

LETHAL NEGOTIATIONS

POLITICAL DIALOGUE BETWEEN GANGS
AND AUTHORITIES IN EL SALVADOR

ACKNOWLEDGEMENTS

This policy note was written during a complex political and security situation in El Salvador. Thanks go to all Global Initiative Against Transnational Organized Crime (GI-TOC) staff with expertise on gangs and the GI-TOC's Network of Experts in the region, who provided valuable information.

Particular thanks go to the journalists and local sources without whose professionalism, hard work and courage this paper would not have been possible.

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SUMMARY

This policy note provides a brief background on gangs in El Salvador and the attempts of Salvadoran authorities to negotiate with them to reduce violence in the streets. It analyzes a March 2022 gang-led homicide spree with a particular focus on the government's response, arguing how it has harmed citizens' lives, turning fundamental human rights into bargaining chips between licit and illicit actors.

Highly punitive responses to contain gang violence have been the norm in El Salvador. In addition, for the past decade, secret negotiations between state actors and imprisoned gang leaders have been conducted, but outcomes have yielded similar or worse results. Authorities must seek alternative avenues for peace, such as promoting restorative justice and community resilience, minimizing the risk of prison riots and providing reinsertion programmes. Mediation from the international community is also needed in order to prevent the situation from spinning out of control.

INTRODUCTION: CRACKDOWN ON VIOLENCE AND FREEDOM

On 5 April 2022, at the request of the president of El Salvador, Nayib Bukele, the Nuevas Ideas (New Ideas) party, which holds the majority in the Legislative Assembly, passed an amendment to the national penal code approving Article 345-C, which makes any gang-related analysis or journalistic piece a crime punishable with 10 to 15 years in prison. This addition to the penal code, particularly its ambiguity, has sparked outrage and concern among journalists and anyone who has published documents, texts, photos or other information to analyze any type of criminal group or organization in El Salvador. Given the broad reach of this new law, the publication of this policy note could potentially result in the authors being prosecuted by the Salvadoran justice system.

El Salvador is unfortunately infamous for the deadly violence generated by gangs, known locally as *maras*, and their confrontation with Salvadoran authorities. However, 2021 recorded the lowest homicide rate in more than 20 years,¹ with 18 homicides per 100 000 habitants.² This was a significant improvement after reaching one of the highest rates in the world, 106 homicides per 100 000 habitants, in 2015.

Despite this downward trend, 26 March 2022 marked the most lethal day since the Salvadoran civil war ended in the early 1990s. In total, 87 people were killed over the course of that weekend, presumably ordered by gang leaders in prison. These two days were an outlier, as, in 2020–2021, the average number of homicides per day was 3.4,³ and, according to police reports, the average dropped to zero in the days following these murders.

To contain the spike in violence, Bukele ordered prison officials to severely restrict communications, mobility and food for inmates. He also asked the Legislative Assembly to approve a 30-day state of emergency to suspend the rights to freedom of association and a legal defence, to increase the period of detention without cause from 72 hours to 15 days and to allow governmental interception of communications without judicial authorization.⁴

On 27 March, the Legislative Assembly approved that request without limiting freedom of movement. Still, security forces installed checkpoints in communities around the country and conducted raids and widespread arrests of anyone suspected of being associated with or resembling a gang member. Since then, Bukele, an avid Twitter user, has made public, with the hashtag #GuerraContraPandillas ('War against gangs'), that in the first 33 days of the state of emergency, over 20 000 people were detained⁵ and 16 000 gang members in the prison system have not left their cells.⁶ He even threatened to withdraw their food entirely if yet another killing took place. On 23 April, the state of emergency was expanded 30 additional days.

Human Rights Watch, the Inter-American Court of Human Rights and the US Department of State have all expressed their concern over the violence and threats to freedom of speech. Bukele has ignored these concerns and even accused these organizations of defending gangs. Salvadoran authorities have officially linked this effort to control gangs and reduce violence to the state's security strategy, called Plan Control Territorial (territorial control plan), but there are signs that they are conducting secret negotiations with leaders of Mara Salvatrucha-13 (MS-13), Barrio 18 Sureños and Barrio 18 Revolucionarios – the three most powerful gangs in the country – to reduce violence in the streets and provide electoral support in



exchange for benefits in the prison system.¹⁰

This policy note provides a brief background on the gang context in El Salvador and the attempts of Salvadoran authorities to negotiate with these criminal groups to reduce the violence. It analyzes the March 2022 homicide spree with a particular focus on the Salvadoran authorities' response and emphasizes how gang violence and the state's response have harmed citizens' lives, turning fundamental human rights into bargaining chips between licit and illicit actors. Finally, this brief provides alternatives to reduce the possibility of blackmail from gangs and backlash from the state from ambiguous negotiations, and recommendations to prevent this situation from spinning further out of control and damaging the human rights of Salvadorans.



