

**Forum:** UN Office on Drugs and Crime

**Issue:** Addressing the “excessive” use of force by police and military officers in El Salvador’s gang crackdown

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## Introduction

El Salvador has experienced a dramatic increase in gang and criminal activity since the late 1990s, leading to a heavy-handed government response. In 2003, the Salvadoran government implemented the Mano Dura (Firm Hand) policies: a set of law enforcement policies implemented in El Salvador in 2003 to combat gang violence and organised crime. The procedures involve increased police presence, stricter sentencing laws, and the use of military force in some cases. The goal of Mano Dura was to reduce crime rates and restore public safety, but the policies were criticised for their heavy-handed approach and for leading to human rights abuses, including police brutality and extrajudicial killings.

This aggressive approach has led to several human rights violations, including police brutality (beatings, torture, and other forms of physical violence), extrajudicial killings, arbitrary detention, denial of a fair trial, violation of freedom of expression, discrimination against marginalized communities (including young people and those living in poverty). In the end, the policy was accused of worsening gang violence: Despite the intended goal of reducing crime, the Mano Dura policies were criticised for actually worsening gang violence, as the increased police presence led to increased conflict and a wish for revenge by gangs, radicalising them.

This report will analyse the current situation in El Salvador, exploring the causes and consequences of the excessive use of force since 2003, as well as possible solutions to the problem and assess the effectiveness of the current approach, and explore potential alternatives.

## Term Definitions

### Gang

A gang is defined as a group of people, typically young people, involved in criminal activities such as extortion, robbery, and drug trafficking. Gangs often have a hierarchical structure, with a leader or leaders at the top, and the members below them. Gangs in El Salvador are involved in a wide range of criminal activities, and their activities often pose a threat to the safety of their communities.

### “Excessive” force

The unwarranted or unnecessary use of violent force by the police or military against suspected criminals or gang members. This excessive use of force can take many forms, such as the use of physical violence, the threat of violence, or the use of weapons such as firearms, tear gas, and rubber bullets. This excessive use of force often results in severe injury or death, which is illegal under Salvadoran and international law.

### Gang crackdown

A series of measures taken by the Salvadoran government to reduce gang violence and criminal activity. These measures have included the implementation of the Mano Dura policies, which involve the formation of joint military and police anti-gang squads, as well as increased surveillance, arrests, and prosecutions of gang members. The goal of the crackdown is to reduce gang activity and improve public safety in affected communities.

## Background Information

El Salvador has a long and complicated history of violence and instability, which has contributed to the persistent problem of gang violence and organised crime in the country.

In October 1979, El Salvador's military junta made up of civilians and army officers, resigned as civilian members refused to agree to reforms and failed to bring the military under control. The junta was dismantled. A civil war broke out in 1980. It was characterised by extreme violence, including terrorism by death squads, targeting of civilians, and recruitment of child soldiers. As a result of this armed conflict in Central America, Salvadorans fled to the United States and settled in the Los Angeles ghetto. There they met other immigrants from Latin America, but it was the Mexicans who fought and discriminated against them more fiercely. Salvadorans were uneducated and had difficulty finding work. They found themselves in a city already built around gangs. They felt alienated from this criminal society, so they had no choice but to form their gangs.

There are two major mafia groups of his in Los Angeles known as "Maras". 18th Street and Mara Salvatrucha (or MS-13). Their main characteristic is extreme violence in their criminal activities, such as murder, rape, and all kinds of brutal criminal activities. They are recognizable by their quirky tattoos spread all over their bodies. After serving time in the United States, Maras members were deported to their countries of origin. Upon arriving in their home country, they continued their criminal activities, forming gangs operating as American branches and causing serious security problems for Latin American governments.

After the 12-year civil war that ended in 1992, El Salvador struggled to rebuild and address the root causes of violence, including poverty, inequality, and lack of opportunity. The "Mano Dura" (Firm Hand) policies were implemented in 2003 as a response to the growing problem of gang violence and organised crime in the country. The initial goal of the Mano Dura policies was to reduce crime rates and restore public safety, but the implementation of the guidelines was criticised for leading to human

rights abuses, including police brutality, extrajudicial killings, and the arbitrary detention of individuals without proper cause or evidence, and of discrimination.

