



# Unruly law. Rule of law and rules of the game in arenas of government – gang interaction in El Salvador

Chris van der Borgh

*Utrecht University, the Netherlands*

## ABSTRACT

This article explores the rules and laws that govern the ways in which different state agents deal with and relate to street gangs in El Salvador. By conceptualising the state as a field of power, it discusses a number of arenas in which different types of state actors interact with gangs. Each arena is governed by a set of rules, which affect the practices and images of state law. The arena approach sheds light on the different ways in which state agents deal with gangs and how practices and images of state law relate to the rules in each of the arenas. While in certain cases, legality is faked and illegality is covered up, in others, legality is criticised and illegality defended or denied. The article shows that the ensemble of 'state practices' does not lead to a consensual set of rules and laws about the use of force towards gangs, as the question of how to deal with gangs – in particular whether to repress or collude – remains highly contested.

## 1. Introduction

On March 27, 2022, Salvadoran legislators approved a state of exception that eliminated a number of fundamental rights, giving security forces the opportunity to round up members of different street gangs in the country (Labrador & Martínez, 2023, March 31). A year into the state of exception, which was extended several times, this has led to massive arrests (an estimated 65.000 people), the effective dismantling of gangs in the streets of El Salvador, as well as further changes in criminal and penal codes (Labrador & Martínez, 2023, March 31; Martínez et al., 2023). The state of exception has been criticized for leading to human rights violations, such as arbitrary detentions (Amnesty International, 2022; Human Rights Watch and Cristosal, 2022). However, Salvadoran president Bukele, who was elected to office in 2019, has defended the approach on social media (in particular Twitter), ridiculing the concept of human rights and those who intend to defend human rights (Fernández, 2022). The new and ruthless 'war on gangs', which among other things led to the construction of a new mega-prison (Terrorist Confinement Center) in 2023, enjoys considerable support in El Salvador, while several Latin American leaders have shown interest in the 'Salvadoran experience' as well.

Over the past 30 years, the street gang phenomenon has transformed into one of El Salvador's main security challenges. Subsequent governments have labelled street gangs as the principal national security threat and called for repressive approaches in dealing with them. However, upon closer inspection, there appears to be great variation in how different government actors, at different levels (from the micro to the macro level), have engaged with gangs; ranging from mostly secretive

practices, to contact and collusion with gangs, to open confrontations. The different responses may challenge or violate the law, as government actors see no other choice than acting illegally (either liaising with gangs, facilitating truces, or waging war against them). The interactions between gangs and government actors show the multiple types of governance that emerge, in which the law is changed, used, or neglected, while the legal and illegal blur in complex ways.

Rather than seeing the state and its government policies, politics, and responses as following a 'unitary' or single logic, this article conceptualises the state as a complex and contradictory entity, whose parts (staff, agencies, representatives) are involved in different types of state practices (Migdal, 2001). The paper shows how state laws are used, challenged, and adapted in different arenas where government actors, other societal actors, and gangs interact in different ways, following different 'rules of the game'. While each arena has its own actor-configuration and 'rules of the game', the relation between these rules of the game and legal imperatives takes on different forms. The article shows that in the case of El Salvador, there is considerable variation in the ways in which state agents deal with street gangs. This also explains why the dynamics in different arenas can be at odds with each other and often lead to ambiguous and contradictory outcomes. The article focuses on the period before the most recent state of exception (March 2022), including the first years of the President Bukele government.

The article starts with a discussion of the conceptualization of the state, its relations with society and non-state armed groups (NSAGs), and the arena approach used to analyse state practices. The next section discusses how the rule of law in El Salvador is challenged from 'within' (deficient reforms, corruption) and 'outside' (gangs). This is followed by

*E-mail address:* [c.vanderborgh@uu.nl](mailto:c.vanderborgh@uu.nl).

<https://doi.org/10.1016/j.ssaho.2023.100664>

Received 13 December 2021; Received in revised form 25 August 2023; Accepted 25 August 2023

Available online 20 September 2023

2590-2911/© 2023 The Author. Published by Elsevier Ltd. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

an exploration of different arenas where government actors deal with gangs, referencing, using, or breaking the law in different ways. Lastly, some concluding remarks are made about the possible uses of this approach in other contexts.

## 2. Laws, rules, arenas

Mainstream approaches to liberal constitutional democracy see the rule of law as a key aspect of governance and the legitimization of authority (Von Benda-Beckmann et al., 2009, 4). The assumption is that rule (understood as domination) is based on law: ‘institutions and entities, public and private, including the state itself are accountable to laws that are publicly promulgated’ (UN, 2004). However, the idea of the rule of law is problematic in areas where statehood is limited and challenged by non-state armed actors of different types. In many Latin American countries, state laws and regulations are challenged by illegal non-state armed groups that exert control over populations and territories, or penetrate different types of state institutions. This has led to a situation that Arias et al. (2010) have called ‘violent pluralism’, with ‘states, social elites, and subalterns employing violence in the quest to establish or contest regimes of citizenship, justice, rights, and a democratic social order’ (Arias et al., 2010, p. 4). As a result, the laws and regulations of the state have to compete with, relate to, and intertwine with types of sanctioned behaviour of other formal or informal organizations (Migdal, 2001).

