

POLICY BRIEF



**GLOBAL
INITIATIVE**
AGAINST TRANSNATIONAL
ORGANIZED CRIME

PUNITIVE GOVERNANCE IN CENTRAL AMERICA

AN ANTIDOTE TO CRIMINAL
GOVERNANCE?

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Cover: A group of 2 000 detainees are moved to a prison in Tecoluca, El Salvador, 24 February 2023. © *Presidencia El Salvador via Getty Images*

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SUMMARY

In March 2022, authorities in El Salvador imposed a state of emergency to contain the growing crime and gang violence besieging the nation. Enshrined in the country’s constitution to respond to extreme circumstances such as war, rebellion, sedition or severe disturbances to the public order, the decree allowed the suspension of the rights to freedom of movement, expression and association, and to legal defence, among others. The state of emergency, still in place after more than a dozen extensions (10 of which have been considered unconstitutional by legal experts), appears to have provided communities with a long-sought-after sense of security. However, this has been at the expense of people’s fundamental rights: as of April 2023, more than 67 000 Salvadoreans have been incarcerated without due process and over 100 have died while in state custody.

More recently, Honduran authorities have also resorted to harsh governance measures to contain increasing extortion levels. In December 2022, Honduras authorized a state of emergency that is still in effect today. The

results of this response have been underwhelming and there is a lack of public information available to better analyze the consequences.

As the situation in El Salvador gains international attention for an alleged reduction in gang violence, this policy brief analyzes and compares the effects of the state of emergency in both countries.

Punitive responses harnessed in the past in an attempt to control criminality in the Central America region have shown that, although bringing short-term results, the effects are not sustainable over time. Addressing the root causes of violence and crime, such as corruption and impunity, and providing solutions to structural problems, including better education and job opportunities for young people, are some of the policy interventions that authorities should focus on instead of heavy-handed governance impositions. Although law enforcement institutions need to be strengthened in the region, fundamental human rights must also be upheld at the same time.



INTRODUCTION

Large parts of Central America endure persistently high levels of insecurity and societal violence. Transnational drug trafficking organizations and local gangs exploit weak law enforcement agencies, systemic corruption and disaffection stemming from low socioeconomic development, often in a context where institutions have been weakened by civil conflict.

According to the Global Organized Crime Index 2021, Central America is the worst-performing region in the world for criminality. It scores 6.16, compared to a global average of 4.87 (the higher the number, the worse the performance).¹ Extortion of businesses and communities by gangs in El Salvador, Honduras and Guatemala is a key factor behind this poor ranking. Seven out of eight countries in the region are home to cocaine markets that exert significant to severe influence. Central America scores fifth worst among all regions in the world for resilience, and El Salvador performs especially poor in terms of its capacity to regulate economic affairs, including illicit activity.

To tackle criminality generated by gangs and criminal networks, authorities in El Salvador and Honduras have previously implemented highly punitive (and populist style) 'iron fist' policies. History suggests that these crackdowns have in some respects exacerbated, rather than curtailed, gang activity. Increased incarceration – notably accompanied by the segregation of rival gang members – facilitated coordination between leaders behind bars, enabling them to extend extortion activity, including by killing people who refused to pay.²

Salvadorean authorities are known to have twice engaged in substantive negotiations with gang leaders to reduce lethal violence. The first attempt, known as 'the truce', came in 2012, when officials under then President Mauricio Funes's administration negotiated with the Mara Salvatrucha (MS-13) gang and two factions of Barrio 18. This strategy appeared to yield a quick victory; the annual homicide rate fell 40 per cent, to 41.8 per 100 000 inhabitants,³ but the initiative was quickly abandoned due to political fallout. The annual homicide rate subsequently rose by a factor of 2.5, to reach a record 106 homicides per 100 000 inhabitants in 2015.⁴ A second attempt at negotiation by El Salvador came under incumbent President Nayib Bukele in 2019. Those negotiations came in a context where homicides continued to fall from the peak reached in 2015. According to media reports, concessions included prison officials reversing a decision to merge cell blocks containing opposing gangs, a removal of guards viewed as excessively violent and the provision of fast food for prisoners. Reports also alleged that some gang leaders who faced extradition to the US had even been released.⁵ An apparent breakdown in talks led to gang leaders in prison allegedly ordering a killing spree that left 87 citizens dead by late March 2022.⁶

In response, President Bukele pressed the National Assembly into passing a state of emergency that suspended the rights to freedom of association and legal defence. It also increased the permitted period of detention without cause from 72 hours to 15 days. The legislature duly approved these measures on 27 March 2022, initially for a period of 30 days. Although the police and the military were ready to execute detentions of alleged gang members, the Salvadorean justice system was not prepared to process such high numbers of detentions at once. The prison system, with a total capacity of approximately 30 000 inmates, was already overcrowded at 120 per cent by December 2020.⁷ The additional thousands of detainees have placed the Salvadorean prison system well above its limit, disregarding international conventions for the treatment of prisoners.

