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CIVIL LIBERTIES IN EL SALVADOR

By Meredith Zielonka

INTRODUCTION



Soldiers on patrol on one of the main roads in Soyapango, El Salvador.
New York Times

Barrios – a Spanish term often used to describe low-income neighborhoods, such as neighborhoods in El Salvador with high levels of gang violence.

Since March 2022, 1% of El Salvador’s population has been imprisoned. More than 60,000 Salvadorans have been arrested, adding to the 40,000 already in jail (Grillo 2023). A mass incarceration of this scale is on par with some of the strictest regimes around the world, and it has been going on for more than a year. Despite the severity of the situation, the approval rating of Nayib Bukele, the President of El Salvador, hit a high of 88% in December 2022, just nine months after the arrests began (Segura 2022).

El Salvador has struggled for years with gang violence in the poor and dense **barrios**, neighborhoods neglected by the police and effectively governed by gangs. On March 27, 2022, President Bukele and the legislative assembly passed a “**state of exception**,” allowing the military to enter the *barrios* and arrest anyone suspected of gang involvement (Grillo 2023). The majority of those arrested have been charged with “gang affiliation,” both members of gangs and those who help gangs.

Many arrestees maintain their innocence but lack legal methods to secure their release. Human rights groups have decried the inhumane conditions of the prisons, where inmates are overcrowded, beaten, and tortured. Other observers have alleged that the government’s practices of widespread arrest are illegal (Grillo 2023).

Nevertheless, the crackdown has been immensely popular among the Salvadoran population. It has also been effective in controlling criminal actions of the two main gangs, MS-13 and Barrio 18, who often use murder as test of initiation and competition for status. In 2015, El Salvador had the highest murder rate in the world at 105 per 100,000 people. In 2022, that number dropped to 8 per 100,000 (Grillo 2023).

State of Exception

– an emergency declaration that temporarily suspends basic civil rights, such as the right to free speech and due process rights.



Nayib Bukele delivers a speech to El Salvador's Congress in June.
Camilo Freedman/Bloomberg

MS-13 and Barrio 18 – two major gangs in El Salvador with origins and branches in the US

At the core of this issue in El Salvador is a fundamental conflict between civil liberties and the right to live safely and peacefully. Polling has indicated that right now, Salvadorans are willing to accept aggressive arrests and imprisonment in exchange for less violence.

EXPLANATION OF THE ISSUE

Historical Development

From 1979 to 1992, the devastating Salvadoran civil war between the US-backed right-wing government and Soviet-backed left-wing guerilla fighters led to large scale migration from El Salvador to the United States, particularly Los Angeles (Garsd 2015, Blitzer 2022). Ethnic tensions in immigrant neighborhoods led to the formation of self-defense groups for the neighborhood, which evolved to resemble traditional gangs. After the civil war had ended, the US began deporting gang members back to El Salvador. There, these gang members found a land without infrastructure or integration systems, a country that barely had a police force. (Garsd 2015). They turned to crime, extorting local businesses to generate income and growing their dominance over the neighborhoods they inhabited. This facilitated the rise of both **MS-13** and **Barrio 18**, the two major gangs in El Salvador.

The Rise of Bukele

Nayib Bukele began his political career at the age of thirty as mayor of a small town. He soon ran for mayor of San Salvador, the capital and largest city in the country. In 2019, at age thirty-seven, he was elected President of the country (Blitzer 2022), having cast aside the major political parties and formed his own. He based his platform on fighting corruption and violence and has focused on modernizing El Salvador. Bukele has renovated plazas, opened markets, built medical clinics, installed lamps, and cleaned up downtown areas. He has fought for El Salvador's image as an independent nation, once tweeting the words "We are not your colony" to members of the U.S. Senate Foreign Relations Committee (Blitzer 2022).

But despite his anti-corruption platform, Bukele has himself been accused of corruption. He has fired Supreme Court magistrates who would not allow him to the constitution and serve a second Presidential term and demoted those who have criticized him (Blitzer 2022). Bukele has engaged in populist tactics, spreading propaganda via social media, and blasting any critical media outlets as puppets of his political enemies.