This article builds on Migdal’s state-in-society approach and takes issue with the (neo)Weberian notion of the state as an institution that possesses a monopoly of the legitimate use of force within a territorial domain, which can be understood by focusing on the ‘apparatus’ or the institutions of the state (Lotholz & Hébert, 2016). Instead, it focuses on state practices in historical, social, and political contexts (ibid; Migdal, 2001). It brings to light the ‘partial undeterminedness’ of the state, and highlights that state practices can be profoundly contested (Hagmann & Péclard, 2010, pp. 544–546). Migdal’s relational approach to the state stresses that the practices of state agents must be understood in relation to the practices of other societal actors with their own sets of rules, and asserts that understanding the state requires us to look at dynamics and networks within the state, as well as these between state and society (Migdal & Schlichte, 2005, pp. 3–4). Thus, the state is defined as ‘a field of power marked by the use and threat of violence and shaped by (1) the image of a coherent, controlling organisation in a territory, which is a representation of the people bounded by that territory, and (2) the actual practices involving those staffing its multiple parts and those they engage in their roles as state officials’ (Migdal & Schlichte, 2005, p. 15). The image suggests the existence of a ‘dominant, single center of society’ (Migdal, 2001, p. 16). The practices – the actions enacted by different staff members of parts of the state – come in many forms, such as border patrols, policing, etc. These practices can either fortify or weaken the image of the state (Migdal, 2001, p. 18).

In Migdal’s ‘state-in-society approach’, the rule of law is of relative and variable importance and the focus is on the ‘de facto’ rule (understood as domination). Indeed, the law is a ‘many-sided phenomenon’ (Benda Beckmann et al., 2009, 13), and the way in which law plays out is always actor- and context-specific, and can fluctuate over time. The distinction between legality and illegality is one of the key dichotomies on which the image of the state is built (Migdal & Schlichte, 2005, p. 30), while the distinction is not fixed and therefore negotiable. In addition, state agents can also decide to suspend the law in extraordinary situations (Migdal & Schlichte, 2005, p. 30), which raises questions about the ‘rules of suspension’ (Zwitter, 2012, pp. 95–111). Moreover, suspension of the law can be part of political agendas and interests and can be a crucial ‘securitizing’ move in the effort of state agents to secure its legitimacy (Balzacq et al., 2010). Thus, while the idea of the rule of law often is an important point of reference and a source of legitimacy for state governance, its suspension can be defended by pointing at an urgent higher goal of state security. This ambiguity about the rule and

role of law is more likely to be present in situations in which state power is challenged or threatened by non-state armed groups.

As will be argued further on, in the case of El Salvador, the role of the law in the interactions between state agents and gangs differs between arenas (and over time). In some cases, state officials claim to act ‘legally’, while tacitly looking for pragmatic solutions that may be against the law. In other cases, the very question if state conduct is legal or not is less relevant. In this regard, Migdal argues that practices are moral codes in their own right, which may contend with the expressed state’s image (often based on legality). Referring to the work of Steven Ellis and his colleagues on ‘criminalisation’ of the state in Africa, Migdal warns against seeing certain types of elite behaviour as criminal (Migdal, 2001, p. 19). While it can be unlawful, it is not necessarily seen as morally wrong. Hence, the practices of state officials should not be analysed from the laws and codes of the state (only), but also take into account the relations of government staff with other institutions, which can explain why in some cases kinship relations prevail over meritocracy (ibid, 19).

Migdal proposes to study state practices in different ‘arenas’ of opposition and accommodation where state and societal actors interact, while in each arena different sets of rules govern the interactions between these actors. The arena can be defined as a ‘bundle of rules and resources that allow or encourage certain kinds of interactions to proceed, with something at stake’ (Jasper, 2015, p. 27). These sets of rules are arena-specific and ‘often quite distinct from those set out in the state’s own official laws and regulations’ (Migdal, 2001, p. 20; Migdal & Schlichte, 2005, p. 3). For example, smuggling rings, clans, and companies can all put forth ‘systems of meaning that imply boundaries quite different from those represented in the image of the state’ (Migdal, 2001, p. 26). This also means that there is an ongoing contestation of rules and a constant struggle over systems of meaning and the territorial and social divisions’ (Ibid, 26). Thus, in Migdal’s view, society consists of ‘multiple systems of rules’ (Migdal, 2001, p. 15) that are not necessarily compatible.