Along with the state of emergency, Bukele's ruling party also secured an amendment to the national penal code system – Article 345-C, which stipulates a prison term of 10 to 15 years for anyone creating 'texts' that 'refer to the territorial control' of gangs.⁸ The country's association of journalists decried this move as tantamount to a gag on reporting on gangs and the violence they generate.⁹

The emergency measures have been extended for over a year with mixed and opaque results. On one hand, gangs appear to have been partially dismantled and Salvadoreans seem to be enjoying a long-sought-after sense of relative security. An opinion poll by the Central American University in December 2022 found that 88 per cent feel 'safe' or 'very safe' in their own homes due to a reduction of crime.¹⁰

However, this has come at a clear cost. More than 67 000 citizens have been arrested¹¹ since the state of emergency came into force and, according to Human Rights Watch, between March and August 2022, 39 000 were charged with illicit association (among them more than 1 000 children). Most of the arrested have been sent to two prisons (Izalco and La Esperanza) where they live in severely overcrowded conditions.¹² According to Human Rights Watch, at least 32 people have lost their lives¹³ in state custody since the state of emergency came into force, but some reports put the



Nayib Bukele, president of El Salvador, addresses new police recruits days after the approval of a state of emergency, 4 April 2022. The decree has granted the government special powers that have been widely criticized. © Kellys Portillo/Aphotografia via Getty Images

number of deaths at 90 or more.¹⁴ Additionally, transparency and access to public data has been severely hindered. It has become virtually impossible to obtain access to public records to inform a robust evaluation of government actions – and the consequences of those actions – under the state of emergency.

El Salvador's crackdown on gangs amounts to punitive governance and has come at the expense of the basic rights of citizens. It can be understood as a government's response to criminal governance through militarization, suspension of human rights and due process, and it has caught the attention of countries throughout Latin America.

Its populist appeal makes the state of emergency easy to implement and to communicate to the public. Military and police personnel are portrayed by state media as being tough against the perpetrators of violent crime. Raiding homes and detaining citizens with complete disregard for due process is portrayed as a minor cost in exchange for the safety of all.

Emergency governance has also repeatedly been imposed elsewhere in the region, often pre-dating the ongoing crackdown in El Salvador. Guatemala's President Alejandro Giammattei has declared 24 states of emergency since coming to power little more than three years ago. His administration has presented these measures as legitimate policy responses to challenges ranging from the COVID-19 pandemic, to insecurity, gang violence and devastation wrought by hurricanes.¹⁵

On the back of the anti-gang states of emergency in Guatemala and El Salvador, Honduras has now followed suit. Like El Salvador, Honduras has been beset by an extortion crisis, but one exacerbated by a poorly coordinated demobilization of military personnel and in a context marked by the penetration of criminal organizations at the highest levels of government.¹⁶ In February 2022, Xiomara Castro was inaugurated as president. She pledged to combat corruption and bolster citizens' security. Her strategy involved decreasing the military's involvement in security affairs and increasing trust in the police.

As the military disengaged from crime fighting, the police force's limitations left it unable to contain a wave of extortion against public transportation in late 2022.¹⁷ In a bid to control the increased levels of extortion and rescue her popular image, President Castro opted for punitive governance, declaring a war on extortion. This was followed by an executive order for a partial state of emergency that was implemented in some neighbourhoods with high crime rates in San Pedro Sula and Tegucigalpa. Since then, the state of emergency has been repeatedly extended and, ironically, the president has turned once more to the military to help implement it. The measures have also now been extended to most of the country.

This policy brief sets out to understand the context in which the Salvadorean and Honduran governments have implemented their respective states of emergency and to provide a tentative observation of results, while acknowledging that the dataset for Honduras is limited by the short duration of the state of emergency to date.



EL SALVADOR'S YEAR-LONG STATE OF EMERGENCY

After decades of living under the de facto power of gangs, some of El Salvador's citizens have been receptive to the president's argument that innocent civilians incarcerated under his state of emergency represent merely an acceptable 'margin of error.'¹⁸ Tens of thousands of people have thus far been detained under the state of emergency that has been in place in the year since March 2022.

President Bukele had opposed 'iron fist' policies when mayor of San Salvador, before abruptly resorting to the tactic himself three years into his presidency in March last year. Such draconian moves have populist appeal, both for political leaders seeking to prolong their stints in power and some of El Salvador's gang-weary civilians, many thousands of whom have been the victims of gang activity. For many, therefore, the rights of gang members should not be upheld. The resultant policy directionality can be characterized as punitive populism. It permeates all branches of the Salvadorean government and at all levels. It promotes an excessive reliance on criminalization to achieve security and superficial justice, without reliable data to support such claims and resulting in acknowledged injustices for those wrongly caught up in the dragnet.

Punitive populism is seen by its advocates in Central America as a quick route to improving social welfare, even as it overlooks factors including the protection of innocent civilians, sustainable crime prevention and restorative justice.¹⁹ Iron fist policies involving military responses and increased incarceration have undisputed electoral appeal²⁰ and implementing populist policy is easier than dismantling the immense criminal apparatus often embedded in the state. However, the use of the army in police work and harsher penalties for offenders are not responses that have worked in contemporary Central American history.²¹

It is difficult to measure the costs of El Salvador's suspension of constitutional guarantees and militarization of public security. To sustain this regime for a year, the Salvadorean government first had to create the conditions for it. A visit by Bukele with armed military guards to the Legislative Assembly on 9 February 2020 and the illegal and unconstitutional dismissal of the magistrates of the Constitutional Chamber of the Supreme Court of Justice, as well as of the Attorney General of the Republic on 1 May 2021, are the most relevant precedents.

It is impossible to undertake a robust assessment of the state of emergency regime. Key data has been kept confidential by all the involved law enforcement institutions: the Office of the Attorney General, the police, the General Directorate of Penal Centres and the Institute of Forensic Medicine.

While the number of homicides in El Salvador has clearly dropped since 2015 (see Figure 1), it is difficult to understand why the current administration seeks to make it appear as if there are fewer homicides than in reality, and why this data is not available as it used to be. Since the state of emergency, the police have reserved public access to this data since the second half of 2022.

