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IRB – Immigration and Refugee Board of Canada (Author)

El Salvador: Law enforcement efforts against gangs, including anti-gang legislation and arrests since a state of emergency was declared in March 2022 (2019–November 2022) [SLV201162.E]

Research Directorate, Immigration and Refugee Board of Canada

1. Overview

According to sources, the population of El Salvador is approximately 6.5 million people (Al Jazeera 28 Mar. 2022; US 14 Nov. 2022; World Bank 2021). Sources indicate that MS-13 [Mara Salvatrucha] and Barrio 18 have approximately 70,000 (Al Jazeera 12 Apr. 2022) or approximately 60,000 gang members between them in El Salvador (InSight Crime 15 Sept. 2020). Sources state that gangs operate in 94 percent of the country's departments [1] (Assistant Professor of security studies 13 Oct. 2022) or that the *maras* (gangs), including MS-13, are "active in 94 per cent of El Salvador's 262 municipalities" (International Crisis Group 26 Nov. 2018, 3).

According to the Council on Foreign Relations (CFR), an independent and nonpartisan US-based membership organization and think tank that focuses on foreign policy (CFR n.d.), the homicide rate in El Salvador "reach[ed] its lowest level in two decades" in 2019 (CFR 4 May 2022). Freedom House's annual report states that while gang-related crime and violence "remain grave problems" in El Salvador, 2020 and 2021 "saw the lowest homicide rates in years" (24 Feb. 2022, Sec. F3). Al Jazeera reports that El Salvador "registered 1,140 murders in 2021," which is an "average of 18 deaths per 100,000 inhabitants," compared to 103 homicides per 100,000 inhabitants in 2015 (28 Mar. 2022).

2. Government Response to Gangs

2.1 Territorial Control Plan (*Plan Control Territorial*, PCT)

In correspondence with the Research Directorate, an assistant professor of criminology at the University of the Fraser Valley in British Columbia, who focuses on street gangs and illicit networks and economies in Latin America, indicated that the government's response to "the gang problem remains unclear," but the administration of President Nayib Bukele "attributes the significant reduction in homicide" to the Territorial Control Plan (Plan Control Territorial, PCT) and state of emergency (Assistant Professor of criminology 24 Oct. 2022). According to a June 2019 press release from the El Salvador presidency, the PCT mainly focuses on three areas, namely [translation] "controlling correctional centres, disrupting the funding of organized crime, and strengthening the security forces" (El Salvador 18 June 2019). A June 2022 press release further indicates that the PCT was implemented on 20 June 2019 and has seven phases, with four already launched while the remaining three [translation] "are still pending, in secret" (El Salvador 24 June 2022). However, the Assistant Professor of criminology noted that the government's communication around the PCT is "ambiguous" regarding its "objectives, reach, and operation" (24 Oct. 2022), According to sources, the PCT is not publicly available (Assistant Professor of criminology 24 Oct. 2022; independent researcher 17 Oct. 2022) and "both researchers and journalists have been unable to corroborate its existence" (Assistant Professor of criminology 24 Oct. 2022). El Faro, a multimedia investigative journalism source based in San Salvador (El Faro n.d.), indicates that according to internal prison records obtained by the publication, officials from "Nayib Bukele's administration [were] negotiating" with MS-13 and "agreed to the reduction in homicides, prison privileges, and long-term pledges tied to the results of congressional elections in 2021" (El Faro 6 Sept. 2020). However, an independent researcher based in the US, whose work focuses on MS-13 and Barrio 18 in northern Central America, indicated that Bukele denies "ever negotiating" with gangs (Independent researcher 17 Oct. 2022).