68,579 people were arrested between March 27, 2022, and May 16, 2023, close to 1% of El Salvador's population.

Human Rights Watch – an international non-governmental organization that conducts research and advocacy on human rights.

International Covenant on Civil and Political Rights – a multilateral treaty that commits nations to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.

Bukele and Gangs

A critical element of Bukele's administration has been the crackdown on gang violence. After he was elected President, he enacted a plan to increase policing and police resources (Calderon, 2019). Subsequently, the murder rate in El Salvador began to fall. In September 2020, Bukele was accused of negotiating with MS-13 and Barrio 18, exchanging more flexible prison conditions for fewer homicides and political support (Grandadam, 2020).

On March 26, 2022, El Salvador recorded 62 murders in a single day, the deadliest day in Salvadoran history since the civil war (Blitzer 2022, Grillo 2023). On March 27, the Legislative Assembly declared a thirty-day state of exception, which suspended some constitutional liberties, allowing the military to arrest anyone they deemed suspicious. Detainees lost the right to a legal defense. All minors would be tried as adults. The right to gather in groups larger than two was suspended. Communication between prisoners and those outside prison was drastically reduced (Blitzer, 2022). The state of exception has been extended fourteen times and 68,579 people have been arrested as of May 16, 2023 (Magana, 2023).

Scope of the Problem

Though Bukele's crackdown has drastically reduced the murder rate, it has come at a cost. The state of exception in El Salvador legally suspended many of the rights enshrined in the country's constitution and allowed for violations of basic human rights as established by the UN. As you read on, consider how you might balance public safety with the pressure to uphold civil liberties.

Constitutional Suspensions

Article 29 of El Salvador's constitution outlines a process to declare a state of exception. A state of exception is basically an emergency declaration which temporarily suspends basic rights, including free speech and protest, for 30 days. A state of exception can be extended at least once. The Constitution's language is ambiguous as to whether the state of exception can be extended multiple times (Constitution, 1983). However, **Human Rights Watch (HRW)**, a leading international nonprofit that researches human rights, argues that it can only be extended once (Human Rights Watch, March 2022). Besides free speech and protest, the right to be informed of the reasons behind detention as well as the limits on detention length are suspended under a state of exception (Alianza, 2022). Typically, in El Salvador, nobody can be held for more than 72 hours before seeing a judge. Under the state of exception, this period has been extended to 15 days.

The **International Covenant on Civil and Political Rights**, ratified by El Salvador, specifies that governments may diverge from



*Two thousand detainees are moved to the “Center for the Confinement of Terrorism,” a mega-prison in Tecoluca, in February.
Handout/Getty Images*

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – a convention adopted by the United Nations on 10 December 1984 outlining what constitutes cruel and unusual punishment as part of international law.

some of their obligations “in time of public emergency which threatens the life of the nation.” However Human Rights Watch says that those circumstances do not appear to apply in this case (Human Rights Watch, March 2022). As you continue reading, think about whether you agree with the Human Rights Watch position on the state of exception, or if you think it is a necessary move to uphold public safety.

Innocent Detainees and Unlawful Detention

The judicial process has been contravened in El Salvador. Salvadoran human rights organization Cristosal has been monitoring this process, sounding the alarm about mass hearings that inevitably result in imprisonment. “There’s no official policy beyond giving people blanket sentences and keeping them detained,” according to Rina Montti of Cristosal. “We’ve been to hearings where there are between three hundred and five hundred people being tried en masse. But there’s no actual criminal investigation,” (Blitzer 2022).

In these mass hearings, no evidence is seen, no trials held, and people wrongfully arrested are put into prison. Judges and prosecutors have repeatedly failed to provide due process protections under international law, violating detainees’ human rights and making it difficult, if not impossible, for them to adequately defend themselves during criminal proceedings (Human Rights Watch December 2022). One woman, whose husband was wrongfully arrested, stated that “everyone is getting six months.” She and her husband, who has spent months in prison, have decided to just wait out the rest of his sentence despite his innocence (Blitzer, 2022).