Questionable efficacy of emergency measures

In February 2023, the Bukele administration claimed that there had been 300 days of ‘zero homicides’ in the country.²² However, official records do not record homicides in detention centres of people incarcerated under the state of emergency. In November 2022, the security minister acknowledged 90 deaths in prisons,²³ but human rights organizations have identified more than 120 deaths in detention centres since the state of emergency began. A local human rights organization, Socorro Jurídico Humanitario, has alleged that four people who died in state custody were buried in mass graves without their relatives being informed by the authorities.²⁴

Under Article 2 of the UN Convention Against Torture, the Salvadorean authorities are prohibited from perpetrating torture or other human rights violations even under exceptional conditions. However, arbitrary detentions have become the norm during the state of emergency under a government that does not recognize its obligation to respect basic legal due process. The current administration has continued to reserve information regarding detentions and judicial processes of incarcerated people and those who have been released (on parole or declared innocent). This information could help analyze the actual ‘margin of error’ during the state of emergency and better understand the circumstances under which the detentions took place.

César is a 20-year-old man who was detained in May 2022 and is currently on parole. He feels unsafe. ‘They say that they have released 3 000 people, but it’s a lie because we are not free,’ he says. ‘One does not feel free; there is fear.’²⁵ He says that he initially backed the emergency regime, but after being confined to a cell while innocent, he believes that the government has failed him and others. ‘With what I have experienced, I feel that there exists now a different type of crime... before, the gangs harassed and tortured us, now it’s the police who do it.’ The state of emergency appears to have had little or no appreciable impact on violent crime. Homicides in 2022 declined, but a steep down trend has in any case been observed for each year since 2015 (see Figure 1). The fall in homicides in 2022 was slightly greater than in 2021, but broadly consistent with the annual rate of decline during the last seven years.

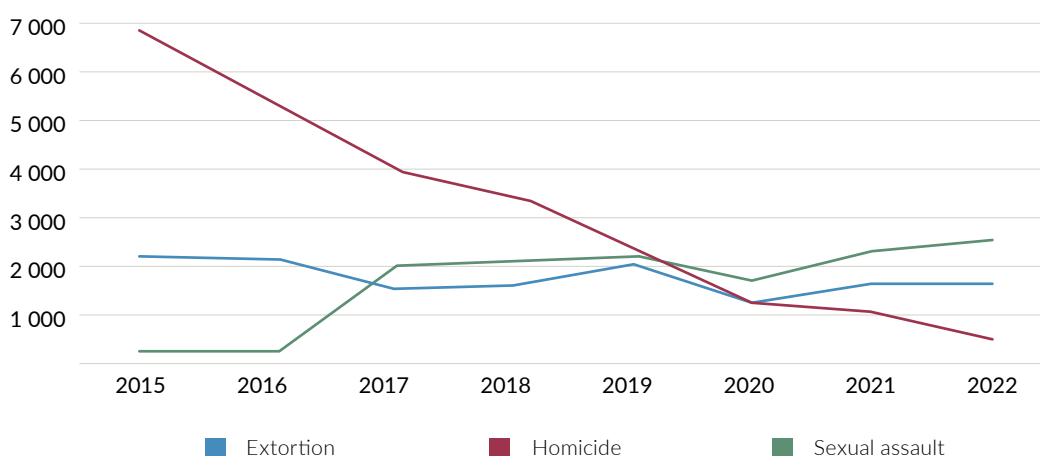


FIGURE 1 Reported cases of extortion, homicide and sexual assault in El Salvador, 2015–2022.

SOURCE: *La Prensa Gráfica*, <https://www.laprensagrafica.com/elsalvador/2022-repor-to-un-aumento-en-denuncias-por-violacion-20230206-0090.html>

Meanwhile, reported cases of extortion have mostly remained constant, while sexual assault rose, by 8 per cent in 2022. The rise in reported sexual assaults may in part be driven by the state of emergency giving victims greater confidence in coming forwards to denounce perpetrators. However, even factoring in this caveat, it is clear that the state of emergency has done little or nothing to reduce gender-based violence and to effectively tackle one of the most prevalent crimes: extortion.

Salvadorean academic Oscar Picardo notes that the gang phenomenon was a slow, progressive socio-cultural creation, intertwined with migratory processes, poverty, lack of opportunities and a high rate of school dropouts. For Picardo, it is a social construct that is not easily undone by social engineering or social cleansing (the latter being the elimination of groups deemed to be undesirable). He expresses surprise that the mass arrests have not been met with a violent response, especially if these groups are categorized as terrorists and/or organized crime groups. He also questions what comes next: has the problem been transferred to the prisons; have the causes of the gang phenomenon been solved?²⁶ An even more disturbing question could be added, is this really a war on gangs?

On 23 February 2023, the US Department of Justice announced the arrest of three MS-13 gang leaders in Mexico and their extradition to face charges in New York. The three – along with 10 others, some of whom remain at large – stand accused of actively engaging in public displays of violence to threaten and intimidate civilians; violence to obtain and control territory; and manipulating the electoral process in El Salvador. The press release also states that the accused have played a leading role in MS-13's alleged negotiations with the government of El Salvador.²⁷ El Salvador's government has consistently denied that negotiations are taking place with gang leaders. Salvadorean officials have repeatedly stated that the emergency regime will remain in place for as long as necessary.²⁸ 'There is a willingness to lose freedom in exchange for security,' asserts Claudia Ortiz, a congresswoman.²⁹ Lawyer and political analyst Thanya Pastor likewise argues that El Salvador's citizens value 'their security' above human rights and democracy in the current context.³⁰



A soldier detains a man in San Salvador, 4 April 2022. Arbitrary detentions have become the norm during the state of emergency. © Camilo Freedman/APHOTOGRAFIA/Getty Images

The nuances and contradictions within popular assent

Opinion polls reflect high support for the state of emergency. Results of a survey published last October by the Institute of Public Opinion of the Central American University show 75.9 per cent of Salvadoreans approve of the policy.³¹ This is nine percentage points lower than the 84.8 per cent rating obtained in an April–May 2022 survey conducted by the same institute.