Mano Dura legislation typically focuses on toughening criminal codes, lengthening prison terms, and encouraging judges to apply maximum penalties. A classic example of this comes from the anti-mara law enacted in El Salvador in July 2003. This act, known as the Ley Anti-Maras facilitates the detention and prosecution of suspected gang members based on the newly classified felony of "illicit association", or gang membership. Under this law, suspects were identified based on flimsy evidence such as tattoos. Between July 2003 and August 2004, roughly 20,000 "mareros" were arrested, many of them teenagers and young men. Approximately 95 percent of them were eventually released without charge after the Mano Dura Law was declared unconstitutional by the Salvadoran Supreme Court for violating the UN Convention on the Rights of the Child. During that period, the country's homicide rate rose from six to seven murders per day.

This aggressive approach has been largely successful in reducing gang activity, however, it has also led to a number of human rights violations, including the excessive use of force in affected communities. In response to this problem, international organisations such as the United Nations and Amnesty International have called on the Salvadoran government to take measures to address the excessive use of force.

In 2016, the government of El Salvador launched a new national security plan called the "Plan El Salvador Seguro" (Safe El Salvador Plan) as a response to the high levels of crime and violence in the country. The plan aimed to reduce crime and improve public safety by increasing the number of police officers, improving police training, and strengthening the criminal justice system.

However, the implementation of the Plan El Salvador Seguro has been criticised for having a biased approach to crime and violence. The plan has been criticised for focusing primarily on repression and punishment, rather than addressing the underlying social and economic factors that contribute to crime and violence. It was also criticised for its reliance on the military to support police efforts, which has raised

concerns about the use of excessive force and human rights abuses by military personnel. It was also criticised for contributing to similar discrimination that appeared with the Mano Dura policies.

In 2019, the government also created a National Commission for the Prevention of Excessive Use of Force and the Protection of Human Rights. The commission was tasked with monitoring the implementation of the National Security Plan and making recommendations for further measures to address the excessive use of force. The commission also sought to improve public awareness of the issue and to identify areas of vulnerability in order to better protect civilians from human rights abuses.

Its impact has been mixed. On one hand, the commission has been credited with increasing transparency and accountability in the police and military forces, and with investigating and reporting on instances of excessive use of force and human rights abuses. On the other hand, some have criticised the commission for being underfunded and understaffed, and for lacking the resources and independence necessary to effectively address the problem of excessive use of force and human rights abuses.

Additionally, some human rights organisations and critics argue that the commission has been ineffective in addressing the root causes of excessive use of force and human rights abuses and that it has failed to hold police and military personnel accountable for their actions. They argue that the commission has not done enough to ensure that victims of human rights abuses receive justice and that perpetrators are held responsible for their actions.

Despite these efforts, the excessive use of force by the police and military officers remains a problem in El Salvador, and the government faces an ongoing challenge in addressing it. By continuing to implement the National Security Plan, and by engaging with international organisations, and civil society groups, the government is making progress in reducing the excessive use of force, and in ensuring that the human rights of all Salvadorans are protected. However, most of the population still feels at risk, and those policies just had an undermining effect on the present violence in El Salvador. This is confirmed by the implementation of a state of emergency on the 27th

of March 2022, seeing violence and arrests occur even more, and trials becoming stricter. Criminal proceedings for suspected gang members can now be held in absentia or presided over by so-called "faceless" judges, i.e. judges whose identities remain secret. Teenagers who are associated with gangs and convicted of serious crimes will be tried as adults and will be held in adult custody rather than in juvenile detention.

## Countries and Organisations Involved

### El Salvador

In El Salvador, the government and security forces are primarily responsible for addressing the excessive use of force by police and military officers in the country's gang crackdown. However, several other countries and organisations have also been involved in this effort.

### USA

Some analysts argue that U.S. immigration policy (War on Drugs and anti-immigrant policies such as the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) has exacerbated the gang problem in Central America. By the mid-1990s, the civil conflicts in Central America had ended and the United States began deporting undocumented immigrants, many with criminal convictions, back to the region. Between 2000 and 2004, an estimated 20,000 criminals were sent back to Central America.