In arenas, the relations and interactions between state agents and staff are governed by implicit, mostly informal, rules of the game. Rules are ‘the patterns that people follow in social life’ (Fligstein & McAdam, 2012)<sup>1</sup> and provide an understanding of the tactics that are possible (in a given arena). This ties in with Giddens’ (1979, 69) view of rules and resources as the two key features of structures, and rules being both the ‘media and the outcome of social systems’ (ibid). While a key characteristic of arenas is that certain sets of rules are developed and that actors have a shared understanding of what is at stake in each arena, this is not to say that the interpretative frames of actors always align; the interests and interpretative frames of what is going on can differ (Fligstein & McAdam, 2012). In other words, the fact that actors in the arena understand the rules of the game does not imply that they agree with the status quo.

Before discussing a number of arenas of government–gang relations, I first present some relevant contextual information about the development of El Salvador’s security sector and the growth of street gangs after the country signed peace agreements in 1992.

## 3. Rule of law and rule of gangs

The most important result of the peace agreements signed in 1992 between the government of El Salvador and the guerrilla movement Frente Farabundo Martí para la Liberación Nacional (FMLN) was the demilitarization of political life and a process of (re)democratization (Lyons, 2005). The military was sent back to the barracks and excluded from politics, while the rebel movement FMLN was disarmed, demobilized, and transformed into a political party. Elections after the peace agreements of 1992 were, despite some shortcomings, generally deemed free and fair (Van der Borgh, 2004). Yet while the peace agreements and

<sup>1</sup> Fligstein and McAdam (2012) use the term strategic action fields.

the political reforms were seen as a success story initially, it soon became clear that institutional reforms were challenged in different ways (ibid). Two trends are of particular importance to understanding government responses to gangs in the past decades: the security sector reforms and the growth of street gangs.

Firstly, security sector reform was high on the post-settlement agenda, but it faced serious challenges. A new civilian police apparatus was built, which replaced the militarized police. While the initial reports about the reform were quite optimistic, it became increasingly clear that elites with ties to the old regime maintained considerable influence in the post-war years, occupying key positions in the police apparatus and blocking reform (Aguilar, 2014; Cruz, 2011, pp. 16–7; Silva, 2014a; Wade, 2016, pp. 50–1). In addition, due to an overstretched and underfunded judicial system, the capacity to uphold the rule of law remained weak. The penetration of criminal interests in the police apparatus has been discussed by various authors (Aguilar, 2014; Silva 2014a, 2014b). According to Silva (2014b), ‘It was through the police that transnational organized crime, above all drug trafficking organizations and money launderers, penetrated the political system and the social fabric of the country.’

Secondly, in the period after 1992, when the civil war came to an end, gangs grew quickly and transformed from a sub-cultural phenomenon of small and loosely organized groups into organizations part of larger gang networks that have their origin in the United States (US) (Arana, 2005; Savenije, 2004, 2009). Most cliques are part of one of the principal Salvadoran street gangs (the Mara Salvatrucha and the two factions of Barrio 18) that are sworn enemies. Over time, gangs strengthened their control over different spaces (neighborhood level, prison system) and increasingly extorted local residents and businesses in large parts of El Salvador. Gangs were generally strongest in marginalized neighborhoods of the larger cities, but the phenomenon also spread to the countryside (Segovia, 2016).

The deficient security sector reform and the growth of street gangs are related phenomena. It was during the transformation of the security sector that new spaces emerged for the proliferation of street gangs. In interviews conducted in 2017–2018, residents from marginalized neighbourhoods in the Metropolitan Area of San Salvador (AMSS) were asked to compare the security situation at that time with the wartime period. They argued that during the war it was difficult, but not as difficult as the situation at that moment in time.<sup>2</sup> Local gangs already existed during the civil war, but they were lightly armed or unarmed, while local cliques had different names and were not yet part of larger gang structures. More importantly, they operated in a highly militarized context, where guerrilla or security forces were in control, and therefore gangs were not able to exercise the degree of (armed) territorial control that they developed after the civil war. In addition, gangs were not necessarily repressed during the civil war. Former gang members in a neighborhood of the AMSS reported that during the civil war, the police gave them warnings but did not repress them.<sup>3</sup> A former police officer in Nueva Concepcion remembered that, at the end of the war, he arrested local gang members for disturbing public order, who then spent one night in prison and no further measures were taken.<sup>4</sup> However, in the post-settlement years, the demilitarization of many urban and rural spaces allowed street gangs to grow more rapidly and to become more heavily armed and violent. The national context of rapid demilitarization and deficient security sector reform, in combination with the massive deportations of Salvadoran youth from the United States back to El Salvador, was fertile ground for the gang phenomenon to grow exponentially, allowing for hardening and escalation of inter-gang violence, and higher levels of territorial control (Van der Borgh, 2021).

<sup>2</sup> Author’s interviews in the Metropolitan Area of San Salvador (AMSS), July 2017, November 2017, and November 2018.