Delving deeper into the survey questions, it is noticeable that many respondents do not clearly establish the direct relationship between the contents of the different legislative decrees that have given life to the state of emergency with provisions that violate human rights. Respondents do not necessarily endorse arbitrary detentions, denial of legal assistance and defence for a detainee, and subjection to cruel treatment. A survey by Salvadorean think tank Guillermo Manuel Ungo Foundation found that 83.7 per cent of those surveyed agreed or strongly agreed with the state of emergency. However, 69.7 per cent disagreed when asked if a person should be arrested on suspicion of belonging to illegal groups without an arrest warrant; more than 57 per cent disagreed or strongly disagreed with any person being detained for up to 15 days without being brought before a judge and 90.7 per cent disagreed with the whereabouts of a detained person being withheld.³² These findings indicate that while respondents want to feel safe and approve of the use of force to guarantee their security, many Salvadoreans are opposed to the institutionalization of human rights violations.

Meanwhile, in the context of what threatens to be a permanent suspension of constitutional guarantees, principally by means of mass arrests without due process, additional violations are being committed against citizens. Students from a high school in the municipality of La Libertad decried police confiscating their mobile phones. ‘The police told us that we were going to participate in a class activity, requiring us to ... use our mobile phones,’ one student said. ‘As soon as we did this, they took them away from us and said they would give them back’ at a later date.³³

The state of emergency has also allegedly helped fuel arbitrary dismissals of and reprisals against trade unionists who demand payment of salary arrears owed by municipal governments. An example is the case of Ovidio Hernández, secretary of the Union of Workers of the Mayor’s Office of Soyapango, who was detained on 10 January, released 15 days later and dismissed despite having union privileges.³⁴ Whatever threats the Salvadorean government has identified – terrorism, gangs or drug trafficking – the excessive use of force and the systematic violation of human rights should be avoided. The government resorted to an emergency regime without first exhausting other legal avenues. This has fed into concerns that the government has imposed the state of emergency in a bid to control the population, rather than to guarantee its security.



THE WAR ON EXTORTION IN HONDURAS: FOLLOWING SALVADOREAN FOOTSTEPS?

On 24 November 2022, Honduran President Xiomara Castro declared a ‘war on extortion’ and suspended constitutional rights while flanked by balaclava-clad officers with skulls on their uniforms. A year prior, she had campaigned on demilitarizing public security and focusing on community-based policing. What was behind this seismic shift in both narrative and policy?

Gangs are notorious in Honduras for extorting payments from a wide spectrum of businesses, such as bus operators, taxi services and small to medium-sized enterprises under threats of violence. Extortion, often referred to as ‘war tax’ in Honduras, had been evolving in recent years both in terms of the criminal groups deploying this tactic and how they threaten and collect payments from victims.

Towards the end of 2022, pressure rose from parts of Honduran society to take effective measures against a perceived surge in extortion. Most notably, the Honduran Council of Private Enterprise released a statement declaring that ‘extortion was getting out of hand’ and urging the government to act.³⁵ The government responded by announcing an ambitious plan to combat extortion and by introducing a state of emergency that suspended certain rights in neighbourhoods supposedly affected by gangs. These efforts and their consequences continue to unfold.

‘There are many areas of the country where citizens prefer to call the gang instead of the police when they have a problem,’ said Fernando, a homicide investigator for more than 20 years whose name has been changed for his security.³⁶ Fernando has lived for many years in an area controlled by MS-13, but affirms they do not harm him, since confrontations with the police are not in the gang’s interest. He gave an example of how they operate in the neighbourhood:

[A] person approached me wanting to sell me a [car] battery. The guy was half *bolo* (a drunk) and I suspected he had stolen it so I told him to go away. The next day we found the *bolo* with broken hands. It turns out that the person whose battery he had stolen had reported him to the gang. The gang investigated the case as if they were the police. They went to talk to witnesses and found the person who had stolen the battery and the person who had later bought the battery. They interviewed the purchaser and he told them that he had bought the battery for 100 lempiras [US\$4]. The gang resolved the case by returning the 100 lempiras and taking the battery back to the original owner. And the thief received his punishment.³⁷

This is an example of criminal governance. The gang is taking on roles as police, prosecutor and judge, and can solve matters such as this in less than one day. In a country where only five per cent of homicides were solved in 2020,³⁸ some citizens see gangs as the only organizations capable of taking action.

Instead of a police monopoly on violence, they share a 'duopoly' on violence with criminal groups such as MS-13, who use violence to settle disputes and resolve conflicts.³⁹ The state has been absent in many marginalized neighbourhoods across the country, unable to effectively guarantee citizens' security. Gangs and other criminal groups sometimes fill that void.

Criminal governance and extortion are closely intertwined. The vast amounts of money collected over the last decade have permitted gangs to grow into organized structures capable of exercising large-scale criminal governance.⁴⁰ This in turn provides the gangs a strong grip on communities, which allows them to extort on an even larger scale.

According to research by Asociación para una Sociedad más Justa (Association for a more just society – ASJ), a Christian group promoting justice in Honduras, nine per cent of Honduran households are victims of extortion. This corresponds to 847 154 individuals who are paying millions of dollars each year.⁴¹ However, the cost of extortion extends far beyond the mere economic impact of these payments. Extortion leads to a series of other crimes such as kidnappings and homicides, along with funding for criminal groups. It also discourages investment, fuels migration and contributes to a sense of hopelessness.