During the 1980s, the US government provided significant military and economic aid to the Salvadoran government in its fight against left-wing guerrillas, in order to contain the spread of socialist ideas in South America. It also pushed the election of a military dictatorship against leftist guerrilla groups. Since the 1990s, the US has provided assistance with the USAID (U.S. Agency for International Development) to promote judicial reform, expand democratic governance, create economic opportunities, strengthen education, and improve public health in Central America.

The US have also contributed to train the Salvadoran security forces and have contributed to the implementation of the National Security Plan. In addition, the US has also provided funding (over \$4.4 billion in development assistance through USAID) and technical assistance to civil society groups and international organisations involved in the effort to reduce the excessive use of force, keeping El Salvador's economy moving during the war years and during the transition from war to peace, building or rehabilitating 415 km of roads, 114 bridges, and 4,476 repairs to the electrical grid.



## Other Central American Countries

Most gang activity in Central America has occurred in El Salvador, Honduras, and Guatemala. Among the Central American countries, Honduras and El Salvador have enacted aggressive anti-gang laws, whereas Nicaragua and Panama — two countries in which the gang problem has yet to pose a major security threat — have adopted youth crime prevention strategies. Guatemala is considering a package of stringent anti-gang legislation, but is also implementing some social rehabilitation and prevention programs.

In 2014, the governments of Guatemala, Honduras and El Salvador announced the Alliance for Prosperity, a strategic plan to create greater economic opportunities, improve security and access to justice and to strengthen government institutions in the three countries to reduce illegal migration to the United States.

## UN

The United Nations and its various human rights agencies have also been involved, mostly with UNODC, UNHRC, UN Human Rights Office and United Nations Development Assistance Framework (UNDAF), in the effort to reduce the excessive use of force in El Salvador. They have helped developing basic goods and services, decent work and livelihoods, governance, resilience and safe environments and coexistence, by strengthening the institutions in charge of delivering justice, prosecuting crime and preventing violence, peacebuilding strategies, support in national strategies to generate opportunities for returnees and their reintegration to their communities of origin, and the eradication of femicide.

The UN has called on the Salvadoran government to take measures to address the excessive use of force and has issued several reports on the issue. The UN has also provided technical assistance to the Salvadoran government and security forces in the form of training and capacity building.

## Gangs

The major gangs operating in Central America with ties to the United States are the “18th Street” gang (also known as M-18), and their main rival, the Mara Salvatrucha

(MS-13). The 18th Street gang was formed by Mexican immigrants in the Rampart section of Los Angeles in the 1960s, youth who were not accepted into existing Hispanic gangs. It was the first Hispanic gang to accept members from all races and to recruit members from other states. MS-13 was created during the 1980s by Salvadorans in Los Angeles who fled the country's civil conflict

In March 2012, MS-13 and Barrio 18, two of El Salvador's largest gangs, signed a ceasefire. The ceasefire was arranged to work with the government of El Salvador to reduce the number of gang-related killings.

### Other NGOs

In addition, many international nongovernmental organisations (NGOs) have also been involved in the process. For example, Amnesty International and Human Rights Watch have issued multiple reports on the issue, criticising the repression done by the police in prisons or under the state of emergency announced in March 2022. Other NGOs, such as the Central American Institute for Law and Human Rights (ICJHR) and the International Commission of Jurists (ICJ) have also been involved in the effort. However, these reports only alarm on the cause, revealing the issue to a widespread public, but no governmental or international action issues from those.

More local responses like the creation of Homies Unidos, an organisation also in 1996 to prevent youth violence and gang membership in El Salvador, have a bigger impact. Based in Los Angeles and El Salvador, the organisation works to help displaced persons and families divided into two regions. They also provide liaisons for those who are in need. The organisation helps deportees navigate El Salvador's complex and dangerous gang geography. It also offers programs and mentorship for young people in both locations. The organisation promotes employment, education, and physical and mental health, and provides the tools and resources to accomplish these things, such as tattoo removal, for instance.