GANGS NEGOTIATE WITH SALVADORAN AUTHORITIES

The origins of MS-13 and Barrio 18 can be traced to California's late-20th century gang ecosystem. These two criminal organizations arrived in Central American countries, particularly El Salvador, after deportation processes in the mid-1990s. Extortion has been one of the main tools used to generate resources for gang members on the streets and within the prison system. What began as voluntary fees that gang members collected from merchants and public transport drivers quickly became the engine that fuelled the expansion of these organizations in El Salvador. Today, extortion has grown into a criminal enterprise affecting all aspects of socio-economic life largely as a way to control territories and everything and everyone that passes through them. 12

These criminal groups are organized such that incarcerated leaders are able to give orders to gang cells on the streets on how to collect and distribute extortion funds, and indicate who should be killed for failing to meet payments. Gangs within prisons can spark violence in the streets and control violence in communities across El Salvador. Authorities have tried to regulate homicides and other crime by tackling gangs with highly punitive (and populist-style) 'iron fist' policies whose main goal is to criminalize gang membership and increase control measures (such as raids and checkpoints) in response to violence. Yet for the past 10 years, Salvadoran authorities have also facilitated secret dialogues and negotiations with imprisoned gang leaders to reduce violence and obtain electoral support in exchange for benefits for those leaders.

At least two known secret negotiations have taken place. The first one, known as 'the truce', happened in 2012, when officials under former president Mauricio Funes's administration negotiated with MS-13 and the two factions of Barrio 18 to reduce gang violence. The result was a 40 per cent decrease in the homicide rate (from 70.7 to 41.8 homicides per 100 000 people). After defence minister Munguía Payés, who negotiated the truce, stepped down, his successor abandoned the agreement. The homicide rate skyrocketed in the following two years to over 106.3 homicides per 100 000 people. The effects of the truce have been analyzed at length, and although it is unclear how it affected civilians (some say thousands of lives were saved and others that disappearances increased), gangs became political actors from then on.

Although the 2012 negotiation developed into a political scandal, during subsequent elections, gangs were seen as political assets to bargain with for peace on the streets and to garner electoral support. News articles showed that politicians from the left-wing Frente Farabundo Martí para la Liberación Nacional (FMLN) and right-wing Alianza Republicana Nacionalista approached gang leaders to negotiate for support.

President Bukele is a young politician who was previously mayor of Nuevo Cuscatlán (a small municipality near the capital) and San Salvador as a member of the FMLN, the party from which he was later expelled. He won the presidential election in February 2019 with the Gran Alianza por la Unidad Nacional party, took office in June, and shortly after he re-joined the Nuevas Ideas party, which he founded in 2017. While mayor of San Salvador, he opposed iron fist policies and supported tackling the root causes of violence by providing small libraries called CUBOS where at-risk youth could attend after-school programmes.¹⁶ However, once he became president, he benefitted from his popularity (over 70 per cent



of approval rating) to leverage the army and the national police force to show additional strength – both for political reasons and as a show against crime.



Nayib Bukele, president of El Salvador, has initiated a tough crackdown on gang-led violence in the country dubbed the 'war against gangs'. © APhotografia/Getty Images

In February 2020, he visited the Legislative Assembly with armed soldiers to pressure members to approve an extension to the security budget. By April 2020, at the beginning of lockdowns to control the spread of COVID-19 and after a wave of 70 homicides, his administration released photographs and footage of hundreds of gang members from MS-13 and Barrio 18 (who are sworn enemies) mixed together in cramped spaces as a way to portray toughness against gangs and force them to comply with agreements in the ongoing negotiations.¹⁷

It was in September of that year that *El Faro*, a news outlet known for its rigorous journalistic investigations, made public prison documents showing that officials from the Bukele administration had been negotiating with MS-13 in the Zacatecoluca and Izalco prisons since 2019.¹⁸ According to documentation released by *El Faro*, in the second semester of 2020, prison officials reversed the decision to merge cell blocks containing opposing gangs, removed guards who were seen as too violent and allowed for fast food to be served. In exchange, gang leaders agreed to reduce the number of homicides and support Nuevas Ideas in the February 2021 interim elections, when Bukele's party would go on to obtain the majority.

Since 2015, homicides have been decreasing steadily, but it is unclear how much of this decline is the result of negotiations between state and gang actors, security policies such as the territorial control plan or gangs reducing violence in good faith. ¹⁹ As shown in Figure 1, in the alleged years these negotiations took place, homicides decreased at similar rates (40 per cent from 2011 to 2012 and 44 per cent from 2019 to 2020). Inversely, the end of the talks between Salvadoran authorities and gang leaders in 2013 seems to have had an extremely lethal result as the homicide rate rose by 165 per cent from 2013 to 2015.