In a bid to address shortcomings, Honduran authorities established an anti-extortion unit in 2013, specialized extortion courts and maximum-security prisons in 2016. However, ASJ has found that Honduras's criminal justice system has largely failed to address gang activities. Such activities included forcing victims to pay high prices for services – including the provision of car washing or food – as well as more generalized extortion. An estimated 99 per cent of all extortion cases are never reported.⁴² Furthermore, 100 per cent of criminal case files reviewed by ASJ were for cash-based extortion, suggesting that the system was unable or unwilling to prosecute digital extortion payments, which is a growing trend.

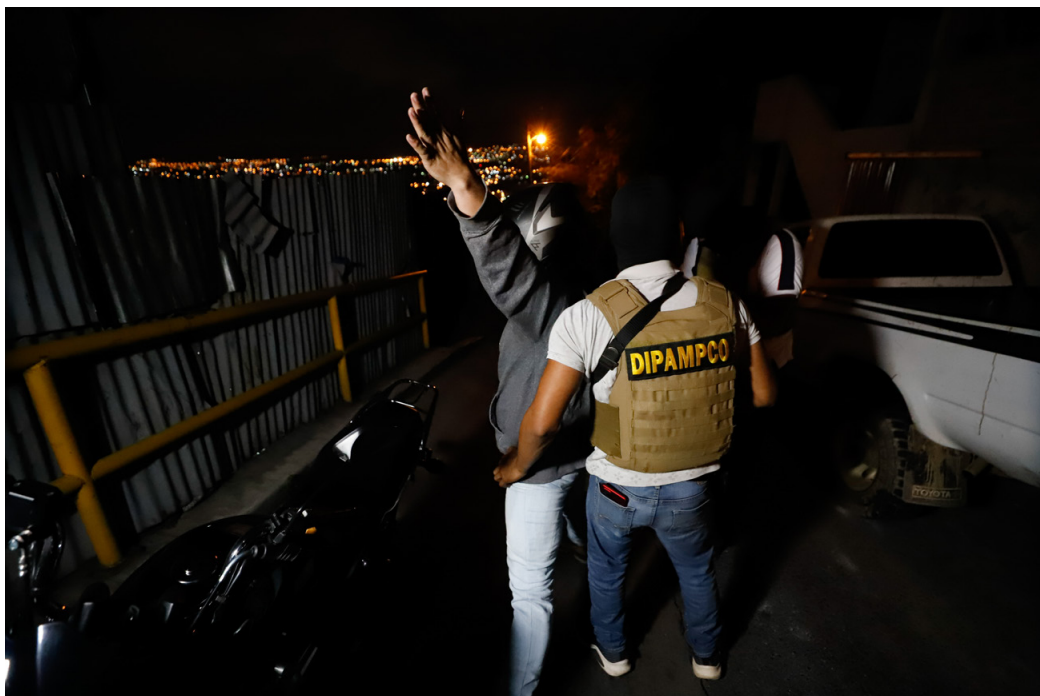
While El Salvador and Guatemala, according to official sources, have been able to cut the incidence of extortion in half over the last decade, according to survey responses collected by the Latin American Public Opinion Project, Honduras has barely budged and the country had the highest rate of extortion out of the three countries in the latest year of the survey (2018).

The Honduran anti-extortion unit, (Fuerza Nacional Anti Maras y Pandillas, FNAMP) was tasked with investigating extortion up until May 2022. It was composed of military, police and criminal intelligence officers. As part of the promise to demilitarize public security, the government decided to relaunch this organization under the name DIPAMPCO, relabeling it as a police unit.⁴³ However, this transition was mishandled. FNAMP officers requested a 10-month transition plan to ensure a smooth and managed handover to the police, but the process only lasted one month. The director of the police publicly accused FNAMP of manipulating evidence, using false testimonies in court and committing human rights violations.⁴⁴ During the transition, extortion victims told ASJ that they were told by FNAMP staff that an absence of funds for petrol prevented them from carrying out their work. One victim was simply told that FNAMP was undergoing a transition and was therefore unable to follow up on the case.⁴⁵ This arguably contributed to the increase in extortion suffered by citizens and the business sector.

The 'Plan for the Treatment of Extortion' and the state of emergency

The government responded by launching its ambitious 'Integral Plan for the Treatment of Extortion and Connected Crimes' in a high-profile press conference spearheaded by President Castro on 24 November 2022.⁴⁶ An unofficial version of the plan was leaked to the media one day before it was presented by authorities, and provides some detail on the components of its eight elements:⁴⁷

- **Operational:** Create an inter-institutional commission overseen by key criminal justice institutions, drawing also on transport organizations.
- **Technological:** Improve information handling processes and the interconnectedness of communications platforms, including by acquiring hardware and software.
- **Legal reforms:** To catch up with extortion innovations and to improve regulation of sim cards and digital wallets (often used for extortion calls and collecting payments).
- **Communitarian:** Implementation of citizen security diagnostics and citizen round tables at municipal level; improve trust in the police and recover public spaces controlled by criminal groups.
- **Penitentiary system:** Improve infrastructure and equipment, install cell phone signal blocking, separate convicted inmates from those in pre-trial custody, and increase training of prison staff.
- **Inter-institutional collaboration:** Promote alliances and spaces for collaboration between relevant agencies.
- **Educational:** Train justice operators and police cadets, and create preventive campaigns.
- **Budget:** Allocating an additional 1 095 068 068 lempiras (approximately US\$45 million) to the police to implement the plan.