## Timeline of Events

- 1990s** Gang activity begins to rise in El Salvador, prompting the Salvadoran government to implement the Mano Dura policies in 2003.
- 2003** Mano Dura policies are implemented in El Salvador, involving the formation of joint military and police anti-gang squads.
- 2012** The leaders of El Salvador's two most powerful gangs, Mara Salvatrucha (MS-13) and their rival Calle 18 decided in March 2012 to end the fighting and killing among them to reduce the alarming murder rates in the impoverished country - murders fell by half (40.10 murders per 100,000 people, the lowest since 1994).
- 2014** The pact unravels, leading murders to soar again - 62.29 murders per 100,000 people.
- 2015** El Salvador experiences a surge in homicides per capita, making it the most violent country in the world, with one murder every hour - 105.23 murders per 100,000 people (in comparison it is 1.17 in the United Kingdom).
- 2016** The Salvadoran government launches the National Security Plan, which includes a set of measures to address the excessive use of force.
- 2019** The Salvadoran government creates the National Commission for the Prevention of Excessive Use of Force and the Protection of Human Rights.
- 2020** The U.N. Human Rights Office raises concerns about the excessive use of force by police and military officers in El Salvador's gang crackdown.
- 2021** The UNODC signed with the Supreme Court of Justice and the Ministry of Justice and Public Security of El Salvador a cooperation project "Strengthening the implementation of management tools of cases for disappearances and torture of women, men, and youth related to organized crime", with the aim of reinforcing the investigation of cases of disappeared persons in the country, through the articulation of institutional operational processes.
- 2022** Since the declaration of a state of emergency on March 27, police and military personnel have reportedly deployed in areas where members of gangs are based, resorting to unnecessary and excessive use of force. More than 5,747 people were arrested without warrants, and some were reportedly subjected to cruel, inhuman, or degrading treatment.

## Relevant UN Treaties/Resolutions

The UN has adopted a number of resolutions related explicitly to El Salvador, including Resolution 1989/10 (1989), which calls for a cease-fire and a political settlement between the government and the FMLN; Resolution 1990/51 (1990), which calls for the establishment of a truth commission to investigate human rights violations during the civil war; and Resolution 2018/43 (2018), which calls for the Salvadoran government to take measures to address the excessive use of force by police and military officers.

In addition, the UN's Human Rights Council has also issued a number of reports and statements related to El Salvador, including the report of the independent international commission of inquiry on El Salvador (1991), which examined allegations of human rights violations, and the statement of the High Commissioner for Human Rights on the situation of human rights in El Salvador (2020), which raised concerns about the excessive use of force by police and military officers in El Salvador's gang crackdown.

On a more global scale, the UN proposed numerous Treaties and Resolutions that address the excessive use of force by police or army officers. The UN states that law enforcement officials shall fulfil the duty imposed upon them by law at all times, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession (Article 1, UN Code of Conduct for Law Enforcement Officials, 1979). The UN also heavily regulates the employment of force by police and army officers. Whenever absolutely unavoidable, any use of force by law enforcement officials must meet the following four requirements: legality (lawful purpose and respect equal treatment of all persons), necessity (strictly necessary for the achievement of a lawful purpose, noting that lethal force may only be used when unavoidable to protect against grievous bodily harm or an imminent threat to life), proportionality (harm inflicted by the use of force must not be excessive compared to the benefit of the lawful purpose pursued) and precaution (law enforcement operations must always be planned, prepared and conducted so as to

minimise the resort to force and the resulting harm). These principles should not be bent under any circumstances (UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990).

Concerning gang activity in general, the UN's main treaty is the The United Nations Convention against Transnational Organized Crime, adopted by the General Assembly in November 2000, and is the main international instrument in the fight against transnational organised crime. The Convention is further supplemented by three Protocols, which target specific areas and manifestations of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition.

## Previous Attempts to Solve Issue

The government has set up numerous programs to try to guide the youth away from gang membership. La Mano Dura was a form of zero tolerance policy, a strategy that had flowed into El Salvador from Los Angeles, which called for "the immediate imprisonment of a gang member simply for having gang-related tattoos or flashing gang signs in public." Before this policy was ruled unconstitutional, it put tens of thousands of gang members as young as 12 years old in jail between 2003 and 2004.