Human Rights Abuses in Prison

The United Nations Standard Minimum Rules for the Treatment of Prisoners provide guidelines for the basic treatment of prisoners, including adequate clothing, food, bedding, and a minimum allowance of outdoor exercise. The **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, prohibits the inhumane punishment of prisoners under international law (Human Rights Watch March 2022). However, an eighty-nine-page report released in December by Human Rights Watch and Cristosal detail the human rights abuses experienced by detainees through the arrest process and in prison (Human Rights Watch December 2022).

Cells meant for thirty people are forced to hold 125 people. Guards subject detainees to tear gas and ban them from speaking or praying (Pappier, 2022). Thousands have been held without outside communication for long periods of time or were only allowed to see their lawyer for a few minutes before their hearings (Human Rights

Accountability for Cryptocurrency in El Salvador Act –

S.3666, a bill introduced to tackle the risk of incorporating Bitcoin as a legal currency by requiring the State Department to report on it.

Temporary Protected Status –

a program that allows migrants whose home countries are considered unsafe the right to live and work in the United States for a temporary but extendable period.

Watch December 2022). Torture and beatings were common and ninety people died in custody between March and December 2022.

Congressional Action

US Relations with El Salvador have degraded since the election of Nayib Bukele in 2019. Congressional concerns have arisen especially over a lack of confidence in Salvadoran Democratic institutions. In May 2021, H Res. 408 was introduced, with the purpose of reaffirming “the importance to U.S. national interests of combating corruption, strengthening democratic institutions, and supporting judicial independence in El Salvador. Further, it urges El Salvador to respect its democratic institutions, including by strengthening government transparency, and to uphold human rights” (H Res. 408 2021). The resolution never moved out of committee.

The Senate also dealt with a bill related to El Salvador; however, this bill dealt with Bukele’s decision to make Bitcoin a national currency alongside the US dollar and did not address human rights concerns or gang violence. The **Accountability for Cryptocurrency in El Salvador Act or ACES Act**, S 3666, asks the State Department to create a plan to protect the US financial system from risks associated with El Salvador’s adoption of Bitcoin. This bill was introduced in February 2022, and reported in April 2022, but no further progress was made in the 117th Congress. The bill was reintroduced in the 118th Congress, after the state of exception began. Similar legislation was also made in the House as H.R. 7391 (S 3666 2021).

In January 2023, an additional resolution was introduced to the House by Rep. Ro Khanna (D-CA), H Res. 19, which acknowledged the role of the US in El Salvador’s civil war and called to increase US support for strengthening civil society and humanitarian assistance in El Salvador. The resolution was introduced and referred to committee (H Res. 19 2023).

There were also two actions in the 118th Congress that addressed several Latin American countries, including El Salvador. The first is HR 2644, a bill introduced in April to reduce the amount of foreign assistance to El Salvador, Guatemala, and Honduras based on the number of unaccompanied children who are nationals or citizens of such countries and who in the preceding fiscal year are placed in Federal custody by reason of their immigration status (HR 2644 2023). The bill was referred to the House Foreign Affairs committee and has proceeded no further.

The second action was not a bill or resolution but rather a letter sent from 116 members of congress led by Rep. Joaquin Castro (D-TX) to President Biden. They called on the Biden administration to redesignate El Salvador and Honduras as **Temporary Protected Status (TPS)** states, which provides access to work permits and relief from deportation to foreign nationals who are unable to return.

Human Rights Watch, Amnesty International, and the Office of the UN High Commissioner for Human Rights have all come out in opposition to El Salvador’s State of Exception.

The lawmakers specifically cited El Salvador’s extended state of exception and mass imprisonment as reason for its inclusion (Castro 2023). In response, the Biden Administration extended TPS to Salvadorans through June 30, 2024.