Police officers take part in an operation against suspected gang members as the state of emergency began in Tegucigalpa, Honduras, 6 December 2022. © Emilio Flores/Anadolu Agency via Getty Images

This technical plan aims to increase institutional capacities to counter extortion. However, without effectively generating robust criminal investigations to tackle gangs it would not be of much relevance.

It was presented in combination with a state of emergency in targeted neighbourhoods, legally introduced in executive order PCM 29-2022. The order suspended six constitutional rights, enabling the police and military to make arrests and carry out raids with fewer restrictions⁴⁸ in 89 neighbourhoods in Tegucigalpa and 73 in San Pedro Sula for a period of 30 days from 6 December 2022 until 6 January 2023. However, the state of emergency has since been extended in both geographic scope and duration. The first extension was for 45 days, adding an additional 73 municipalities across the country, lasting until 20 February. The Castro Administration justified the extension given the ‘very good results in combating crime’ during the first period. But as discussed in the next section, results are unclear, at best.

The state of emergency was extended a third time on 21 February, until 6 April, by decree. The territorial reach was extended further to include all of Tegucigalpa and Comayagüela, San Pedro Sula, in addition to 123 municipalities across the country. On 7 April, the state of emergency was again extended, this time until 21 May, and on 20 May it was once again extended until 5 July.⁴⁹

The 21 February decree emphasized the role of the military police, which was henceforth given the same mandate as the civilian police to make arrests under the state of emergency, further cementing the retreat from demilitarization. As highlighted by human rights group Cristosal, there is an apparent contradiction in the decree. Article one suspends the right to free movement, while article two includes the peculiar phrasing ‘free movement continues normally in the whole country’ and leaves it to the discretion of the police to restrict the right to free movement.⁵⁰ This led to confusion about the content of the state of emergency and the police chief announced a process to request a special permit for businesses to move during the state of emergency. This only served to create more confusion among citizens, forcing the police to retract the proposal.⁵¹

Unclear results

In terms of arrests for extortion, the impact of the state of emergency appears underwhelming. According to official police data, only eight suspects were arrested for extortion during the first 42 days of implementation.⁵² This figure is extremely low, given that the state of emergency was portrayed by authorities as a war against extortion, and in comparison with the amount of arrests in El Salvador.

On 21 February 2023, during the presentation of the third extension of the state of emergency, the police published updated detention data. A total of 4 233 people were arrested during the state of emergency, out of which 514 were gang members; 35 per cent were supposed members of MS-13, 27 per cent from Barrio 18 and 38 per cent from other gangs. Unfortunately, the most recent data was released without detailing the type of crime.⁵³ During the presentation, authorities continued to refer to the state of emergency as partial, yet for each extension the territorial reach has expanded from

First state of emergency	Second state of emergency
6 December 2022 – 6 January 2023 Arrests made: 641	7 January 2023–18 January 2023 Arrests made: 397
<ul style="list-style-type: none"> ■ 169 for committing various crimes. ■ 358 for committing misdemeanours. ■ 1 for domestic violence. ■ 24 for family abuse. ■ 38 based on arrest warrants. ■ 37 for drug trafficking. ■ 4 detained for extortion. 	<ul style="list-style-type: none"> ■ 131 for committing various crimes. ■ 147 for committing misdemeanours. ■ 6 for domestic violence. ■ 16 for family abuse. ■ 60 based on arrest warrants. ■ 33 for drug trafficking. ■ 4 detained for extortion.

FIGURE 2 Arrests made in Honduras during the state of emergency, December 2022–January 2023.

Source: Honduran police, <https://www.policianacional.gob.hn/noticias/21034>

a few neighbourhoods to whole municipalities throughout the country. Additionally, the information on arrests has been scant. Figure 2 provides the only disaggregated information on arrests provided by the authorities during the first state of emergency, along with partial data for the second state of emergency.

An early January 2023 report by the national human rights ombudsman noted that the majority of detentions during the state of emergency were for misdemeanours such as causing a public scandal and lack of respect towards an officer. The same report expressed concern about shortcomings and inaccuracies in police registers at detention facilities, due to errors or manipulation of the information.⁵⁴ The document also found that 60 per cent of those detained were in fact arrested outside the territorial boundaries of the state of emergency. The rights commission also registered 13 complaints of disproportionate use of force and expressed deep concern about sloppy handling of information and the consequent risk of arbitrary detentions.

After requesting information from extortion courts in Tegucigalpa and San Pedro Sula, ASJ found that 26 new cases of extortion entered the courts between 6 December 2022 and 20 January 2023. In comparison, an average of 38 cases entered the courts every month from 2017 to 2021. The criminal justice system therefore introduced 53 per cent fewer cases in the early stages of the state of emergency than the years before.⁵⁵

At the community level, the impact appears less intrusive than might be expected. One resident of La Rivera Hernandez, a section of San Pedro Sula notorious for high levels of crime, told ASJ: ‘In our neighbourhood there is no impact at all. Gang members continue to patrol with their guns visible at night and the police presence is minimal.’⁵⁶

Dany Pacheco, a pastor working with at-risk youth in la Rivera Hernandez to dissuade them from getting involved with gangs, told ASJ in February 2023 that business has continued largely as usual:

I woke up this morning (22 February 2023) to the news that the taxi spot downtown stopped operating due to extortion. The taxi drivers told me the gang gave them until Monday to pay up. This state of emergency won’t stop the gangs. They impose the rules. For the police to come in momentarily and beat up random young people or plant false evidence... just further erodes trust in the police.⁵⁷

An influential leader of the transport sector, who requested anonymity, also does not perceive any substantive difference on the street, although he does note that a proliferation of new extortion groups arriving on the scene from October to November 2022 has now given way to a 'more organized' situation, controlled by 'Barrio 18, Los Benjamin and M-1'. Overall, he notes, 'we still pay a similar amount of money to extorters as before'.

