized enterprises are constantly being extorted by gang members; these gangs are so well structured that they work only by direct orders of the chief of the gang; this chief is called *palabrero*, and it has not made any difference in the number of extortions, even though the *palabrero* is in prison and condemned to a life sentence; it is as if he was outside giving orders to the other gang members.

Despite of all the efforts that are being made by the institutions in El Salvador, and despite the new laws created by the Legislative Organ, or the creation of new courts, it will be almost impossible to fight back against organized crime as should be done if you are expecting to achieve success.

Organized crime nowadays has centred all their efforts in trading contraband of drugs and firearms: some of those groups focus on human trafficking, and some of these groups had been able to corrupt the legal system, sometimes by paying just employees of a specific court, but other times they pay directly to the judge who has the case under his command.

Some of the criminals that are involved in organized crime still leave on regular or poor conditions, but for several years, a few of these criminals have begun to increase their assets, and now the District Attorney's Office is going after those assets that cannot be justified by any document or testimony that prove it has been acquired in a legal way or with legal money.

D. International Cooperation

El Salvador has engaged in mutual legal assistance with other countries on the basis of international treaties; some of these international treaties allow El Salvador to ask for information while there is an open investigation for a specific crime; therefore, the country that has subscribed to this treaty has the obligation to help obtain the information that is been requested. To do so the country needs to know the facts that have been investigated and who is being investigated as well.

When information sought from the responding country is in relation to the organized crime, the responding countries have always tried to respond as soon as possible, bearing in mind that the all information they need to do the necessary search has already been sent to them in the beginning. Still, it can sometimes take around five months for the prosecutor to receive the answer sent by the responding country, and this excessive amount of time is just the reflection of the bureaucratic design made by the Legislative Organ. This bureaucratic design involves so many authorities that are not under the direct orders of the District Attorney's Office in El Salvador, so the only logical response or idea that comes to mind when you see so many authorities involved in this procedure is that the government always wants to know what is being investigated and especially who is being investigated.

This excessive amount of time that it takes to receive a document leads to a bigger problem, and there are direct consequences on those organized crime cases that are being investigated, and sometimes these cases have already been taken to court, making it hard to probe the felonies accused.

Right now the authorities involved in the procedure of mutual assistance are: first, the prosecutor, who has to make a request that goes to a Special Unit called the Unity of International Legal Affairs, where the document is checked to ensure that it has all the necessary information; the second step is to send this request to the Judicial Organ where it is checked once again; the third step is where the Judicial Organ sends the document to the Ministry of Justice (part of the Executive Organ) where the document is checked again; finally, the document gets to the Ministry of Foreign Affairs, and of course again the document has to be checked.

166TH INTERNATIONAL TRAINING COURSE
PARTICIPANTS' PAPERS

When the answer is finally sent to El Salvador, it goes through the same process in reverse to get into the hands of the prosecutor, so by this time, the investigation that is being conducted is practically public: no matter how many envelopes you send the document in, the central authority always opens them.

In the case of extradition it is almost the same way as mutual assistance, and involves the same agencies; the only difference is that when the General District Attorney asks for extradition, this is required to go to the Supreme Court, and all the 15 magistrates decide if this request can be made to the country where it is supposed to be a specific person; if the Supreme Court decides that is appropriate to make this request, they send the document to the Ministry of Justice and then to the Ministry of Foreign Affairs.

There are just a few cases of organized crime where El Salvador had asked for extradition, and most of them had been related with corruption, and some others with drugs; this has also been true when another country had asked El Salvador to extradite someone who was in Salvadorian territory.

As it has been said before, the legal basis for mutual legal assistance is a treaty, a multilateral or bilateral agreement, and the same goes for extradition, but with the only difference that extradition is regulated by the Constitution of El Salvador and also in the different treaties that had already been signed by the representatives. The reasons why extradition can be denied by the authorities in El Salvador depends on the considerations made by the Magistrates of the Supreme Court. They decide if the extradition is in accordance with the laws in El Salvador, if all the requirements of the treaty have been satisfied, and if there is another case open, or if a conviction has already been obtained in El Salvador against this person.

II. CONCLUSION

El Salvador has been struggling with organized crime for around 15 to 17 years. Since then the Legislative Organ has enacted several special laws with the belief that legislation is only what is necessary to fight this type of crime, but it seems to forget that no matter how many special laws you have in one country, lacking the necessary resources to put that law into action renders the law as just a simple piece of paper with letters on it, and it has no consequence on the society.

Organized crime in El Salvador is increasing, but the human resources to fight back are not, and the same is true regarding the sufficiency of tools needed by prosecutors. They are not enough. The State, i.e. the government and the Legislative Organ, need to understand that they have to invest in those agencies in charge of investigating, prosecuting and adjudicating organized crime. Of course, special laws are necessary, but these agencies need to have all the tools to bring this special law to life, to make it work, so the society can see in the not-so-distant future, that all efforts are being made, and that there is an interest in eradicating organized crime once and for all.