<sup>3</sup> Author’s interview, San Salvador, July 2017.

<sup>4</sup> Author’s interview, Nueva Concepción, February 2015.

The anti-gang policies that were developed from 2003 onwards that focused on zero-tolerance interventions (*mano dura*) were not able to stop the gang phenomenon. An important critique of these policies is that they contributed to the transformation rather than the abolition of gangs, with prison leadership becoming stronger, and extortion (to sustain the gang) becoming more important (Cruz, 2011; Van der Borgh & Savenije, 2015; Wolf, 2017). Although Salvadoran citizens seemed to support these tough measures, they were also severely criticised by the judiciary for being unconstitutional. For example, at the beginning of this century, judges refused to apply a temporary anti-gang law, releasing gang members if no convincing evidence was presented of their participation in criminal acts.<sup>5</sup> This shows that the gang phenomenon and the question of how to deal with gangs led to push-back from the judicial sector, as well as debates within that sector about the legality of particular forms of government engagement with gangs.

The existence of the gang phenomenon over a longer period of time had a profound impact on the state and society of El Salvador. In the period up to March 2022, the presence of gangs at the local level deeply influenced local social fabrics and the behaviours of local residents. In gang-controlled neighbourhoods, where gangs had a strong power position, local residents called them ‘the law’, or the authority (Van der Borgh, 2023). However, Salvadoran gang structures developed only a limited capacity to ‘govern’, and the use of violence and capacity to instil fear vis-à-vis a range of actors remained crucial in the local control that the gangs exerted (Van der Borgh, 2021). In the words of a local resident: ‘They have a degree of control, but actually they haven’t. Because the people don’t support them. They want to have control, instilling fear, but they don’t have that because the people don’t help them. The only thing that the people have is fear’.<sup>6</sup> Gang power was mostly based on the capacity of gangs to use violence, to instil fear and to intimidate residents of gang-controlled neighbourhoods.

In the places where gangs built up a strong power position, all local actors needed to take them into account. At a local level, gangs had the ability to put pressure on local government staff and representatives. Government officials often had little other choice than to deal with street gangs to get access to neighborhoods where gangs were strong. The same can be said about members of political parties, who often needed to deal with gang presence and tended to do so in a variety of ways. This ranged from ‘asking permission’ to enter a neighborhood, to making deals, which included making payments to gangs (Van Lagenhove, 2017; Van der Borgh, 2023). Engagement between state officials and gangs also took place at the national level, which is the subject of the next section.

#### 4. Arenas of state – gang interaction

This section maps the interactions between gangs and government actors in three selected arenas. For each arena, the main issue at stake, the key actors, and the rules of the game will be briefly discussed. By looking at state practices, one can get a preliminary idea of the rules of the game, as practices and rules should be understood ‘in conjunction with one another, [and] are brought into being in the context of overlapping and connected sets of rules’ (Giddens, 1979, p. 69). Particular attention is given to how the rules of the game relate to law, or what the role of law is in the arena. The identification of arenas and the assessment of interactions and rules in these arenas will be exploratory and primarily serves the objective to explore how state law is practised and imagined in different arenas. In the arenas that are discussed below, different tasks that are typically associated with the state are ‘at stake’,

<sup>5</sup> President Flores came into open conflict with the president of the Supreme Court about the issue of the implementation of the anti-gang law: see ‘Enfrentados presidente Flores y Corte Suprema’, La Prensa Gráfica, 21 October 2003, p.3.

<sup>6</sup> Author’s interview, Nueva Concepción, February 2015.

such as policing, voting (electoral politics), and the containment of violence. Each of these tasks is affected by the presence of gangs, but in each of these arenas gangs play a different role and different rules come into existence that govern the interactions between state agents and gangs. Since the de facto use of violence in El Salvador was not monopolized by 'the state' and gangs had the capacity to use force, it is important to make a distinction between confrontational interactions, in which the use of force or coercion was important, and forms of engagement in which liaising, 'pacting' and collusion were important.

#### 4.1. Arenas of the truce and collusion

Since 2003, all governments have stressed the importance of repression to stop the gang phenomenon. In 2003, then-President Francisco Flores announced a zero-tolerance approach to street gangs, rounding up thousands of alleged gang members (Cruz, 2011). The legality of these measures was criticized, and judges refused to apply a temporary anti-gang law, releasing alleged gang members when no convincing evidence was presented of their involvement in criminal acts (Van der Borgh & Savenije, 2015, p. 10, note 45). Thus, President Flores came into open conflict with the president of the Supreme Court about the issue of the implementation of the anti-gang law. An important difference with the state of exception that President Bukele proclaimed in 2022 is its implementation in the context of democratic backsliding, which affected the judicial sector (Tariaciuk Broner & Bullock, 2023, March 21).