One potential significant impact of the state of emergency is a reduction in homicides. According to the police, there was a reduction of 224 homicides from the beginning of the state of emergency up until 6 January, compared to the corresponding period of 2022 to 2023.⁵⁸ It is uncertain whether this reduction is a direct consequence of the state of emergency or whether it is due to other factors.

It remains premature to evaluate the implementation of the efforts to curb extortion in Honduras. The police report high numbers of arrests made for crimes and misdemeanours⁵⁹ other than extortion, and it remains to be seen whether the components of the technical plan are being implemented, including whether the inter-institutional commission is effectively operating. It also remains unclear whether the technical capacity of the police is improving and whether there is better control of prisons.

A strategy that could pose an effective response to extortion would have to shut down prison-based extortion, target criminal networks and widen investigative approaches to control electronic extortion payments in the short term. In the long run, the Honduran authorities should tackle the conditions that give rise to gang recruitment, address the issue of territorial governance by criminal groups and undertake broad reforms to curtail impunity.

The state of emergency appears unnecessary and brings the risk of human rights violations. Furthermore, while it may have dissuaded smaller, less powerful groups from extorting, it appears to have been largely unsuccessful in countering dominant groups, including Barrio 18. Such groups have powerful connections and more advanced operating methods. Initial data provided by the police and courts indicates little meaningful action towards the goal of containing extortion, a conclusion bolstered by community and private sector actors noting an absence of tangible benefits on the ground.



SALVADOREAN VERSUS HONDURAN PUNITIVE GOVERNANCE

Over a year into El Salvador's punitive response, the reduction in lethal violence, the partial dissolution of gangs and the sense of security felt by the citizens are difficult to quantify, beyond periodic opinion polls. A lack of official data and the constraints imposed on the press feed into difficulties in evaluating the effects of the state of emergency. Meanwhile, the authorities routinely trumpet the results as outstanding, even as they round up tens of thousands of people and respond to claims of human rights violations of alleged gang members.⁶⁰

The Bukele administration is also now advertising the construction of a high-capacity prison for more than 40 000 inmates.⁶¹ The prison received the first 2 000 inmates on 24 February in a highly publicized operation that showcased prisoners running in their underwear and cramped onto a patio while they waited to be transferred to their cells. The transfer process came as the US Department of Justice released an indictment against gang leaders that indicates senior Salvadorean officials are still negotiating with criminal groups to reduce lethal violence.⁶²

An additional survey in December 2022 once again found high levels of overall support for the state of emergency. However, the percentage of those who expressed being a victim of a crime during the first 10 months of the state of emergency went from 4.5 per cent in May to 11.3 per cent in December of 2022. Additionally, one fifth (21.1 per cent) of Salvadoreans claim to know someone with no apparent links with gangs who is now in prison. Further complicating the picture, 62.3 per cent of victims of military or police abuse agree that military raids are 'very necessary'.⁶³

The Salvadorean socio-political context under which the state of emergency has been passed over 12 times cannot be underestimated. President Bukele is a highly popular political leader in control of the National Assembly along with his New Ideas party. This has enabled him to control the judiciary, as well as position the official narrative as the main source of information to citizens. What is not part of the official narrative is that punitive governance does not address the root causes of violence and insecurity – notably, low economic growth, lack of education and employment opportunities for youth, impunity, corruption and institutional weakness. It also undermines building institutional capacities to understand criminal trends and develop robust criminal investigations that respect the rule of law and due process. The state of emergency is a populist response that exploits citizens' despair.

Persisting with the state of emergency also eats into El Salvador's limited resources, in a context where the police force and much of the military is deployed 24/7 across the country. For example, in late December 10 000 troops, almost 60 per cent of the Salvadorean military, were deployed to surround Soyapango, the third most populated city in El Salvador to arrest anyone suspected of gang involvement.⁶⁴ Deploying such volumes of personnel is extremely burdensome on the public budget, especially as the public debt is on course to reach an estimated 97.5 per cent of the GDP by 2027.⁶⁵

The political context in Honduras is different. President Castro won the election on pledges to fight corruption and roll back militarization, but she has been forced to renege on the latter due to the mishandled dissolution of the country's anti-extortion unit and rushed state of emergency.

The first two phases of the state of emergency in Honduras generated extraordinarily slim results. The total number of police officers deployed has not been published, but the 600 men with whom the director of the police began to operate in the highest crime neighbourhoods in Tegucigalpa appears to represent a low number of officers to deploy to begin a state of emergency.⁶⁶

As with the Salvadorean case, Honduran authorities are not addressing the root causes of violence, extortion and wider crime. Containing corruption, reducing impunity and offering opportunities for education and labour for youth are the key structural reforms authorities in both countries should focus on instead of curtailing rights and freedoms.

Salvadorean and Honduran authorities seem to have been following a handbook on how to publicly appear to be containing and handling violence and insecurity, at the expense of citizens' basic human rights and tackling the root causes of crime. In doing so, these nascent democracies are at risk of irretrievably undermining the rule of law.

This begs the following questions: Are democratically elected governments using punitive governance as a path to autocratic control? Is the despair and frustration felt by Central Americans pushing them to accept that living without basic rights and freedoms is better than living in a violent environment? Has democracy failed to provide Central Americans with robust institutions capable of upholding human rights and the rule of law?