Finally, the Tom Lantos Human Rights Commission (TLHRC) in the House held a hearing in September 2022, regarding the ongoing state of exception in El Salvador, hosted by TLHRC co-chairs Rep. James P. McGovern (D-MA) and Rep. Christopher H. Smith (R-NJ) (Tom Lantos Human Rights Commission 2022).

Other Policy Action

Under President Trump, relations with El Salvador primarily focused on immigration. President Trump limited aid to El Salvador to incentivize the country to curtail immigration to the United States. Under the Biden Administration, policy focus shifted to concerns about democratic backsliding and corruption in El Salvador (Congressional Research Service 2022). Since the state of exception was introduced, the US Treasury has sanctioned several high-ranking Salvadoran officials (Grillo 2023).

International organizations have come out against the abuses witnessed throughout the state of exception, including Human Rights Watch, Amnesty International, and the Office of the UN High Commissioner for Human Rights, though no binding resolutions have been passed.

IDEOLOGICAL VIEWPOINTS

Conservative View

Conservatives are more willing to view Bukele’s actions in El Salvador as unfortunate and inhumane yet the legal actions of a democratically elected leader. Rep. Smith, a Republican who co-chairs the Tom Lantos Human Rights Commission with Democratic Rep. McGovern, wrote in his remarks for the Commission’s hearing on El Salvador that “Bukele should be condemned for bullying the other two branches of government,’ he said, but underscored that Salvadorans had...granted him a supermajority in the legislature in 2021. ‘While one may not like the results, El Salvador still is a democracy’” (Sanz 2022, Tom Lantos Human Rights Commission 2022). Senator Marco Rubio echoed similar sentiments to Smith, stating at the hearing of the US Ambassador to El Salvador: “We don’t have to clap or celebrate all the stuff that we don’t think is good, but we have a national security interest that needs to be balanced” (Sanz 2022). El Faro, a leading periodical as well as strong critic of Bukele, reports that Bukele has engaged in a multimillion-dollar

lobbying effort to “sway top [Republican] party members to stay out of efforts to pressure his government” (Sanz 2022).

Liberal View

Dominican Republic-Central American Free Trade Agreement – a free trade agreement encompassing the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic.

Liberals are split on the right approach to the issues in El Salvador, opposing the human rights violations but wary of the murky history of US intervention in the state. The fact of Bukele’s massive popularity amongst El Salvadorians cannot be ignored, according to one view, no matter the ethics of his approach. This contingent, of which the Biden administration is a part, believes that “given the matters of China and Russia, which have enormous weight in Washington, they can’t burn all of their bridges” and should turn to reconciliation (Sanz 2022).

Another contingent, of which Rep. McGovern is a part, believes that “Popular doesn’t mean right,” and that they should turn their focus to more directly attacking the problem before El Salvador becomes a dictatorship (Sanz 2022). Senator Bob Menendez, chair of the Senate Foreign Relations Committee, has previously asked the Biden administration to consider suspending El Salvador’s participation in the **Dominican Republic-Central American Free Trade Agreement** (CAFTA-DR) in response to the backsliding democracy of the country (Gressier 2021) and such democratic erosion has just continued since.

AREAS OF DEBATE

The major issues with the State of Exception in El Salvador have to do with the violations of the Salvadoran constitution and its backsliding democracy as well as violations of international law regarding due process, unlawful detention, and human rights abuses in prison. There are a range of approaches that the Senate can take when considering how to address the breach of civil liberties in El Salvador. Still, there are several barriers when working with an international actor, and you should consider the limits of the Senate’s jurisdiction as you evaluate possible solutions.

Incorporate Democratic Clauses into CAFTA

One of the most concrete solutions to the ongoing issues in El Salvador has been to incorporate new clauses into the Central American Free Trade Agreement (CAFTA) that require democratic clauses and sanctions for noncompliance. A similar option is El Salvador’s suspension from CAFTA altogether (Gressier 2021).