However, the repressive policies coexisted with high-level efforts to contact, have dialogue, negotiate, or collude with gang leaders. In this regard, there was a variety of interactions, which mostly took place backstage, making the evidence of these interactions often patchy and anecdotal. A unique episode of gang-government engagement was in 2012–2013, when imprisoned national gang leaders decided to make a truce, leading to a marked reduction in homicide rates. Salvadoran government officials facilitated this initiative, one of the architects of the truce being the Minister of Justice and Public Security (JPS), Munguia Payés, who had only recently been appointed and had promised to crack down on gangs (Van der Borgh & Savenije, 2015, 2019). Thus, the highly unstable and changing arena of high-level engagements between gang leaders and government officials 'produced' a truce, involving high prison gang leaders of opposing gangs, government-appointed facilitators with access to gangs in prisons, and the support of a few high-level government staff (Van der Borgh & Savenije, 2019). The gang truce (2012–2013) can be seen as a new arena in which the containment of gang violence was one of the main points at stake. While it led to a marked reduction in homicide rates, the legality of the practices employed to facilitate the truce (e.g. the use of facilitators who got access to high-level prisons, gang leaders placed in regular prisons to be able to communicate with gang members outside of the prison) was disputed from the very beginning (ibid).

In the course of 2013, the truce started to unravel as a result of changes in the arena of the truce itself, as well as changes in other sectors of the government. The arena of the truce needed the continued support of the Minister of JPS, Munguia Payés. When he had to resign after the Constitutional Court declared his appointment unconstitutional (as a General of the Armed Forces he was not allowed to serve as Minister of JPS), the newly appointed Minister Perdomo rejected the practices and rules of the arena of the truce. Perdomo opposed the practice of dialogue with active gang members and dismantled the infrastructure that allowed contact between facilitators and imprisoned gang leaders. This was a blow to the efforts to keep the truce alive, and would not be overcome. In addition, the opposition of the Chief Public Prosecutor, Luis Martínez, (appointed on December 4, 2012) had a profound impact on the arena of the truce as well. Martínez actively and vocally challenged the intentions behind the truce, calling the mediators of the truce 'farsantes' ('phoney'). He initiated anti-terrorist legislation against gang members and, at a later stage, prosecuted gang members cooperating

with the mediators of the truce.<sup>7</sup> Thus, the Chief Public Prosecutor argued that his opposition against the arena of the truce was not only 'conform the law' but that the rule of law itself was at stake. Importantly, he openly criticised the mediators and international supporters of the truce (such as Adam Blackwell of the Organization of American States), who supported the truce and defended it. The measures implemented by the new minister Perdomo and the Chief Prosecutor eventually had a devastating effect on the arena of the truce.

After the truce had unravelled, the engagement of national political leaders with high-level gang leaders did not entirely stop. This became particularly clear when Bukele took office in 2019. His government focused on the deployment of police and military in gang-controlled neighbourhoods, and by doing so claimed to finally solve the problem and reduce homicide rates. However, there is growing evidence that the new president made deals with gang leaders before the presidential elections of 2019 and continued talks with them once elected. The marked drop in homicide rates after his administration started has been attributed to these contacts and deals made with gangs rather than to the repressive practices (as the political discourse goes). Thus, in 2019, in the arena of high-level gang-government engagement, new deals were made that had some similarities with the objectives of the truce of 2012–2013: to make sure that gangs contain violence in exchange for benefits to gangs (such as better prison conditions and investment in their neighbourhoods) (Briscoe & Breda, 2020; Martínez et al., 2020). The high-level engagement with gangs continued until March 2022, when President Bukele changed course and implemented the state of exception.

#### 4.2. The arena of policing

In the years 2012–2013 the Salvadoran police was not a stakeholder in the arena of the truce and continued its regular operations, which included the arrest of gang members who played important roles in the truce (Van der Borgh, 2019). Thus, even in times of the truce, police-gang interactions remained mostly confrontational. However, police operations clearly were not able to stop the gang phenomenon or to break their control over territory. When the truce unravelled, homicide rates increased again, as well as calls for tougher measures. In early 2015, this led to the recognition of the right of police to use force in 'self-defense' against gangs by a newly appointed Minister of JPS, Mauricio Ramírez Landaverde (Gagne, 2015). This de facto declaration of war against gangs led to a steep increase in the number of gang members who were killed by the police (Valencia, 2016). The United Nations Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions (UN, 2018), and the Salvadoran Ombudsman for Human Rights (PPDH, 2019) criticized these measures, arguing that they violated the law. While there were clear signs of summary executions of gang members, spokespersons of the police argued that the use of violence was in conformity with the law (ibid). However, it is fair to say that in cases of summary executions, the police did not always abide by the law, and this led to de facto changes in practices and informal rules of policing.