The number of homicides during the first three months of 2022 (336) is similar to the same period in the previous year (330). The main difference is the deadly spike during the last weekend of March. Only time will tell if 2022 follows a similar path to 2013 or if Bukele's policies are able to contain the violence.

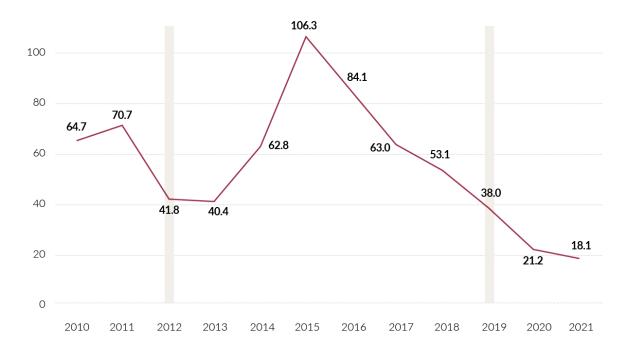


FIGURE 1 Homicide rates per 100 000 inhabitants, El Salvador, 2010-2021.

Sources: Mesa Técnica Interinstitucional de la Fiscalía General, Policía Nacional Civil and Instituto de Medicina Forense, El Salvador

The March 2022 killing spree and its aftermath can be understood as a message from gang leaders and as a sign of the deterioration of El Salvador's democracy. Gang leaders are demanding that authorities renegotiate the terms of their agreement and are sending a message to citizens to let them know who is in control. There are different levels of commitment among illicit actors with respect to the negotiation process; as the terms and conditions of the negotiation are only partially known due to lack of transparency, it is impossible to know with certainty what or who caused the violence, which specific elements of the negotiation gang leadership wanted to revisit and what gang leaders would have demanded in exchange for ending the violence.



THE AUTHORITARIAN AFTERMATH OF THE GANG-LED KILLINGS

As a response to the March 2022 violence, the Bukele administration tightened its grip on gang members in prison and passed emergency measures that had an immediate effect on the rights of citizens to lawful detention. Thousands were reportedly detained every day and hundreds of women searched for their sons or partners in jails around the country and, in many cases, were forced to buy them food, which the prison system does not provide in sufficient quantities.²⁰

To show how they are subjugated, images were released of gang members in prison handcuffed and forced to run in uncomfortable positions, food rations were cut from three meals a day to two, and Bukele even threatened to cancel meals for all prisoners if the killings continued.



Imprisoned gang members during the March 2022 state of emergency. © Presidency of El Salvador/Handout/Anadolu Agency via Getty Images





Families of detained alleged gang members search for their relatives at a detention centre in San Salvador, 4 April 2022. © Camilo Freedman/APhotografia via Getty Images

Despite this, authorities have not disclosed which gang leaders were involved in the violence or if they have been sent to solitary confinement or had their extradition process to the US expedited, and it is unclear whether those wanted for extradition are still in prison. Days after the March 2022 massacre, InSight Crime reported that at least four members of the MS-13 leadership facing extradition to the United States had been allowed to leave prison in late 2021 and early 2022.²¹

The Bukele administration has gone even further by restricting the freedom of the press and freedom of expression. On 5 April 2022, Bukele tweeted: 'When the Germans wanted to eradicate Nazism, by law they forbade all Nazi symbology, as well as messages and anything that promoted Nazism. No one said anything, it was understood that it should be that way. Now we will do the same with gangs.'22 That night, his party passed an amendment to the national penal code system approving Article 345-C, which makes it a crime punishable with 10 to 15 years in prison to

create, participate in creating, facilitate or fabricate texts, paintings, designs, drawings, graffiti or any form of visual expression on public or private property that explicitly or implicitly transmits messages, symbols, terms, propaganda or any type of written remark alluding to the various associations, or terrorist criminal groups, that are gangs or *maras*, particularly those that refer to the territorial control of those groups or transmit threats to the general population.²³

On 7 March, El Salvador's journalist association issued a statement expressing its concern that Article 345-C severely constrained the freedom of the press and declared that not reporting on gangs and the violence they generate will not make the situation disappear.²⁴

El Faro replaced all of the news on its webpage for 24 hours with the hashtag #NoALaCensura ('No to censorship') and a public statement rejecting the amendment to the penal code. 'The reforms to the penal code approved ... by the Bukele-controlled Legislative Assembly are a gag order on the press and freedom of expression, but above all else, an assault on the public's right to be informed. What should citizens know about El Salvador's gangs? Nothing, according to the government,' they said.²⁵



To provide some context on the gravity of the criminalization of journalism in El Salvador, Figure 2 compares the penalties approved for reporting information on gangs with some of the most heinous crimes a person can be a victim of. As shown, disseminating journalistic articles, analysis or other information related to gangs will be sanctioned with penalties comparable to killing, forcibly disappearing, torturing, raping or stealing property from a person and even committing genocide.