This solution most directly targets El Salvador’s general democratic backsliding, such as Bukele’s control of all three branches of Congress, his dismissal of judges, and the lack of checks on

Presidential power in El Salvador. The clauses would likely require some level of checks on power common in democracies, as well as requirements that would prevent Bukele from further violating the constitution, like if he ran for a second term as President. If these requirements are violated, there could be sanctions taking several forms, from imposing fines on trade — effectively reversing the free-trade agreement — to limiting access to the US banking system for high-ranking government officials.

Democratic backsliding is generally considered the fundamental reason that the state of exception has persisted for so long. Bukele has destroyed all the systems that would have the power to stop him or replaced their top officials with his supporters. This solution would address democratic backsliding, a major concern for the West, but ignores the gang violence that endangers those in El Salvador.

Some might argue that this solution does more harm than good. The Treasury has already put sanctions on banking in place for some Salvadoran officials with no change in behavior, indicating that the Salvadoran government might ignore any further checks put into the CAFTA. In fact, Bukele responded furiously to the Treasury sanctions (McFarland 2021). Given the high level of support for Bukele despite his constitutional violations, the appearance of US intervention in Salvadoran affairs might harm US interests abroad, especially after America’s traumatic involvement in the Salvadoran civil war.

Political Perspectives on this Solution

Liberals favor this solution more than conservatives. Both Senator Bob Menendez (D-NJ) and former Senator Pet Leahy (D-VT) personally advocated for this solution prior to the state of exception (Gressier 2021). Liberal proponents of this solution believe that strong action must be taken to correct El Salvador’s course on the road to democracy. However, some liberals believe that reconciliation with the Salvadoran government is critical to fighting the influence of Russia and China and are hesitant to push back on Salvadoran policy.

Conservatives also believe that the judicial dismissals taken by Bukele are undemocratic and that El Salvador’s democratic institutions must be strengthened (Risch 2021). However, conservatives are more likely to prioritize building relationships in Latin America to counter a threat from China or Russia. Conservatives might also oppose this idea on the grounds that it restricts trade, which could have adverse economic consequences. Additionally, Bukele has targeted conservatives with extensive lobbying campaigns, incentivizing them not to punish El Salvador (Alvarado 2021).

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Urge Bukele to Address Root Causes of Violence

Bukele first implemented the state of exception to control extreme violence stemming from gang control in El Salvador. One solution to end this mass imprisonment and the associated human rights abuses is to address the root causes of gang violence: chiefly, poverty and social exclusion.

This would primarily involve heavy investment in social and humanitarian organizations on the ground in El Salvador by government and international organizations, as well as coordination amongst law enforcement to minimize arrests while maximizing impact. Congress would need to allocate funds for humanitarian aid and decide the most effective way to distribute it on the ground in El Salvador.

Failure to invest in prevention and reintegration programs for former gang members, as well as failure to address the economies that allow gangs to thrive, have contributed to gang violence (Human Rights Watch December 2022). By allocating significant resources to reintegrate former gang members back into society, the government would create reasonable alternatives to the gangs. There is also precedent for El Salvador's participation in such programs for youth, seen through programs implemented while Bukele was Mayor of San Salvador (Speck 2022).

Some criticize this approach as unreliable and not as effective as imprisonment. Also, El Salvador has taken out millions in loans with the International Monetary Fund (Gressier 2021). They may not possess significant capital to accomplish large-scale investment projects, bringing the effectiveness of a program like this into question.

Political Perspectives on this Solution

Liberals generally advocate for solutions of this sort because they address the social causes of violence rather than opting for a punitive approach. They might favor investing in community organizations directly rather than urging Bukele to do so, though overreach in this area could further dissolve the US-El Salvador relationship.

Conservatives tend to prioritize maintaining a diplomatic relationship with the government of El Salvador over trying to change their behavior within their own government. However, senior Republicans have come out against Bukele's dismissals of Supreme Court Justices and the Attorney General, with Senators Risch and Rubio and Representatives McCaul and Green publishing a statement calling on the Biden administration to create dialogue to strengthen Salvadoran democracy (Risch 2021).