#### 4.3. The arena of local governance and campaigning

The end of the truce and the hardening of the war on gangs did, however, not end the practices of politicians and government staff to liaise with gangs. Politicians still needed to deal with gangs. In the words of Ernesto Muyschondt, a Member of Parliament who admitted that he had negotiated with gangs before the 2014 presidential elections: 'If you

<sup>7</sup> Later government staff that had supported the facilitators of the truce were also targeted. Raúl Mijango, the principal facilitator of the truce has been in custody since August 2017. See 'Mijango fue acusado de dos delitos en caso tregua', El Diario de Hoy, 7 May 2016, p. 30.



want to be a politician, you have to deal with them' (Labrador & Martínez, 2016, March 12). The former mayor of San Salvador (and incumbent president) Nayib Bukele, allegedly also 'pacted with gangs' in the very period that the security forces engaged in a war on gangs (Martínez, 2020). This points to the existence of local-level arenas where political leaders wheeled and dealt with local gangs in order to get access to local territories where gangs were strong. What was at stake in this arena was the access of local government staff and politicians to gang-controlled territories (not the control over these territories, which in this particular arena is not contested). One of the rules in these arenas seemed to be that access to gang-controlled territories of non-armed government actors is negotiable in exchange for rewards (money, projects, jobs).

It is fair to say that in the run-up to the national elections, gangs played an important role in the arena of electoral campaigning. At stake was access to local territories and possibly the outspoken support of gangs for a particular political party. Due to the fragmented structure of gangs, it used to be difficult to win the support of an entire gang, and through them the support of local residents. But there is little doubt that during electoral campaigns, gangs become important 'middlemen' for politicians. A member of a political party involved in the 2014 campaign for the presidential elections recognised that political parties competed for access to territories and support of gangs.<sup>8</sup> In addition, gangs seemed to be aware of the actual policy proposals of political parties regarding gangs and turned against parties that proposed zero-tolerance policies. When, during the campaign of 2014, one of the political parties (the ARENA party) decided to reject new efforts of dialogue with gangs, this seemed to have a negative impact on the outcome of the elections. In the second round of the presidential elections, the party took a softer stance.<sup>9</sup> Thus, during the elections, localised arenas came into existence where access to territories for politicians and their campaigns, and support for political parties is negotiated.

## 5. Conclusion

This paper used the arena concept as a heuristic tool to analyse state-gang relations in El Salvador in the period roughly between 2012 and 2021. The discussion of different arenas shows that state actors and political actors (such as police, national politicians, and government staff) develop different types of relations with gangs. In each arena, different things are at stake, such as the use of force by the police, access to neighbourhoods in the framework of electoral politics, and the containment or reduction of homicide rates (truces or collusion), while in each arena certain rules (have) come into existence that govern the interactions between state agents and gangs.

Confronted with non-state groups that have the capacity to use force and thus challenge the monopoly of violence - which is an important pillar of the image of the state - there seem to be two main types of reaction of state agents: they either deal pragmatically with it or choose to crack down and use force. However, in both types of policy, tensions can emerge between the rules of the game and the rule of law. In the cases discussed in this paper, some of these tensions became more visible and were openly debated (e.g. in the arena of policing and in particular in the arena of the truce), while in other cases the tension remained more hidden (e.g. state-gang interaction in times elections).

The arena approach to statehood used in this article can be useful for other situations where non-state armed groups have the capacity to challenge the state. It helps to 'disentangle' the state and to understand the diversity of relations between state agents and non-state armed groups. The approach can also be useful to analyse the recent policies of the Bukele government that has virtually defeated the gangs in the streets. For example, it can be useful to analyse the most important space

where gang-government interactions still take place: the prison system. The question of how and whether the arena of the prison will develop is uncertain, in particular, whether gangs will be able to strengthen their power position in the prison and will be able to exert influence outside of the prison. In addition, the arena approach is not only relevant for analysing state-gang relations but also in looking at the liaisons that arise with other societal actors (e.g. business, organized crime).