CRIME	PENAL CODE	YEARS IN PRISON
Creation and reproduction of messages, symbols, terms or propaganda alluding to gangs	Art. 345-C	10-15
First-degree murder ('simple homicide')	Art. 128	15-20
Rape	Art. 158	6-10
Aggravated robbery	Art. 213	8-12
Genocide	Art. 361	10-25
Forced disappearance of persons	Art. 364	15-25
Torture	Art. 366-A	6-12

FIGURE 2 Top punishable crimes in El Salvador, 2022.

Source: El Salvador Penal Code

This policy results not only in the criminalization of those with a relationship to gangs, but journalists and other experts will be considered criminals, and if they are imprisoned, it will be lawful rather than an indication of political persecution. Although in early April there was a significant reduction in homicides, it is extremely worrisome that Bukele is using authoritarian tactics to achieve this result. Although democratically elected, for the past three years the Salvadoran government has been using the same highly punitive measures and nebulous negotiations with gang leadership to combat crime as its predecessors. But Bukele's administration has gone a step further by restricting the basic rights of all citizens, criminalizing journalism and limiting freedom of the press, which is sending El Salvador down an authoritarian and violent path.



RECOMMENDATIONS

El Salvador has been fighting to provide a democratic and safe environment for its citizens for decades. After the end of the civil war in 1992, the process of building democratic institutions was affected by corruption, weak economic development and the rise of gangs fighting for territorial control.

Highly punitive responses to contain violence have not yielded the desired results. Not only does violence continue to be part of the daily lives of Salvadorans, but they are now exposed to significant human rights violations. Given that attempts by authorities and politicians to secretly negotiate with gang leaders have not achieved long-term violence reduction, it is time to seek alternatives to control the violence and promote peace.

To that end, we recommend the following:

- Promote restorative justice and community resilience. Fostering restorative justice and resilience among citizens, the state and criminal groups is complex, but it does not come at the cost of civilians' lives and basic human rights. The Colombian peace route, through which armed and criminal groups were demobilized, could provide valuable insights into promoting peace and security for Salvadorans.
- Minimize the risk of prison riots. The Salvadoran prison system is overburdened, currently housing more than 36 000 gang members and alleged gang members. Overcrowded spaces, crackdowns and lack of food generate extremely stressful conditions. Gang leaders could take advantage of this situation and spark riots with hundreds, if not thousands, of potential victims to increase pressure on Salvadoran authorities and force them back to the negotiating table. Moreover, as the prison population does not segregate convicted felons from prisoners whose cases are still pending, there is an additional danger in active gang members forcing those who were recently incarcerated into becoming involved in gang activities or simply turning violent against new prisoners.

As of 21 April, three detainees have been beaten to death by other prisoners over the course of the month. One more perished as authorities failed to provide the medical assistance he required. Their families claimed they were not involved in criminal activities or were part of any gang.²⁷ To avoid the prison system from once more becoming the catalyst for gang growth, it is imperative that a thorough release process for those not involved in illegal or criminal activities be created and that the prison system be depressurized.

• Make reinsertion programmes available. Other than faith-based options offered by the church, there are no reinsertion programmes available for gang members interested in changing their ways. As part of the restorative justice and community resilience process, it is imperative to develop prevention initiatives to reduce the risk factors that can lead to gang involvement (lack of employment, housing or education) and to develop the skills of gang members and their families so they may contri-bute to society in a positive way. Homeboy Industries in Los Angeles, California, and Jesus Luz de Oportunidad, in Panama City, are two programmes with excellent reinsertion models that could be adapted to the Salvadoran context. Moreover, returning to innovative social programmes such as the CUBO initiative as well as promoting peace programmes and activities



would be a positive strategy to promote social development and reintegration, rather than alienate community actors.

Promote mediation and collaboration with the international community. For the past 10 years, El Salvador has suffered from complex structural problems such as corruption, weak institutions, insufficient economic development and one of the highest homicides rates in the world. Although state authorities have tried to portray their response as beneficial for Salvadorans, international and civil society organizations have expressed their concern over human rights violations and the absence of rule of law.

To de-escalate the situation and protect Salvadorans' lives and their rights, the international community and organizations should encourage mediation and support Salvadoran authorities in scaling back their punitive policies. Developing robust criminal investigations into those who ordered and perpetrated this violence and seeking justice through due process and dialogue among involved parties would be the recommended first steps to take. A plethora of international and civil society organizations should support this process through methodologies to promote dialogue, peace and community resilience. This will not be easy nor produce immediate results, but failing to do so could send El Salvador down a *pax mafiosa* authoritarian path that would be very difficult to turn back from.



NOTES

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