2.2 The *Mano Dura* Policy

Sources state that since 2019, President Bukele has implemented "extraordinary measures" and a "mano dura" [2] policy to combat gangs in El Salvador (Assistant Professor of security studies 13 Oct. 2022) or that President Bukele has "reverted to the same *mano dura* or repressive tactics" as the previous governments since coming into office in 2019 (*The Guardian* 5 Apr. 2022). International Crisis Group notes that the government of El Salvador has "turned to heavy-handed tactics to respond to surges of gang violence in the past, but none compares to the present crackdown in either intensity or duration" (5 Oct. 2022, i). Freedom House indicates that authorities in El Salvador "have pursued a harsh, militarized response to the country's powerful criminal gangs, resulting in extrajudicial killings and other abuses" (Freedom House 24

Feb. 2022, overview). According to InSight Crime, a think tank and media organization that studies organized crime in the Americas (InSight Crime n.d.), President Bukele has "authorized security forces to use 'lethal force' against gang members" for "'self-defense or for the defense of the lives of Salvadorans'" (30 Apr. 2020).

Al Jazeera states that President Bukele is using "mass detentions" to "clea[n] up the streets of El Salvador" (21 Apr. 2022). According to sources, prisons in El Salvador are operating at "several hundred percent" capacity (Assistant Professor of security studies 13 Oct. 2022) or "over double the penitentiary system's estimated capacity" (InSight Crime 16 May 2022). The Prison Policy Initiative (PPI), a non-profit and non-partisan advocacy organization that researches and documents "mass incarceration" (PPI n.d.), indicates that in 2021, El Salvador had the world's second highest incarceration rate with 562 per 100,000 people (PPI Sept. 2021). Al Jazeera notes that according to a researcher from Human Rights Watch (HRW) who has documented "about 50 cases of human rights or due process violations,"

[p]olice first enter poor neighbourhoods with a known gang presence and round up residents, mostly young men, and then take them to the police station, where their family members are often allowed to see them briefly. Then they are sent into the penitentiary system, which is where they often get 'lost' Family members do not know which prison their loved ones have been sent to and inquiries through the official channels come up blank. (Al Jazeera 21 Apr. 2022)

Agence France-Presse (AFP) reports that in April 2022, Congress in El Salvador approved a request by President Bukele to "criminalize gangrelated messages in the media" (6 Apr. 2022). According to a penal code reform approved by the Legislative Assembly (Asamblea Legislativa), the unlawful production and reproduction of [translation] "messages, signs, names, propaganda, or any form of written expression alluding to" gangs will carry a sentence of 10 to 15 years (El Salvador 2022a, Art. 1). According to a press release from the El Salvador presidency, the penal code was amended to increase prison sentences for gang members (El Salvador 31 Mar. 2022). Sources note that maximum prison sentences increased "from nine to 45 years," and that the government also "raised maximum prison sentences for children and will allow teenagers to be tried as adults for the most serious offenses, and serve their sentences in adult prisons rather than juvenile detention facilities" (AFP 6 Apr. 2022) or that "prison sentences for gang membership were increased" from a "maximum of nine years to up to 45 years for leaders," while the "penalties against minors were also increased significantly" (Germany 4 Apr. 2022, 3).

2.3 Legislation

Decree No. 333 of the Legislative Assembly of El Salvador provides the following:

[translation]

Declare a State of Emergency

Art. 2.- A "State of Emergency" shall be declared throughout the national territory, as per the serious of the disturbances to public order caused by criminal groups that threaten the life, peace, and security of the Salvadoran population.

Competent Authority

Art. 3.- The Ministries of Justice and Public Security, of National Defence, and the Director of the National Civil Police shall coordinate their actions to comply with the provisions of this decree, according to the essential human and material resource needs for effective compliance with security measures and for the protection of the population, as well as the coordination of pertinent measures to regain national security.

Suspension of Constitutional Rights

Art. 4 - The constitutional rights and guarantees outlined in articles 7, 12, second paragraph, 13, second paragraph, and 24, in relation to article 131, subsection 27, and article 29 of the Constitution of the Republic, are hereby suspended nationwide for a period of thirty days as of the effective date of this decree.