Following La Mano Dura was a government program called Super Mano Dura ("Super Firm Hand"). Super Mano Dura was highly criticised by the UN. According to the Salvadoran government, it saw temporary success in 2004 with a 14% drop in murders. This success dwindled beginning in the next year, and as of 2005, El Salvador had 65 homicides per 100,000 inhabitants, more than triple the current rate of Mexico.

San Salvador's former mayor Norman Quijano provided efforts to restore public safety that have been successful. Security measures in San Salvador's most troubled Districts (5 and 6, which border Soyapango, and are home to many gangs) included safety campaigns and recreational activities to keep youth from joining gangs. The mayor also initiated a security camera program so the police can monitor the most heavily trafficked areas of the city. The project was launched in the historic downtown and will expand throughout the entire city.

In late April 2020, President Nayib Bukele ordered that prisons containing gang members be placed on lockdown following a spate of violence between April 24 and April 27, 2020, that killed 77 people, which was blamed on gang members. As part of the Salvadoran government's crackdown, prisoners were locked in crowded cells for 23 hours a day; cells were barricaded with plywood and sheets of metal; mobile and wifi signals were blocked, and rival gang members were mixed together. Human Rights Watch has criticised the treatment of prisoners as humiliating, degrading, and endangering their health in the midst of the 2020 coronavirus pandemic.

In 2022, current president Nayib Bukele implemented a state of emergency, aiming to deal with this issue, which seemed a success at first. The authorities have imprisoned over 50,000 alleged gang members since declaring a state of emergency in response to a spate of gang-related killings in late March and the murder rate has dropped dramatically – although official figures exclude those killed by security forces and Reuters recently uncovered discrepancies over the number of bodies recovered from mass graves. This state of emergency, recently extended for a sixth month, bears close resemblance to the “iron fist” crackdowns of past governments in 2003 and 2004, which brought an initial drop in homicides followed by a sharp spike from 2004 to 2006.

The United Nations (UN) has also been involved in the effort to reduce the excessive use of force in El Salvador. Many experts have called for immediate action to help the victims and to stop the conflict, however, none of these calls for action have had a real impact on the situation.

## Possible Solutions

Instead of eviscerating human rights and judicial independence, the authorities could address the longstanding inequalities that leave children from El Salvador's most marginalised communities vulnerable to gang recruitment.

Attempts to address El Salvador's gang problem through rehabilitation and social reintegration have mostly been limited to the modest efforts of a handful of evangelical churches, but even these have become untenable under the current crackdown. If global funds were to be distributed to the government, whilst ensuring these will be rightfully used (no corruption or fraud), reinsertion policies could eventually work out.

Another way to protect the population and deliver justice for the gangs' victims is also to guarantee robust investigations, due process, and fair trials, while simultaneously tackling the root causes of violent crime and facilitating rehabilitation and social reintegration.

One way this could be achieved is to establish dialogue between the government and the gangs. It worked with the first truce of 2012, that was negotiated to reduce homicides, but not addressing extortions or other criminal activities. The limitation of this truce was that while people liked the reduction of homicides, the truce didn't really address the gang control in the communities. And the gangs continued extorting.

Hence, a solution would be the demobilisation of the gangs as criminal actors and their incorporation into licit ways of living. Negotiations with gangs in order to demobilise them, and also to provide justice to the victims would be a way to achieve peace, however bearing in mind that most of the violence were perpetrated by young people. This would need to be taken into consideration during the process of finding justice for the population. In that vein, gang leaders should be imprisoned whilst promising protection and opportunities for the members of the families and of the communities. A bargaining chip may be to offer a future for these families, these communities, while at the same time holding the leaders accountable, keeping them in prison, and paying their debt.



In the end, gang demobilisation would be one of the most interesting solutions, requiring funds and political capital. President Bukele might have been in a stronger position to do so early in his tenure, but it will be harder now with the mass incarceration and vilification of gang members. Still, demobilisation is one of the only long-term solutions.

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