## CRedit authorship contribution statement

**Chris van der Borgh:** Investigation, Conceptualization, Writing - review & editing.

## Declaration of competing interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

## References

- Aguilar, J. (Ed.). (2014). *La situación de la seguridad y la justicia 2009-2014. Entre expectativas de cambio, mano dura militar y treguas pandilleras*. Instituto Universitario de Opinión Pública, Universidad Centroamericana "José Simeón Cañas". [http://www.uca.edu.sv/iudop/wp-content/uploads/libro\\_la\\_situacion%C3%B3n\\_de\\_la\\_seguridad.pdf](http://www.uca.edu.sv/iudop/wp-content/uploads/libro_la_situacion%C3%B3n_de_la_seguridad.pdf).
- Amnesty International. (2022). *El Salvador: President Bukele Engulfs the Country in a Human Rights Everyday Security Practices in Gang-Controlled Neighborhoods in San Salvador* ■ 17 Crisis after Three Years of Government. June 2, 2022 <https://www.amnesty.org/en/latest/news/2022/06/el-salvador-president-bukele-human-rights-crisis/>.
- Arana, A. (2005). *How the Street Gangs Took Central America* (pp. 98–110). Foreign Affairs.
- Arias, E., & Goldstein, D. (Eds.). (2010). *Violent Democracies in Latin America*. Duke University Press.
- Balzacq, T., Basaran, T., Bigo, D., Guittet, E., & Olsson, C. (2010). Security practices. In R. Denmark (Ed.), *International studies encyclopaedia online*. Blackwell Publishing.
- Briscoe, I., & Breda, T. (2020). *A bargain worth making? Bukele and the gangs in El Salvador. War on the rocks*. <https://warontherocks.com/2020/12/a-bargain-worth-making-bukele-and-the-gangs-of-el-salvador/>.
- Broner, T. T., & Bullock, N. (2023). *Countering El Salvador's democratic backsliding. Americas quarterly*. <https://www.americasquarterly.org/article/countering-el-salvadors-democratic-backsliding/>.
- Cruz, M. (2011). Criminal violence and democratization in Central America: The survival of the violent state. *Latin American Politics and Society*, 53(4), 1–33.
- Fernández, B. (2022). *The El Salvador diaries: The cult of Nayib Bukele. Who is the self-proclaimed "coolest dictator in the world" really? Al Jazeera* <https://www.aljazeera.com/opinions/2022/8/8/the-el-salvador-diaries-the-cult-of-nayib-bukele>.
- Fligstein, N., & McAdam, D. (2012). *A theory of fields*. Oxford University Press.
- Gagne, D. (2015). *El Salvador police Chief targets rising gang violence. InSight crime*. <http://insightcrime.org/news/brief/el-salvador-police-commander-green-light-gangs/>.
- Giddens, A. (1979). *Central problems in social theory: Action, structure and contradiction in social analysis*. Macmillan.
- Hagmann, T., & Péclard, D. (2010). Negotiating statehood: Dynamics of power and domination in Africa. *Development and Change*, 41(4), 539–562.
- Human Rights Watch and Cristosal. (2022). *"We Can Arrest Anyone We Want". Widespread Human Rights Violations Under El Salvador's "State of Emergency"*. December 2022 [https://www.hrw.org/sites/default/files/media\\_2022/12/elsalvador1222web.pdf](https://www.hrw.org/sites/default/files/media_2022/12/elsalvador1222web.pdf).
- Jasper, J. M. (2015). Introduction: Playing the game. In J. M. Jasper, & J. W. Duyvendak (Eds.), *Players and arenas. The interactive dynamics of protests* (pp. 9–32). Amsterdam University Press.
- Labrador, G., & Martínez, C. (2016). *Ernesto Muyschondt: 'Si quieres ser político en este país tenés que tratar con ellos. El faro*. [https://www.elfaro.net/es/201603/el\\_salvador/18214/Ernesto-Muyschondt-Si-quieres-ser-pol%C3%ADtico-en-este-pa%C3%ADs-ten%C3%A9s-que-tratar-con-ellos.htm](https://www.elfaro.net/es/201603/el_salvador/18214/Ernesto-Muyschondt-Si-quieres-ser-pol%C3%ADtico-en-este-pa%C3%ADs-ten%C3%A9s-que-tratar-con-ellos.htm).
- Labrador, G., & Martínez, Ó. (2023). *One year under a police state in El Salvador. El faro*. [https://elfaro.net/en/202303/el\\_salvador/26793/one-year-under-a-police-state-in-el-salvador](https://elfaro.net/en/202303/el_salvador/26793/one-year-under-a-police-state-in-el-salvador).
- Lotholz, P., & Hébert, N. (2016). Re-Reading weber, re-conceptualizing state-building: From neo-weberian to post-weberian approaches to state, legitimacy and state-building. *Cambridge Review of International Affairs*, 29(1), 1467–1485.
- Lyons, T. (2005). *Demilitarizing politics. Elections on the uncertain road to peace*. Lynne Rienner Publishers.
- Martínez, C., Lemus, E., & Martínez, Ó. (2023). *Bukele government dismantled gang presence in El Salvador. El faro*. [https://elfaro.net/en/202302/el\\_salvador/26694/bukele-government-dismantled-gang-presence-in-el-salvador](https://elfaro.net/en/202302/el_salvador/26694/bukele-government-dismantled-gang-presence-in-el-salvador).
- Martínez, C., Martínez, Ó., Arauz, S., & Lemus, E. (2020). *Gobierno de Bukele lleva un año negociando con la MS-13 reducción de homicidios y apoyo electoral. El Faro*. [https://elfaro.net/es/202009/el\\_salvador/24781/Gobierno-de-Bukele-lleva-un-a%C3%B1o-negociando-con-la-MS-13-reducci%C3%B3n-de-homicidios-y-apoyo-electoral](https://elfaro.net/es/202009/el_salvador/24781/Gobierno-de-Bukele-lleva-un-a%C3%B1o-negociando-con-la-MS-13-reducci%C3%B3n-de-homicidios-y-apoyo-electoral).