Period of Validity

Art. 5 - This decree shall enter into force on the day of its publication in the Official Gazette and its effects shall last for thirty days as from the date of its publication. (El Salvador 2022b)

Decree No. 344, the Rewards Law for Combating Impunity for Acts of Terrorism (*Ley de Recompensas para el Combate a la Impunidad de Actos de Terrorismo*), a legislative decree administered by the Ministry of Justice and Public Security (Ministerio de Justicia y Seguridad Pública), provides the following:

[translation]

WHEREAS:

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II. That given the disproportionate increase of violent acts throughout the

national territory by members of terrorist organizations ...;

III. That ... the aforementioned criminal structures: "...are terrorist groups, gangs known as Mara Salvatrucha or MS-13 and La Pandilla 18 or Mara 18, and any other gang or criminal organization that seeks to exercise powers related to the area of State sovereignty ... ," it is necessary to stop said criminal organizations from systematically attacking the life, security, and personal integrity of the general population;

IV. That in addition to the firm, forceful, and essential actions that have been initiated against terrorist groups and their members, directed and coordinated by the competent authorities, there is a clear urgency not to allow levels of impunity for acts of terrorism committed against the population, and it is necessary to create a reward fund so that every person can participate in carrying out the capture of those who attempt to flee from justice; for this reason the Terrorist Reward Fund was created.

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Creation of the Fund

Art. 2.- The Reward Fund for the Elimination of Impunity for Acts of Terrorism, hereinafter referred to as the Fund, shall be created for the purpose of granting rewards to all those persons who provide information leading to the capture of members of terrorist groups or who are materially apprehended, who have been determined by the Ministry of Justice and Public Security, and who are included on the list created for such a purpose by the Ministry and for whom there is an active arrest warrant by the competent authorities.

The amounts of money granted by virtue of the present decree shall be exempt from any type of tax, withholding, or discount. (El Salvador 2022c, Preamble II-IV, Art. 2, fourth ellipsis in original)

Decree No. 337 of the Legislative Assembly of El Salvador provides the following:

[translation]

WHEREAS:

• • •

III. That in order to comply with the duties of the State, regarding the protection and preservation of those rights; and in view of the increase in level of criminal activity by terrorist members, the Legislative Assembly, at the behest of the President of the Republic through the Council of Ministers, issued Legislative Decree No. 333 dated 27 March 2022, published in the Official Gazette No. 62, Volume No. 434 of the same date,

which includes the State of Emergency Exception, whose purpose is to provide legal tools and mechanisms to the public security institutions, National Civil Police, and Armed Forces of El Salvador, with a view to reestablishing order and citizen security, as well as territorial control.

- IV.- That in view of the disproportionate increase of violent acts throughout the national territory by terrorist members, gangs, or groups, the life and safety of all citizens has been put at risk, creating a state of alarm, social instability, and subsequent fear in the general population by creating imminent danger for people's lives, as well as their physical and mental stability.
- V.- That it is a well-known fact that through their actions, the aforementioned criminal organizations carry out systematic attacks on the life, security, and personal safety of the population, including against civil, military, police, and prison authorities; against property, by committing crimes of extortion of natural or legal persons; violations of the right of every citizen to reside in any part of the country; against the right to education, by forcing students to drop out of school; against the right to free transit, by paralyzing public transportation, including at the national level, and frequently threatening the lives of the staff of the public transportation system; they prevent the freedom of economic and labour activities across a broad number of sectors for the entire population; among many other actions carried out in a systematic, planned, and organized manner.
- VI.- ... the aforementioned criminal structures: "...are terrorist groups, gangs known as Mara Salvatrucha or MS-13 and La Pandilla 18 or Mara 18, and any other gang or criminal organization that seeks to exercise powers related to the area of State sovereignty. ...

...

THEREFORE,

in exercise of its constitutional authority and at the behest of the President of the Republic, through the Minister of Justice and Public Security.