This is the solution highly favored by international organizations such as Human Rights Watch and the United Nations (Human Rights Watch December 2022). They believe that perpetual arrests

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are not a permanent solution to El Salvador's gang problem and that reinvestment is a better solution.

Increase Aid for Civil Society Organizations

Many journalists and civil society organizations have been suppressed by the Salvadoran government. Congress could grant aid to Salvadoran civil society organizations, ranging from humanitarian organizations like Cristosal, a nonprofit organization that promotes the defense and guarantee of human rights, to journals like El Faro, which was forced to relocate to Costa Rica out of fear for their safety after being prosecuted by the government (El Faro Editorial Board 2023).

Much like aid for reintegration or youth programs, aid for civil society aims to rebuild institutions that have been impacted by the harsh actions of the Bukele government, slowing the backsliding Salvadoran democracy by reestablishing strong checks outside of the government.

Critics of this aid point to Bukele's harsh treatment of civil society, particularly the media. They favor pacifying and rebuilding relationships in El Salvador and see this aid as undermining that relationship and reigniting distrust between Bukele and the Biden administration.

Political Perspectives on this Solution

Liberals tend to support granting aid to civil society organizations because they see it as an effective way to invest in the long-term health of democracy in El Salvador. However, some liberals are hesitant to jeopardize mending the relationship with the Salvadoran government, which they see as important to broader international alliances (Gressier 2021). This is also the reason that many conservatives might hesitate to openly oppose the Bukele administration.

International organizations wholeheartedly support aid to nonprofits and civil society organizations in El Salvador but also seek broad coalition-building support from major states to directly address the government of El Salvador in their dealings with democracy.

BUDGETARY CONSIDERATIONS

There are two primary costs associated with these solutions. The first is research. Any research required to compile reports or generate background information will accrue a cost, though it will be small, less than \$500,000 according to the Congressional Budget Office (Congressional Budget Office). The second is aid, which Congress can grant in any amount it sees fit. However, if you decide

to pursue an aid-based solution, you may want to look at previous examples of international aid for guidance on how much to spend.

CONCLUSION

The ongoing state of exception in El Salvador has seen more than 2% of the country arrested. Thousands have been subjected to inhumane detention conditions, torture and beatings, and over a hundred have died in custody. Nayib Bukele, the president of El Salvador, has repeatedly ignored the constitutional democratic processes of the country to take control of all three branches of government. He has removed all checks on his own power and suppressed journalists and civil society organizations that speak out.

This topic requires the delicate balancing of difficult international relations priorities. Senators must weigh the history of US intervention in Latin America and the quest for democracy against the will of the Salvadoran public and the rights of the detained. They must consider their constituents' stakes in international relations and the possibility of any precedent set. Finally, they must consider the overall role of the United States in intervening in foreign state issues.

This issue is critical because El Salvador represents a microcosm of global issues today. We see the erosion of formerly democratic states into dictatorships, with civil liberties slowly being stripped away by democratically elected leaders. We also see a unique case of extrajudicial powers being supported by the people for their effectiveness. It is up to you, senators, to propose a solution to this problem, to set the standard for the entire world on how the United States approaches global affairs in this decade.

GUIDE TO FURTHER RESEARCH

The concerns related to the state of exception in El Salvador have been heavily researched and reported by numerous human rights organizations around the world. They have interviewed countless individuals on the ground and in many cases are working directly with organizations in El Salvador. To learn about the situation and contemplating the best response, using primary sources on the ground is best. The interplay between the government of El Salvador and outside forces, including local journalists, international organizations, and foreign governments, is critical to understanding the conflict. Local journals like *El Faro* cover these relationships well in their English-language articles.

Members of the Senate Foreign Relations Committee have spoken during hearings at length about the issue of El Salvador. This

would be a good primary source for perspectives, but journalists have also reported on various Congressmen's statements in session regarding El Salvador. You should research your own Senator's past statements on El Salvador and their overall philosophy surrounding international aid and engagement.

Regardless, ensure that you understand the competing interests at play in this conflict, as well as the constraints on the Senate when it comes to formulating a response.

GLOSSARY

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