<sup>8</sup> Author's interview, San Salvador, 2018.

<sup>9</sup> Ibid

- C3%B1o-negociando-con-la-MS-13-reducci%C3%B3n-de-homicidios-y-apoyo-electoral.htm.
- Migdal, J. (2001). *State in society: Studying how states and societies transform and constitute one another*. Cambridge University Press.
- Migdal, J., & Schlichte, K. (2005). Rethinking the state. In K. Schlichte (Ed.), *The dynamics of states* (pp. 1–41). Routledge.
- Procuraduría para la Defensa de los Derechos Humanos (PDDH). (2019). *Informe especial de la señora Procuradora para la Defensa de los Derechos Humanos, licenciada Raquel Caballero de Guevara, sobre las Ejecuciones Extralegales atribuidas a la Policía Nacional Civil, en El Salvador, 2014-2018. Caracterización de casos de violación al derecho a la vida y patrones de actuación extralegal*. San Salvador.
- Savenije, W. (2004). La Mara Salvatrucha y el Barrio 18 St.: Enómenos sociales transnacionales, respuestas represivas nacionales. *Foreign Affairs en Español*, 4(2), 38–46.
- Savenije, W. (2009). *Maras y Barras. Pandillas y violencia juvenil en los barrios marginales de Centroamérica*. FLACSO.
- Segovia, A. (2016). *El Salvador: Nuevo patrón de violencia, afectación territorial y respuesta de las comunidades (2010–2015)*. San Salvador: Instituto Centroamericano de Investigaciones para el Desarrollo y el Cambio Social (INCIDE).
- Silva, H. (2014a). *Infiltrados. Crónica de la corrupción de la PNC (1992-2013)*. San Salvador: UCA editores.
- Silva, H. (2014b). *The infiltrators. Corruption in El Salvador's police. Insight crime*. <https://www.insightcrime.org/investigations/the-infiltrators-a-chronicle-of-el-salvador-police-corruption/>.
- United Nations (UN). (2004). *Report of Secretary-General: the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616)*.
- United Nations (UN). (2018). *El Salvador end of mission statement, agnes callamard, united Nations special Rapporteur for extrajudicial, summary or arbitrary executions*. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22634&LangID=E>.
- Valencia, R. (2016). *Casi que guardia nacional civil. El faro*. <https://elfaro.net/es/201610/salanegra/19277/Casi-que-Guardia-Nacional-Civil.htm>.
- Van Lagenhove, L. (2017). Varieties of moral orders and the dual structure of society: A perspective from positioning theory. *Frontiers in Sociology*, 2, 9. <https://doi.org/10.3389/fsoc.2017.00009>
- Van der Borgh, C. (2004). Triple transition and governance in El Salvador. In J. Demmers, A. E. Fernández Jilberto, & B. Hogenboom (Eds.), *Good governance in the era of global neoliberalism: Conflict and depoliticization in asia, Africa, Latin America and eastern europe* (pp. 116–133). Routledge.
- Van der Borgh, C. (2019). Government responses to gang power. From Truce to War on gangs in El Salvador. *Eur. Rev. Lat. Am. Caribb. Stud.*, 107, 1–25.
- Van der Borgh, C. (2021). Understanding the dynamics and functions of gang violence. The case of El Salvador. In D. Brotherton, & R. Gude (Eds.), *Routledge international handbook of critical gang studies*. Routledge.
- Van der Borgh, C. (2023). Everyday security practices in gang-controlled neighborhoods in san salvador. *Conflict and Society*, 9, 1–20.
- Van der Borgh, C., & Savenije, W. (2015). Securitizing and Re-securitizing gang policies. The funes government and gangs in El Salvador. *Journal of Latin American Studies*, 47(1), 149–176.
- Van der Borgh, C., & Savenije, W. (2019). The politics of violence reduction. Making and unmaking the Salvadoran gang truce. *Journal of Latin American Studies*, 51, 905–928.
- Von Benda-Beckmann, F., Von Benda-Beckmann, K., & Eckert, J. (2009). Rules of law and laws of ruling: Law and governance between past and future. In F. Von Benda-Beckmann, K. Von Benda-Beckmann, & J. Eckert (Eds.), *Rules of law and laws of ruling. On the governance of law* (pp. 1–30). Taylor and Francis.
- Wade, C. J. (2016). *Captured peace. Elites and peacebuilding in El Salvador*. Ohio University Research in International Studies.
- Wolf, S. (2017). *Mano dura. The politics of gang control in El Salvador*. University of Texas Press.
- Zwitter, A. (2012). *The rule of law in times of crisis – a legal theory on the state of emergency in the liberal democracy*. Archives for Philosophy of Law and Social Philosophy.