DECREES, the following:

REFORMS TO THE PENAL CODE

Art. 1. - A final clause is hereby added to Art. 162, as follows:

"In cases in which the crimes referred to in this article are committed by terrorist members, gangs, or any other criminal group referred to in Article 1 of the Law on the Prohibition of Gangs, Groups, and Criminal Associations and Organizations, the penalty to be imposed shall be twenty to thirty years."

Art. 2.- Art. 345 is hereby amended as follows:

"Art. 345.- The following groups, associations, and organizations shall be considered criminally illegal:

- 1. Those with at least the following characteristics: that are formed by three or more persons; of a temporary or permanent nature; in fact and by law; that have some degree of structure and that have the purpose of committing a crime; and,
- 2. Those mentioned in Art. 1 of the Law on the Prohibition of Gangs, Groups, and Criminal Associations and Organizations.

Whoever takes part in an illicit group, association or organization mentioned in paragraph 1) of this article, shall be punished with imprisonment from three to five years. In the case of those mentioned in paragraph 2), shall be punished with imprisonment from twenty to thirty years.

The creators, organizers, chiefs, leaders, financiers, or ringleaders of the aforementioned groups shall be punished with imprisonment of forty to forty-five years.

If the perpetrator or participant is a public authority, agent of authority, public official or employee, the penalty shall be considered aggravated and increased by one third of the maximum in each case and absolute disqualification from office for twice the time.

Those who promote, aid, facilitate, or favour the formation or continue as part of the groups, associations, or organizations included in the present article, or if any person who, knowing of their illegality, receives direct or indirect benefit from relations of any nature with such organizations, even without taking part in them, shall be punished with twenty to thirty years of imprisonment.

Whoever, by their own accord or through another, solicits, demands, offers, promotes, formulates, negotiates, agrees, or makes agreements on behalf of the non-prosecution of crimes or the establishment of any prerogative to illegally exempt another or others from the application of the provisions of the law herein, or offers benefits or advantages to the members of the groups, associations, or organizations included in this article, shall be punished with imprisonment of twenty to thirty years.

The same sanction shall be incurred by those who, as intermediaries, negotiators, mediators, interlocutors, or other similar persons, promote or participate in the conducts referred to in the preceding paragraph.

The proposal and conspiracy to commit any of the acts provided for in this provision shall be punished with imprisonment of twenty to thirty years.

The present criminal offence shall be punished in concurrence with other offences. (El Salvador 2022d, Preamble II-VI, Art. 1–2, third ellipsis in original)

2.3.1 Implementation

Sources report that in March 2022, El Salvador's parliament approved a state of emergency (AP 28 Mar. 2022; BBC 27 Mar. 2022) that "temporarily suspended some constitutional protections," including "restrictions on free assembly," "the right to be informed of the reason for arrest and access to a lawyer upon being detained, in addition to allowing for administrative detention of more than 72 hours" (Al Jazeera 28 Mar. 2022). Al Jazeera notes that President Bukele also "order[ed]" a 24-hour lockdown of gang members in their prison cells (28 Mar. 2022). According to sources, President Bukele "ordered reductions in food for prison inmates" (AP 28 Mar. 2022) or announced that "food for gang inmates would be rationed to feed the new detainees" (The Guardian 5 Apr. 2022). Sources state that "for the first time," rival gang members were "incarcerated together" in prisons (The Guardian 31 Oct. 2021) or that El Salvador has [translation] "adopted an unprecedented measure: mixing gang members" from MS-13 and "the two factions" of Barrio 18 in the same cells (Noticias Telemundo 14 May 2020).

Sources indicated in October 2022 that the state of emergency was "still in force" in El Salvador (Independent researcher 17 Oct. 2022) or was "extended" on 15 October 2022 and that "more than 55,000" individuals have been arrested since the state of emergency was first declared (Al Jazeera 15 Oct. 2022).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Reguest.