Without denying the relative sense of security Salvadoreans appear to be enjoying amid the partial dismantlement of gangs on the streets, a robust evaluation analyzing official data, along with surveys of innocent victims of police over-reach, are required to understand the full picture. Some key questions follow: Have negotiations between authorities and criminal groups fed into security improvements seen in El Salvador? What have been the costs in terms of the human rights of citizens? What will be the long-term effects of mass incarceration of criminal groups and gangs? Do citizens understand what is at stake for them during a state of emergency? What has been the cost to the public budget? How have criminal trends, not only lethal violence, varied over the state of emergency?

While the Honduran state of emergency has only been in force for a few months, its evolution from a limited (in territory and law enforcement involvement) to a near-total state of emergency needs a thorough analysis to better understand why it has or has not generated more tangible results for citizens. This will take time to play out and assess.

The history of the region has shown that populist and punitive responses from authorities offer short-term results that are good publicity for authorities, but are not sustainable in the long run. Results from El Salvador's state of emergency have been highlighted by some local and international

media as positive, but much more public data is required to analyze the true situation and to address some of the questions above.

Above all, a redoubling of efforts by public authorities, political actors, civil society and academia is needed to strengthen institutions to bolster respect for the rights and freedoms of citizens, as well as to better inform efforts against gang violence and extortion. A better job is also needed in terms of showcasing evidence to better explain to citizens that the rule of law, freedom and human rights complement, rather than contradict, the basic security of citizens.



Protestors ask for the freedom of their jailed relatives, San Salvador, March 2023. Human rights organizations claim that a significant per cent of jailed Salvadoreans could be wrongfully imprisoned. © Camilo Freedman/SOPA Images/LightRocket via Getty Images



RECOMMENDATIONS

Central Americans contend with levels of violence and criminality that create serious obstacles to enjoying basic human rights and freedoms. Democratic processes in the region appear to have fallen short in developing institutions capable of upholding the rule of law.

Acknowledging the magnitude of these constraints and the critical security context in both El Salvador and Honduras, we recommend the following actions:

- A state of emergency should only ever be imposed as a last resort and after careful planning, in a context where all viable alternative channels have been exhausted.
- Authorities in El Salvador and Honduras failed to plan beforehand to set clear goals and explain to citizens how the state of emergency would affect basic rights and freedoms. Ahead of imposing any state of emergency, a clear delineation of responsibilities, goals and time frames are critical for stakeholder institutions to operate effectively. Relevant institutions should also be provided with a time-limited consultation period, during which they are at liberty to propose amendments to the process ahead of implementation.
- The consultation period ahead of a state of emergency should also be used by authorities to explain the looming constraints on freedom and the ultimate goals to society in a clear and transparent way.
- Opacity is the one constant variable during the state of emergency in both countries, but particularly in El Salvador, given restrictions on the press and public access to data. Basic journalistic freedom and unfettered access to data are crucial to maintaining confidence in any state of emergency imposed on a democratic country outside wartime. Placing restrictions on data access and creating an environment where the media is fearful of scrutinizing authorities only feeds into suspicions that emergency measures are aimed more at authoritarian control than tackling crime. Governments in both countries should guarantee unrestricted access to institutional data on arrests, convictions and crime statistics. They should also guarantee opinion pollsters and the media the privacy required to keep the confidence of sources. This will allow citizens and civil society to better assess if the tradeoff that the state of emergency sets in motion is paying off, or is too costly in terms of undermining the rights of detainees and the security of innocent citizens.
- Salvadorean authorities should take advantage of the relative security citizens are enjoying to address the factors that have perpetuated insecurity. This will require promoting dialogue,

resilience and restorative justice programmes to enable victims and perpetrators of crime – potentially including state security operatives – to live sustainably in a peaceful environment.

- An assertive strategy is needed to address the root causes of gang recruitment and hence violence. Sustainable programmes in El Salvador and Honduras to open opportunities for youth to continue their education, along with the provision of meaningful employment opportunities, ideally in collaboration with the private sector, are paramount here.
- Public services should be enhanced to make sure all Salvadoreans have adequate health services, safe water and public transport. Resources should be deployed to ensure better street lighting and the maintenance of parks and plazas in areas traditionally afflicted by gangs, both to enhance citizens' security and to help provide a more engaging environment for young people who are vulnerable to the lure of gang recruitment.
- The implementation of similar resilience and preventive programmes in Honduras would also have the benefit of persuading more citizens to make a living in their current surrounds, rather than migrating within the country or outside Honduras entirely.
- Governmental authorities, civil society organizations and academic institutions in El Salvador, Honduras and the wider Central America region should ramp up efforts to build democratic institutions that abide by the rule of law. An immense effort will be required by civil society and academic institutions in particular to push back against the highly misleading, if outright inaccurate, notion that resorting to a state of emergency is a quick and guaranteed way to protect the security of citizens.
- The imposition of punitive governance – and the slick presentation of its perceived benefits by El Salvador's government – has created an urgent need to show citizens how human rights, liberty and living in a safe environment are not mutually exclusive. This will require innovation in crafting consumable messaging on the importance of human rights, the rule of law and democratic values.
- Punitive and populist governance continues to be eyed by authorities as an easy and efficient way to contain crime and violence generated by organized crime not only in Central America, but in the Latin American region. Civil society, academia, the private sector and the international community should coordinate resources to counter these autocratic tendencies and uphold the rule of law, human rights and democratic institutions as the best way for citizens to live in a safe environment. Failing to do so might result in democratic regressions that will ultimately be deeply regretted by electorates whose voices risk being silenced.



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