Notes

- [1] El Salvador is divided into 14 administrative divisions called *departamentos* (departments) (US 29 Nov. 2022).
- [2] According to InSight Crime, *mano dura* is also known as "heavy-handed security policies," which have been "a constant feature of El Salvador security policy since the early 2000s" (InSight Crime 12 Apr. 2022).

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Oral sources: Acción Ciudadana; assistant professor at an American university who focuses on illicit economies in Latin America; assistant professor at an American university who focuses on violence and crime in Mexico and Central America; assistant professor at an American university who focuses on violence, transnational illicit economies, mass incarceration, and security in the Americas; associate professor at an American university who focuses on organized criminal violence and policing in Latin America; associate professor at an American university who focuses on organized violence, armed groups, drug cartels, prison gangs, and paramilitaries in Latin America; associate professor at an American university who focuses on political and criminal violence, and drug trade and crime in Latin America; associate professor at a university in Brazil who focuses on violence and corruption in Honduras; Cristosal; director of research at an American university who focuses on criminal violence, gangs, and police in Latin America; Fundación de Estudios para la Aplicación del Derecho; German Institute for Global and Area Studies; Inter-American Dialogue; International Crisis Group; lecturer at a university in the UK who focuses on gang violence and hate crime in Latin America; professor at an American university who focuses on citizen security, human rights, and violence in Latin America; professor at an American university who focuses on peace-building and conflict in Central America; professor at an American university who focuses on political and criminal violence, and transitional justice in Latin America; professor at an American university who focuses on security and politics in Latin America

and the Caribbean; research associate at a German research institute who focuses on conflict, urban violence and peace, security and border areas, and illegal markets in Latin America; researcher at an American university who focuses on violence and transnational gangs in Latin America; researcher at a German university who focuses on violence, crime, public security, urban violence, youth gangs and youth violence in Central America; senior fellow at a Caribbean university who focuses on regional security issues; UN – UNICEF; visiting fellow at a university in the UK who focuses on street gangs and drug policy in Latin America; Wilson Center.

Internet sites, including: Americas Society/Council of the Americas; Amnesty International; Animal Político; Armed Conflict Location & Event Data Project; Australia - Department of Foreign Affairs and Trade; Austrian Red Cross - ecoi.net; Belgium - Office of the Commissioner General for Refugees and Stateless Persons; Bertelsmann Stiftung; Brookings Institution; Canal 12; CBC; Center for Strategic and International Studies; Deutsche Welle; El Comercio; El Mundo [El Salvador]; El País [El Salvador]; El Universal; El Salvador – Asamblea Legislativa; elsalvador.com; El Universo; EU – EU Agency for Asylum; Fédération internationale pour les droits humains; France - Office français de protection des réfugiés et apatrides; Infobae; Institute for War and Peace Reporting; International Center for Not-For-Profit Law; INTERPOL; La Prensa Gráfica; La Razón; LatinAmerican Post; Los Angeles Times; Mondo Times; Netherlands -Ministry of Foreign Affairs; The New Humanitarian; The New York Times; North American Congress on Latin America; Norway - Landinfo; Noticias de América Latina y el Caribe; Organisation of American States - Inter-American Commission on Human Rights; Organisation suisse d'aide aux réfugiés; Prensa Libre; Proceso Digital; Reporters sans frontières; SWI swissinfo.ch; Transparency International; UK - Home Office; UN -Committee Against Torture, Human Rights Council, Office for the Coordination of Humanitarian Affairs, Office of the High Commission for Human Rights, Refworld, UNDP, UN Women; US – Congressional Research Service, Department of State, Library of Congress; Washington Office on Latin America; The Washington Post; Wilson Center.

Associated documents

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El Salvador

Query response on El Salvador: Law enforcement response to gangs (2019 - November 2022)

El Salvador : information sur les efforts de maintien de l'ordre visant les gangs, y compris les lois antigangs et les arrestations depuis l'instauration d'un régime dérogatoire en mars 2022 (2019-novembre 2022) [SLV201162.EF] (Response, French)

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